

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 91

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

MEMBER EXCUSED: Sen. Randy Miller, Vice-Chair

STAFF PRESENT:
M. Max Williams II, Committee Counsel
Bill Taylor, Committee Counsel
Julie Clemente, Committee Assistant

MEASURES HEARD:
Work Session SB 788
SB 218
SB 343
Public Hearing SB 853
SB 212

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 , SIDE A

002 CHAIR BRYANT: Calls committee to order.

OPENS WORK SESSION ON SB 788

006 CHAIR BRYANT: Speaks of the need to reconsider vote on SB 788.

012 MOTION: SEN. BAKER: Mr. Chair, I move the rules be suspended for the
purpose of reconsidering the vote on SB 788.

CHAIR BRYANT: SENATOR BAKER moves the rules be suspended for the purpose
of reconsidering the vote on SB 788.

CHAIR BRYANT: Those of the opinion that the rules should be suspended for
the purpose of reconsidering the vote on SB 788 will vote "Aye" -- those
opposed "No".

VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES and the
rules have been suspended. All members are present. SENATOR MILLER IS
EXCUSED.

MOTION: SEN. BAKER: I move we reconsider the vote by which SB 788 was
sent to the floor with a do pass recommendation.

CHAIR BRYANT: SENATOR BAKER moves that we reconsider the vote by which
788 was sent to the floor with a do pass recommendation. SB

CHAIR BRYANT: Those of the opinion that we should reconsider the vote by
which SB 788 was sent to the floor with a do pass recommendation will vote
"Aye"-- those opposed "No."

VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES and the vote
has been reconsidered. All members are present. SENATOR MILLER IS EXCUSED.

SB 788 is now once again before the committee.

028 MAX WILLIAMS: Speaks of SB 788-1 amendmends. Explains.

044 MOTION: SENATOR BAKER: Moves to ADOPT the SB 788-1 amendments dated
4/5/95.

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All
members are present. SENATOR MILLER IS EXCUSED.

MOTION: SENATOR BAKER: Moves that SB 788, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

051 SEN. SORENSON: Are there any other concerns regarding changing the indemnification law?

CHAIR BRYANT: You could still go after the general contractor and the subs would be responsible for their own negligence.

VOTE: In a roll call vote, SENATORS BAKER, HAMBY, SORENSON, STULL and CHAIR BRYANT vote AYE. SENATOR SPRINGER votes NAY. SENATOR MILLER IS EXCUSED.

CHAIR BRYANT: The motion CARRIES.

SENATOR STULL will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 788

OPENS PUBLIC HEARING ON SB 853

Witnesses: Bradd Swank, Management/Legal Analyst, State Court
Administrator's Office
Senator Ron Cease, Senate District # 10
Senator Joan Dukes, Senate District # 1
Marshall Coba, Oregon Trucking Association
Steve Johnston, Oregon Department of Transportation
Liz Friedman
Jim Dyer

070 BRADD SWANK, Management/Legal Analyst, State Court Administrator's Office: Testifies on SB 853. [EXHIBIT A] At request of committee counsel, speaks of background of bill; explains bail schedule.

125 Supreme Court tried to address some of those issues. Explains.

170 Most serious offenses would be classified A. Explains.

202 Speaks of chart [EXHIBIT A] ranking all offenses by class. Continues.

243 SENATOR RON CEASE, Representing Senate District 10: Introduces proposed SB 853-2 amendments. [EXHIBIT C]

304 Washington State does what we propose here. Continues.

309 SENATOR JOAN DUKES, Representing Senate District #1: Introduces proposed SB 853-3 amendments. [EXHIBIT B] Speaks of the number of hiway construction workers killed each year.

350 If you are violating a traffic law in a construction zone, we are going to double the fines. Speaks of change in -3 amendments; insert "road" on line 6 after "where". Continues.

383 CEASE: Doesn't have a problem with shall or may. Continues.

412 CHAIR BRYANT: Amendments should have a classification of A, B, C or D. Explains.

429 SEN. HAMBY: Concurs. Questions language in -2 amendments.

CEASE: More inclusive than she is. Explains.

450 HAMBY/CEASE: Continue discussion.

TAPE 90, SIDE A

041 SEN. BAKER: Do we want to put this to every traffic infraction?

CEASE: Speeding infractions are the main concern. Explains.

BAKER/CEASE: Continue discussion.

051 SEN. SORENSON: What do each of you mean by hiway?

DUKES: Hiway is defined in statute. Is a state road. Explains.

082 SEN. BAKER: Do traffic infractions also include equipment failures?

DUKES: Whatever language gets you to that point is where we want to go. Explains.

