

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 66

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 218 - PUBLIC HEARING
SB 220 - PUBLIC HEARING
SB 343 - PUBLIC HEARING
SB 367 - WORK SESSION
SB 343 - 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 PUBLIC HEARING on SB 343

WITNESSES: Sen. John Lim, District 11
Rep. Kate Brown, District 13
Craig Walker, Lieutenant, Gresham Police Department
Walter Slusarczyk, Gresham Police Department
Claudette LaVert, City of Gresham
Randy Lumsford, Chief of Police, City of Silverton
Jodi Sherwood, Community Policing Coordinator, Keizer
Paul Snider, Association of Oregon Counties
Jim Arneson, Oregon Criminal Defense Lawyer's Association
Chuck Martin, Mayor's Task Force, City of Portland
Ted Hughes, Pacific Northwest Paint Council

010 SEN. JOHN LIM, District 11: Testifies and submits written testimony
in favor of SB 343. [EXHIBIT A]
055 - bill doesn't preempt local regulations on graffiti

061 SEN. SORENSON: Is there a way to broaden the mandated sanctions so if
community needs some other labor done it can be added to the community
service section?

085 SEN. LIM: I don't have a problem in broadening the penalty areas.

089 SEN. SORENSON: This is making an offense rather than a crime so we
wouldn't incur any indigent defense costs for people accused of violating
this offense, is that correct?

096 SEN. LIM: I'm not a lawyer.

100 CHAIR BRYANT: Page 2 of the amendments may make it more than a
violation and cause indigent defense costs.

115 SEN. SORENSON: Can the community service be done for a city or for a
non-profit group?

131 SEN. LIM: It isn't indicated in the bill.

139 REP. KATE BROWN, District 13: Testifies in support of SB 343-1
proposed amendments [EXHIBIT C]. Graffiti creates an atmosphere of fear,
and a negative economic impact.

175 CHAIR BRYANT: Questions what can be considered a graffiti instrument.

200 SEN. SORENSON: When we add on sanctions, we make this a crime in
competition with other crimes. How can we make it a violation rather than
a crime?

210 REP. BROWN: I think you avoid imposing jail sentences and that would

avoid the problem.

220 CRAIG WALKER, Lieutenant, Gresham Police Department: Testifies in support of SB 343. Relates past history of graffiti treatment in Gresham.

260 WALTER SLUSARCZYK, Gresham Police Department: Would like bill to say

it "shall"

impose a fine of \$500 rather than "may". Graffiti is a psychological crime, and offenders do not need any leniency.

300 - leave it is a violation, eliminating costs so case can move to court more swiftly

315 - felt tip marker would be a graffiti instrument, but suggests adding specific "intent" to commit violation

327 - parents need to be held responsible for children second time this happens

363 CHAIR BRYANT: In Gresham voluntarily locking up the paint?

369 SLUSARCZYK: Yes.

384 SEN. SORENSON: Are there store thefts where people try to get spray paint?

380 SLUSARCZYK: We did a study and didn't see any increase of spray paint theft by voluntarily banning it.

411 CLAUDETTE LaVERT, City Council, City of Gresham: Testifies in support of SB 343. Describes Gresham's experiences with graffiti.

445 RANDY LUMSFORD, Chief of Police, City of Silverton: Testifies in support of SB 343. Submits Mayor Ken Hector's written testimony for the record [EXHIBIT D].

482 JODI SHERWOOD, Community Policing Coordinator, City of Keizer: Testifies in favor of SB 343. Relates Keizer's experience with graffiti ordinance.

TAPE 66, A

050 - hopes this bill will discourage future perpetrators from committing vandalism

070 SEN. BRYANT: Do stores have an obligation to lock up paint, or keep book on sales in your ordinance?

071 SHERWOOD: No, we do not.

096 SEN. SORENSON: If defendant doesn't do what judge ordered, what can judge do?

098 SHERWOOD: Californian cities stop them from getting drivers licenses and report cards.

110 SEN. BAKER: When you currently arrest juveniles do you ask them where they got supplies?

118 SHERWOOD: Not exactly.

132 SEN. STULL: Keizer has the support of the business community.

152 PAUL SNIDER, Association of Oregon Counties: Testifies without a position on SB 343. Graffiti problem is significant.

