

SENATE COMMITTEE ON JUDICIARY

May 04, 1999 Hearing Room 343

3:00 p.m. Tapes 161-162

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

STAFF PRESENT: William Taylor, Counsel

Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: SB 80 - Work Session

SB 721 - Work Session

SB 722 - Work Session

SB 723 - Work Session

SB 1075 - Work Session

SB 1206 - Work Session

SB 916 - Work Session

SB 804 - Work Session

SB 805 - Work Session

HB 2257A ñ Public Hearing and Work Session

SB 1163 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.

TAPE/#	Speaker	Comments
Tape 161, A		
003	Chair Bryant	Calls the meeting to order at 3:12 p.m.
<u>SB 1075 WORK SESSION</u>		
009	Rep. Karen Minnis	State Representative, House District 20 Testifies in support of SB 1075, which mandates that the court must consider prior child or spousal abuse when awarding custody of children.
029	Stephen B. Herrell	Circuit Court Judge, Multnomah County Submits testimony and testifies in support of SB 1075 (EXHIBIT A). Indicates family violence is a factor that should be considered when awarding custody. Children who witness family violence are marked by that experience. Indicates that SB 1075 should adopt a "rebuttable presumption," as outlined in <u>Family Violence: A Model State Code</u> that was released in 1994 by the National Council of Juvenile and Family Court Judges.
143	Maureen McKnight	Legal Aid Services of Oregon Submits testimony and testifies in support of SB 1075 with amendments (EXHIBITS B & C). The ñ1 amendments are offered to allow consideration of other related factors when a parent is an abuser in order to insulate the issues addressed by SB 1075 from a court challenge. Indicates that the "rebuttable presumption" approach addressed by Judge Harrell is the preferable avenue to take and a hand engrossed version is part of Exhibit C.
173	Sen. Brown	Who had the ñ1 amendments drafted?
176	McKnight	Legal Aid requested a draft from Legislative Counsel of amendments to address our concerns.
177	Sen. Brown	On page 5, lines 17-18 of SB 1075, preference is given when considering custody to the primary caregiver of the child. Is that just codifying case law?
182	McKnight	That does codify case law.

185	Minnis	I believe that is current law, but I'm not sure.
200	Counsel Taylor	Judge Harrell, are you satisfied with the conceptual amendments that Maureen McKnight has proposed to SB 1075?
201	Harrell	Yes.
<u>SB 721 WORK SESSION</u>		
226	Counsel Tweedt	SB 721 specifies that a split calculation must be made for the Public Employees Retirement System (PERS) members who serve both as a legislator and in other employment with a PERS plan. The ñ1 amendments specify that SB 721 applies only to members who are appointed or begin service after the effective date (EXHIBIT D) .
238	Chair Bryant	Explains that all the PERS changes should be prospective not retrospective in their effect. The idea is that the legislators would receive benefits at the level of compensation they received while in PERS, not at the level of the best three years of employment.
260	Sen. Brown	Since 1991, I have been a full time legislator and my PERS balance has generated about \$1000 a year. I am not allowed to invest in an IRA. It's the worst of both worlds. I would be extremely concerned about punishing legislators for serving the public.
274	Chair Bryant	I don't think it is punishment. From a PERS standpoint, it is based on your compensation as a legislator, rather than what you could earn doing another job in the public employment sector.
283	Sen. Brown	Why would we treat legislators differently than others who have held two jobs in the public sector, covered by PERS retirement benefits?
285	Chair Bryant	Probably because the compensation level is low, compared to other state jobs.
<u>SB 722 WORK SESSION</u>		
298	Counsel Tweedt	The ñ2 amendments replace the original bill (EXHIBIT E) . They create a Tier 3 for post January 1, 2000, newly hired employees. The pension for those hires would be based on a formula that is different for general employees and public safety employees and an annuity based on employee contributions and earnings. The first ten sections of the bill pertain to that calculation. Section 11 would allow the employee to withdraw both the employer and employee contribution on retirement, without loss of eligibility for insurance or the medical supplement. Section 15 of the bill would permit the PERS Board to pool local government employers. Section 17 would permit employer participation in the variable account. Section 19 would permit cities and counties to withdraw from PERS for all hires after the effective date.

