

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

May 5, 1995 Hearing Room 357
1:30 pm Tapes 132 - 133

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Mike Lehman, Vice Chair
Rep. Bev Clarno (Arrival: 2:30 pm)
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Bill Markham
Rep. Lonnie Roberts
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck
Rep. Sharon Wylie

STAFF PRESENT:

Greg Moore, Committee Counsel
Anne Tweedt, Committee Counsel
Kay C. Shaw, Committee Assistant

MEASURES HEARD:

HB 3391 Work Session
SB 266 A Work Session
SB 711 A Work Session
SB 853 A Work Session

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,
please refer to the tapes.

TAPE 132, A

004 CHAIR TIERNAN: Call meeting to order at 1:41 pm. REP. CLARNO is
EXCUSED.

CHAIR TIERNAN: Opens work session on SB 853 A.

SB 853A - WORK SESSION

Witness: Brad Swank, State Court Administrator's Office

012 ANNE TWEEDT, Committee Counsel: Reviews the Preliminary Staff Measure
Summary and the infraction matrix. The Preliminary Staff Measure Summary,
including the infraction matrix, is hereby made a part of these Minutes
(EXHIBIT A).

040 CHAIR TIERNAN: Explains the legislative history of last session about
the bail fines for traffic violations and this bill is the proposed fix of
the legislative action from last session. Urges that all members
understand the system for classifying traffic infractions before the vote.

REP. ROBERTS: Recounts his understanding of the issue/action from last
session and the effect of the current bill.

REP. HAYDEN: Understands that the legislature did not set the bails; that
the Supreme Court set the bails. The bails are those set by the Supreme
Court. Proposes rolling back the bails.

COUNSEL TWEEDT: The Supreme Court sets the minimum bail schedule.

CHAIR TIERNAN: Is the current bail maximum schedule at the top of matrix?

COUNSEL TWEEDT: Those are the maximum fines that can be assessed for those
traffic infractions -- A, B, C and D.

077 CHAIR TIERNAN: What was the law in 1993? What was the change from the
last session? What is the intent of this bill?

088 BRAD SWANK, State Court Administrator's Office: Testifies in support of
SB 853A.

> Introductory comments.
> Provides legislative history in 1993 and intent to achieve an
across-the-board adjustment of fine amounts for traffic infractions based
on the fact the traffic fine maximum amounts had not been adjusted since
originally created in 1975.
> Defines "bail" in the traffic context as the "amount that an officer

writes on the front of a ticket." It is not the maximum fine and judges can reduce the amount written on the ticket.

126 CHAIR TIERNAN: What's the bail relationship to the maximum fine?

MR. SWANK: The Supreme Court in trying to set bail amounts considered two policy considerations:
ORS 153.632 that established minimum fine amounts for courts.
Other statutes set mandatory statutory assessments that courts are to impose when a fine is imposed.

The Supreme Court wanted to set a bail schedule that allowed courts, as bail, to collect the minimum fine plus the statutory assessments and to also reflect the increase from the amount of bails before 1993 and thereafter.

151 CHAIR TIERNAN: Refers to Exhibit A, Page 3, and the language "provides the following schedule . . . (NOT CHANGED) by SB 853-A". What does that mean?

MR. SWANK: Those are the maximum fine amounts that can be imposed on somebody for violating that offense.

CHAIR TIERNAN: Was that changed in 1993?

MR. SWANK: Yes, the maximum fine amounts were changed.

CHAIR TIERNAN: Continues to inquire about legislative changes in 1993.

MR. SWANK: SB 853 is reclassifying offenses.

CHAIR TIERNAN: This bill is not moving or changing the dollars, but merely reclassifying offenses?

MR. SWANK: Yes -- it will have an affect on the bail schedule.

169 CHAIR TIERNAN: Is this a net increase, decrease or the same?

MR. SWANK: Most offenses were decreased.

CHAIR TIERNAN: Continues inquiries about fiscal impact.

MR. SWANK: Bail amounts pre-1993 were not established by the Supreme Court. The bail amounts were established by individual courts throughout the state.

202 MR. SWANK: Continues testifying:
> Explains problems during the interim after creation of the bail schedule by the Supreme Court.
> Refers to and explains from chart (Exhibit A).
> Intent of bill is to make bail more consistent within categories of offenses.

268 CHAIR TIERNAN: Is that chart an old chart?

MR. SWANK: The chart reflects the current bails.

289 REP. HAYDEN: Concerned about the classification movement and that the same fines are attached. Is there any damage to the bill if fines and bails are arbitrarily cut 25 percent?

