

SENATE COMMITTEE ON JUDICIARY

May 18, 1999 Hearing Room 343

3:00 p.m. Tapes 185 - 187

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

MEMBER EXCUSED: Sen. Brown

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HB 2381A ñ Possible Reconsideration and Work Session

HB 2482A ñ Public Hearing and Work Session

HB 2135A ñ Public Hearing and Work Session

HB 2425A ñ Public Hearing and Work Session

HB 2721A ñ Public Hearing and Work Session

HB 3397 ñ Public Hearing and Work Session

HB 3576 ñ Public Hearing and 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.

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TAPE/#	Speaker	Comments
Tape 185, A		
003	Chair Bryant	Calls meeting to order at 3:12 p.m.
<u>HB 2721A PUBLIC HEARING</u>		
011	Rep. Max Williams	State Representative, House District 9 Submits written testimony and testifies in support of HB 2721A which addresses the summary judgment rule in Oregon. Oregon has its own summary judgment rule. HB 2721A brings Oregon into line with the federal summary judgment rules. Indicates that the Oregon State Bar Committee on Procedures and Practices does not oppose the bill as amended (EXHIBITS A, B & C).
075	Chair Bryant	Discusses the legislative intent in 1995 and the subsequent court decisions, some of which did not reflect their intent. HB 2721A will change the summary judgment statute to clearly reflect legislative intent in the language of the statute.
136	Robert Neuberger	Attorney, Portland Submits written testimony and testifies in opposition to HB 2721A (EXHIBIT D). Discusses the history of summary judgment statutes in Oregon. A summary judgment requires far more than probable cause. Indicates that the proposed legislation does not mirror the federal statute.
Tape 186, A		
004	Neuberger	Discusses the amount of time and energy taken in preparing, submitting and hearing summary judgments. Discusses the rate of affirmation by higher courts of summary judgments.
175	Chair Bryant	Discusses the history and intent of the tort bills he sponsored in 1995, including SB 385 from that session.
220	Neuberger	Discusses his recall of the events in 1995 that led to the passage of SB 385.
<u>HB 2482A PUBLIC HEARING</u>		
297	James Nass	Legal Counsel, Court of Appeals Submits written testimony and testifies in support of HB 2482A (EXHIBIT E).

HB 2482A WORK SESSION

440	Sen. Courtney	MOTION: Moves HB 2482A to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 ñ Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
450	Sen. Bryant	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote by which HB 2381 was passed.
		VOTE: 6-0 EXCUSED: 1 - Brown
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
454	Sen. Bryant	MOTION: Moves to RECONSIDER the vote by which HB 2381 was passed.
		VOTE: 6-0 EXCUSED: 1 - Brown
	Chair	Hearing no objection, declares the motion CARRIED.
<u>HB 2381A WORK SESSION</u>		
457	Counsel Tweedt	HB 2381A has language that would require a court to award prevailing party fees. If the defendant prevailed, there would not be a violation and therefore fees could only be awarded to the cable company. With Mr. Dewey's concurrence,

		<p>the ñA2 amendments delete "incurred as a</p> <p>Result of a violation." This will reestablish the intent of the legislation (EXHIBIT F).</p>
492	Sen. Bryant	<p>MOTION: Moves to ADOPT HB 2381A-A2 amendments dated 5/18/99.</p>
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair	<p>Hearing no objection, declares the motion CARRIED.</p>
496	Sen. Courtney	<p>MOTION: Moves HB 2381A to the floor with a DO PASS AS AMENDED recommendation.</p>
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. NELSON will lead discussion on the floor.</p>
Tape 185, B		
<u>HB 2425A PUBLIC HEARING</u>		
040	Tom Branford	<p>Circuit Court Judge</p> <p>Submits written testimony and testifies in support of HB 2425A that relates to keeping a dog that is a public nuisance (EXHIBIT G). Discusses the current laws and the need for change.</p>
066	Sen. Burdick	<p>Under current law, if a dog kills a child, that dog can't be destroyed until they kill another child?</p>
070	Branford	<p>That's correct. There is a county procedure that may be an option, but in circuit court I do not have that option.</p>

