

**SENATE COMMITTEE ON JUDICIARY**

**April 05, 1999 Hearing Room 343**

**3:00 p.m. Tapes 107-108**

**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: SB 792 Public Hearing and Work Session**

**SB 888 Public Hearing**

**SB 177 Work Session**

**SB 38 Work Session**

**SB 17 Work Session**

**SB 62 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 107, A		

003	Chair Bryant	Calls the meeting to order at 3:13 p.m.
<b><u>SB 792 PUBLIC HEARING</u></b>		
014	<b>Mark Gardner</b>	<p><b>Special Counsel, Attorney General's Office</b></p> <p>Submits written testimony and testifies in support of SB 792 (<b>EXHIBIT A</b>). SB 792 is model legislation based on the Master Settlement Agreement (MSA) reached with cigarette manufacturers (Participating Manufacturers). The MSA contains economic provisions that obligate the Participating Manufacturers to pay Oregon a portion of the state's cost associated with the tobacco companies' misrepresentations and distributions of cigarettes in Oregon. Discusses the provisions of SB 792.</p>
129	Chair Bryant	How much do we currently have in the account based on this settlement?
131	Gardner	<p>On December 28, 1998, the first payment was made to the state's escrow account. Oregon's share is \$28 million that is invested in</p> <p>treasury bills at 5.85%. Discusses amounts and times payments are to be made into the escrow account. Oregon will receive \$180 million for the biennium.</p>
150	Chair Bryant	Were we recently awarded additional funding by a commission that Dave Froenmeyer served on?
152	Gardner	That is correct. Oregon will get an additional \$207 million distributed from 2008 to 2017.
163	Chair Bryant	Each state can decide how they want to spend their share of the money?
165	Gardner	That is correct.
166	Chair Bryant	The non-participating manufacturers have about 7% of the market, is that correct?
168	Gardner	That is not correct. Only .2 to .3% are non-participating manufacturers. The MSA represents 99.7 to 99.8% of the cigarette manufacturers.
180	Chair Bryant	Is smokeless tobacco in any way included in this settlement?
182	Gardner	Chewing tobacco is subject to a separate settlement. There is no direct payment involved, but \$300 million is to be placed into an educational trust fund which is available for grants.

198	Chair Bryant	Did the states not included in this settlement have lawsuits settled before the MSA was reached?
200	Gardner	Four states settled prior to the Master Settlement Agreement and they have separate settlements.
206	Chair Bryant	How much did Minnesota settle for?
207	Gardner	Approximately \$6 billion over 25 years.
213	Chair Bryant	What is the projected settlement total over 25 years for Oregon?
216	Gardner	The projected amount, without the additional money from Dave Frohnmeyer's committee, is \$2.25 billion.
222	Chair Bryant	What restrictions are in the agreement as far as tobacco taxes are concerned?
224	Gardner	None, that I am aware of.
228	Chair Bryant	Discusses possible increase in federal excise tax on tobacco products.
235	Gardner	Discusses federal legislation possibilities. If federal excise taxes are increased before December 31, 2001, and the money raised is passed on directly to Oregon, it would offset revenues received under the MSA dollar for dollar.
244	Chair Bryant	If the federal government keeps the money, then there would be no impact on the state's settlement funds?
245	Gardner	That is correct.
248	Chair Bryant	Do you know if the possibility of withholding federal funds to offset the MSA funds is still an issue?
256	Gardner	I have heard in discussions with congressional staffers that there is a move to earmark part of the state's funds for public health initiatives.
267	Chair Bryant	What happens if a cigarette manufacturer goes bankrupt?
268	Gardner	There would be no obligation to pay under the terms of the settlement. However, if any of the assets were sold, there would be a legal obligation to make the payments.

276	Sen. Courtney	The agreement does not apply to cigars or pipe tobacco?
281	Gardner	I believe that is correct.
283	Sen. Courtney	Does this agreement prohibit local cigarette taxes?
290	Gardner	No.
296	Chair Bryant	What has the State of Oregon incurred in legal fees?
303	Gardner	The state hired outside counsel who were paid approximately \$21.5 million directly by the tobacco manufacturers. The state will be reimbursed for in-house counsel by tobacco interests at the prevailing rate.
<b><u>SB 792 WORK SESSION</u></b>		
344	Sen. Courtney	<b>MOTION: Moves SB 792 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. BRYANT will lead discussion on the floor.</b>
<b><u>SB 888 PUBLIC HEARING</u></b>		
370	George Trahern	<p><b>County Assessor, Josephine County, representing the Oregon Assessorís Association</b></p> <p>Testifies in support of SB 888. SB 888 has been introduced on behalf of the Oregon Assessorís Association to remedy an unintended consequence of HB 2096, passed in 1997, which established the privacy of DMV records. Department of Transportation records are used to update the assessment and tax rolls for manufactured housing and mobile homes by Coos County. Normally, the county assessorís records are open to the public, however, the records obtained from the Department of Transportation are private. Even though they contain the same information as other land records, the county canít release the information.</p>
404	Keith Kramer	<b>Assistant County Counsel, Coos County</b>

