

SENATE COMMITTEE ON
JUDICIARY

March 16, 1995
3:00 P.M.

Hearing Room C
Tapes 58 - 61

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
M. Max Williams II, Committee Counsel
Julie Clemente, Committee Assistant

MEASURES HEARD: Public Hearing & Work Session - SB 602
- SB 231
- SB 362
-- Public Hearing - SB 232
Work Session - SJR4
- SB 1
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TAPE 58, SIDE A

004 CHAIR BRYANT: Calls committee to order at 3:00 p.m.

OPENS WORK SESSION ON SB 1
Invited Testimony Theodore R Kulongoski, Oregon Attorney General
Senator Gordon Smith Senate President

012 THEODORE R. KULONGOSKI, Oregon Attorney General: Thanks Senator Hamby
and

introduced Committee for hours of work done on SB 1 Bill is in better form than when

036 SEN. GORDON SMITH, Senate President: Both he and Attorney General feel
this bill was number 1 in importance continues.

073 SEN. SORENSON: Concerned about creation of a youth authority and a
multi-tiered system that can't be funded What is the cost to implement bill and should it be passed
if there are no funds? a

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090 SEN. SMITH: Confident this will be a priority in the final budget.
Public demands it. Issue reviewed with Governor. Levels he is recommending will be in budget, more
if necessary.

101 KULONGOSKI: Two things should be kept in mind:
- State will have primary responsibility for regional facilities. Bill
amended to provide that counties on an individual or regional basis can initiate programs that will
provide the second
and

third tiers.
- Crime bill currently under review nationally was amended to allow some of
the crime moneys
to
build regional facilities.

134 SEN. HAMBY: Agrees with previous speakers, could not have tackled scope
of problem
without

156 help of very many talented people in audience today. Continues.
Committee's BILL TAYLOR: Refers to SB 1-11 amendments dated 3/13/95 plus memo in
packet.
163 CHAIR BRYANT: If we adopt the -11 amendments together with amendments
outlined in the memo dated 3/16/95, will include other items adopted by the sub-committee.
BILL TAYLOR: Correct.
MOTION: SEN. HAMBY: Moves the ADOPTION of the -11 amendments including
the amendments mention in the memo dated 3/16/95.
179 SEN. SORENSON: Expresses his concerns regarding the magnitude of bill.
Offers comments.
- Troubled with the speed the legislature is modifying the ballet measure
passed by the people.
- Has to be assured there will be funding.
- Intends to vote no and speaks of intended Minority Report.
217 SEN. HAMBY: SB 1 language precisely mirrors crimes noted in Measure 11.
Speaks directly to
the mandate of the people with one exception. Committee chose to add the
five most heinous
crimes on the list and applied them to a younger age group: 12, 13 & 14.
- Have not adjusted Measure 1 1, to come later in a House bill.
250 SEN. SPRINGER: Do we have any approximation of fiscal impact of this
bill?

SEN. HAMBY: Have received preliminary data from Legislative Fiscal.
Explains.

281 CHAIR BRYANT: Bill will go to Ways & Means once it goes through the
House Judiciary Committee.
SEN. SPRINGER: Hopes for fiscal impact reports when bill goes to Senate
floor for vote.
Speaks of his unsuccessful attempt to amend bill to reflect amendments
brought by
Representative Gordly. Continues. Intends to vote no and speaks of intended Minority
Report.
305 CHAIR BRYANT: Speaks of his intent to bring 6 bills to full committee in
April as a result of
a
report on ethnic and rational balance injustice. Very similar to
Representative Gordley's bills.
If
passed would cover not only juvenile corrections section, but adult
corrections section as well.

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327 SEN. MILLER: Represents area that currently houses the Dammasch State
Elospital Speaks of
his concern in the siting of facilities
SEN. HAMBY: Bill was amended yesterday to incorporate language asking the
DOYA to
clearly
recognize those communities who come forward
363 CHAIR BRYANT: Those who request siting will receive priority Reads
Section 30 to Sen
Miller
372 SEN. MILLER: It's not likely to be done over their objection?

