

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 51

MEMBERS PRESENT:

SEN. NEIL BRYANT, Chair
SEN. RANDY MILLER, Vice-Chair
SEN. KEN BAKER
SEN. JEANNETTE HAMBY
SEN. PETER SORENSON
SEN. DICK SPRINGER
SEN. SHIRLEY STULL

STAFF PRESENT:

BILL TAYLOR, Committee Counsel
DIANE DUSSLER, Committee Assistant

MEASURES HEARD:

SB 214 - PUBLIC HEARING
SB 117 - WORK SESSION
SB 213 - WORK SESSION
SB 214 - WORK SESSION
SB 216 - WORK SESSION

SB 392 - 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 , A

003 CHAIR BRYANT: Calls the meeting to order at 3:00 p.m.

Opens WORK SESSION on SB 392

WITNESS: Sen. Bill Kennemer, District 12

010 SEN. BILL KENNEMER, District 12: Sens. Baker and Sorenson raised
several concerns at previous hearing regarding including senators in the
bill.

- explains Legislative Counsel's response to that issue included with
proposed amendments SB 392-1 [EXHIBIT A]
025 - proposes conceptual addition, in SB 392-1, line 1, after word all
insert "annual"

030 SEN. SORENSON: What about other elected officers?

035 SEN. KENNEMER: Garnishment would be the most effective mechanism
those cases.

050 SEN. SORENSON: What about lottery licenses?

056 SEN. KENNEMER: You have to have a liquor license to get a video poker
machine. Those who have individual licenses in their individual names will
be included in SB 392-1 amendment.

063 SEN. STULL: I'm concerned with licenses on partnerships, and people who
are not directly involved in the process?

071 SEN. KENNEMER: Partnerships and corporations would not be included in
this amendment.

086 MOTION: CHAIR BRYANT: Moves to ADOPT SB 392-1 AMENDMENTS with the
insertion of the word "annual" before licenses in line 1.

VOTE: Hearing no objections, the amendments are ADOPTED. All members
present vote AYE. SEN. MILLER is EXCUSED.

093 MOTION: SEN. HAMBY: Moves SB 392, AS AMENDED, be sent to the Floor with

a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members present vote
AYE. SEN. MILLER is EXCUSED. SEN. KENNEMER will carry the bill to the
Floor.

Closes WORK SESSION on SB 392

Opens WORK SESSION on SB 216

WITNESSES:

John Ellis, Department of Justice
Phil Yarnell, Department of Human Resources
Marla Rae, Department of Justice

104 CHAIR BRYANT: SB 216 abolishes the Support Division of the Department of Justice and transfers its duties and functions to the Department of Human Resources effective July 1, 1995.

106 CHAIR BRYANT: SB 216-2 amendments would roll the District Attorney's Support Enforcement into the Support Enforcement Division. They were proposed by Rep. Eldon Johnson and opposed by the sponsors and several DAs.

It would have a fiscal impact of a million dollars presently being picked up by the counties.

123 SEN. SORENSON: The hearing officials are concerned about the agency exerting undo influence over the hearings process. I would like to protect those functions and employees in the department.

140 CHAIR BRYANT: SB 213 has the discussion of administrative hearings concerning disputes of Department of Human Resources's record keeping on support distribution.

153 SEN. SORENSON: I believe the hearing is referred to in Section 85, page 41, line 14-18, of original SB 216. I propose to strike "as determined by Director of Human Resources" and keep in "appointed by Employment Department."

185 JOHN ELLIS, Department of Justice: DHR and Department of Justice want to have ultimate decision on appointment of hearing officers remain with the director of DHR

199 PHIL YARNELL, Department of Human Resources: Adult and Family Services currently has its hearing unit. Hearings officers will issue final orders which will not go through an approval process by the administrator before they are issued.

