

HOUSE COMMITTEE ON JUDICIARY

July 8, 1993 Hearing Room 357 1:30 p.m. Tapes 90 - 91

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Tom Mason, Vice-Chair Rep. Kate Brown Rep. Peter Courtney Rep. Jim Edmunson Rep. Veral Tarno Rep. Bob Tiernan

MEMBERS EXCUSED: Rep. Tom Brian Rep. Ken Baker

STAFF PRESENT: Julie Nolta, Committee Clerk Holly Robinson, Committee Counsel Carole Souvenir, Committee Counsel

MEASURES CONSIDERED: SB 1078 - Relating to criminal identification data HB 3326 - Relating to the presence of minors at racing events SB 227 - Relating to local juvenile justice advisory councils SB 249 - Relating to local juvenile justice advisory councils SB 210 - Relating to retirement benefits SB 295 - Relating to adoption

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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. [--- Unable To Translate Graphic ---]

TAPE 90, SIDE A

004 CHAIR PARKS: Calls the meeting to order at 1:50 p.m.

HB 3326 - PUBLIC HEARING

Witnesses: Dave Nelson, Portland Meadows

052 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3326 allows minors under 12 years of age to enter upon a race course during races and if wagering is

permitted if the minor is accompanied by a parent or guardian until 10:30 p.m. on Friday and Saturday until 10:30 p.m. and 8:00 p.m. on

Sunday. 062 DAVE NELSON, PORTLAND MEADOWS: Testifies in favor of HB 3326.

HB 3326 - WORK SESSION

095 MOTION: REP. MASON: Moves HB 3326 TO THE FLOOR with a DO PASS recommendation.

HOLLY ROBINSON, COMMITTEE COUNSEL: There are -1 amendments to be adopted. (EXHIBIT A)

REP. MASON: Withdraws his motion.

HOLLY ROBINSON, COMMITTEE COUNSEL: Explains -1 amendments.

108 MOTION: REP. MASON: Moves to ADOPT HB 3326-1 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Baker and Rep. Brian are excused.

110 MOTION: REP. MASON: Moves HB 3326 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES AYE: Baker, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Baker, Brian

Rep. Mason to carry the bill

SB 249 and SB 227 - WORK SESSION

127 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 249 requires that local criminal justice councils be established in each county in each judicial district to address methods of coordinating court, indigent defense and related

services and resources. SB 227 modifies county juvenile advisory councils.

CHAIR PARKS: Asks if there was a financial impact.

HOLLY ROBINSON, COMMITTEE COUNSEL: There was none.

152 MOTION: REP. BROWN: Moves SB 227 TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES AYE: Baker, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Baker, Brian

Rep. Tiernan to carry the bill

161 MOTION: REP. BROWN: Moves SB 249 TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brian

Rep. Baker to carry the bill

SB 295 - WORK SESSION

Witnesses: Peggy Rabin, Attorney General's Office Rep. Kevin Mannix,
District 32

176 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 295 repeals current
statute concerning petitions for adoptions.

CHAIR PARKS: Asks about the negative effects if the bill does not pass.

191 PEGGY RABIN, ATTORNEY GENERAL'S OFFICE: Testifies in favor of SB
295 .

214 REP. BROWN: Refers to SB 295 A-9 amendments. (EXHIBIT B) Asks
about the connection with the state.

RABIN: Explains four bases of jurisdiction.

REP. BROWN: Asks if she would be comfortable with "significant
connection within the adoption statute."

236 RABIN: Refers to language in Section 2(a) of the A-9
amendments. County of connection was a reference to venue. Restates
what the

statute does.

CHAIR PARKS: Does that come into effect when there is concurrent
jurisdiction?

RABIN: The amendment has a jurisdiction section and a venue section.

273 REP. BROWN: What happens if minor child is not residing in
Oregon? It does not matter in terms of venue? RABIN: Oregon may not
have jurisdiction and the venue statute is not

relevant.

REP. BROWN: Doesn't want to prohibit foreign adoptions in Oregon.

RABIN: There are bases for jurisdiction based on the adoptive parents.

287 CHAIR PARKS: If you don't have the natural parent or the
adoptive parent in Oregon, then in no case would you have jurisdiction.

REP. BAKER: A military family from Oregon stationed in another country
could have significant connection because their domicile was here.

294 REP. BROWN: Does that exclude an agency in Oregon from
arranging an adoption of a foreign child to parents from another state?

REP. KEVIN MANNIX, DISTRICT 32: Oregon should not serve as a basis of
jurisdiction of convenience for purposes of circumvention of states
where they should be operating.

316 REP. MASON: Disagrees with Rep. Mannix's phrasing in terms of a business. It is not without precedent that a jurisdiction could serve

as the legitimatizing jurisdiction of this action.