CHAIR BRYANT: Explains

390 VOTE: In a roll call vote, SENATORS HAMBY, MILLER, STULL AND CHAIR
BRYANT vote AYE. SENATORS BAKER, SORENSON AND SPRINGER vote
NAY.
CHAIR BRYANT: The motion CARRIES.
VOTE: SEN. HAMBY: Moves SB 1, AS AMENDED, be sent to the Floor with a DO
PASS recommendation
VOTE: In a roll call vote, SENATORS HAMBY, MILLER, STULL AND CHAIR
BRYANT vote AYE. SENATORS BAKER, SORENSON AND SPRINGER vote
NAY.
CHAIR BRYANT: The motion CARRIES.
SEN. HAMBY will lead discussion on the Floor
420 SEN. SORENSON AND SEN. SPRINGER FILE NOTICE OF A MINORITY REPORT.
436 CHAIR BRYANT: Thanks all associated with the sub-committee

for their hard
work

onSB 1

CLOSES WORK SESSION ON SB 1

OPENS PUBLIC HEARING ON SB 362

Witnesses: Stephen Kafoury, Architect's Council of Oregon
William Seider, Architect's Council of Oregon
Ralph M Yenne, Area Vice President, Professional Engineers of Oregon
Ray Boucher, Board of Architect Examiners
Vicki McLean, Assistant Manager, Building Code and Compliance Section,
Building
Codes Division

446 STEPHEN KAFOURY, Architect's Council of Oregon: Testifies in favor of SB
362

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TAPE 59, SIDE A

046 KAFOURY: Continues.

056 WILLIAM SEIDER, Vice President, Legislative Affairs, Architect's Council
of Oregon:

Testifies in favor of SB 362.

090 CHAIR BRYANT: How do we protect the public? States concerns.

101 SEIDER: Have good point. Not talking about normal operating procedure.
Talking emergency,
quick fix and compromise. Explains.

112 KAFOURY: Moral obligation is the overriding concern from making a bad
judgment. Without
legislation, very difficult to get someone to do the job without
compensation

122 SEN. SPRINGER: Aware of any claim filed in State against an architect in
these circumstances'?

KAFOURY: No.

141 CHAIR BRYANT: References California's law. How long has the State had
its law and are you
aware of their experiences?

KAFOURY: Fairly recent.

146 SEN. SORENSON: Tell us more about how this would have been implemented
in a recent

-

disaster?

KAFOURY: References last earthquake in California. Explains.

164 RALPH M. YENNE, Area Vice President. Professional Engineers of Oregon:
Test)files in favor of SB 362.
202 RAY BOUCHER, Board of Architect Examiners: Test)files in favor of SB 362.
226 VICKI McLEAN, Assistant Manager, Code Development and Compliance
Section, Building Codes Division: Presents proposed amendments and testimony in favor of SB
362. 1EXHIBIT B]
251 CHAIR BRYANT: Requests copy of California law.
255 BOUCHER: A proposal has been introduced and forwarded to their national
board for development as model legislation for the 55 states and jurisdictions
including Canada along these
lines.
CHAIR BRYANT: National council language is same language that is proposed
here?
BOUCHER: Broader in the sense that it provides for crossing state lines.

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statements made during this session. Only text enclosed in quotation marks
repon a speaker's exact words. For complete contents of the proceedings,
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SENATE JUDICIARY March 16, 1995 - Page 5 284 KAFOURY: Modeled closely after
California's law.

CLOSES PUBLIC HEARING ON SB 362
OPENS PUBLIC HEARING ON SB 602

Witnesses: Roger Martin, Lobbyist for the Securities Industry
Association
Joe Willis, Member, Commission on Uniform State Laws

302 ROGER MARTIN, Lobbyist for the Securities Industry Association:
Test)files in favor of SB
602.
342 JOE WILLIS, Member, Oregon Commission on Uniform State Laws: Test)files
in favor of
SB 602. [EXHIBIT C1
400 Continues. Detailed, balanced bill.
460 Encourages Committee to pass this bill. Is being pushed for adoption in
all 50 states. Had
good results.

TAPE 58, SIDE B

47 MAX WILLIAMS: Have been in contact with representatives of the bankruptcy
section, the
financial institutions section and the securities section of the Bar. Thus
far, they really don't
have a position
054 SEN. SPRINGER: Asks when bill was printed and posted.

MAX WILLIAMS: Has been on calendar since first part of March. Not much
interest.

63 WILLIS: Knows it was sent to the Securities Bar section.

MARTIN: Only inquiry he received was from US West.

