

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 6, 1997 Hearing Room 357

1:00 PM Tapes 41 - 42

**MEMBERS PRESENT:**

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

**MEMBERS EXCUSED:** Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

**STAFF PRESENT:**

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

**MEASURE/ISSUES HEARD:**

Work Sessions - HB 2430, HB 2152A

Public Hearings - SB 301, HB 2817, HB 2759

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.

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 41, A</b>		
004	Chair Minnis	Calls subcommittee to order
<b><u>HB 2817 - PUBLIC HEARING</u></b>		

008	Chair Minnis	Opens public hearing
012	Mike Fahey	State Representative, District 17 >submits and summarizes informational materials, <b>(EXHIBIT A)</b> >not opposed to prison but the amount of money that it takes to build on the wetlands >has talked with Sheriff Noelle, but cost involved before anything can be done is why bill is here
049	Rep. Bowman	Comments about level of NIMBY activity taking place in North Portland community >site recommended by citizen group
055	Rep. Fahey	Yes, but it wasn't number one. >Port of Portland site was number one up until the last meeting when the Port threatened lawsuit. >not a question of backyards but of priorities and use of funds
072	Rep. Shetterly	Asks if there are any other sites under consideration to which this bill would apply
075	Rep. Fahey	I don't know of any and I would hope not.
077	Bob Montgomery	State Representative, District 56 >current sites under consideration are not in wetlands >supports HB 2817 >seen what happens to wetlands and floodplains recently >can't afford to spend public money on something in harm's way
098	Rep. Shetterly	What is the timeline for development of this site?
099	Rep. Fahey	We needed it last year. We need the space. It is on the fast-track. >ironic because other site is immediately buildable
104	Rep. Shetterly	Does waiting until sine die present a problem, or do we need an emergency clause if this bill were to move forward?
110	Rep. Fahey	We would need it for this.
113	Rep. Bowman	With BM 47 is this still the plan that Multnomah County is intending to implement?
		Because of Measure 47, everything is still up in the air as far as

116	Rep. Fahey	prisons. >talking about 14,000 truckloads of fill before building can begin
128	Chair Minnis	Comments about emergency management facility to be located near Salem Airport which didn't go through because it is on a floodplain and federal dollars would not be available >These are county facilities with county money, but if federal money is ever needed I don't know if that would be a hindrance or not.
136	Rep. Fahey	There will be some state money involved. >If county wants to build it with their own money, that is their option. >Five feet of fill out there brings the site up to road level.
142	Chair Minnis	I'm wondering what the federal government's rationale is in not wanting to build on a floodplain.
143	Rep. Fahey	I think it would probably be common sense.
145	Rep. Bowman	I have a problem with setting up legislation to address one problem. >I think this is a county issue and not a state money issue.
155	Chair Minnis	The policy is whether to address all 36 counties throughout Oregon.
161	Rep. Shetterly	Why do you build this in a place that is going to flood? >broad support on co-sponsorship
166	Rep. Fahey	I have no problem with these facilities. >looking for wise use of money in light of fact that other services are being cut
173	Rep. Shetterly	How are we going to define the wetlands?
178	Rep. Fahey	The language came out of Legislative Counsel.
180	Rep. Montgomery	EPA regulations define wetlands. Quite possibly this should not just be correctional facilities but any government facility should not be placed in harm's way.
195	Chair Minnis	Closes public hearing on HB 2817
<b>HB 2430 - WORK SESSION</b>		

203	Chair Minnis	Opens work session on HB 2430
212	Rep. Bowman	<b>MOTION: Moves HB 2430 to the full committee with a DO PASS recommendation.</b>
216		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 2 - Prozanski, Courtney</b>
	Chair Minnis	<b>The motion CARRIES.</b> <b>REP. BOWMAN will lead discussion in full committee.</b>
220	Chair Minnis	Closes work session on HB 2430
<b><u>HB 2152 - WORK SESSION</u></b>		
222	Chair Minnis	Opens work session on HB 2152 >explains discussion of previous work session >-3 amendments, <b>(EXHIBIT B)</b>
233	Rep. Shetterly	<b>MOTION: Moves HB 2152 to the full committee with a DO PASS AS AMENDED recommendation.</b>
236		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 2 - Prozanski, Courtney</b>
	Chair Minnis	<b>The motion CARRIES.</b> <b>REP. SUNSERI will lead discussion in full committee.</b>
241	Chair Minnis	Closes work session on HB 2152
<b><u>SB 301 - PUBLIC HEARING</u></b>		
243	Chair Minnis	Opens public hearing on SB 301
250	Rob Bovett	Assistant County Counsel, Lincoln County >appearing on behalf OF Lincoln County Sheriff's office and Oregon State Sheriff's Association