080	Chair Bryant	If a dog chases livestock, he may be destroyed. The state doesn't have the option to destroy a dog who has injured a person.
085	Branford	That is the reason this legislation is needed.
093	Sharon Harmon	Oregon Humane Society Testifies in support of HB 2425A as amended by the ñA5 amendments (EXHIBIT H) . Section three of HB 2425A is eliminated by the ñA5 amendments. Indicates that there were inadvertent changes to the original bill and the ñA5 amendments will correct that.
107	Chair Bryant	The ñA5 amendments would eliminate judicial review?
109	Harmon	That judicial review still exists, just under a different part of the law.
111	Chair Bryant	A person could still request a stay on action being taken under this bill if they wanted to, even if we eliminate this section?
118	Harmon	That is correct.
119	Glenn Kolb	Oregon Veterinary Medical Association Submits written testimony and testifies in support of HB 2425A (EXHIBIT I) .
129	Sen. Nelson	Discusses SB 795 that also addresses dog behavior, as it relates to uniformity in the statutes.
136	Chair Bryant	Indicates that SB 795 is a different set of statutes and deals with civil rather than criminal penalties.
160	Branford	Discusses limits on financial violation penalties in the Oregon statutes.
175	Chair Bryant	The sterilization of a dog just calms the dog down?
177	Kolb	Yes, it calms the dog down, and makes it less likely to run.
183	Branford	This bill addresses the keeper of the dogs, as well as the dog who is causing problems.
200	Sen. Qutub	If you eliminate section three of HB 2425A, the ability to request a stay and judicial review has not been lost?

207	Counsel Tweedt	I can't answer that. I haven't done any research.
210	Teresa Miller	Oregon Humane Society In my discussions with Chuck Taylor in Legislative Council, he said that whether or not we leave section three in the bill, the right for judicial review exists in other parts of the statutes.
<u>HB 2425A WORK SESSION</u>		
221	Sen. Courtney	MOTION: Moves to ADOPT HB 2425A-A5 amendments dated 5/18/99.
224	Sen. Qutub	Has Judge Harmon looked at the A5 amendments and do they meet with his approval?
227	Harmon	I have not researched it, but I was assured that Legislative Council indicated other parts of the statutes allow for judicial review.
		VOTE: 6-0 EXCUSED: 1 - Brown
		Chair Bryant Hearing no objection, declares the motion CARRIED.
240	Sen. Courtney	MOTION: Moves HB 2425A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Brown
		Chair Bryant Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
<u>HB 2135A PUBLIC HEARING</u>		

285	Susan Browning	Department of Revenue Submits written testimony and testifies in support of HB 2135A (EXHIBIT J). Discusses two sections of the bill: one that allows certain specified Department of Revenue employees to have a pseudonym and the second to allow authorization to disclose specific information that will help in the prosecution of mail theft.
391	Robert McDonnell	US Postal Inspector, Postal Inspection Service, Portland Submits written testimony and testifies in support of HB 2135A (EXHIBIT K). Discusses the problem of mail theft and how the passage of HB 2135A will assist the postal service in prosecuting incidents of mail theft.
Tape 186, B		
053	Cynthia Byrnes	Attorney General's Office Indicates she is available to answer any questions.
054	Vice-Chair Courtney	If someone from the Department of Revenue calls me because I haven't paid my taxes, I don't have the right to ask who is calling under this bill?
056	Browning	It is similar to what private collection agencies do, which is to give their agents "desk names." Very few of our employees have need for this protection. I would guess 3 or 4 employees.
073	Vice-Chair Courtney	Asks Sen. Tarno if police officers use pseudonyms.
077	Sen. Tarno	No. What brought this forward at this time? Has something happened?
098	Browning	Yes. There is a group of tax protesters who are harassing individuals in our agency both personally and in court. Discusses the personal animus directed to revenue agents. The director would need to approve each instance of an employee using a pseudonym.
120	Sen. Tarno	Do other states do this?
122	Browning	The federal government does this on a carefully controlled basis.
145	Sen. Qutub	Aren't there legal ways to protect employees who are being harassed by tax protesters? The courts can handle a case brought without merit.

156	Byrnes	I received one call in which a tax protester had come to a revenue agent's home. These kinds of cases are very difficult. It was handled by a protective order. Discusses the type of problems which employees have had and the statutes that are available to handle these problems.
173	Sen. Qutub	Last session the governor vetoed a bill on mail theft. I think this bill is too narrow as it relates to mail theft. I am not yet convinced that we need to have pseudonyms in the Department of Revenue.
208	Sen. Nelson	When a citizen appears to be so dangerous, aren't there other agencies that are equipped to handle this?
213	Browning	The Oregon Department of Revenue will back off and turn collection over to the State Police or the Federal Government if we know the group involved is dangerous.
234	Vice-Chair Courtney	Discusses mail theft and the issue of pseudonyms.
260	Sen. Tarno	Is the Department of Revenue legally able to pass on information about taxpayers that are violent and irate to the Department of Justice?
270	Browning	As much as possible we try to handle these problems internally. We do pass on certain physical threats or bomb threats to the State Police.
285	Vice-Chair Courtney	Closes public hearing on HB 2135A and opens public hearing on HB 3397.
<u>HB 3397 PUBLIC HEARING</u>		
297	Bernie Bottomly	Tri-County Metropolitan Transportation (Tri-Met) Submits written testimony and testifies in support of HB 3397 which creates an exception to the public records law for employee addresses provided to special districts when used in promoting alternatives to single occupant motor vehicle transportation (EXHIBIT L). Tri-Met gets employee address lists from private employers and uses them to map an appropriate transportation program for that business. This might include car pools, van pools, bus pass subsidies or other strategies. While the list is in our possession we are unable to protect it from disclosure if a request is made under the public records law. Since we realized this and have informed businesses of the possibility we would not be able to protect the confidentiality of these lists, approximately two-thirds of the employers we have contacted are turning down our assistance.
345	Vice-Chair Courtney	Why would a newspaper want the list of these employees?
346	Bottomly	My understanding is that they were doing a transportation story regarding commuting patterns.