081 CLOSES PUBLIC HEARING ON SB 602

OPENS WORK SESSION ON SB 602

MOTION: SEN. MILLER: Moves SB 602 be sent to the Floor with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection the motion CARRIES. All members are present.

SEN. MILLER will lead discussion on the Floor.

090 OPENS PUBLIC HEARING ON SB 231
098 Witness Susan Smith, Chair, Oregon Dispute Resolution Commission
Donna Silverburg, Public Policy Coordinator, Oregon Dispute Resolution Commission

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Alice Phalan, Executive Director, Oregon Dispute Resolution Commission
Tom Balmer, Deputy Attorney General, Department of Justice
Suzanne Townsend, Dispute Resolution Coordinator, Department of Justice
Marla Rae, Executive Assistant to the Attorney General, Department of Justice
Dave White, Administrator, Department of Administrative Services Risk Management Administration
Tom Barkin, Public Utilities Commission
Martin Henner, Legislative Assistant to Sen. Bill Dwyer.

109 SUSAN SMITH, Chair, Oregon Dispute Resolution Commission: Test)files in favor of SB

231. 1EXHIBITS D, E & F1
Continues.

- Mediation information sheet

178 Introduces proposed SB 231-4 amendments. 1EXHIBIT F1

234 Continues. The purposes of these programs are set out in Section 4, subsection 5.

288 Continues. By working collaboratively with the Department of Justice, both agencies can benefit.

328 In conclusion, SB 231 addresses the three different areas in which the Commission focuses its work.

336 SEN. BAKER: Regarding the -4 amendments: Eliminating Section 1 of the bill. Section 1 sub section 4 gives a definition of the Dispute Resolution Program. Don't you need this?

SMITH: We were amending that definition to clarify that states using Dispute Resolution services

would be covered by that definition.

362 CHAIR BRYANT: Three areas that you are interested in are Risk Management, DOJ and DEQ?

SMITH: That's right.

CHAIR BRYANT: Are all three of those agencies excited about this?

SMITH: That s my understanding. Explains.

379 MARLA RAE, Executive Assistant to the Attorney General, Department of Justice. Sitting in for Tom Balmer, Deputy Attorney General, Department of Justice: Presents Balmer's testimony in favor of SB 231, 1EXHIBIT H] and proposed amendments 1EXHIBIT

G

437 Continues:
457 CHAIR BRYANT: "As I understand your testimony, it may not be necessary
to pass this bill to
accomplish what the Commission would like. In the event we wish to move
ahead, you would
like
the amendments [EXHIBIT G1 included in the amendments adopted by the
committee'?"
463 RAE: Yes. Explains.

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please refer to the tapes.

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TAPE 59, SIDE B

40 SEN. SORENSON: Understand the DOJ bills state agencies when they do legal
work. Is there a
way to have the DOJ do that with mediation services?

RAE: Yes. Explains.

053 SEN. SORENSON: Do you hire mediators?

SUZANNE TOWNSEND, Dispute Resolution Coordinator, Department of Justice:
Usually done pursuant to personal services contract. Explains.

75 CHAIR BRYANT: Proposed amendments would be a substitute for -4 amendments
proposed
by the Commission?

RAE: Yes.

78 DAVE WHITE, Administrator, Department of Administrative Services Risk
Management
Administration: 1EXHIBIT II. Also will speak for Tom Barkin, Public
Utilities

Commission: Testifies in favor of SB 231.

1 25 Continues.

141 WHITE: Speaks for Tom Barkin, Public Utilities Commission: PUC supports
the work of the
commission. Are neutral on the legislation.

147 CHAIR BRYANT: Have you reviewed both sets of amendments ?

WHITE: Comfortable with either one.

CHAIR BRYANT: Was going to suggest the DOJ because in sub-section 3 they
include you.

156 SEN. SPRINGER: How often do you retain outside counsel?

WHITE: Not often. Has a very good deal through the Department of Justice.

177 MARTIN HENNER, Legislative Assistant to Sen. Bill Dwyer, SD #21:
Presents proposed -2

amendments to SB 231. 1EXHIBIT J1

202 CHAIR BRYANT: Has some concerns that one agency can tell another agency
to report to it

and give it information.

HENNER: Just to collect general statistical data.

CLOSES PUBLIC HEARING ON SB 231

216 SEN. BAKER: Asks Chair to inquire of Susan Smith whether the -2
amendments proposed by Sen. Dwyer is something she would want to have.

