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SENATE COMMITTEE ON CRIME & CORRECTIONS

March 7, 1997 Hearing Room B

1:00 P.M. Tapes 28 - 30

MEMBERS PRESENT:

Sen. Shirley Stull, Chair

Sen. Jeannette Hamby, Vice-Chair

Sen. Avel Gordly

Sen. Eileen Qutub

Sen. Cliff Trow

MEMBER EXCUSED: Sen. Veral Tarno

STAFF PRESENT:

Nikola Jones, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD: Overview and Informational Meeting on Measure 17

Invited Testimony: Kevin Mannix, Co-Author, Measure 17

Oregon Department of Corrections

Attorney General's Office

Office of the Governor

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 28, A		
003	Chair Stull	Calls meeting to order at 1:03 p.m.
007	Nikola Jones	Committee Counsel, explains contents of Committee's packet regarding Measure 17.
026	Chair Stull	<p>Comments on the complexity of Measure 17.</p> <p>>constitutional law - changes will require voter's approval</p> <p>>General overview is planned for today. Witnesses will be back providing more in-depth information.</p>
041	Kevin Mannix	<p>Co-Author and Co-Chief Sponsor of Measure 17 presents an overview for Committee. Discusses the difficulty during the 1993 session when he and Rep. Derfler tried to fix some of the statutes in order to put inmates to work. Found it impossible to get the subcommittee to commit to a bill because of special interests at that time; no input was received from the public although the concept of putting prisoners to work had popular support. It was also decided to present the issue as a constitutional amendment because there were already statutes on the books.</p> <p>Continues to discuss both the liberal and conservative sides of the measure. Liberal side is against the warehousing of prisoners. Advocates basic education, on-the-job training, and work experiences. The conservative side advocates the concept of accountability and the appropriate use of a resource - the inmate.</p> <p>Measure 17 balances both sides by saying inmates must work 40 hours per week but half that time can be spent on training and education. Those too ill or too dangerous can be exempted.</p> <p>>rehabilitation - not punishment</p>
		<p>Continues. Oregon's constitutional provision is considered one of the most aggressive and progressive in the United States. Measure 17 (Section 8) allows compensation to be determined and defined by the Director but also limits how the compensation can be used.</p>

111	Mannix	<p>>except where to comply with federal law</p> <p>Discusses the Attorney General's recent interpretation regarding the going back to comply with federal law.</p> <p>>80% used for victims - 20% for inmate - Explains.</p> <p>>government decided to inquire if there was a problem - Explains.</p> <p>>Measure 17 doesn't violate federal law.</p>
165	Mannix	<p>The only court ruling you have on Measure 17 says its okay to pay inmates. Continues.</p> <p>>State shuts down interstate commerce portion.</p> <p>>Private sector wants to know that they are complying with federal law.</p> <p>>losing a wonderful opportunity to get the private sector to pay for these programs</p> <p>>have to refer something back to the voters to clean up that problem</p>
197	Mannix	<p>That is why we are here today - continues.</p> <p>>concept of whether Measure 17 costs or saves money</p> <p>>uses example of the City of Salem and using prisoners for maintenance work in the parks</p> <p>>neutral savings description</p> <p>>City of Salem received 5 times the work for same amount of money</p> <p>>local or communities don't count</p>
237	Mannix	<p>Corrections Department have begun to keep records</p> <p>>in terms of benefits to tax payers - saved \$4 million</p> <p>>work ethic, on-the-job training, and team spirit for inmates</p>
254	Sen. Gordly	Refers to voter's pamphlet - What were some of the arguments?
	Mannix	<p>Replies. The arguments I made when I gave speeches</p> <p>>very liberal and very conservative at the same time</p> <p>>public relations by others referred to the accountability side - inmates should work as hard as the tax payers</p>
	Sen. Gordly	Arguments against.