107 CEASE: Probably safer going narrower route. Explains

116 SEN. SORENSON: Does this deal with issue of construction activity?

CHAIR BRYANT: It would under that definition of the bill.

124 MARSHALL COBA, Oregon Trucking Association: Presents amendments to SB 853-1 amendments: [EXHIBIT D] Amendments will bring overweight fines into

a reasonable level. Explains.

Delete lines 14 through 24 on page 1. Delete lines 1 through 7 on page 2.

Believes "this will make the fine fit the crime."

154 CHAIR BRYANT: Do the rollbacks go back to 1993 fines?

COBA: Correct.

CHAIR BRYANT/COBA: Continue discussion.

166 SEN. SORENSON: Speaks of trend in traffic infractions. Has the increase in the fines brought about any greater compliance?

COBA: Not able to answer. Explains.

182 SEN. SORENSON: It would help me if we have a way of knowing if an increase in fines resulted in fewer violations. Explains.

COBA: Do not know the statistics. Do know that the Department of Transport supports these amendments.

211 STEVE JOHNSON, Oregon Department of Transportation: Testifies in support of SB 853. ODOT has no objection to amendments Mr. Coba presented

as long as indicated lines are deleted. Speaks of schedule of fines. Schedule 1 must stay at current rate.

242 LIZ FRIEDMAN, works summers on road crews: Testifies in support of SB 853-2 amendments offered by Sen. Cease. Small step in correcting what is a

very large and growing problem. Explains.

285 JIM DYER: Testifies in support of SB 853-2 amendments. Speaks of personal experience. Son was hit and killed while working on hiway crew. Driver received a careless driving ticket, fine was reduced to half. Supports signage similar to those in Washington state.

359 CHAIR BRYANT: Senator Baker has agreed to assist in working the bill. Requests Mr. Dyer and Mr. Swank meet with Senator Baker regarding language for amendments.

CLOSES PUBLIC HEARING ON SB 853

385 OPENS WORK SESSION ON SB 343

400 SEN. STULL: Refers to SB 343-3 and SB 343-4 amendments. [EXHIBITS E & F] Senator Lim drafted -3 amendments; comparing -2 amendments. Explains differences.

468 CHAIR BRYANT: Let's discuss as we go. Mr. Taylor, what is the present fine for defacing public/private property?

BILL TAYLOR: Depends on classification. Explains.

TAPE 89, SIDE B

044 BILL TAYLOR: Is now a violation, not a criminal provision. Explains.

CHAIR BRYANT: Preference committee? \$750.

057 SEN. SPRINGER: Are we aware of any other violations where we impose community service?

BILL TAYLOR: There is a provision that allows a court to impost community sanctions. Explains.

075 SEN. STULL: Point of clarification; - 4 amendments, first page, Section 3, line 22 regarding community service. Continues.

091 CHAIR BRYANT: If we go to "may" don't have trouble saying "the minimum." Explains.

SEN. STULL: Specific language used is "at least."

CHAIR BRYANT: Before the word perform insert "at least 20 hours community service." Gives the court better direction.

102 SEN. SORENSON: If you have "the court may order." Why have numbers in there?

CHAIR BRYANT: Purpose of the bill is not just to have a fine, but also to impose community service. Go back and clean up the graffiti. Explains

SEN. SPRINGER/BRYANT: Continue discussion.

135 SEN. STULL: Sen. Lim's ammendments do not have that reference to ORS
137.128.

CHAIR BRYANT: We need that to avoid our concern about making it criminal.

139 BILL TAYLOR: This conduct could still be treated as criminal conduct
under the criminal mischief statute. We are creating a parallel.
Explains.

148 SEN. SORENSON: Clarification, SB 343-4 amendments: Does the prosecutor
have the option of seeking a crime for possession of a graffiti implement?

SEN. BRYANT: Not for possession of a graffiti implement.

162 SEN. STULL: Continues: page 2 of -4 amendments, section 3 subsection
3. Community Service implemented within 6 months.

Dash 3 amendments, section 5 line 25, subsection b, presumptive sentencing
issue. Has legislative counsel had an opportunity to review?

187 CHAIR BRYANT: Why is that there?

BILL TAYLOR: That is where they are sentencing someone to probation.
Can't have both; either jail or community service.

CHAIR BRYANT/STULL: Discussion.

BILL TAYLOR: In -4 amendments it is eliminated.

198 SEN. STULL: Continues. Page 3 of SB 343-3 amendments, lines 23 through
30, parental responsibility. Not addressed in bill.