REP. MANNIX: Has no problem with the concept of a jurisdiction deciding that it wants to serve as a jurisdiction of convenience for some transaction. Oregon should not be a jurisdiction of convenience for adoption.

REP. MASON: Do have a connection with the agency.

347 REP. MANNIX: Any agency that wants to carry transactions in Oregon may do so, but would not be doing the legal, legitimizing of those

transactions unless there is Oregon jurisdiction.

REP. MASON: Asks about agencies who do international adoptions. They should be allowed to use courts here.

REP. MANNIX: If something goes wrong with the adoption, the impact is not here but where the child or parents are.

REP. BAKER: The Holt agency testified that this would not affect them. Also, people in other states are coming to Oregon to avoid forms of adoption they don't like. Oregon doesn't have a legitimate purpose to do that.

384 RABIN: A significant fact in going with the Uniform Child Custody Jurisdiction Act (UCCJA) is that uses the same standards as the Parental Kidnapping Prevention Act, the full faith and credit section. Describes the full faith and credit section.

CHAIR PARKS: How can Congress by statute modify the full faith and credit section?

REP. MANNIX: Congress can only set standards by which we will give deference to one another. They cannot force us to do it. 414 REP. BROWN: Refers to p. 6 of SB 295 A-9 amendments. Asks about the completion of the home study.

DIANA ROBERTS, ADOPTION PROGRAMS, CHILDREN'S SERVICES DIVISION: (EXHIBIT C) Agency here subcontracts with an agency in another state to complete the post-placement study.

REP. BROWN: This language gives Oregon adoption agencies the authority to do that?

ROBERTS: Believes it does.

REP. MANNIX: As long as they are responsible for the study.

448 REP. MASON: Asks Ms. Ball to expand on Oregon adoption agencies facilitating international adoptions. Would the bill help or hinder?

464 JENNIFER BALL, HOLT INTERNATIONAL CHILDREN'S SERVICES: Would not affect Holt very often. Position is one of neutrality on the bill. Bill would

make some adoptions more difficult in some cases.

REP. MASON: What would those cases be?

BALL: When parents are from another state and the child is from another country. When two states' laws are different.

TAPE 91, SIDE A

027 REP. MASON: If parents from another state are adopting a child from a foreign country, the form would be the Oregon court?

BALL: Isn't sure.

CHAIR PARKS: That would have a big effect on your agency.

042 ROBERTS: In inter-country adoptions, the adoption takes place in the foreign country. The family often re-adopts the child in the U.S. Holt

is licensed in several states which allows them to be a consenting agency in those states.

062 CHAIR PARKS: Asks if they have statistics on adoptions in which none of the parties were from Oregon.

ROBERTS: 18 out of 1200 private adoptions. Discusses high fees in these cases.

CHAIR PARKS: Holt was not involved in any of those?

ROBERTS: Adventist agency was involved in 3 or 4 and Columbia Counseling Agency was involved in the remainder.

CHAIR PARKS: Is this run by lawyers?

ROBERTS: Run by social workers.

078 CHAIR PARKS: What have we corrected by passing this bill if we look at those 18 adoptions as a problem?

RABIN: Bill deals with placement reports and rules on placement reports. Brings adoption statutes together. Gives judges more about

adoptions through placement reports.

093 REP. BROWN: There are times when pre-placements reports are not able to be done before the child is placed?

ROBERTS: True in a small number of cases. Potential parents could get guardianship while placement report is being completed.

REP. BROWN: Child is in legal limbo until guardianship proceedings.

111 REP. MANNIX: Discusses differences between custody and guardianship. Gives the reason for placement study.

REP. BROWN: The parents have no legal authority to order medical treatment before guardianship proceedings.

127 REP. BAKER: Can get order of guardianship that takes place immediately subject to later hearings by the court.

REP. BROWN: What happens if it is a Saturday?

REP. MANNIX: The bill won't change anything about the circumstances of adoptions on short notice. Bill states that the study is part of the process.

145 REP. BROWN: Hasn't recalled any CSD home studies where the potential parent was found to be an abuser. What precipitated this?

ROBERTS: Discusses a CSD adoption case.

REP. MANNIX: Discusses government sanction of a parent-child relationship.

168 CHAIR PARKS: Asks about amendment to limit fee to \$950 for the report.

ROBERTS: CSD proposed the amendment because of the committee's discussion about a cap on the fee.

REP. MANNIX: It also calls for a reduction or waiver based on capability to pay.

184 RABIN: Discusses full faith issue, UCCJA and its supremacy clause.

REP. TIERNAN: Asks who the main proponent of the bill is.

REP. MANNIX: Senator Hamby and myself.

ROBERTS: Majority of the amendments were introduced by CSD.

REP. TIERNAN: Asks who spoke against the bill in the Senate.

ROBERTS: Not sure.

BALL: Holt spoke against the bill and amendments were made that alleviated our concerns.

