

SENATE COMMITTEE ON JUDICIARY

March 04, 1999 Hearing Room 343

3:00 p.m. Tapes 60-61

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: Work Session

SB 230

SB 273

HB 2388

Public Hearing and Work Session

SB 267

SB 378

SB 379

HB 2235

TAPE/#	Speaker	Comments
Tape 60, A		
003	Chair Bryant	Calls the meeting to order at 3:07 p.m.
009	Counsel Tweedt	<p>Introduces:</p> <ul style="list-style-type: none"> • LC 2817, relating to taxation. • LC 2971, relating to actions to determine insurance coverage for environmental contamination; and declaring an emergency. • LC 2032, relating to organized communities. • LC 3659, relating to driving privileges, declaring an emergency. • LC 3929, proposes amendment to the Oregon Constitution relating to initiative laws. • LC 3962, relating to statements of economic interest. • LC 2387, relating to public officials. • LC 2503, relating to mandating cooperation between insurers and law enforcement. • LC 4002, relating to finance and providing for revenue raising that requires approval by a three-fifths majority. • LC 3986, relating to finance; appropriating money; and providing for revenue raising that requires approval by a three-fifths majority.
059	Sen. Bryant	MOTION: Moves LC's: 3986, 4002, 2503, 2387, 3962, 3929, 3659, 2032, 2971, 2817, BE INTRODUCED as committee bills.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Qutub</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
064	Chair Bryant	Opens work session on SB 230.
<u>SB 230 WORK SESSION</u>		

068	Chair Bryant	Explains SB 230, SB 273 and HB 2388 are all related to questions of public disclosure.
072	Counsel Tweedt	Explains SB 230 exempts from public disclosure names and addresses that were submitted to a commodity council board or commission. The ñ1 amendments put this exemption in ORS 192.501 which contains a balancing test between the public interest and the need for non-disclosure rather than giving them an outright exemption under ORS 192.502 (EXHIBIT A).
082	Sen. Courtney	Asks what the Oregon Newspaper Publishers think about the ñ1 amendments.
094	Lori Brocker	Counsel, Oregon Newspaper Publishers Association We would prefer not to have the exemption at all, because we don't believe it is necessary, but it is better to have it included in ORS 192.501 if there is to be an exemption.
106	Sen. Burdick	I have concerns about so many exemptions from public disclosure.
112	Sen. Bryant	MOTION: Moves to ADOPT SB 230-1 amendments dated 3/3/99.
		VOTE: 6-0-1 EXCUSED: 1 ñ Qutub
		Chair Bryant Hearing no objection, declares the motion CARRIED.
115	Sen. Bryant	MOTION: Moves SB 230 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-2-0 AYE: 5 ñ Brown, Nelson, Qutub, Tarno, Bryant NAY: 2 ñ Burdick, Courtney
		Chair Bryant The motion CARRIES. SEN. NELSON will lead discussion on the floor.

139	Chair Bryant	Opens the work session on SB 273.
<u>SB 273 WORK SESSION</u>		
143	Counsel Tweedt	The ñ1 amendments have the effect of moving the legislation from ORS 192.502 to ORS 192.501 which will provide a balancing test (EXHIBIT B). SB 273 covers public disclosure of the records of applicants for employment with state agencies.
155	Chair Bryant	Including SB 273 in ORS 192.501 rather than ORS 192.502 has made a compromise between those who wanted it passed as written and those who didn't want it passed at all.
161	Sen. Courtney	Asks whether SB 273 applies to school districts or local governing bodies.
165	Counsel Tweedt	It specifically applies to applicants for employment with state agencies.
170	Sen. Courtney	Are we allowing local governing bodies to shield their applicants from disclosure? It is fundamentally unfair to cover state agencies and not extend this coverage to school districts and local governing bodies.
194	Sen. Tarno	Agrees with Sen. Courtney that the exemption should be extended.
199	Sen. Courtney	Proposes conceptual amendment to expand the entities covered by the exemption and asks for discussion.
211	Sen. Tarno	Indicates that the League of Oregon Counties and Association of Oregon Counties should be heard on this issue.
212	Sen. Nelson	Agrees with Sen. Tarno.
213	Sen. Brown	Indicates that she opposes the bill whether or not it is widened.
218	Sen. Burdick	Agrees with Sen. Brown.
222	Chair Bryant	Closes the work session on SB 273 and opens the work session on HB 2388.
<u>HB 2388 WORK SESSION</u>		
230	Counsel Tweedt	Explains that the ñ2 amendments also have the effect of moving the legislation