MR. SWANK: Currently, bails are set by the Supreme Court Bail Schedule based on the Supreme Court's assessment of how serious the legislature thinks the fine is. By repealing ORS 153.623 the legislature has made it possible for bail amounts to be decreased whether or not the maximum fine amount is adjusted.

REP. HAYDEN: Bails could be less than fines?

MR. SWANK: There are some offenses where, because of the minimum statutory fine amount that was set in ORS 153.623, bail and the fine amount are the same -- the statutory minimum fine is the same as the maximum fine. In most offenses bail is a percentage of the maximum fine possible and the bail is about 40 percent of the maximum fine with some exceptions.

327 CHAIR TIERNAN: If the reclassification is accepted and the pre-1993 fines are added, what in your opinion would be the result?

MR. SWANK: The Supreme Court in response to SB 853 will have to adopt a new bail schedule. If the maximum fine amounts are modified down, the fines would probably be lower. It is a policy decision for the legislature. The fines for some offenses will go down regardless of whether or not the maximum amount is adjusted. By removing the minimum fine provisions that now exist, the legislature allows the Supreme Court to establish lower bails without adjusting the maximum fine.

CHAIR TIERNAN: Refers to the infraction matrix (Exhibit A). If the posted speed is exceeded by 11-20 miles per hour, under current law it is a B infraction (i.e., \$470 maximum fine), SB 853A is reducing that offense to a

maximum fine of \$190. What is the current bail for exceeding the speed limit by 11-20 miles per hour?

MR. SWANK: \$134 if it doesn't contribute to an accident and \$201 if it does contribute to an accident. Those figures are the absolute minimum that the Supreme Court could impose as bail and still collect the statutory minimum fine and assessments.

370 CHAIR TIERNAN: What was the bail before 1993?

MR. SWANK: It depends upon the location (e.g., \$15 in Salem and \$112 in Portland).

CHAIR TIERNAN: What about the State Police?

MR. SWANK: Explains the reason for developing a uniform bail schedule was to eliminate confusion for police officers. A police officer, depending upon the jurisdiction cited to, would carry bail schedules created by courts. An officer in Salem might be carrying a bail schedule for the District Court, Municipal Court, North Salem Justice Court or East Salem Justice Court -- a police officer could be carrying five or six bail schedules. State Police experienced the same situation.

428 REP. JOHNSTON: Refers to the phrase on the Staff Measure Summary that SB 853A introduces a logical scheme for classifying traffic infractions. Urges support for the bill. Agrees with Rep. Hayden that the fines are too

high. May agree to the Class D offenses remaining the same, otherwise would accept Rep. Hayden's proposal to lower penalties by 25 percent.

TAPE 133, A

006 REP. WYLIE: Asks for response to fiscal questions.

009 CHAIR TIERNAN: Opines that raising or saving money through fines is inappropriate. The reason why the fines were increased last session was to raise \$14.8 Million for the judges' retirement.

014 REP. WYLIE: It was also deflected by other issues such as contracting out for collecting fines. The focus was on other pieces of the bill. Agrees with Chair Tiernan; however, wants to know the fiscal impact in order to consider where else the money could be generated.

MR. SWANK: A substantial amount of this money goes to local governments. More than 50 percent of the traffic infraction fines that are cited are for

Municipal and Justice Courts. When the money comes in, the money is dispersed to several different sources -- the fine portion of the money is divided 50-50.

REP. WYLIE: What is the actual fiscal impact of this change?

031 MR. SWANK: Opines this bill, as drafted, will not have a substantial fiscal impact. Briefly explains the reason.

CHAIR TIERNAN: If the maximum fines are adjusted, what would be the estimated decrease in the bail schedule? Would it be decreased in proportion?

MR. SWANK: The last time the Supreme Court set its current bail schedule, it was set in proportion to the maximum fine amount (i.e., about 40 percent

of the maximum fine). A potential impact of a decrease in the fees is "We would probably have to make a visit to Ways and Means, because we are part of the revenue chain for a number of programs, including State Police and BPSST and those sorts of things."

055 REP. HAYDEN: Agrees with Chair Tiernan. Feels "very strongly that fines should be a deterrent to inappropriate behavior and that the amount of fines should be linked to the statistical number of traffic offenses that are occurring and not to a judge's pension." Fines should be raised if there are more serious accidents; however, if drivers are driving prudently, then the fines should be lowered. It should have nothing to do with the revenue flow for government employees.

061 CHAIR TIERNAN: Reads from the infraction matrix prepared by Committee Counsel (Exhibit A). Proposes for Class D, \$75; Class C, \$150; Class B, \$300; and Class A, \$600. Each class is doubling in progression from Class D to Class A and represents about a 25 percent reduction from the current schedule.