213 CHAIR BRYANT: What is intent of department in handling hearings?

219 YARNELL: Hearing officers would transfer to Adult and Family Services Division and become a part of that hearings unit. They would not be conducting same types of hearings that our current hearing officers do now.

We could try contracting with the department subject to a later review.

240 CHAIR BRYANT: The option is contracting with the Department of Employment for the services of the hearing officers versus transferring them to DHR as additional officers.

248 SEN. SORENSON: What is the difference in the language "as determined by" as opposed to "appointment by"?

250 ELLIS: My thought in using "as determined by" was to leave the ultimate decision up to the director of DHR.

270 SEN. SORENSON: I like language "hearings shall be conducted by qualified hearing officer appointed by the Employment Department". I'm open to a sunset of that provision to see how transfer goes.

300 CHAIR BRYANT: What is your reaction to Sen. Sorenson's suggestion?

280 YARNELL: We don't agree that hearings need to be in a separate department to be impartial. They will issue final orders not subject to review. Having them in the department gives us more management over the hearings process in terms of how many there are.

313 CHAIR BRYANT: I suggest another option may be to put a period after the word officer on line 14 and delete the rest of the sentence down through line 15 after resources to read "except as provided by ORS 416 hearings shall be conducted by qualified hearing officer. The director may

employ hearing officers within the department or obtain their services by contract or interagency agreement." This might expedite the hearing process as director may need additional hearing officers.

350 CHAIR BRYANT: My concern is that counties spend a million dollars of their own funds per year running the program. This gives people another option instead of going to Support Enforcement which people perceive as being the welfare agency. I favor the SB 216-1 amendment.

370 SEN. BAKER: I understand the supposed cost to implement the change. It makes no sense to have multiple agencies collecting support with different personnel and different methods. From the consumers standpoint, their access is denied due to the fragmented system. We need one agency.

411 SEN. STULL: Prefers the SB 216-1 amendments. Rather than abolishing opportunities for local governments we need to target counties not meeting efficient standards

452 SEN. SORENSON: Clients find system confusing, bouncing back between county and state.
The SB 216-2 amendment is less complicated.

TAPE 50, A

040 CHAIR BRYANT: SB 216-1 amendments are technical amendments suggested by

LC.

MOTION: CHAIR BRYANT: Moves to ADOPT SB 216-1 AMENDMENTS.

053 VOTE: Hearing no objections, the amendments are ADOPTED. All members are present.

070 MOTION: SEN. BAKER: Moves to ADOPT SB 216-2 AMENDMENTS.

VOTE: 4-3 MOTION FAILS
AYE: Baker, Hamby, Sorenson
NAY: Miller, Springer, Stull, Bryant

073 MOTION: SEN. SORENSON: Moves to AMEND SB 216, Section 85, paragraph 2, by inserting a period after the word officer and deleting "appointed by the the Employment Department as determined by the Director of the DHR".

076 VOTE: Hearing no objection, the amendment are ADOPTED. All members are present.

078 CHAIR BRYANT: I was advised by Marian Gest, that OPEU initially had no position as they represented parties in both department, however, she did polling with the Department of Justice employees and they preferred to stay

with the Department of Justice.

090 MOTION: CHAIR BRYANT: Moves that SB 216, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

093 SEN. SPRINGER: Does this need to go to Ways and Means?

097 TAYLOR: According to the Fiscal Analysis it doesn't have any cost in the sense it is shifting the cost to DHR. [EXHIBIT D]

107 MARLA RAE, Department of Justice: It does need to go to Ways and Means.

109 MOTION: CHAIR BRYANT: Moves to send SB 216, AS AMENDED, WITH SUBSEQUENT REFERRAL to Ways and Means.

VOTE: Hearing no objections, the motion CARRIES. All members are present.