165 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: Has concern that Lines 5-7 of SB 343-1 amendments might elevate offense to more

than a violation.

- has concern that possession of graffiti instruments would lead to discriminatory enforcement against minorities

190 CHAIR BRYANT: You would suggest doing away with the part about possession of graffiti instrument with intent to use it.

200 ARNESON: Yes.

195 SEN. HAMBY: Washington County doesn't have court time for violations and misdemeanors.

210 SNIDER: I share that concern. I don't know what the fiscal or organizational impact would be on counties to implement. It isn't clear under whom community service will be.

222 SEN. SORENSON: You are interested in other ways to deal with sections that refers to Department of Corrections, what did you have in mind?

216 ARNESON: Impose a fine but allow person to void fine by doing community service.

274 CHUCK MARTIN, City of Portland Graffiti Steering Committee, Vice President and President-Elect of Alliance of Portland Neighborhood Business

Associations: Testifies and submits written testimony on SB 343.

[EXHIBIT E] Has some problems with amendments.

- Section 2 has our full support, we like fines and community service

348 - Section 3, questions how you can prove intent with graffiti
instruments
355 - Section 7 and 8, raises concerns in business community and city of
Portland

387 CHAIR BRYANT: Sen. Lim is willing to delete section dealing with
retailers; locking up paint and keeping books.

406 TED HUGHES, Pacific Northwest Paint Council: Testifies in favor of SB

343. National Paint Council has developed research in graffiti area which
is available upon request.

467 SEN. SORENSON: Is it true that a large portion of paint is stolen?

478 HUGHES: Don't know answer to that.

Submitted for the record written testimony from Sarah Hackett [EXHIBIT B].

Closes PUBLIC HEARING on SB 343

Opens WORK SESSION on SB 343

490 CHAIR BRYANT: Department of Corrections needs to be deleted, do you
have suggestions Mr. Taylor?

TAPE 65, B

045 TAYLOR: I believe we should take that out. On page 1, fine of \$500
perhaps could be increased to \$750 which is less than a misdemeanor. This
gives judge the option of imposing community service and the person the
option of accepting it, in lieu of a fine.
- mandated community service starts to look like a crime
- questions if mandated service becomes involuntary servitude

066 SEN. SORENSON: A time limit on community service is good. Wants to
delete Department of Corrections from amendment, and requirement of record
keeping.

082 CHAIR BRYANT: Within Section 7, items 3, 4, and 5 would be deleted.

084 CHAIR BRYANT: Conceptual we have Mr. Taylor's suggestions plus Sen.
Sorsenson's suggestion that community service must be completed within six
months.

106 TAYLOR: With the option, the person can choose and we reduce problems
with involuntary servitude.

104 SEN. SORENSON: I would like to put a time limit in the statutes.

133 CHAIR BRYANT: Language could be "in no event shall this community
service not be performed within six months".

123 SEN. SORENSON: I like the language "community service shall include
removing graffiti either those the defendant created or those created by
another or both or such other community service as the court deems
appropriate".

132 SEN. HAMBY: I think time should be open ended.

139 CHAIR BRYANT: OK, we will change that to at least 30 hours, and under
Section 2b at least 20 hours.

143 TAYLOR: Do we want the language "At the option of the court and the
option of the defendant or option of the defendant" as defendant may
choose 30 hours of community service.

146 CHAIR BRYANT: Prefer to let judge have discretion on it. I intend to
leave in Section 3 on intent.

178 SEN. SORENSON: I'm concerned with broadening this to allow police
officers to ticket people or arrest them for conduct which they may not be
aware is a violation of an offense.

197 CHAIR BRYANT: Section 7 prohibits selling to minors without consent of
parent. Section 6 imposes a \$250 fine which is rather steep.