216 REP. BROWN: Asks if Robin Pope, Chair of the Adoption Section for the Family Law Section, has seen modifications to the bill.

ROBERTS: Has seen bill as it came out of the Senate.

225 REP. TIERNAN: Asks why the bill is necessary.

ROBERTS: To clear up confusion of jurisdiction around adoption cases.

234 REP. BAKER: Refers to proposed language (EXHIBIT D) regarding the \$950 cap.

MOTION: REP. BAKER: Moves to ADOPT SB 295 CONCEPTUAL AMENDMENTS in Exhibit D, dated July 7, 1993.

REP. MASON: Is this going up or down?

REP. BAKER: Current language is unlimited. This amendment limits those to \$950.

260 REP. MASON: We want to encourage adoption. These fees are very high.

ROBERTS: There is a waiver provision for families who can't afford to pay the fee.

269 REP. BAKER: Agencies are currently subsidizing these studies.

REP. MASON: That is a good use of money.

281 MOTION: REP. PARKS: Moves to AMEND REP. BAKER'S CONCEPTUAL AMENDMENTS TO SB 295 by inserting "The court granting adoption shall make a specific finding that the fees are both necessary, reasonable and not in excess of those authorized by the rules of the Division."

REP. BAKER: What purpose does that serve?

CHAIR PARKS: It is a direction to the court that we want them to actually look at the affidavit submitted as to the fees and weigh that against what they believe is reasonable and necessary and what the agency has authorized.

308 REP. MASON: What if the court finds it is not reasonable?

CHAIR PARKS: Then they are not entitled to charge the fee.

REP. MASON: The adoption can still go through but agency can't charge the fee.

315 REP. BAKER: Fee is usually paid up front and the adoption may take place some time later. Is the fee collected from the agency later?

CHAIR PARKS: They would have to refund the fee.

REP. BAKER: Does not accept the friendly amendment.

VOTE: 6-2 MOTION PASSES AYE: Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: Baker, Brown EXCUSED: Brian

348 MOTION: REP. BAKER: Moves to ADOPT SB 295 CONCEPTUAL AMENDMENTS in Exhibit D, dated July 7, 1993.

MOTION: REP. BROWN: Makes a friendly amendment to insert the last sentence of the first paragraph of the conceptual amendments into paragraph two.

REP. BAKER: Accepts the amendment.

362 VOTE: 8-0 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brian

366 MOTION: REP. BAKER: Moves SB 295 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-1 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Tarno, Tiernan, Parks NO: Mason EXCUSED: Brian

MOTION: REP. COURTNEY: Moves to RESCIND the subsequent referral.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian is excused.

CHAIR PARKS: Calls a recess at 2:40 p.m. Re-opens meeting at 2:50 p.m.

SB 1078 - WORK SESSION

414 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 1078 provides for nationwide criminal records for first time applicants for licenses as teachers,

administrators, personnel specialists (school counselors and psychologists) and school nurses, and for school employees and contracts who have direct, unsupervised contact with students.

430 REP. BAKER: Asks about conscientious objector provision.

HOLLY ROBINSON, COMMITTEE COUNSEL: Some object to having fingerprints

taken.

448 REP. TIERNAN: How is this different from the bill we heard?

REP. COURTNEY: This bill is the Senate version of the background check for teachers. Explains future action on SB 1078.

TAPE 90, SIDE B

038 DAVID FIDANQUE, ACLU: Testifies in favor of Rep. Courtney's amendments to SB 1078.

052 LAUREL BLANCHARD, EXECUTIVE DIRECTOR, WESTSIDE FAMILY YMCA, BEAVERTON: Testifies in favor of Rep. Courtney's amendments to SB 1078.

096 REP. TARNO: Asks for the philosophy of the national YMCA organization regarding this bill.

BLANCHARD: Safety needs to be the first rule for the children.

REP. TARNO: Has this been a concern for a number of years?

BLANCHARD: Yes.

108 MOTION: REP. COURTNEY: Moves to ADOPT SB 1078 B-8 AMENDMENTS.

REP. BROWN: Restates the future action on the bill as stated by Rep. Courtney.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian is excused.

120 MOTION: REP. COURTNEY: Moves SB 1078 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-1 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Tarno, Tiernan, Parks NO: Mason EXCUSED: Brian Rep. Courtney to carry the bill. SB 210 - WORK SESSION

130 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 210 permits a spouse in a divorce proceeding, annulment or separation to reach the benefits

provided under the Public Employees' Retirement System, other public employer retirement plan or deferred compensation plans of a public employer. The City of Portland has submitted amendments. (EXHIBIT F)

146 BILL SELBY, LEGAL ADVISOR, FIRE AND POLICE PENSION PLAN, PORTLAND CITY ATTORNEYS OFFICE: Testifies to SB 210.

171 REP. TIERNAN: Feels amendment is appropriate. Should change "may" to "shall" on p. 4, line 1 of the bill.

SELBY: Not addressing the PERS portion of the bill.