089 REP. JOHNSTON: Refers to discussion about the maximum numbers. Is there information about what was the actual fine imposed? Gives example, \$940 is the maximum Class A and maybe the average Class A fine is \$400?

MR. SWANK: For 90 plus of the people the fine assessed is the amount of bail that the officer writes on the front of the ticket or a lesser amount, because they send in a mitigating statement and the judge reduces it.

101 REP. JOHNSTON: Using the formula described, a \$940 maximum would result in \$376 which is 40 percent of \$940.

MR. SWANK: It would be 40 percent plus the statutory assessment.

REP. JOHNSTON: These are not the fines that are levied, they are the fines that could be levied.

108 REP. ROBERTS: Explains his efforts regarding a bill to return the fines to pre-1993. Says police were somewhat less likely to write a ticket or a serious ticket, because the fines were so high. Likes Chair Tiernan's suggestion.

REP. LEHMAN: Also likes Chair Tiernan's suggestion. No problem with lowering Classes C and D. Suggests maintaining the higher amount for Classes A and B, because in smaller jurisdictions a judge frequently sees the same people repeatedly for the same offense. Therefore, having an higher maximum does allow the opportunity for the judge to penalize at the maximum for repeat offenders. In fact, Classes A and B are maybe capable of a \$50-\$75 increase to give the opportunity of penalizing the repeat offender.

139 REP. STROBECK: Agrees with the discussion about Classes D and C. Suggests increasing the penalty for Class B to \$400 and Class A to \$800 for the reasons stated by Rep. Lehman and also due to the seriousness of the offenses.

REP. ROBERTS: These are the maximums; the judges can still assess less.

158 CHAIR TIERNAN: Reviews assessment comments received from judges.

REP. HAYDEN: Will there be a disservice by a 25 percent cut?

MR. SWANK: There is a strong possibility that an across-the-board 25 percent cut will have a fiscal impact.

REP. HAYDEN: Will any conflict amendments be necessary?

MR. SWANK: None that are known.

177 REP. GRISHAM: Explains intent to vote "no."

197 MOTION: CHAIR TIERNAN moves to modify SB 853A by adjusting the fines for Class A to \$600, Class B to \$300, Class C to \$150 and Class D to \$75.

REP. STROBECK: Recommends the discussion include that SB 853A redistributed these. Suggests a friendly amendment to made Class B \$400 and Class A \$800.

CHAIR TIERNAN: Doubling the fine "every time you go up the rung is logical, is significant." Explains.

242 REP. ROSS: Supports Chair Tiernan's proposal.

REP. WYLIE: Explains intent to vote "no." Prefers Rep. Grisham's proposal.

VOTE: In a roll call vote, REPS. HAYDEN, JOHNSTON, MARKHAM, ROBERTS, ROSS,

STARR and CHAIR TIERNAN vote AYE.

REPS. GRISHAM, LEHMAN, STROBECK and WYLIE vote NAY.

REP. CLARNO is EXCUSED.

CHAIR TIERNAN: Declares MOTION PASSED.

256 MOTION: REP. HAYDEN moves SB 853A, as amended, to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, REPS. HAYDEN, JOHNSTON, MARKHAM, ROBERTS, ROSS,

STARR, STROBECK, WYLIE and CHAIR TIERNAN vote AYE. REPS. GRISHAM and LEHMAN vote NAY. REP. CLARNO is EXCUSED.

CHAIR TIERNAN: Declares MOTION PASSED. Carriers of the bill are REPS. JOHNSTON and TIERNAN.

271 REP. GRISHAM: Serves notice of a Minority Report.

REP. LEHMAN joins in the Minority Report.

CHAIR TIERNAN: Closes work session on SB 853A and opens work session on HB

3391 (see tape at 328).

REP. BEV CLARNO: Arrives at 2: 30 pm.

HB 3391 - WORK SESSION

Witness: Joe Gilliam, Northwest Payphone Association

298 JOE GILLIAM, Northwest Payphone Association: Submits proposed HB 3391-1

amendments (EXHIBIT B). Testifies that the proposed HB 3391-1 amendments are identical to the HB 3392-5 amendments that allowed five free phone calls and dial around. The difference between the two amendments is that the HB 3391-1 amendments allow seven free phones calls.

318 MOTION: CHAIR TIERNAN moves for unanimous consent to suspend the rules for the purpose of reconsideration of HB 3391.

CHAIR TIERNAN: Hearing no objection from ALL MEMBERS PRESENT, declares MOTION PASSED.

MOTION: CHAIR TIERNAN moves to reassign HB 3391 from the Subcommittee on Regulatory Reform to the Full Committee.