		<p>Submits written testimony and testifies in support of SB 888 (<b>EXHIBIT B</b>). Gives examples of the problems that arise in Coos County due to the unintended consequences of restricting public access to motor vehicle information. The solution is to define motor vehicle in such a way that manufactured structures and mobile homes are not included in the Department of Transportation prohibition. Indicates that a suggested amendment to SB 888, which defines motor vehicle, is in Exhibit B.</p>
<b>Tape 108, A</b>		
072	<b>Don Miner</b>	<p><b>Oregon Manufactured Housing Association</b></p> <p>Testifies in support of SB 888 if amended to exempt manufactured housing from the Department of Transportation's prohibition of disclosure.</p>
087	<b>Bill Seely</b>	<p><b>Driver and Motor Vehicle Division, Department of Transportation</b></p> <p>Submits written testimony and testifies against SB 888 (<b>EXHIBIT C</b>). The first problem with SB 888 as written is that it redirects our privacy statute to apply to motorized vehicles only. Discusses the effect of this change. Second, the definition of vehicle in the statute was taken from the federal definition in order to be in compliance with federal laws in this area. Not complying with federal law carries expensive penalties.</p>
123	Chair Bryant	<p>Asks that further work be done to craft an amendment acceptable to all. Closes public hearing on 888.</p>
<b><u>SB 268 WORK SESSION</u></b>		
139	<b>Dan Hartman</b>	<p><b>Chief Risk Officer, Risk Management Division</b></p> <p>Submits written testimony and testifies in support of the amendments suggested by his office (<b>EXHIBITS D &amp; E</b>). SB 268 creates an affirmative defense regarding Y2K problems for public bodies. Discusses the changes made by the bill amendments which answer the previous concerns of the committee. Indicates that the bill amendments replace all the previous language of the bill.</p>
213	Chair Bryant	<p>Discusses HB 3245 which would establish similar rules for the private sector that SB 268 establishes for the public sector and has been sent to the House Judiciary-Civil Law.</p>
226	Sen. Nelson	<p>Can a contractual breach still be charged under this bill?</p>
230	Hartman	<p>The intent is to protect public bodies from tort claims. Any protection we get from breach of contract would be on contracts signed after this bill became law.</p>
242	Chair Bryant	<p>Discusses expansion of SB 268 to include all date related errors.</p>

252	<b>Don Mazziotti</b>	<b>Chief Information Officer, State of Oregon</b>  We anticipate 8-10% of Y2K failures will occur in the first two weeks of the year 2000. It appears that 25% will occur during 1999. About 55% are projected to occur during the year 2000 and 15% to occur after the year 2000. There are many dates that could be related to a Y2K error.
276	Chair Bryant	For the record, it is important that our definition of a Y2K error include the definition in Section 2, Subsection (4)(a)(B). The emergency clause will cover any problems in 1999.
284	<b>Mardi Saathoff</b>	<b>Assistant Attorney General</b>  Confirms that it does include a broad range of dates that are associated with the Y2K failure problem.
332	Sen. Nelson	If 89 of the 126 agencies were compliant with SB 268 at the previous hearing, how many are compliant with SB 268-1?
344	Mazziotti	We have 23 agencies which have completed their work and 89 more are expected to be compliant on schedule.
<b><u>SB 268 WORK SESSION</u></b>		
357	<b>Sen. Bryant</b>	<b>MOTION: Moves to ADOPT SB 268-1 amendments dated 3/29/99.</b>
		<b>VOTE: 7-0</b>
<b>Chair Bryant</b>		<b>Hearing no objection, declares the motion CARRIED.</b>
360	<b>Sen. Bryant</b>	<b>MOTION: Moves SB 268 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
<b>Chair Bryant</b>		<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. NELSON will lead discussion on the floor.</b>

**SB 17 WORK SESSION**

375	Counsel Tweedt	SB 17 modifies the mileage rate for jurors in circuit courts from eight cents to not less than ten cents a mile and establishes a process for possible reimbursement of jurors for lodging, dependent care and other reasonable expenses. Indicates additional fiscal information has been provided by the Access to Justice for All Committee ( <b>EXHIBIT F</b> ).
393	Chair Bryant	Asks if the Access to Justice for All Committee looked at removing the lodging reimbursement.
396	Counsel Tweedt	I believe they did take a look at that, but there are no amendments offered.
402	<b>Leola McKenzie</b>	<b>State Court Administrator's Office</b>  The Committee had a meeting on this issue and felt the fiscal impact of the lodging provision was very small. It would benefit only very large counties.
<b>420</b>	<b>Sen. Brown</b>	<b>MOTION: Moves SB 17 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means.</b>
425	Sen. Qutub	Where in the bill does it define the requirements for reimbursement for lodging?
435	Counsel Tweedt	It specifies that the State Court Administrator establishes procedures for eligibility.
440	Chair Bryant	Does the State Court Administrator have any rules regarding this issue?
441	McKenzie	We do not, however, in rare instances in large rural counties if the judge orders it, it has been done. Discusses rule making process.
452	Chair Bryant	Discusses how "reasonable expense" would be defined.
<b>473</b>		<b>VOTE: 7-0</b>
	<b>Chair Bryant</b>	<b>Hearing no objection, declares the motion CARRIED.</b>