332	Chair Bryant	I think we intended to include not just cities and counties, but special districts. The two that have to stay in, to keep the system actuarially sound, would be state employees and schools. Discusses the April 22, 1999 letter from Mark Johnson (EXHIBIT F) . Community Colleges have asked about a portability program in a Tier 3 PERS. Is this possible?
419	Fred McDonnal	Public Employees Retirement System (PERS) At the present time there is no method for people to "roll over" retirement funds from another plan. There is a bill this session to allow that. There would be no expenditures from the PERS trust to augment those funds, however. PERS between our colleges is very portable.
460	Chair Bryant	In the first instance, where funds would be rolled over from another qualified plan, wouldn't there be administrative costs?
462	McDonnal	Yes, but not large costs.
475	Steve Delaney	Public Employees Retirement System (PERS) We will deduct those costs prior to the yearly earnings distribution so it would be paid for by the participant.
Tape 162, A		
052	Chair Bryant	So it would be cost neutral to PERS. Did we do this at Oregon Health Sciences University (OHSU)?
055	McDonnal	No, that is considerably different.
058	Sen. Nelson	Asks whether SB 328 relates to portability.
059	Chair Bryant	Yes. I think it does.
064	Sen. Nelson	Asks whether the optional plan is portable between colleges.
069	McDonnal	The optional plan can't be carried with you, but it is available when you retire.
083	Sen. Nelson	Is final average salary defined in this bill?
084	Chair Bryant	It is in current statute. You'll find it in the PERS current statute book that was provided a few days ago.
<u>SB 723 WORK SESSION</u>		

094	Counsel Tweedt	The ñ1 amendments replace the original bill with language modifying membership of the eleven member PERS Board (EXHIBIT G). It reformulates the make-up of the Board from three public members to a total of six, including the requirement that three of those members have experience in investing or pension management.
106	Chair Bryant	This doesn't change the fiduciary responsibility, it just widens the base of the Board.
115	Sen. Courtney	Is the implication that the PERS Board has not invested or managed well?
119	Chair Bryant	The PERS Board does not do the investing. The implication is that if you are a beneficiary of the PERS system, you have a slightly more myopic view of the system. A wider view might be better.
127	Sen. Courtney	That's the theory. What about reality?
128	Chair Bryant	That's my theory and reality. That's why I'm recommending this. If you are not a member of the PERS Board you may have a different view.
133	Sen. Courtney	Have they acted in a myopic manner or has mismanagement occurred?
139	Chair Bryant	I would not accuse the PERS Board of any mismanagement. However, with a slightly different perspective, the problems we are addressing might have surfaced sooner.
146	Sen. Qutub	The reaction to the provisions of SB 721 earlier in this meeting illustrates that when the participants in the decision making process are all members of the plan, vested interest becomes obvious and difficult to ignore. SB 721 deals with the legislature and it would effect the people who are sitting here.
165	Sen. Courtney	I hadn't thought of the actual Board makeup being part of the problem.
174	Chair Bryant	Maybe if the Board was slightly different they might have been slightly more proactive.
<u>SB 1163 PUBLIC HEARING</u>		
200	Ray Wilkeson	Oregon Forest Industries Council Testifies in support of SB 1163 with the ñ1 amendments (EXHIBIT D). SB 1163 fixes liability for harm or potential harm occurring downstream from the site of environmental activity. Discusses environmental activity required by the Forest Practices Act that causes downstream harmful effects.

245	Terry Lamers	Oregon Small Woodlands Association Testifies in support of SB 1163. If a landowner is required to leave trees down as a part of the Forest Practices Act, the State, not the landowner, should be responsible for any inadvertent damage caused by this requirement.
263	Charlie Stone	Department of Forestry Testifies in support of SB 1163 and the ñ1 amendments that make clear that the limitations on liability in SB 1163 do not apply to any liability occurring under Chapter 477 which deals with fire damage.
<u>SB 1163 WORK SESSION</u>		
296	Sen. Tarno	MOTION: Moves to ADOPT SB 1163-1 amendments dated 4/30/99.
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
		VOTE: 5-0 EXCUSED: 2 - Brown, Courtney
298	Sen. Tarno	MOTION: Moves SB 1163 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. TARNO will lead discussion on the floor.
318	Sen. Courtney	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. COURTNEY to BE RECORDED as voting AYE on the motion to move SB 1163 to the floor with a DO PASS AS AMENDED recommendation.