	Mannix	Largely were saying that it is a punitive measure, showing a nasty attitude towards prisoners, and that it took away their dignity.
289	Sen. Trow	Comments regarding statement that Mannix believes this is a government created problem. In addition you seem to be saying that the Department of Administrative Services (DAS) is not able to understand the Measure. Asks for more details. >advised by legal counsel that there was a problem
	Mannix	Replies. When a client agency comes to me, they have a certain goal in mind. It is my job as an attorney to look at all options as well as the legal obstacles for achieving that goal. Explains.
320	Sen. Trow	You seem to be saying that DAS had some reason not to want to implement this law.
	Mannix	Continues. For some reason the Department of Corrections was told by DAS that they have to ask a lot of questions of the Department of Justice. Continues. >had to pay for attorney time >Department of Justice came up with an opinion >explains how the process works
344	Sen. Trow	Am sure that can happen. It may also be true that they perceived a real legal problem. How do we know which way it was done?
	Mannix	Don't know if we will ever know which way it was done. Continues. >court's decision
363	Sen. Trow	Continues for clarification of previous questions. We are dealing with interstate commerce which is federal law.
	Mannix	Respectively disagree about how you approach your legal counsel. Explains.
386	Sen. Trow	Relating to Measure 17. What is your interpretation of out-of-state prisoners' housing.
	Mannix	I would have to check to see if the location counts. >Spirit of Measure 17 is that it doesn't matter. Continues.
410	Sen. Trow	Should we privatize prisons in Oregon, would that prison be obligated to fulfill Measure 17?
TAPE 29, A		
	Mannix	In terms of spirit - continues.
017	Sen. Gordly	Refers to statement regarding government needing to create a problem. Pretty harsh. Would hope that we would ask the Attorney General, "What prompted you to take a look at this area?"
029	Chair Stull	Point of clarification. You will have that opportunity. Information presented as an overview today. Continues.

040	Mannix	<p>Clarifies to Committee:</p> <p>Department of Justice responded to questions - allowed some range of interpretation</p> <ul style="list-style-type: none"> >consistently publicly supportive of their efforts >increasingly critical of DAS - continues >injunction issued
071	Sen. Trow	You mention government opposition. Why do you think that is?
	Mannix	<p>Replies:</p> <ul style="list-style-type: none"> >inertia >requires business be done differently
	Sen. Trow	Why is the DAS opposed?
	Mannix	<p>Try to explain by perception - continues.</p> <ul style="list-style-type: none"> >new way of doing business >mired in their own bureaucratic inertia
	Sen. Trow	Continues for clarification.
	Mannix	Yes. Gives example.
106	Sen. Hamby	What about an inmate faced with a long term, is it your intent that they be trained for re-entry also?
	Mannix	<p>Replies.</p> <ul style="list-style-type: none"> >productive while they are in prison >develop that work ethic and get some basic on-the-job training and education
	Sen. Hamby	Illegal aliens?
	Mannix	No distinction made in this Measure. Explains.
145	Sen. Hamby	If we were to ignore the federal decision on interstate commerce and we are working against our own state constitution - that becomes a concern
	Mannix	<p>Federal government has never said that Measure 17 violates anything. Continues.</p> <ul style="list-style-type: none"> >set the Prison Industries Enhancement Program (PIE) aside
165	Sen. Trow	Comments. Legal or internal problem with deferential pay?
		<p>No legal problem with deferential pay. Explains.</p> <ul style="list-style-type: none"> >13th amendment

	Mannix	<p>>question of motivation and discipline</p> <p>>stairstep program of rewards</p> <p>>reduction of jealousy factor, but not an elimination</p>
191	Chair Stull	Comments on the fact that it is not unlike the real world. We all don't make the same amount of money. Continues.
	Sen. Trow	Ability to compete is not that open.
209	Sen. Qutub	<p>Stairstep Program seems to be a good system.</p> <p>>there are a lot of things similar to the real world</p> <p>>incentive to make more</p>
	Mannix	<p>Oregon prides itself in being almost revolutionary in the way it does government and business.</p> <p>>Measure 17 would allow us to help inmates</p> <p>>opportunity rather than a problem</p>
226	Chair Stull	<p>Comments on the fears and arguments against.</p> <p>>opportunity to discover it being very beneficial for the caseworker as well as the clients.</p> <p>>inmates may benefit by experiencing things for the first time.</p>
	Mannix	I agree. Continues
265	Sen. Hamby	<p>Am still troubled. The language is so clear: "Any compensation earned through prison programs shall only be used for -"</p> <p>Continues.</p>
313	Chair Stull	Comments for clarification.
	Mannix	<p>Didn't give you a full description. Explains.</p> <p>>whole Section 8 is referring to compensation</p> <p>>important to look at the language - rehabilitation</p> <p>>rehabilitation includes an incentive program - grubstake fund</p> <p>>issue coming over from the House - clean up that language to make it clearer that you can provide that compensation</p>
326	Chair Stull	Directs comments to Committee. In interest of time, please limit questions if possible.
		<p>Director, Oregon Department of Corrections. Submits written testimony.</p> <p>[Exhibit A] Remarks on the Department's agreement with much of what Mr.</p>