215 SEN. STULL: One thought is to insert "intent".

233 CHAIR BRYANT: We will prepare amendment and bring bill back.

Opens PUBLIC HEARING on SB 220

WITNESSES: Janine O'Neill Robben, Director Medicaid Fraud Unit, Department
of Justice
Paul Snider, Association of Oregon Counties
Scott Gallant, Oregon Medical Association
Tom Mattis, Manager, Compliance Section Worker's Compensation Division

250 JANINE O'NEILL ROBBERN, Director Medicaid Fraud Unit, Department of
Justice:
Testifies in favor of SB 220 and submits written testimony [EXHIBIT F].

310 CHAIR BRYANT: Can you live without Section 3?

315 ROBBERN: Yes.

323 SEN. SORENSON: Do you want to add in language from federal false claims

act to allow private parties to enforce that?

360 ROBBEN: I don't think it would change my work load.

401 TAYLOR: Is Section 4 meant to be in lieu of ORS 132.560 or complimentary to?

411 ROBBEN: It is meant to be complimentary to.

418 SEN. SPRINGER: Section 8 gives district attorney or Attorney General concurrent jurisdiction, isn't that unusual?

428 ROBBEN: I am prosecuting Medicare fraud cases by being deputized as a deputy district attorney in the counties.

450 SEN. BAKER: In what other areas does Attorney General have direct prosecutorial ability?

452 ROBBEN: Cases directed by the governor.

TAPE 66, B

038 PAUL SNIDER, Association of Oregon Counties: We have no position on SB 220.

045 SCOTT GALLENT, Oregon Medical Association: Testifies in opposition to SB 220. Gives examples of medical fraud.

085 CHAIR BRYANT: Section 3 has been deleted.

089 SEN. SORENSON: Do you recall any Rico or false claims cases being brought against Oregon physicians?

092 GALLENT: A few years ago there was a chiropractic case.

099 TOM MATTIS, Manager Compliance Section, Worker's Compensation Division: Testifies and submits written testimony without a position on SB 220 [EXHIBIT G]. Questions whether this would include workers compensation insurers as payer.

125 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: Has concern with Section 4 as when you allow at DA's discretion the aggravation of crimes into one count you have problem with what crime you are in violation

of.

165 - has a concern when don't identify what claim is for five year limitation

170 - don't know what Section 6 means

180 CHAIR BRYANT: If you could express your concerns to Janine.

Closes PUBLIC HEARING on SB 220

Opens WORK SESSION on SB 367

190 CHAIR BRYANT: We pulled this bill back as we have a problem.

200 TAYLOR: Problem is slot machine can be both a gray machine and a gambling device and under the definition it would be in violation of a gray machine. Explains Amendments SB 367-2. [EXHIBIT H]

220 CHAIR BRYANT: I went over these changes with the state police.

MOTION: CHAIR BRYANT: Moves to SUSPEND RULES to bring SB 367 back to the committee.

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

MOTION: CHAIR BRYANT: Moves to ADOPT SB 367-2 AMENDMENTS.

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

MOTION: CHAIR BRYANT: Moves 367 AS AMENDED be sent to the Floor with a DO PASS recommendation.

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

SEN. MAE YIH will carry the bill to the Floor.

Closes WORK SESSION on SB 367

Opens PUBLIC HEARING on SB 218

WITNESS: John Ellis, Department of Justice

255 JOHN ELLIS, Department of Justice, Support Enforcement Division: Testifies and submits written testimony in favor of SB 218 [EXHIBIT I & J]. 300 - continues explaining bill

365 CHAIR BRYANT: Adjourns meeting at 5:00 p.m.

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Testimony on SB 343 - Sen. John Lim - 2 pages
B - Testimony on SB 343 - Sarah Hackett - 2 pages
C - Proposed Amendments on SB 343 - Sen. John Lim - 4 pages
D - Testimony on SB 343 - Ken Hector - 2 pages
E - Testimony on SB 343 - Charles Martin - 8 pages
F - Testimony on SB 220 - Janine O'Neill Robben - 6 pages
G - Testimony on SB 220 - Tom Mattis - 1 page
H - Proposed Amendments to SB 367-2 - 2 pages
I - Proposed Amendments to SB 218 - 4 pages
J - Testimony on SB 218 - John Ellis - 2 pages