CHAIR TIERNAN: Hearing no objection from ALL MEMBERS PRESENT, declares MOTION PASSED.

HB 3391 - WORK SESSION

332 MOTION: REP. STARR moves ADOPTION of HB 3391-1 amendments.

REP. JOHNSTON: Acknowledges the tenacity of the industry to deal with this problem. Nothing about changing the number of phone calls from five to seven deals with the fact that the marketplace is beyond this type of resolution. Remarks about "stepping into something that is beyond the ability of this Committee to appreciate how to do it." This is a bad bill.

REP. LEHMAN: This should be regulated by PUC, is "nothing but a 25 cents charge we are charging to consumers with no indication that it's needed or necessary", and it will cost MCI to conform to this legislation. "It's outrageous."

REP. STROBECK: Says that Rep. Lehman's comments make a case for the bill.

Opines it is fair that payphone providers receive compensation.

383 REP. JOHNSTON: Agrees wholeheartedly that the marketplace is probably changing such that at some point they are going to need compensation; however, the legislature does not know all that is involved. This bill is a "band-aid on a patient that we don't even know how ill it is."

REP. STROBECK: The FCC has spoken to this issue, but the FCC's jurisdiction ends at interstate business.

CHAIR TIERNAN: Hearing no objection from ALL MEMBERS PRESENT, declares MOTION PASSED.

401 MOTION: REP. STROBECK moves HB 3391, as amended, to the Floor with a DO PASS recommendation.

411 VOTE: 7-5
AYE: 7 - Clarno, Grisham, Hayden, Markham, Starr, Strobeck and Tiernan
NAY: 5 - Johnston, Lehman, Roberts, Ross and Wylie

CHAIR TIERNAN: Declares the motion CARRIES. REP. KEN STROBECK will lead discussion on the floor.

424 REP. JOHNSTON: Serves notice of Minority Report.

REP. LEHMAN: Joins in Minority Report.

CHAIR TIERNAN: Closes the work session on HB 3391 and opens work session on SB 711A.

TAPE 132, B

SB A 711A - WORK SESSION

Witness: Marshall A. Coba, Oregon Trucking Association
Steve Johnston, Oregon Department of Transportation (ODOT)

009 ANNE TWEEDT, Committee Counsel: Reviews the Preliminary Staff Measure Summary. The Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT C).

025 MARSHALL A. COBA, Oregon Trucking Association (OTA). Testifies in support of HB 711A:
> This bill is a companion to SB 853.
> Oregon trucking industry was negatively impacted by the bail and fine schedule adopted by the 1993 session.
> Recounts prior testimony regarding exorbitant fines for overweight trucks, specifically the assessment of a \$24,000 fine for the failure of a hydraulic booster that caused one axle to be overweight.
> OTA does not condone operating overweight trucks and acknowledges those operators should be punished; however, the current levels of bails and

fines are outrageous and need to be reduced.

> FOR THE RECORD: SB 711A is one of OTA's priority issues and that, if passed, will "make the fine fit the crime". Urges support.

043 STEVE JOHNSTON, Oregon Department of Transportation (ODOT): Testifies on SB 711A:

> Introductory comments.

> ODOT's position is that the new bails, if passed, will continue as a good

deterrent and ODOT has no objections to its passage.

048 MOTION: REP. MARKHAM moves SB 711A to the Floor with a DO PASS recommendation.

050 VOTE: 10-0

AYE: 10 - Grisham, Hayden, Johnston, Markham, Roberts, Ross, Starr, Strobeck, Wylie and Tiernan

EXCUSED: 2 - Clarno and Lehman

CHAIR TIERNAN: Declares the motion CARRIES. REP. Mike Lehman will lead discussion on the floor.

CHAIR TIERNAN: Closes the work session on SB 711A and opens work session on SB 266A.

SB 266-A - WORK SESSION

Witness: Paul Romain, representing the Oregon Beer and Wine Distributors Association

Chris Lyons, Oregon Liquor Control Commission (OLCC)

Robert D. Van Brocklin, Stoel Rives Boley Jones & Grey, Attorneys at Law (Portland) for Bass PLC

Michael Mills, Mills & McMillin, P.C., Attorneys at Law (Salem) for Oregon Restaurant Association

079 GREG MOORE, Committee Counsel: Reviews the Preliminary Staff Measure Summary and references the submission of several proposed amendments. The Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT D).

109 COUNSEL MOORE: Reviews the proposed amendments:

> Proposed SB 266-A10 amendments are submitted by Bill Cross for Willamette

Valley Vineyards (EXHIBIT E).