		>submits and summarizes written testimony in support of bill, <b>(EXHIBIT C)</b>
312	Rep. Bowman	What is a juvenile restraining order?
314	Bovett	Juvenile abuse restraining orders came up in 1993. >offers example of when they are issued and the process involved
337	Chair Minnis	Does this require that temporary custody be turned over to the state?
340	Bovett	The juvenile abuse restraining order issues at the time or after court has made determination it is subject to its jurisdiction.
349	Chair Minnis	Closes public hearing on SB 301
<b>HB 2759 - PUBLIC HEARING</b>		
358	Chair Minnis	Opens public hearing on HB 2759
369	Randall Edwards	State Representative, District 15 >submits and reads written testimony in support of bill, <b>(EXHIBIT D)</b>
420		Continues testimony
<b>TAPE 42, A</b>		
017	Rep. Bowman	What about the magic number of 5?
019	Rep. Edwards	When bill was first drafted it was 4 which was in accordance with previous rule. >DOC had upped it to 5 upon rewriting of their rules, but I know that there are physical and fiscal constraints.
028	Rep. Sunseri	Is there any prohibition on what they report and what we'll see on Channel 2?
031	Rep. Edwards	This bill, as drafted, only addresses who can attend. >What they can report is at the discretion of the department. >underscores the need for public exposure
042	Rep. Wells	How is this going to be written as to how much they can see?
		I have not come to a conclusion on that yet, but I wanted to address

051	Rep. Edwards	the right to attend.
059	Rep. Shetterly	I have a sneak preview of -1 amendments from Oregon Newspapers that addresses that issue.
070	Gail Ryder	Government Affairs Director, Oregon Newspapers Association >introduces Hasso Hering, Rob Prieue, and Bill Johnstone
		>submits written testimony and proposed amendments, <b>(EXHIBIT E)</b>
		>reads written testimony
120		Continues testimony
170		Continues testimony
204	Rep. Wells	Comments on being impressed by the tightness of viewing quarters >How will they control number of people that come in?
211	Ryder	The bill requires five media representatives and four comfortably fit at last one.
218	Hasso Hering	Editor, <i>Albany Democrat-Herald</i> >submits and reads written testimony, <b>(EXHIBIT H)</b>
267	Bill Johnstone	Executive Director, Oregon Association of Broadcasters >submits and reads written testimony, <b>(EXHIBIT F)</b>
340	Rob Prieue	City Editor, Corvallis Gazette-Times, President, Willamette Valley Chapter of Society of Professional Journalists >submits and reads written testimony, <b>(EXHIBIT G)</b>
390		Continues testimony
<b>TAPE 41, B</b>		
015	Prieue	Comments on -2 amendments
019	Rep. Shetterly	Is there room in the amendments that would address non-disclosure relating to personnel involved in the execution process?
029	Hering	It would depend on what is covered there. >best way to shield identities is to make sure not disclosed >Corrections officers under no duty to declare who they are. >envisions reporters wanting to describe physical characteristics of those involved
051	Ryder	This came up because in California they asked for their officers to wear surgical masks to hide their identity.

060	Rep. Sunseri	What is the intention here?
063	Hering	What we're asking for here is simply these amendments. >No one here would object to cameras being present, but that is not what we're asking for.
068	Johnstone	Rules currently only allow for pencil and pad and no recording devices. >>want ability to be able to report exactly what we see
088	Rep. Sunseri	My concern is that this bill does not express the limitation of not allowing cameras.
104	Hering	Less than 70 years ago, executions were done by public hanging in the courthouse square. >This has changed not due to legislation but due to public attitudes.
118	Rep. Sunseri	There are a lot of things shown on TV that violate public sensitivities. >no protection or limitation here for those who don't want to see it
125	Ryder	DOC Administrative Rules are very specific about addressing your concern.
131	Rep. Wells	In looking at administrative rules, there seems to be a conflict.
140	Chair Minnis	Clarifies that it was left out when drafted but were subsequently changed.
141	Ryder	The reason for the bill is to maintain that rule knowing that they could change that rule at any time.
144	Johnstone	Originally, five people were allowed to attend, but when UPI left Oregon it was reduced to 4 and so our argument was that it should be reinstated to the 5.
160	Chair Minnis	I have problems with the amendments based on some assumptions of the constitutionality of the press' rights.
174	Bryan Johnston	State Representative, District 3 >The public stands to gain from this with better knowledge. >Media is our eyes and ears in most circumstances. >in support of bill and amendments
194	Rep. Bowman	What troubles me about the amendments is that it was earlier stated that it is the public's right to know about what happens during an execution which I don't agree with. >I agree with the media being able to be present and report on it, but there is a fine line.