CHAIR BRYANT: Parent would be responsible for intentional torte of their
minor now under other statutes.

BILL TAYLOR: Constitutional to hold parents responsible. Explains.

CHAIR BRYANT: Include that in bill. What section on the -3 amendments
would that be?

SEN. STULL: Section 6 and subsection 3c.

225 SEN. SORENSON: References -3 amendments, page 2 line 20, the reference
to ORS 137.126 & 137.129. Is that part of the criminal code.

BILL TAYLOR: Maybe just a different drafting style to accomplish the same
thing. Explains.

242 SEN. SORENSON/TAYLOR: Discussion.

296 SEN. STULL: Page 1 of -4 amendments, line 19 regarding 30 hours.
Continues

312 SEN. SORENSON: Still trying to get answers to two questions.
Continues.

CHAIR BRYANT/SORENSON: Discussion

358 CHAIR BRYANT: If the court found it to be constitutional, the entire
bill wouldn't be thrown out. Explains.

379 SEN. STULL: Point of clarification: 30 hours is for the designation of
applying graffiti, 20 hours for possession of an instrument.

384 SEN. SPRINGER: Speaks to the definition of graffiti. Could that be
flyers on telephone poles, etc.?

400 CHAIR BRYANT: Posting would be okay. Continues.

426 SEN. BAKER: I think we have some drafting problems. Explains

CHAIR BRYANT: What would you suggest?

CHAIR BRYANT/BAKER: Discussion

TAPE 90, SIDE B

026 SEN. STULL: Senator Lim is in agreement with all other -4 amendment
choices.

030 CHAIR BRYANT: Summarize changes for us, Senator Stull.

SEN. STULL: Dash 4 amendments, page 1, Section 2 subsection a, line 16 - increased bail amount to \$750.
- Subsection b, line 19 - may order the defendant to perform "up to" 100 hours of community service.
- Page 2, Section 3, line 11, may order the defendant to perform "up to" 50 hours of community service.

050 Section 6 - parental responsibility: make it our Section 7. Deleting original Section 7 in the -4 amendments. Insert in Section 7 the -3 amendment on page 3, Section 6, subsection c, lines 24 through 30.

065 SEN. BAKER: Dash 3 amendments: Why aren't we including lines 13 through 30? Is it already in the bill?

CHAIR BAKER: Already in Section 3.

CHAIR BAKER/BAKER: Continue discussion.

MOTION: SENATOR STULL: Moves to ADOPT the SB 343-4 amendments as amended.

093 SEN. BRYANT: Page 3 of the SB 343-3 amendments, line 16 regarding parental responsibility. Is that also included in the -4 amendments?

SEN. STULL: There is no reference to parental responsibility in the original -4 amendments.

CHAIR BRYANT: Would it be appropriate to add the entire Section 6 from the -3 amendments to your amendment?

SEN. STULL: Would have no objection and Senator Lim would appreciate it.

101 SEN. BAKER: "Effectively we could take the -3, starting at Section 6 on page 2, line 29 and bring in all of Section 6 with the exception of lines 9 through 12."

SEN. STULL: We would transfer that entire section to our Section 7 in the -4 amendments.

108 SEN. SORENSON: Are we making a policy decision to not give the defendant the option of performing community service in lieu of the fine?

CHAIR BRYANT: Can the judge impose a fine and also order community service?

SORENSON/BRYANT: Continue discussion.

168 SEN. SPRINGER: Are we making a foster parent or the state legally responsible?

SEN. BAKER: It's discretionary. Explains.

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All members are present. SENATOR MILLER IS EXCUSED.

MOTION: CHAIR BRYANT: Moves that SB 343, AS AMENDED, be moved to the Floor with a DO PASS recommendation.

VOTE: CHAIR BRYANT: Hearing no objection, the motion CARRIES. All members are present. SENATOR MILLER IS EXCUSED.

SENATOR LIM will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 343

OPENS WORK SESSION ON SB 218

Invited Testimony: Layne Barlow
Carl R. Sticker, Marion County Deputy District Attorney on behalf of Oregon

District Attorneys Association
Maureen McKnight, Attorney, Oregon Legal Services
John Ellis, Department of Justice

208 LAYNE BARLOW: Testifies to SB 218. References 15% amount of disposable income that can be withheld from a support obligors income. Continues.

238 CARL R. STECKER, Marion County Deputy District Attorney on behalf of Oregon District Attorneys Association: Testifies in support of SB 218 and offers proposed -3 amendments. [EXHIBIT H]

275 MAUREEN MCKNIGHT, Attorney, Oregon Legal Services: Testifies in support

of SB 218 and offers -2 amendments. [EXHIBITS I & G] Attached is testimony from Richard A. Slottee, Director, Lewis and Clark Legal Clinic, Northwestern School of Law in support of SB 218-2 amendments.