**SB 38 WORK SESSION**

**Tape 107, B**

020	Chair Bryant	SB 38 requires appointment of interpreters for adjudicatory proceedings involving non-English speaking persons.
028	Counsel Tweedt	Indicates the ñ1 amendments replace a large part of the bill ( <b>EXHIBIT G</b> ). The ñ1 amendments essentially add state agencies to the statutes which exist right now relating to the court appointed interpreters.
036	Chair Bryant	Discusses fiscal impact and intent of the bill.
041	Sen. Courtney	Are we not going to allow the administrative law judges to do the appointing of interpreters?
045	Counsel Tweedt	There was concern that the administrative law judges would not be the best entity to select the interpreter.
061	Sen. Qutub	Speaks in favor of administrative law judge being able to disqualify an interpreter if need be, not certify or select the interpreters to begin with.
068	Sen. Brown	Indicates that an agency would be appointing interpreters for the party opposing the agency, which is inappropriate.
075	Chair Bryant	Discusses the current process of certifying and appointing interpreters.
100	Sen. Courtney	In court, the judge appoints the interpreter.
102	Chair Bryant	States that there needs to be consistency. It should happen the same way in administrative hearings as it does in a court of law. Closes work session.

**SB 62 WORK SESSION**

108	Counsel Tweedt	Explains that SB 62 establishes fees for jurors as well as procedures for reimbursement for certain expenses. Indicates the Access to Justice for All Committee has provided further information on the projected costs as asked by the committee ( <b>EXHIBIT H</b> ).
114	Chair Bryant	Discusses the projected cost information on Exhibit H.
129	Sen. Tarno	Clarifies the daily rate of pay after the first two days.
137	Chair Bryant	It would be 8 hours times the minimum hourly wage.



152	Sen. Courtney	<b>MOTION: Moves SB 62 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means.</b>
		<b>VOTE: 7-0</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>SB 177 WORK SESSION</u></b>		
168	Chair Bryant	SB 177 permits civil action for employment termination based on disability. This is to correct an error made in 1997.
182	Counsel Tweedt	Indicates the ñ1 amendments dated 4/2/99 will clarify the retroactivity of the bill <b>(EXHIBIT J)</b> .
190	Chair Bryant	Discusses the timing issues clarified by the amendment and a case which was effected by this.
208	Counsel Tweedt	Indicates she is uncertain of the specifics of the case discussed.
213	<b>Kevin Lafky</b>	<b>Attorney, Private Practice</b>  Indicates the case under discussion is a currently pending case and has no outcome as yet. The original bill had no retroactivity. The ñ1 amendment does not revive a cause of action if it has expired. Discusses the timing of the retroactivity clauses.
260	Sen. Nelson	Is there a certain period of time where no action will be allowed?
263	Chair Bryant	If the statute of limitations has run out, no action is allowed.
264	Lafky	A one-year statute of limitations applies in any case and the courts will have to interpret this.
274	Sen. Bryant	<b>MOTION: Moves to ADOPT SB 177-1 amendments dated 4/2/99.</b>
		<b>VOTE: 7-0</b>

	<b>Chair Bryant</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>278</b>	<b>Sen. Courtney</b>	<b>MOTION: Moves SB 177 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
		<b>Chair Bryant</b>  <b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. COURTNEY will lead discussion on the floor.</b>
<b>284</b>	<b>Chair Bryant</b>	Adjourns hearing at 4:55 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,  
Administrative Support Counsel

#### **EXHIBIT SUMMARY**

**A ñ SB 792, written testimony dated April 5, 1999, Mark Gardner, 3 pp**

**B ñ SB 888, written testimony, suggested amendment and letters, Keith Kramer, 37 pp**

**C ñ SB 888, written testimony dated April 5, 1999, Bill Seely, 2 pp**

**D ñ SB 268, written testimony dated April 5, 1999, Dan Hartman, 1 pp**

**E ñ SB 268, -1 amendments dated 3/19/99, 3 pp**

**F ñ SB 17, written testimony, Access to Justice for All Committee, 1 pp**

**G ñ SB 38, - 1 amendments dated 3/16/99, 7 pp**

**H ñ SB 62, written testimony, Access to Justice for All Committee, 1 pp**

**I ñ SB 177, -1 amendments dated 4/2/99, 1 pp**

**J ñ SB 38, Letter dated March 29, 1999, Michael Bostwick, 2 pp**