195 CHAIR PARKS: What is expense for Portland going to be?

SELBY: Minimum of \$200 per calculation which equals \$400 per person who goes through. Will have to obtain data for the actuary to make the calculation which is implicit in the bill.

CHAIR PARKS: You will charge \$400?

SELBY: If that is what it costs.

CHAIR PARKS: But it would cost \$200 if the people were divorced or not.

SELBY: Explains current benefit system and calculation and what will be necessary under the bill.

CHAIR PARKS: As to the member, you will have to make that calculation anyway.

SELBY: We would not have to make that without this bill.

224 REP. BAKER: Portland's position is that they are exempt from this distribution scheme and pay only to their member.

REP. BROWN: You make the retiree send the spouse the amount entitled.

CHAIR PARKS: If that is the way they operate, why should we give them the right to charge it back?

REP. BAKER: It goes against the member's account and it is statewide.

241 CARL MYERS, OREGON STATE BAR, FAMILY LAW SECTION: Amendments to charge back were made at request of smaller retirement plans. Has no problems

with the City of Portland's amendments. The retirement plans wanted option of charging it through if appropriate. 258 CHAIR PARKS: Not in favor of allowing Portland to charge whatever they want to charge.

MYERS: That is why language states "actual and reasonable."

CHAIR PARKS: Would like to cap it upon mutual agreement. Will not vote for the bill without a cap. \$400 does not seem reasonable.

274 REP. TIERNAN: Asks how often the \$200 is paid. It is an ongoing administrative expense.

REP. BROWN: You will have those administrative expenses anyway.

279 SELBY: The actuary cost is a one time cost. The expense would be borne by the plan even under the language that we are dealing with here.

CHAIR PARKS: Every other employer with a retirement plan has already

absorbed those costs except Portland.

SELBY: The requirement the other plans deal with is the Employees Retirement Income Security Act of 1979 (ERISA). No public plan is subject to ERISA. Private plans are different because of federal legislation which are mandated to accommodate this.

301 CAROLE SOUVENIR, COMMITTEE COUNSEL: Describes the three types of plans the bill deals with.

CHAIR PARKS: The other plans can't recover their costs?

CAROLE SOUVENIR, COMMITTEE COUNSEL: There is not a specific affirmative provision like there is for the City of Portland's.

CHAIR PARKS: So the public people are treated differently than those in the private sector.

CAROLE SOUVENIR, COMMITTEE COUNSEL: This only deals with public plans.

Explains retirement plans dealt with in the bill.

326 REP. BROWN: Does anyone else but City of Portland have the second type of plan?

SELBY: Yes.

CHAIR PARKS: Who?

SELBY: About 25 cities.

335 MYERS: Smaller plans may not have financial base to absorb that cost. Do not want to labor them with additional costs.

REP. TIERNAN: Asks about \$200 fee.

REP. BAKER: The one time fee to do the calculations. SELBY: There will be two calculations.

325 CHAIR PARKS: Asks for clarification on the two calculations.

SELBY: Current calculation does not require services of an actuary.

There will have to be a calculation for each payee.

379 CHAIR PARKS: Asks Rep. Tiernan if he would agree to \$300. Should apply the same across the board.

REP. TIERNAN: Has no problem with that.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Fee pass through provision would apply to all three types of plans.

391 MOTION: REP. BROWN: Moves to ADOPT SB 210 AMENDMENTS submitted by the City of Portland and amending them by deleting "may" and

inserting "shall" on line 3 and a provision requiring a one time maximum of \$300 on the calculation for the employee and the spouse for the plan.

REP. MASON: Discusses confusion about the \$300 fee.

CHAIR PARKS: Asks why the change from "may" to "shall."

417 REP. TARNO: "May" might open up actions or complaints. "Shall" makes it mandatory and not open to challenge.

425 REP. TIERNAN: Wants to make sure the friendly amendment applies to all three retirement plans.

442 CAROLE SOUVENIR, COMMITTEE COUNSEL: The pass through provision for the fees is not included in the PERS section of the bill. Restates

amendment.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian is excused.

470 MOTION: REP. BAKER: Moves SB 210 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-1 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Tarno, Tiernan, Parks NO: Mason EXCUSED: Brian

Rep. Tiernan to carry the bill.

490 CHAIR PARKS: Adjourns meeting at 3:20 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 3326 - 1 page B - Proposed amendments to SB 295 - 12 pages C - Testimony on SB 295 - Children's Services Division - 2 pages D - Proposed amendments to SB 295 - 1 page E - Testimony on SB 295 - Columbia Counseling - 1 page F - Proposed amendments to SB 210 - 1 page