		>supports original bill but not amendments
211	Rep. Johnston	I support their right to full and continuous viewing within reasonable rights of government to operate their facility.
223	Chair Minnis	Do you believe that the press has a greater right than the public?
225	Rep. Johnstone	Yes because the media has achieved the representative status for the people.
230	Chair Minnis	I would argue in opposition to that point because I don't think the press has reached that point of substituted judgment. >To what extent is the fact of terminating one's life private?
251	Steve Doell	Crime Victims United >support of HB 2759 >submits and reads written testimony, <b>(EXHIBIT I)</b> >no objection to a professionally produced and directed reenactment of the crime
294	Chair Minnis	Can we strike one of the media-folks to allow for a member of the victim's family?
299	Doell	We always want to have that as part of the bill that they could be made available to the execution.
301	Chair Minnis	If we're going to codify the media's right we might as well codify the victim's family as well.
303	Rep. Sunseri	Asks question about the extent of public's knowledge with or without media coverage
326	Doell	I think they do know less, whether they are for or against the death penalty, it is important for them to know all the events that happen around the execution.
335	Rep. Sunseri	What if we mounted a fixed camera?
339	Doell	I wouldn't disagree with that but the caveat would have to be that it must be professionally produced. >at a point where death penalty is sterile
351	Rep. Sunseri	What I am trying to understand is the priority of the press.
356	Doell	Priority is to report what has occurred during that time.
363	Rep. Shetterly	I think the press does work in a representative capacity. >would oppose televising the event >I think this bill gets at a balance and support the first part of the amendment.



		>would like to wrestle a little more with second part of amendment because there is merit to protect those who carry out the execution
396	Dave Cook	<p>Director, Department of Corrections</p> <p>&gt;submits and reads written testimony, <b>(EXHIBIT J)</b></p> <p>&gt;work to be done before moving forward on bill</p> <p>&gt;clarifies some things in regards to Rep. Wells' visit as per a previous question</p> <p>&gt;Pens and pencils are provided to avoid contraband being brought in.</p>
<b>TAPE 42, B</b>		
019	Cook	<p>Witnesses do see execution now.</p> <p>&gt;important role in managing the process</p> <p>&gt;showing execution itself is sufficient.</p>
031	Rep. Bowman	The area you operate in is very tiny. Can you articulate what the safety risks would be if there were other people on the other side of the wall?
037	Cook	<p>Responds that it depends on the inmate</p> <p>&gt;Staff are at risk any time we move that inmate.</p> <p>&gt;if curtain opened earlier would see movement from cell to gurney</p>
057	Chair Minnis	So you did agree initially with the bill as introduced?
059	Cook	<p>Yes, but not with the amendments.</p> <p>&gt;would like to do consultation with Rep. Edwards' office and our attorneys</p>
063	Rep. Courtney	Was there a noticeable impact leading up to the day of the execution of Mr. Wright?
067	Cook	<p>Responds with example of San Quentin trip</p> <p>&gt;no traumatic impact on staff or inmates</p>
080	Rep. Courtney	How do they execute in CA?
081	Cook	They currently use lethal injection.
084	Rep. Courtney	Is it possible, in your opinion, that lethal injection makes it a less traumatic event?

088	Cook	It is a sterile process, but I can not speak to any of the other processes.
096	Chair Minnis	Closes public session on HB 2759.
097	Chair Minnis	Declares subcommittee adjourned.

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 2817, Written testimony and informational materials, Rep. Mike Fahey, 12 pp.**

**B - HB 2152, Proposed amendments, Staff, 1 p.**

**C - SB 301, Written testimony, Rob Bovett, 1 p.**

**D - HB 2759, Written testimony, Rep. Randall Edwards, 2 pp.**

**E - HB 2759, Written testimony, informational materials, and proposed amendments, Gail Ryder, 19 pp.**

**F - HB 2759, Written testimony, Bill Johnstone, 2 pp.**

**G - HB 2759, Written testimony, Rob Priewe, 2 pp.**

**H - HB 2759, Written testimony, Hasso Hering, 1 pp.**

**I - HB 2759, Written testimony, Steve Doell, 1 pp.**

**J - HB 2759, Written testimony, Dave Cook, 1 pp.**