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OPENS WORK SESSION ON SB 231

223 SMITH: They would prefer to be voluntarily informed.

CHAIR BRYANT: Could you live with the Department of Justice amendments?

SMITH: Yes.

MOTION: CHAIR BRYANT: Moves to ADOPT the Department of Justice amendments to SB 231.

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All members are present.

MOTION: SEN. BAKER moves that SB 231, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection the motion CARRIES. All members are present.

SENATOR SORENSON will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 231

255 CHAIR BRYANT: It takes a 2/3rds vote to bring SJR4 back to Committee on a motion reconsideration. Have some timing problems in putting SJR4 on the ballot.

OPENS WORK SESSION ON SJR4

281 MOTION: SEN. BAKER: Moves the rules be suspended for the purpose of reconsidering the vote on SJR4.

CHAIR BRYANT: SEN. BAKER moves the rules be suspended for the purpose of reconsidering the vote on SJR4.

CHAIR BRYANT: Those of the opinion that the rules should be suspended for the purpose of reconsidering the vote on SJR4 will vote "aye" - those opposed "Nay".

CHAIR BRYANT: Hearing no objection, the motion carries and the rules have been suspended. All members are present.

292 SEN. BAKER: Mr. Chair, I move we reconsider the vote by which SJR4 was sent to the

Floor with a do pass recommendation.

CHAIR BRYANT: Sen. Baker moves that we reconsider the vote by which SJR4 was sent to the Floor with a do pass recommendation.

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CHAIR BRYANT: Those of the opinion that we should reconsider the vote by which SJR4 was sent to the Floor with a do pass recommendation will say "aye" - those opposed "no".

CHAIR BRYANT: Hearing no objection, the motion carries and the vote has

been reconsidered. All members are present.

313 CHAIR BRYANT: Summarizes items making reconsideration an issue today.
Because of time constraints, doubtful measure would make voter's pamphlet in time that was set. Chair suggests a more appropriate primary date in 1996.

339 SEN. SORENSON: To clarify; does the proposed referendum apply to constitutional and statutory amendments?

CHAIR BRYANT: SJR4 as adopted would apply to both.

356 MOTION: CHAIR BRYANT moves to amend SJR4-1 amendments, page 3, line 4 delete "law shall specify signature verificatio IS to be followed in counties that are located in more than one congressional district. Additionally, on page 4 line 15, after word "on" insert "the date of the Primary Election for 1996", deleting remainder of lines 15 & 16

388 SEN. SPRINGER: States his concerns about proposed ballot measures now filed or that may be filed.

CHAIR BRYANT: The bill itself does not address it, nor the effect if this resolution passes.

SEN. SPRINGER: Feels that concern should be spoken to. Wants to avoid litigation on that question.

MAX WILLIAMS: States that Scott Tighe from the Elections Division is standing by to answer questions.

CHAIR BRYANT: Asks that Mr. Tighe be called to meeting room.

CLOSES WORK SESSION ON SJR4

429 OPENS PUBLIC HEARING ON SB 232

Witnesses: Alice Phalan, Executive Director, Oregon Dispute Resolution Commission Brad Swank, State Court Administrator's Office Tom Stern, Volunteer, Board Member and Chair of the Training Committee, NeighB or-to NeighB or

ALICE PHALAN, Executive Director, Oregon Dispute Resolution Commission:
Test)files in favor of SB 232. [EXHIBITS K & L

TAPE 60, SIDE A

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92 PHALAN: continues: Passage of SB 232 would make contacts made by mediators during the case development phase of mediation confidential unless otherwise stipulated.

143 SEN. STULL: How are allegations of physical or sexual abuse handled?

PHALAN: Described how allegations are handled now and how she anticipates them to be handled.

180 BRAD SWANK, State Court Administrator's Office: Test)files in favor of SB 232, offering amendments. [EXHIBITS M & N]

212 SWANK: Continues explaining proposed amendments.

241 SEN. HAMBY: "Alice, I assume you have no objection."

PHALAN: We think they add a great deal.