Submitted for the record testimony from Sharon Callahan [EXHIBIT]

Closes WORK SESSION on SB 216

Opens WORK SESSION on SB 117

WITNESS: Mike Dingeman, Sergeant, Oregon State Police, Program Coordinator for Implied Consent Breath Testing Program

117 CHAIR BRYANT: SB 171 allows introduction into evidence during court proceedings of documents created by data retrieval from State Police computer system. Concerns expressed by defense counsel were worked out in the amendments.

MIKE DINGEMAN, Sergeant, Oregon State Police, Program Coordinator for Implied Consent Breath Testing Program: Testifies and submits proposed amendments to SB 117-2 [EXHIBIT E] which narrow down previous language submitted to include operator permits for the intoxilizer, the certifications and drug reports to be transmitted electronically and available through LEDS terminals.

137 CHAIR BRYANT: You've gone over these changes with the Oregon Criminal Defense Lawyer's Association, and they are in agreement with these changes.

139 DINGEMAN: Yes, they are.

MOTION: SEN. HAMBY: Moves to ADOPT the SB 117-2 AMENDMENTS.

VOTE: Hearing no objections, the amendments are ADOPTED. All members present vote AYE. SENS. BAKER, SORENSON, SPRINGER are EXCUSED.

140 CHAIR BRYANT: Did we already move the SB 117-1 amendments?

141 TAYLOR: I don't believe so.

144 CHAIR BRYANT: They were in the same area, so we don't need SB 117-1.

148 MOTION: SEN. HAMBY: Moves SB 117, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members presents vote

AYE. SENS. BAKER, SORENSON, SPRINGER are EXCUSED. SEN. STULL will carry the bill to the Floor.

Opens WORK SESSION on SB 213

WITNESSES: John Ellis, Department of Justice
Karen Berkowitz, Multnomah County Legal Aid Service
Art Kapteyn, Department of Justice, Policy Analyst for Child Support Program

159 CHAIR BRYANT: This deals with withholding on child support. Independent contracts had a problem with the existing law and way garnishment could seize their draws.

161 TAYLOR: We have adopted SB 213-1, SB 213-2, amendments from Carl

Stecker. What is left are two amendments from Legal Aid which we asked Mr.

Ellis to cost out.

180 JOHN ELLIS, Department of Justice: My transmittal of 2-17-95 has two separate fiscal impacts [EXHIBIT F]. SB 213-1 by Legal Aid requires Child Support Program to allow an administrative contested case hearing whenever child support obligor or obligee disagrees with DHR accounting or child support.

- we opposed that amendment which has a cost of a million and a half dollars
210 - approximately 6,500 cases will ask for contested hearing

230 CHAIR BRYANT: What is the recourse for a unhappy client?

234 ELLIS: We have recently adopted a grievance procedure, rule 461195010 .

A person who believes we made a mistake can file a formal grievance.

246 SEN. SORENSON: How much of Ms. Berkowitz's objection to the bill do you agree with?

256 ELLIS: We disagree with SB 213-1 from Legal Aid.
280 - we can't have a hearing for every complaint
297 - if contested case process is available, people will use it

288 CHAIR BRYANT: We did adopt several of her suggestions and amendments.

The one we did not adopt relates to this issue.

297 TAYLOR: We adopted all of Legal Aid's amendments except the two before us. Mr. Ellis was asked to cost it out.

320 CHAIR BRYANT: Have you had a chance to look at the grievance procedure and the rule?
I don't think we can afford a million point two in Ways and Means to fund an adversary hearing process.

311 KAREN BERKOWITZ, Multnomah County Legal Aid Service: I don't think rule is clear on what kinds of issues are subject to grievance.
- it doesn't resolve what happens when grievance isn't solved to that person's satisfaction
- there is no appeal beyond the agency, and no time frame to resolve grievances

345 CHAIR BRYANT: Do you have a solution for the timing problem?

346 ELLIS: I believe Art Kapteyn who wrote the rule could explain that.

370 ART Kapteyn, Department of Justice, Policy Analyst for Child Support Program: We prefer it being open ended so we can set time frame depending on evaluating grievance.