> Conceptual, proposed amendments to SB 266A dated May 3, 1995, are submitted by Paul Romain for the Oregon Beer & Wine Distributors Association (EXHIBIT F).

> Proposed SB 266-A12 amendments are submitted by Mike McCallum, Oregon Restaurant Association (EXHIBIT G).

> Proposed SB 266-A amendments dated May 5, 1995, submitted by Robert D. Van Brocklin for Bass PLC (EXHIBIT H).

139 REP. STROBECK: Reads from the last line of Exhibit F. Question about the word "five".

155 PAUL ROMAIN, representing the Oregon Beer and Wine Distributors Association: Says it raises the alcohol content of what can be sold by a distributor. The first "five" is the first five percent by volume. It would say eight percent of alcohol by volume.

REP. STROBECK: Malt beverages containing not more than eight percent? Wasn't the intent to change from five to five and one-half?

170 MR. ROMAIN: Explains the difference. The definition of "beer" in Oregon is currently less than four percent alcohol by weight. If beer exceeds that, it can still be sold. It is still a malt beverage, but it is

called "ale", "stock", etc. The intent with the five and one-half percent is that malt beverages which are less than five-and one-half percent alcohol by volume can be called "beer". In the last provision of the printed A-Engrossed bill, Page 4, Line 42, says that distributors can sell all kinds of malt beverage whether it's called "beer", "ale" or anything. For dock sale purposes, under current law, micro-beers cannot be sold by distributors. The amendment says that for dock sale purposes only the distributors can sell the micro-beers. It merely legalizes a process that has been used and violated for years.

198 REP. STROBECK: Are their malt beverages that reach eight percent?

MR. ROMAIN: Yes. That language was gleaned from the micro-brew statute that authorizes a brew pub or a micro-brewery to sell up to eight percent.

218 CHAIR TIERNAN: In consideration of those wanting more time to consider the amendments, the bill will be rescheduled for next Monday at a time certain of 3:00 pm.

REP. HAYDEN: Wants a review and comment on all the amendments by OLCC.

248 CHRIS LYONS, Administrator, Oregon Liquor Control Commission (OLCC): Testifies on SB 266-A:

> Explains the interim committee work on a technical re-write of the Liquor

Control Act.

> FOR THE RECORD: OLCC supports the technical re-write portion.

REP. ROSS: What is OLCC's position about increasing the percentage of alcohol?

MS. LYONS: There has been a change to make it consistent by weight throughout the chapters -- that's a good thing.

277 MR. ROMAIN: Comments the amendments were a very good compromise and all of the industry agrees. The intent is to have the industry together on the whole issue.

CHAIR TIERNAN: What is OLCC's interpretation of the difference between the proposed SB 266-A12 amendments and the language?

301 MS. LYONS: It restricts OLCC's ability somewhat -- problems come more directly from police reports and less from citizen complaints.

ROBERT D. VAN BROCKLIN, Stoel Rives Boley Jones & Grey, Attorneys at Law (Portland), representing BASS PLC: Submits prepared testimony on SB 266A (EXHIBIT I).

MICHAEL MILLS, Mills & McMillin, P.C., Attorneys at Law (Salem), representing Oregon Restaurant Association: Submits prepared testimony on SB 266A (EXHIBIT J).

CHAIR TIERNAN: Adjourns meeting at 2:59 pm.

Submitted by, Reviewed by, Reviewed by,

Kay C. Shaw	Gregory G. Moore	Anne Tweedt
Committee Assistant	Committee Counsel	Committee Counsel

EXHIBIT SUMMARY:

A - Preliminary Staff Measure Summary on SB 853 -- Staff -- 37 Pages

B - Proposed HB 3391-1 Amendments -- Staff -- 1 Page

C - Preliminary Staff Measure Summary on SB 711-A -- Staff -- 3 Pages

D - Preliminary Staff Measure Summary on SB 266 -- Staff -- 3 Pages

E - Proposed SB 266-A10 Amendments -- Bill Cross for Willamette Valley Vineyards -- 1 Page

F - Proposed Conceptual Amendments to SB 266 -- Paul Romain for Oregon Beer & Wine Distributors Association -- 1 Page

G - Proposed SB 266A-12 Amendments -- Mike McCallum for Oregon Restaurant Association
-- 2 Pages

H - Proposed Conceptual Amendments to SB 266 -- Robert D. Van Brocklin for Bass PLC
-- 2 Pages

I - Prepared Testimony on SB 266 -- Robert D. Van Brocklin for Bass PLC --
2 Pages

J - Prepared Testimony on SB 266 -- Michael Mills for Oregon Restaurant Association -- 2 Pages