352	Sen. Burdick	Two-thirds of the companies turned down your offer?
360	Bottomly	Prior to our disclaimer regarding confidentiality we were getting about 75%-85% acceptance of our assistance.
367	Lori Brocker	Oregon Newspaper Publishers Association Testifies that her organization would support this provision if it were under ORS 192.501. If information exists which could be helpful to inform the public, it would then be accessible under the balancing test.
406	Counsel Tweedt	Discusses the difference between ORS 192.501 and ORS 192.502.
430	Brocker	The balancing test is difficult to meet. We just think that there may be a time that the information should be available.
460	Counsel Tweedt	It also means that you cannot be able to get this information anywhere else.
468	Bottomly	The language we are using in HB 3397 is very specific and covers just the addresses of employees to offer assistance in promoting transportation alternatives to single occupant travel.
Tape 187, A		
029	Sen. Burdick	Would "address" be interpreted to mean the zip code as well?
031	Bottomly	We are looking at the specific home address of an employee.
034	Sen. Burdick	So a reporter could get names and zip codes, just not the address?
036	Bottomly	Yes, I think that would be appropriate.
038	Counsel Tweedt	I disagree with that. If the zip code is part of their address record, then this bill protects it from disclosure.
043	Sen. Burdick	Maybe we can get an amendment to release only the zip code?
051	Brocker	Would it be possible to just add "street" in front of "address"? Would that be enough?
054	Vice-Chair Courtney	I think we need to wait and be sure we do the appropriate thing.

HB 3576A PUBLIC HEARING

082	Diane Cowan	Oregon People's Utility District Association (OPUDA) Submits written testimony and testifies in support of HB 3576A which would exempt municipally owned and people's utility districts (PUD) from certain public disclosure provisions (EXHIBIT M).
122	Sen. Burdick	Do the investor owned utilities already have this exemption?
126	Cowan	Yes. Only the PUDs and the municipal electric utilities don't have this protection.
128	Sen. Burdick	How did that happen?
129	Cowan	It just hasn't been an issue before now. Circumstances have changed.
140	Tom O'Connor	Oregon Municipal Electric Utilities Submits testimony and testifies in support of HB 3576A (EXHIBIT N). Indicates that the PUDs and the electric utilities are not private organizations. We had assumed we were able to protect our customer information and we can not.
169	Lori Brocker	Oregon Newspaper Publishers Association Submits written testimony and testifies in support of amendments. Indicates the language defining "information" which is found in SB 1149 would be far better (EXHIBIT O). Indicates they would prefer inclusion under ORS 192.501 rather than ORS 192.502.
210	Vice-Chair Courtney	Adjourns meeting at 5:15 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 2721A, written testimony submitted by Rep. Max Williams, 5 pp

B ñ HB 2721A, written testimony submitted by Rep. Max Williams, 17 pp

C ñ HB 2721A, written testimony submitted by Rep. Max Williams, 9 pp

D ñ HB 2721A, written testimony submitted by Robert Neuberger, 7 pp

E ñ HB 2482A, written testimony submitted by James Nass, 6 pp

F ñ HB 2381A, -A2 amendments dated 5/18/99, 1 pp

G ñ HB 2425A, written testimony from Tom Bradford, 1 pp

H ñ HB 2425A, -A5 amendments dated 5/18/99, 1 pp

I ñ HB 2425A, written testimony from Glenn Kolb, 1 pp

J ñ HB 2135A, written testimony from Susan Browning, 2 pp

K ñ HB 2135A, written testimony from R. McDonnell, 3 pp

L ñ HB 3397, written testimony from B. Bottomly, 11 pp

M - HB 3576A, written testimony from Diane Cowan, 1 pp

N ñ HB 3576A, written testimony from T. OíConner, 3 pp

O ñ HB 3576A, written testimony from Lori Brocker, 1 pp