246 CHAIR BRYANT: Has the question brought by the Oregon Newspaper
Association been
satisfied'?
PHALAN: Please repeat question.
CHAIR BRYANT: Concerned as the current law requires a written agreement
between the
parties to make record confidential. This would reverse the situation.
PHALAN: Gives an initial response, but may have to do additional research.
280 MAX WILLIAMS: References written testimony of Tom Stem in favor of SB
232. [EXHIBIT
o]
290 SEN. SORENSON: Are the communications to and from the disputants in a
mediation also
undisclosable'?
321 PHALAN: If specifically revealed in the mediation session, it cannot be
entered in to the
proceedings.
332 CHAIR BRYANT: Repeats lines 9 & 10.
349 CLOSES PUBLIC HEARING ON SB 232
OPENS WORK SESSION ON SB 232
MOTION: CHAIR BRYANT: Moves to ADOPT the SB 232-2 amendments together
with amendments of the Oregon Judicial Department.
VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All
members present vote AYE. Senators Miller and Springer are excused.
MOTION: SEN. HAMBY: Moves that SB 232, AS AMENDED, be sent to the Floor
with a DO PASS recommendation.

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VOTE: Hearing no objection, all member present vote AYE. Senators Miller
and Springer are excused.

SEN. HAMBY will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 232

REOPENS WORK SESSION ON SJR4

Invited testimony: Scott Tighe, Manager of Elections Division, Secretary of
State's
Office

373 SEN. SPRINGER: Restates question to Mr. Tighe.
391 SCOTT TIGHE, Manager of Elections Division, Secretary of State's Office:
Reads from
SJR4, version 2, relating to a "grandfather clause."
423 MAX WILLIAMS: Gives Tighe correct copy. Page 3 of the -1 amendments?
439 TIGHE: Yes. Section 1B1 on page 3 continuing on to page 4 would
grandfather those chief
petitioners currently circulating petitions - current law would apply. This
amendment would
only apply to those chief petitioners that would file after the May
election and has been
proclaimed passed by the Governor. Date would be June 20th or later of
1996. Provisions of
this amendment would apply to those groups.
CHAIR BRYANT: Restates dates Tighe cited.
471 TIGHE: After proclamation, the new rules would apply.

TAPE 61, SIDE A

028 If there is going to be a transition, the best time to do it would be at
the May 1996 election.
Explains.

039 SEN. SORENSON: Does this referendum apply to any initiatives other than statutory or state law?
TIGHE: Includes both statutory and constitutional initiatives.
049 SEN. SORENSON: Have there been constitutional amendments referred by the legislature where a specific date has been set?
TIGHE: Would have to check with Counsel, but believes you can.
058 MAX WILLIAMS: Reminds Chair motion still open.

SEN. SPRINGER/HAMBY/BRYANT: Committee discusses whether to use specific date as Sen. Springer suggests. Needs to know primary date.

102 SEN. SORENSON: Suggests using an idea with precision. Explains. ~ ;

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CHAIR BRYANT: Depending on primary date, what would be an appropriate date'?

115 TIGHE: Familiar with some of the concepts being discussed. Moving of primary date complicates things. Explains.

CLOSES WORK SESSION ON SJR4

141 CHAIR BRYANT: Adjourns at 5:45

Submitted by: Reviewed by:

Julie Clemente M. Max Williams II
committee Assistant Committee Administrator/Counsel

EXHIBIT LOG:

A - Key Elements of Senate Bill 1 -- Jeanette Hamby -- 7 pages
B - Building Codes Division Testimony SB 362 -- Vickie McLean -- 1 page
C - Revised Article 8. Investment Securities -- Joe Willis -- 235 pages
D - Oregon Dispute Resolution Commission SB 231 -- Sue Smith -- 18 pages
E - Testimony on SB 231 -- Susan Smith -- 7 pages
F - Proposed Amendments to SB 231 -- Sue Smith -- 3 pages
G - Proposed Amendments to SB ;231 -- Marla Rae -- 2 pages
H - Testimony on SB 231 -- Tom Balmer-- 3 pages
I - Alternative Dispute Resolution Progress and Pilot Projects -- Dave White
-- 5 pages (SB 231)
J - Proposed Amendments to SB 231 -- Martin Henner -- 1 page
K- Testimony on SB 232 -- Alice Phalan -- 3 pages
L - Community Dispute Resolution Programs -- Alice Phalan -- 1 page (SB 232)
M - Proposed Amendments SB 232 -- Brad Swank-- 1 page
N - Proposed Amendments to SB 232 -- Brad Swank-- 1 page
O - Testimony on SB 232 -- Tom Stern -- 2pages

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