335	David Cook	<p>Mannix previously stated. Have no concern about his underlying values behind Measure 17.</p> <ul style="list-style-type: none"> >inmates must work and be held accountable >work eliminates costs for the Department of Corrections and ultimately the tax payers of Oregon >25% work done in the institutions is done simply to oversee and maintain the facility >came in with very poor skills
426	Cook	<p>Prison Reform Act of 1994</p> <ul style="list-style-type: none"> >clear that citizens were serious that inmates work >work is not punishment >inmates who work are easier to manage
TAPE 28, B		
042	Cook	<p>Out-of-state rental beds.</p> <ul style="list-style-type: none"> >need to acquire beds to house inmates for a temporary period of time for the lowest possible cost >work was secondary >establishment of the Prison Industries Board. (PIB) >Implementation - How do you get it done effectively? >more inmates to work at lowest possible costs <p>Discusses types of jobs</p> <ul style="list-style-type: none"> >institutional support - 20/25% work force >other governmental support - work groups
110	Cook	<p>Continues.</p> <ul style="list-style-type: none"> >flood recovery work >forest fire clean up >minimum custody inmates

		<ul style="list-style-type: none"> >problem with placing medium/higher risk inmates- industries program >steady/highly skilled work force under controlled environment >further develop skills 20 hours per week
142	Cook	Finding difficulty and little room to move to improve that program.
146	Benjamin deHaan	<p>Deputy Director, Oregon Department of Corrections. Discusses the implementation of Measure 17.</p> <p>Implementation Strategy:</p> <ul style="list-style-type: none"> >protect the public - run secure and safe institutions >redesign how you operate - gives example >reducing dependence on the General Fund through growth of successful businesses and private partnerships >compliance increases rapidly >long history of using outside work groups >recover 80% of funds spent in outside work groups
184	deHaan	<p>How much expertise did we have in the Department in running businesses?</p> <ul style="list-style-type: none"> >find that expertise >limitations - lengthy administrative processes - explains
209	deHaan	<p>Progress to date:</p> <ul style="list-style-type: none"> >created 1,000 new jobs >hired new staff >assessed financial condition of our industries programs and eliminated marketing efforts which were ineffective/distasteful
232	Sen. Trow	Are we re-allocating resources from other programs to do this?
	deHahn	<p>Replies. We've done both of those things. Explains</p> <p>Given \$22 million in this current budget to serve as seed money on Measure 17 activities. Continues.</p> <ul style="list-style-type: none"> >given new positions >used existing tools and infrastructures

		<p>>retooled existing programs to be more focused on work force development</p> <p>>no curtailment of valuable programs</p>
		<p>Discusses elimination of some marketing strategies. Explains.</p> <p>>created an automated inmate scheduling system</p> <p>>designed the awards system - created a point system - positive benefits</p>
306	Cook	<p>Refers to former Rep. Mannix's comment regarding the inmate recognition awards program. In reality, it was determined through analysis that compensation would not work in terms of the PIE Program as it related to the constitution.</p> <p>>awards system deemed by many in the federal government as very positive. Continues.</p>
340	Sen. Trow	Do you believe you have the freedom to maintain two different ways of doing it with inmates working in interstate commerce?
	Cook	Given the opportunity, we would use this structure in some way to make that happen. Explains
360	Sen. Trow	Fully legal?
	Cook	Fully legal under Measure 17. Explains.
368	Sen. Qutub	More detailed presentation at a later time?
	Cook	We would be thrilled. Explains
394	Sen. Gordly	Have the discussions in the press and legislature contributed to security problems in any way?
414	Cook	<p>Environment changes based on events, climate, population numbers - any number of things. Explains.</p> <p>>"People don't sleep when their lives are in danger." Continues</p>
TAPE 29, B		
035	Cook	work program has contributed something successful
042	Sen. Trow	Questions inertia.
	Cook	I don't think so. I think that is concern. Explains.
054	Chair Stull	You will be invited back to answer questions in more detail.
062	Jef Van Valkenburgh	Assistant Attorney General, General Counsel Division, Oregon Department of Justice. Presents written testimony giving a brief overview of portions of the Attorney General's opinion interpreting provisions of Article I, Section 41 of the Oregon Constitution (Measure No. 17). Not advocating for or against proposed legislation. [Exhibit B]
093	Chair Stull	Directs Committee to information contained in their meeting packet.
	Van Valkenburgh	Continues. The conflict between this provision and a federal law prohibiting the knowing transport of prison-made goods in interstate commerce.