385 - if grievance is they can't get through to some one that is easily solved
390 - if issue is legal in nature and needs an attorney it will take longer

410 CHAIR BRYANT: Perhaps the words "no less than blank time" will help in making a response.

416 SEN. SORENSON: Is there a policy to require a grievance before a contested case hearing?

418 ELLIS: There is no such limitation.

425 SEN. SORENSON: It seems like it would be good to put limits on length of time grievances are required in the statute.

458 CHAIR BRYANT: We adopted the suggested amendments, except for the two on this issue.

467 MOTION: SEN. HAMBY: Moves that SB 213, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members presents vote
AYE. SENS. MILLER, SPRINGER are EXCUSED. SEN. HAMBY will carry the bill to
the Floor.

TAPE 49, B

Opens PUBLIC HEARING on SB 214

WITNESSES: John Ellis, Department of Justice
Karen Berkowitz, Multnomah County Legal Aid
Lane Barlow, private citizen
Daniel White, private citizen
Dan Dennehy, private citizen

050 JOHN ELLIS, Department of Justice, Support Enforcement Division: Testifies and submits written testimony in support of SB 214 with proposed amendments SB 214-1 [EXHIBIT G].

128 KAREN BERKOWITZ, Attorney, Multnomah County Legal Aid: Testifies and submits written testimony in favor of SB 214 [EXHIBIT H] with proposed hand engrossed amendments [EXHIBIT L] for technical corrections.

168 ELLIS: We agree with these changes.

170 SEN. STULL: How many appeals do you have a year?

166 ELLIS: One process administratively establishes paternity, which can be moved to circuit court. Second process establishes simple support awards and can't be moved to circuit court except by appeal.
- have 1,000 administrative orders per month requiring child support payments
- 2-3% of these are appealed to circuit court

190 SEN. STULL: What is scope of protecting tax records of partners?

196 ELLIS: They can't use information except for bona fides to establish child support purpose

260 LANE BARLOW: Testifies and submits written testimony in opposition to SB 214 [EXHIBIT I].
320 - opposed to administrative authority in bill

377 DANIEL WHITE: Testifies and submits written testimony in opposition to SB 214 [EXHIBIT J].
420 - believes there is inequity in system according to who has custody
485 - asks for equal access to law and courts

TAPE 50, B

050 DAN DENNEHY: Testifies in opposition to SB 214. We have an appeal process to address human error. Mr. Ellis is asking for abridgment of rights.
104 - believes request is redundant as we need less paperwork

150 CHAIR BRYANT: I wanted to point out that this doesn't infringe on your appeal rights.

Closes PUBLIC HEARING on SB 214

Opens WORK SESSION on SB 214

217 MOTION: SEN. SORENSON: Moves to ADOPT hand engrossed amendments for SB 214 as prepared by Multnomah County Legal Aid.

226 SEN. STULL: Asks for clarification on Section 5, page 2, as she has concerns about having child support employees perform this service.

231 KAREN BERKOWITZ, Multnomah County Legal Aid: The purpose was to make it very clear that the SED agent could actually serve the writ, but not use force to seize property.

250 SEN. SORENSON: Questions the language; deleting "agent" in one part of sentence and leaving it there in the other.

268 JOHN ELLIS, Department of Justice: I would like to work on this section and bring it back.

300 SEN. STULL: I have concern about reaching out beyond direct parties involved in relation to the business tax forms. Is there a way to create language to address that, if a self employed individual is the only ownership involved?

310 CHAIR BRYANT: It is only if you have an ownership interest. If you own 5% of a corporation and it is a C or an S corporation that is information that is discoverable because you have an equity position in it. What you are doing only relates if you have an ownership interest, correct?

333 ELLIS: Yes, that is correct.

345 SEN. SORENSON: I will move the hand engrossed amendments proposed by Multnomah County Legal Aid with the understanding we will continue our work sessions after we get other action back from Mr. Ellis.