333 Continues explaining amendments. [EXHIBIT G]

379 JOHN ELLIS, Department of Justice: Accepts as a "friendly amendment."

MOTION: SENATOR HAMBY: Moves to ADOPT the SB 218-2 amendments dated 3/31/95.

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All members are present. SENATOR MILLER IS EXCUSED.

MOTION: SENATOR HAMBY: Moves to ADOPT the SB 218-3 amendments submitted by Oregon District Attorneys Association. Page 1, Line 20 after (C) insert: "Only when none of the arrearage is owed to a private obligee and is entirely assigned to this, another state or political subdivision...".

VOTE: CHAIR BRYANT: Hearing no objection the amendments are ADOPTED. All members are present. SENATOR MILLER IS EXCUSED.

MOTION: SENATOR HAMBY: Moves that SB 281, 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 MILLER IS EXCUSED.

SENATOR HAMBY will lead discussion on the Floor.

CLOSES WORK SESSION ON SB 218

OPENS PUBLIC HEARING ON SB 212

387 Witnesses: John Ellis, Department of Justice
Russell Lipetzky, Legislative Chair, Family & Juvenile Law Section, Oregon State Bar
Maureen McKnight, Attorney, Oregon Legal Services

409 JOHN ELLIS, Department of Justice: Testifies in support of SB 212 and offers 212-1 and 212-3 amendments. [EXHIBIT J]

467 ELLIS: Continues.

TAPE 91, SIDE A

046 ELLIS: Continues.

084 ELLIS: Under Oregon law, the huSB and is conclusively deemed to be the father. Explains.

131 SEN. HAMBY: Do you want to speak to the 3-year time limit?

ELLIS: The Department of Justice and the state's child support program is not opposed to the 3-year window concept. Explains.

183 RUSSELL LIPETZKY, Legislative Chair, Family & Juvenile Law Section, Oregon State Bar: Testifies in opposition to SB 212. [EXHIBIT K]

209 RUSSELL LIPETZKY, Attorney: Testifies in support of SB 212 with amendments to section 7. Explains.[EXHIBIT L]

245 LIPETZKY: Has disagreement with Mr. Ellis. Explains.

255 ELLIS: Misunderstanding. Explains.

265 LIPETZKY: Offering amendment to replace Section 7 as it is good social policy.

282 LAYNE BARLOW: Testifies to SB 212. Speaks of his concerns.

CHAIR BRYANT: SB 212-3 amendments takes care of most of your concerns. Explains.

346 MAUREEN MCKNIGHT, Attorney, Oregon Legal Services: Testifies in support of SB 212. [EXHIBIT O]

359 SEN. HAMBY: Is the language ready right now for insertion in Section 1?

ELLIS: I tried to do that. Explains.

373 MCKNIGHT: Concerned with rebutable approach that printed bill suggest. Explains

407 Mr. Leptzky's proposal far more acceptable than the printed version.
Continues.

CLOSES PUBLIC HEARING ON SB 212

Adjourns meeting at 5:40 p.m.

Submitted By:

Reviewed By:

Julie Clemente
Committee Assistant

Bill Taylor
Committee Administrator/Counsel

EXHIBIT LOG:

A - Testimony on SB 853 - Bradd Swank -- 26 pages
B - Proposed Amendments SB 835-3 -- Sen. Dukes -- 1 page
C - Proposed Amendments SB 853-2 -- Sen. R. Cease -- 1 page
D - Proposed Amendments SB 853-1 -- Marshall Coba -- 3 pages
E - Proposed Amendments SB 343-4 -- Sen. S. Stull -- 3 pages
F - Proposed Amendments SB 343-3 -- Sen. S. Stull -- 5 pages
G - Proposed Amendments SB 218-2 -- Staff -- 4 pages
H - Testimony SB 218 -- Carl R. Stecker -- 3 pages
I - Testimony SB 218 -- Maureen McKnight -- 4 pages
J - Testimony SB 212 -- John Ellis -- 5 pages
K - Testimony SB 212 -- Russell Lipetzky -- 2 pages
L - Testimony SB 212 -- Russ Lipetzky -- 2 pages
M - Proposed Amendments SB 212-1 -- Staff -- 1 page
N - Proposed Amendments SB 212-3 -- Staff -- 1 page
O - Testimony SB 212 -- Maureen McKnight -- 2 pages