117	Sen. Trow	Are the five purposes in priority order?
	Van Valkenburgh	They are not.
123	Van Valkenburgh	Continues: In analyzing this including the contemporaneous media reports, concludes that the inmates not be permitted to retain any earnings from work while in prison for this personal use as spending money.
133	Sen. Trow	Prior witness suggested there might be two possible interpretations but went into this analysis wanting one opinion to prevail. Comments?
	Van Valkenburgh	Had some involvement in this process. >this is the best advice that skilled lawyers could come up with >collective opinion of the office >arguments to the contrary - addressed in the opinion
189	Sen. Trow	Did you make this analysis and draw these opinions before the Judge Lipscomb decision? Would that have made a difference?
	Van Valkenburgh	Judge Lipscomb did not rule on the meaning of the constitution. Continues.
208	Van Valkenburgh	Continues: The Department has not completed its analysis of the meaning of "interstate commerce." >potential scope is very broad - have concerns Opinion concludes that the term compensation means payment for value of services rendered. Explains.
		Discusses developments since issuance of Attorney General's Opinion.
265	Van Valkenburgh	Continues: Based on the Attorney's General's opinion interpreting the requirements of Article I, Section 41 and of the federal Ashurst-Summers Act - - ceased production and marketing of inmate-made goods for sale outside Oregon.
288	Sen. Qutub	Were contemporaneous media reports and the voter's pamphlet used in this decision?
	Van Valkenburgh	Yes they were. Explains.
	Sen. Qutub	Voter intent?
	Van Valkenburgh	Continues. Decern the intent of the voters.
292	Sen. Qutub	Questions the most recent opinion of Attorney General Hardy Myers concerning Measure 47. Continues. Doesn't matter what the intent was, doesn't matter what the voters thought. It matters what it says. Continues.
		It is true that the goal, the task, the job is to try to determine what the voter's intent is. Continues.

	Van Valkenburgh	>the manifestation of the will of the voters sometimes doesn't get done in the words that are used >look at the totality
342	Sen. Qutub	"Do you recall the title of Measure 47? I think the Attorney General wrote it"
	Van Valkenburgh	I do not.
	Sen. Qutub	I think it was called "Cut & Cap"
354	Steve Marks	Governor's Senior Policy Advisor. Talks of the Governor's support of prison and inmate work programs. Wants to fully implement Measure 17. Hopeful this Committee will help improve the constitutional language so that we can more fully and aggressively provide for compliance of inmate work programs.
390	Marks	Continues with areas of change the Governor is looking at in HJR 2.
		>change the Oregon Constitution to comply with Ashurst-Sumners - >restrict the inmates ability to engage in private rights of action >allow inmates to be rewarded in work ethic incentive >change the management structure by eliminating the current Prison Industries Board >provide a limited amount of flexibility in the 40-hour work week to deal with security
419	Marks	Addresses DAS (Department of Administrative Services) Review- >Governor very interested >legal questions continue - reasonable questions >curtail the PIE programs
TAPE 30, A		
031	Sen. Trow	What is happening to the Prison Blues program?
	Cook	Removed that portion of the program which is deemed to be interstate commerce - continues.
042	Sen. Trow	Temporary measures?
	Cook	Yes. Continues
050	Chair Stull	Encourages the Committee to look through entire packet. Asks that special attention be paid to the audit report.
063	Sen. Trow	Questions tentative accelerated work schedule.
	Chair Stull	Information will be forthcoming.
	Chair Stull	Declares meeting adjourned at 2:55 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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EXHIBIT SUMMARY

A - Written Testimony - David Cook - 7 pages

B - Written Testimony - Jef Van Valkenburgh - 4 pgs