350 ELLIS: I would like to remove Sections 4, and page 5, lines 12-39.

368 CHAIR BRYANT: Let's WITHDRAW all prior motions.

373 MOTION: CHAIR BRYANT: Moves to delete Sections 4 and 5, beginning with line 12 through line 39 on page 5.

VOTE: Hearing no objections, the amendment is ADOPTED. All members present vote AYE. SENS. BAKER, MILLER, SPRINGER are EXCUSED.

383 MOTION: CHAIR BRYANT: Moves to ADOPT the SB 214-1 amendments.

VOTE: Hearing no objections, the amendments are ADOPTED. SENS. BAKER, MILLER, SPRINGER are EXCUSED.

390 MOTION: SEN. SORENSON: Moves to ADOPT the amendments on bottom of page 2, Section 2, subparagraph 6, proposed by Multnomah County Legal Aid and in Section 3, line 2, page 5, delete "under ORS 418.135".
Service

VOTE: Hearing no objections, the amendments are ADOPTED. SENS. BAKER, MILLER, SPRINGER are EXCUSED.

413 MOTION: SEN. SORENSON: Moves SB 214, AS AMENDED, be sent to the Floor

with a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. SENS. BAKER, MILLER, SPRINGER are EXCUSED. SEN. SORENSON will carry the bill to the Floor.

422 CHAIR BRYANT: Ways and Means has sent SB 216 back; they don't want it as it is in the existing budget, with an existing expenditure limitation, and same FTE's so authority is there.

Opens WORK SESSION on SB 216

432 MOTION: CHAIR BRYANT: Moves SB 216 be sent to floor with a DO PASS recommendation.

440 SEN. SORENSON: I wanted to go back to the hearing officer thing. I am tendering over 4 copies of SB 216-3, which is the formal motion to change references to selection of hearing officers for the Employment Department.

462 CHAIR BRYANT: Going back to Section 85, we have deleted that section and you are trying to restore the amount that has been bracketed.

475 SEN. SORENSON: When we talked about this before I thought we would get a second shot to discuss this with the Ways and Means committee.

MOTION: SEN. SORENSON: Moves to restore on page 41, phrase in brackets "appointed by the employment department" and to delete the phrase "as determined by the Director of the Department of Human Resources".

TAPE 51, A

041 CHAIR BRYANT: I would oppose this motion, I prefer the language we adopted earlier.

044 VOTE: 4-1 MOTION FAILS
AYE: SORENSON
NAY: HAMBY, STULL, BAKER, BRYANT
SENS. MILLER, SPRINGER are EXCUSED.

051 MOTION: CHAIR BRYANT: Moves that SB 216 be sent to the Floor with a DO PASS recommendation.

052 VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE. SENS. MILLER, SPRINGER are EXCUSED. SEN. BRYANT will carry the bill to the Floor.

056 CHAIR BRYANT: Adjourns meeting at 5:05 p.m.

Submitted for the record testimony from Richard Koenig [EXHIBIT K].

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Proposed Amendments to SB 392 - Bill Kenemer - 2 pages
B - Fiscal Analysis of SB 392 - staff - 2 pages
C - Proposed Amendments to SB 216 - staff - 1 page
D - Fiscal Analysis of SB 216 - staff - 1 page
E - Proposed Amendments SB 117-2 - staff - 1 page
F - Testimony with Fiscal Analysis of SB 213 - John Ellis - 13 pages
G - Testimony on SB 214 - John Ellis - 5 pages
H - Testimony on SB 214 - Karen Berkowitz - 3 pages
I - Testimony on SB 214 - Lane Barlow - 6 pages
J - Testimony on SB 214 - Daniel White - 5 pages
K - Testimony on SB 214 - Richard Koenig - 1 page
L - Proposed Amendments to SB 214 - Karen Berkowitz - 8 pages
M - Testimony on SB 216 - Sharon Callahan - 2 pages