	Chair Bryant	Hearing no objection, declares the motion CARRIED .
		VOTE: 6-0 EXCUSED: 1 ñ Brown
<u>SB 80 WORK SESSION</u>		
322	Counsel Tweedt	There are no amendments to SB 80. SB 80 allows the appointment of counsel in guardianship proceedings.
332	Ann Christian	Indigent Defense Services, Department of Justice Testifies in support of SB 80. Indicates that Services to Children and Families (SCF) have asked for funds in their budget to assist in this issue.
418	Chair Bryant	SB 80 is a very limited bill, based on the fiscal statement. I think it is a good policy and is financially sound.
443	Sen. Nelson	I note the fiscal statement provides \$250 per case. Is that reasonable?
446	Christian	Some geographical areas may need to pay more. It may be underestimated on the average.
Tape 161, B		
034	Chair Bryant	With the estimated impact under \$50,000, this is one that does not have to go to the Ways and Means Committee.
035	Sen. Qutub	Didn't she just say that it was underestimated?
040	Chair Bryant	It could be, but I'd like to move it to the other side.
041	Christian	Our estimate was based on a partial biennium. The full biennium is more. So it is debatable whether this needed to go to the Ways and Means Committee.
058	Sen. Qutub	I am not concerned about the full or partial biennium. Discusses the method of estimating costs. You have used \$250 as an average and you have said that isn't correct.

075	Christian	I apologize, the fiscal is out of date. I feel comfortable with the number of cases, but the rate of \$250 is too low. Whether this needs to go to Ways and Means is up to you. This matter is in the Judicial Department's budget plan.
099	Sen. Tarno	The fiscal cites 1853 cases per year. If we double that for a biennium, and take 5% of that number at \$250 per case, you are right up against \$46, 250.
107	Sen. Qutub	MOTION: Moves SB 80 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means.
		VOTE: 7-0
Chair Bryant		Hearing no objection, declares the motion CARRIED.
115	Sen. Brown	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. BROWN to BE RECORDED as voting AYE on the motion to move SB 1163 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
Chair Bryant		Hearing no objection, declares the motion CARRIED.
<u>SB 1206 WORK SESSION</u>		
125	David Bennett	Attorney Testifies in support of SB 1206 as amended (EXHIBITS J & K). SB 1206 as amended brings the provisions of the Oregon Planned Community Act and the provisions of the Oregon Condominium Act into compliance with each other.
162	Barbara Kanz	Planned Community/Condominium Work Group Indicates there are no substantive changes between the ñ1 and the ñ2 amendments.
183	Sen. Bryant	MOTION: Moves to ADOPT SB 1206-2 amendments dated 5/3/99.

		VOTE: 7-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
184	Sen. Bryant	MOTION: Moves SB 1206 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BRYANT will lead discussion on the floor.
<u>SB 916 WORK SESSION</u>		
193	Sharon Barrett	Oregon Rental Housing Association Testifies in support of SB 916 with the ñ4 amendments (EXHIBIT L). SB 916 exempts owner occupied homes that include attached accessory dwelling units from the discrimination statutes for familial status and opposite gender.
216	Counsel Tweedt	The change is that the ñ4 amendments specify that not only must the dwelling be within or attached to the owner occupied dwelling but it must share a common door or access.
222	Cynthia Ingebretson	Fair Housing Council of Oregon Testifies in support of SB 916 with the ñ6 amendments (EXHIBIT M). Indicates that the ñ6 amendments are the product of a collaboration between many interested parties. The ñ6 amendments address the concerns of landlords who are renting out rooms in their homes by using the definition of roomer, which currently exists in the codes.
245	Chair Bryant	The ñ4 amendments specify that if there is a common door for access the owner is exempt. The ñ6 amendments specify you must share some living space in order to be exempt.
285	Sen. Brown	MOTION: Moves to ADOPT SB 916-6 amendments dated 5/4/99.

286	Sen. Burdick	Indicates she is in favor of the ñ6 amendments.
287	Sen. Qutub	Indicates she does not like the ñ6 amendments.
288	Sen. Nelson	Indicates he will oppose the ñ6 amendments.
293	Sen. Tarno	I prefer the ñ4 amendments.
295	Sen. Burdick	Declares conflict of interest since she is a landlady, however she will be voting against that interest.
313	Sen. Qutub	The ñ6 amendments seem very narrow. The privacy given to landlords by the ñ6 amendments should already exist.
326	Sen. Brown	I support the ñ6 over the ñ4 because we are allowing protected discrimination and we should have good reason to do this. Basement apartments can be provided a dead bolt that provides a physical barrier that is no different than any apartment complex.
352	Sen. Qutub	I think this is an issue of liberty and property rights.
357	Sen. Brown	A property owner can choose not to rent.
364		VOTE: 4-3 AYE: 4 - Brown, Burdick, Courtney, Bryant NAY: 3 - Nelson, Qutub, Tarno
	Chair Bryant	The motion CARRIES.
377	Sen. Brown	MOTION: Moves SB 916 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-3 AYE: 4 - Brown, Burdick, Courtney, Bryant NAY: 3 - Qutub, Tarno, Nelson