		from ORS 192.502 to ORS 192.501 which will provide a balancing test (EXHIBIT C) . HB 2388 exempts from public disclosure records submitted to a housing authority. The proponents of the measure state that all of the records listed in lines 42-45 on page 3, and lines 1-9 on page 4 of the original bill contain information of a proprietary nature.
253	Chair Bryant	Originally, HB 2388 just included housing authorities in the non-disclosure privileges given to the Department of Housing and Community Development. Explains the ñ2 amendment moves HB 2388 to ORS 192.501 and indicates that it should be re-drafted to apply to the Housing and Community Development Department in order to be consistent. Closes the work session on HB 2388 and opens the public hearing on SB 267.
<u>SB 267 PUBLIC HEARING</u>		
288	Don Mazziotti	Chief Information Officer, Department of Administrative Services (DAS) Submits written testimony and testifies on SB 267 (EXHIBIT D) . The bill is intended to prevent access, via public record disclosure law, to information related to the security and operation of telecommunication and information processing facilities and services. We seek this exemption to protect our information systems from unauthorized intrusion.
325	Amy Veranth	Assistant Attorney General, Department of Justice Indicates she is available to answer questions should there be any.
329	Lori Brocker	Counsel, Oregon Newspaper Publishers Association Submits written testimony on SB 267 and testifies in support of the ñ1 amendments (EXHIBITS E and F) . The Oregon Newspaper Publishers Association objected to the original bill, not due to the intent but because of the breadth of the original language. Indicates that the two state agencies involved were very cooperative in working out the differences.
348	Sen. Nelson	Asks how the "balancing" procedure between public interest and public disclosure would work.
351	Veranth	Any records covered by ORS 192.501 are subject to a public interest balancing test. The exemption applies unless the public interest takes precedence in any particular instance. The request for release of the records is made to the agency involved, then to the attorney general and finally the circuit court is the last arbiter of public interest in this process.
370	Sen. Burdick	Is the public interest defined well enough in the law?
378	Counsel Tweedt	Public interest has been defined elsewhere in the statutes. SB 267 refers to the existing definition.

390	Veranth	The public interest has been a provision in the law since 1973 and is interpreted with reference to each request for records. Public interest is interpreted based on the particular records involved. Gives examples of different types of public interest balancing.
419	Sen. Burdick	But who makes this decision?
421	Veranth	Initially, the agency involved does, if the petitioner is dissatisfied, it can go to the attorney general, then to the circuit court and possibly the court of appeals.
430	Chair Bryant	Closes the public hearing and opens the work session on SB 267.
<u>SB 267 WORK SESSION</u>		
430	Sen. Brown	MOTION: Moves to ADOPT SB 267-1 amendments dated 3/4/99.
		VOTE: 5-0 EXCUSED: 2 - Courtney, Nelson
		Chair Bryant
		Hearing no objection, declares the motion CARRIED.
434	Sen. Brown	MOTION: Moves SB 267 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
		Chair Bryant
		Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
445	Chair Bryant	Opens public hearing on SB 378.
<u>SB 378 and 379 PUBLIC HEARING</u>		

454	Pete Shepherd	<p>Assistant Attorney General, Department of Justice (DOJ)</p> <p>Introduces Andy Aubertine as the principal person charged with the responsibility of pursuing antitrust violations.</p>
Tape 61, A		
021	Andy Aubertine	<p>Assistant Attorney General, Department of Justice (DOJ)</p> <p>Submits written testimony and testifies in support of SB 378 (EXHIBIT G). Explains that in antitrust suits against large corporations, \$100,000 in civil penalties often isn't enough to deter violations. SB 378 increases this penalty to \$500,000. Notes that no other provisions of the antitrust laws are changed and the judge has absolute discretion to impose an appropriate amount. Discusses prosecution of antitrust violations. Explains importance of civil penalties in prosecution of antitrust violations.</p>
144	Chair Bryant	Closes public hearing and opens work session on SB 378.
<u>SB 378 WORK SESSION</u>		
148	Sen. Courtney	MOTION: Moves SB 378 to the floor with a DO PASS recommendation.
		VOTE: 7-0
		<p>Chair Bryant</p> <p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BROWN will lead discussion on the floor.</p>
<u>SB 379 PUBLIC HEARING</u>		
154	Andy Aubertine	<p>Assistant Attorney General, Department of Justice (DOJ)</p> <p>Submits written testimony and testifies in support of SB 379 (EXHIBIT H). SB 379 would authorize DOJ lawyers to engage in civil settlement discussions at any stage of any antitrust investigation or prosecution. Discusses how problems may arise due to the DOJ's ability to prosecute antitrust matters both in criminal and civil court. Existing disciplinary rules could be interpreted to prohibit DOJ's attorneys from engaging in pretrial, precharging discussions of a proposed civil settlement of facts that could be viewed as criminal or civil violations of law. SB 379 will facilitate resolution of antitrust matters.</p>