	Chair Bryant	<p>The motion CARRIES.</p> <p>SEN. BURDICK will lead discussion on the floor.</p>
<u>HB 2257A PUBLIC HEARING</u>		
408	Phillip Schradle	<p>Appellate Division, Department of Justice</p> <p>Submits testimony and testifies in support of HB 2257A (EXHIBIT N) which would improve the processes that apply when parties involved in civil litigation seek to obtain a stay of a trial court judgment pending appeal.</p>
<u>HB 2257A WORK SESSION</u>		
446	Sen. Courtney	MOTION: Moves HB 2257A to the floor with a DO PASS recommendation.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Qutub</p>
		<p>Chair Bryant</p> <p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. COURTNEY will lead discussion on the floor.</p>
459	Chair Bryant	Reopens work session on SB 916.
<u>SB 916 WORK SESSION</u>		
462	Sen. Tarno	Serves notice of a possible minority report on SB 916.
466	Sen. Nelson	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. NELSON to CHANGE vote from AYE to NAY on the motion to move SB 916 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0

		EXCUSED: 1 ñ Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
<u>SB 804 & SB 805 WORK SESSION</u>		
057	Laura Schroder	Attorney, Portland, Oregon Submits testimony and testifies in support of SB 804 and SB 805 as amended (EXHIBITS O, P & Q) . SB 804 specifies that a final order in other than a contested case issued by the Water Resources Commission must be in writing and clearly indicate it is a final order. SB 805 specifies the same requirements for all state agencies. Indicates the Department of Justice and the Department of Water Resources have asked to move forward only on SB 804. It is agreed that SB 805 is too broad in concept. Discusses the ñ1 amendments and the proposed conceptual amendments found in Exhibit Q.
138	Martha Pagel	Water Resources Department We have tried to make a good faith effort to be clear in our final orders and are happy to support the approach being taken on SB 804 as it will be amended.
151	Sen. Burdick	What kind of fiscal impact will it have?
153	Pagel	I don't believe there will be much impact.
154	Sen. Burdick	The previous \$137,000 will go away?
155	Schroder	Yes. That had to do with the service of orders and was only in SB 805. We are not concerned with the provision for receiving notice by certified and registered mail. Our problem will be taken care of as long as the orders are clearly labeled.
168	Sen. Burdick	Good. The cost to register and certify mail was an issue.
170	Sen. Nelson	SB 804 will apply only to Water Resources?
172	Schroder	That is what we've agreed on.
175	Pagel	Yes, Water Resources will be the "test case."
182	Phillip Schradle	Department of Justice

		Submits written testimony and testifies in opposition to SB 804 and SB 805 (EXHIBIT R) . Indicates that his written testimony is not completely relevant since conceptual amendments have been agreed to. If you pass a broad APA revision that effects all agencies, it will probably have many unintended effects. Using SB 804 as a trial is a good way to do this.
200	Schroder	We have changed "order" to "final order", since we had no intention of causing a hardship to agencies.
204	Sen. Burdick	Closes the work session on SB 804 and SB 805 and adjourns the meeting at 4:50 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 1075, written testimony of Judge Stephen Herrell, 3 pp
B ñ SB 1075, ñ1 amendments dated 4/26/99, 1 pp
C- -SB 1075, written testimony of Maureen McKnight, 12 pp
D ñ SB 721, -1 amendments dated 5/3/99, 1 pp
E ñ SB 722, -2 amendments dated 5/4/99, 32 pp
F ñ SB 722, written testimony of Mark Johnson, 13 pp
G ñ SB 723, -1 amendments dated 3/19/99, 3 pp
H ñ PERS, written testimony, Fred McDonnal, 1 pp
I ñ SB 1163, -1 amendments dated 4/30/99, 1 pp
J ñ SB 1206, -2 amendments dated 5/3/99, 115 pp
K ñ SB 1206, written testimony submitted by Barbara Kanz, 9 pp
L ñ SB 916, -4 amendments dated 5/4/99, 1 pp
M ñ SB 916, -6 amendments dated 5/4/99, 1pp

N ñ HB 2257, written testimony from Philip Schradle, 4 pp

O ñ SB 804, -1 amendments dated 4/28/99, 1 pp

P ñ SB 805, -1 amendments dated 4/28/99, 1 pp

Q ñ SB 804 & SB 805, conceptual amendments submitted by L. Schroder, 3 pp

R ñ SB 804 & SB 805, written testimony from Philip Schradle, 3 pp