190	Chair Bryant	Explains disciplinary rules for attorneys are proposed by the Oregon State Bar and approved by the Oregon State Supreme Court. Disciplinary Rule 7-105, in general terms, says you can't threaten criminal prosecution to gain a civil advantage(EXHIBIT I). How will SB 379 help with the disciplinary rule?
205	Aubertine	We find ourselves in a situation where keeping our options open regarding criminal prosecution could be interpreted as an implicit threat.
224	Sen. Courtney	SB 379, lines 7 through 9, specifies that criminal charges may be subject to civil compromise. This language makes it appear that criminal charges have already been brought, not threatened. It appears that this law has nothing to do with threatening criminal charges. How does the disciplinary rule apply?
266	Aubertine	It is my opinion that the disciplinary rule is in effect and this law does not supercede that rule.
268	Chair Bryant	Has there been a problem in this area?
271	Aubertine	Often, at the beginning of an investigation, counsel for the corporation(s) involved will ask if this is going to be a criminal matter. If the allegations have both civil and criminal characteristics we may say that this has not yet been decided.
291	Chair Bryant	If you are operating under the disciplinary rule now, how does this bill add clarity?
290	Aubertine	It will give us a specific mandate that allows us to compromise and/or settle charges from the beginning up to the time of verdict.
317	Sen. Tarno	Do you envision most of the movement toward compromise coming from the defense?
319	Aubertine	Yes. The defense will almost always want to settle as a civil matter.
327	Sen. Tarno	Do you see a way to suggest civil settlement as a prosecutor without jeopardizing yourself under the disciplinary rule?
333	Aubertine	It can be done, but it leaves us somewhat in jeopardy.
345	Sen. Burdick	The bill says "at any time". Does this mean that you can reach a settlement before an indictment is issued?
349	Aubertine	Yes.

355	Sen. Burdick	This bill is mainly aimed at covering settlement pre-indictment?
356	Aubertine	The bill clarifies our ability to settle a matter from pre-indictment all the way up to the time the jury may be deliberating.
366	Sen. Burdick	This does not assume that a criminal action has already been brought.
368	Aubertine	It does not. It covers a wide range.
383	Sen. Courtney	Inquires about the meaning of "enforcement proceedings" in Section 2, line 17 of SB 379.
399	Aubertine	"Enforcement proceedings," as I understand it, can mean just the beginning of an investigation.
395	Shepherd	Explains the historical reasons for needing this bill. Antitrust violations are exclusively prosecuted, both criminal and civil charges, by the Attorney General's Office. Indicates the DOJ wants to be free to respond to settlement possibilities without jeopardy under the disciplinary rule we have discussed. Indicates that some changes should be made in the language to clear up the questions that have been asked.
Tape 60, B		
035	Shepherd	Suggests that the Attorney General's Office work with committee staff to craft language that clearly states the policy question.
039	Chair Bryant	As I understand it, you are just codifying current practice.
041	Shepherd	That is our intent.
048	Chair Bryant	Closes public hearing on SB 379.
052	Sen. Courtney	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. COURTNEY AND SEN. NELSON to BE RECORDED as voting AYE on the MOTION: Moves SB 267 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
Chair Bryant		Hearing no objection, declares the motion CARRIED.

056	Sen. Qutub	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. QUTUB to BE RECORDED as voting AYE on the MOTION: Moves SB 230 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
057	Counsel Tweedt	Introduces: <ul style="list-style-type: none"> LC 3996, relating to unrepresented child support checks from federal government.
059	Sen. Bryant	MOTION: Moves LC 3996 BE INTRODUCED as a committee bill.
		VOTE: 6-0 EXCUSED: 1 ñ Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
060	Chair Bryant	Discusses committee schedule.
HB 2235A PUBLIC HEARING		
085	Ronelle Shankle	Support Enforcement Unit, Department of Justice (DOJ) Submits written testimony and testifies in support of HB 2235A (EXHIBIT J). Indicates that she also represents the Department of Human Resources, Adult and Family Services in her testimony. This bill would allow the DOJ to provide certain child support account information to the parties involved whether or not the party is represented by an attorney. Before October 1, 1998, the Child Support Accounting Unit (CSAU) was a part of the Department of Human Resources. After that date CSAU became a part of DOJ and is now subject to the disciplinary rules of the Oregon State Bar. They can no longer give out certain

		information to involved parties if an attorney represents them. Discusses the account information that was previously available to parties involved and indicates that this information is not legal in nature. Notes for the record that Oregon Legal Services is in support of the bill.
160	Chair Bryant	Closes public hearing and opens work session on HB 2235A.
HB 2235A WORK SESSION		
162	Sen. Qutub	MOTION: Moves HB 2235A to the floor with a DO PASS recommendation.
161		VOTE: 6-0 EXCUSED: 1 - Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. QUTUB will lead discussion on the floor.
166	Chair Bryant	Adjourns the meeting at 4:15 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 230, -1 amendment (LC 803), dated 3/3/99, 9 pp

B ñ SB 273, -1 amendment (LC 830), dated 3/3/99, 9 pp

C ñ HB 2388, -2 amendment (LC 396), dated 3/3/99, 10 pp

D ñ SB 267, written testimony from Don Mazziotti, 1 pp

E ñ SB 267, written testimony from Lori Brocker, 1 pp

F ñ SB 267, -1 amendment (LC 1137-1), dated 3/4/99, 11 pp

G ñ SB 378, written testimony from Department of Justice, 3 pp

H ñ SB 379, written testimony from Department of Justice, 4 pp

I ñ SB 379, copy of DR 7-105 of the Oregon State Bar disciplinary rules, 1 pp

J ñ HB 2235A, written testimony dated March 4, 1999, Ronelle Shankle, 3 pp