

HOUSE COMMITTEE ON JUDICIARY

July 12, 1993                      Hearing Room 357 1:30                      p.m.  
Tapes                                      92 - 93

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

STAFF PRESENT:                      Sarah May, Committee Clerk Holly Robinson,  
Legislative Counsel Carole Souvenir, Legislative Counsel

MEASURES CONSIDERED:                      SB 321 - Relating to public investments SB  
322 - Relating to false claims SJR 33 - Proposing amendments  
to Oregon constitution relating to  
prohibition of convicted felons SB 1078 - Relating to criminal  
identification data HB 2657 - Relating to day care of children SB 210 -  
Relating to retirement benefits

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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 92, SIDE A

006 CHAIR PARKS: Calls the meeting to order at 1:38 p.m.

PUBLIC HEARING ON SB 321 & 322

\*SB 321 Establishes crime of public investment fraud. (EXHIBITS A,B) \*SB 322 prohibits knowingly presenting false claim to public body for payment. (EXHIBIT C)

Witnesses: Sen. Grattan Kerans, District 20 Elise Fulsang, Marion County District Attorney Terry Leggart, Department of Justice Fred Avera, Oregon District Attorney Association

016 SEN. GRATTAN KERANS, DISTRICT 20: Testifies in support of SB 322 and SB 321. 033 REP. TARNO: Asks about the Oregon State Police funding package that is included in the bill.

035 SEN. KERANS: Concerning SB 321, the cost should be part of the ongoing business.

053 CHAIR PARKS: How are SB 321 and SB 322 different?

054 SEN. KERANS: Explains the differences of SB 321 and SB 322.

073 REP. BAKER: Asks about the law against false claims.

074 SEN. KERANS: Explains that the cases weren't tried under fraud claims. SB 321 also provides ways for civil action and recovery.

086 REP. TIERNAN: Asks about someone who willfully over-values a piece of property, etc., and what the difference is between "shopping around" for the best price.

093 SEN. KERANS: Explains that "shopping around" is outside the customary practices. There has to be evidence of inflating the value of

something.

110 ELISE FULSANG, MARION COUNTY DISTRICT ATTORNEY: Testifies in support of SB 322.

165 REP. BAKER: Asks if the bill is only limited to PERS investment.

168 FULSANG: No. This bill is not to be focused on PERS, but to expand on the federal legislation.

175 REP. TIERNAN: How often would this be invoked?

179 FULSANG: Explains the speculations.

194 REP. TIERNAN: What is the need for the bill?

195 FULSANG: Explains that under the existing statutes, most people can't be prosecuted.

203 REP. BROWN: Asks about a newspaper article concerning Medicaid.

212 FULSANG: Doesn't know the case, but explains what she would have done in a similar situation.

222 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks if Section 9 refers to a civil suit, or any suit.

227 FULSANG: That refers to a civil suit.

235 CAROLE SOUVENIR, COMMITTEE COUNSEL: A person wouldn't be charged under the assurance for voluntary compliance if they were going to charge them criminally?

237 FULSANG: Correct.

239 CHAIR PARKS: Why should there be priority in civil suits over other suits?

242 FULSANG: Explains that it was modeled under a racketeering statute.

249 CHAIR PARKS: Objects that the statute is used so often that it is now not priority. Asks if the bill says that a person has to be given the

opportunity of civil compromise.

264 FULSANG: Explains that, as written, that does occur in the bill.

267 CHAIR PARKS: That would change with the wording "shall"?

268 FULSANG: Correct.

271 REP. BAKER: If this is mandated, it takes away the flexibility of the law.

281 REP. TIERNAN: Could this apply to things like a false expense account?

283 FULSANG: Yes, if the account was filed as a claim.

291 REP. TIERNAN: Gives example, and asks if this would apply.

301 FULSANG: If the expenses were over \$100, yes.

308 REP. TIERNAN: Could this apply to election laws?

310 FULSANG: Possibly, cites where "false claim" is defined.

322 REP. BAKER: Are election laws exclusive?

325 REP. TIERNAN: Explains the reason for asking about election laws.

340 FULSANG: Cites definition of "reimbursement", and explains that false claims have to be using money coming from the state.

351 CHAIR PARKS: This would be a class C felony?

354 FULSANG: Yes, explains the key elements.

378 TERRY LEGGART, DEPARTMENT OF JUSTICE: Testifies in support of SB 322 .

402 CHAIR PARKS: Refers to SB 321, and asks about someone giving a false report and what the consequences would be.

415 LEGGART: Not familiar with SB 321. Discusses the civil standard dealing with cases on appraisal.

443 CHAIR PARKS: Discusses the wide standard of appraisal.

449 LEGGART: Discusses the possibility of being sued civilly for false appraisal.

TAPE 93, SIDE A

011 CHAIR PARKS: Asks about "false pretenses" with "misrepresentation".

023 FRED AVERA, OREGON DISTRICT ATTORNEY ASSOCIATION: Discusses theft by deception. SB 321 wouldn't require proof of reliance.

030 CHAIR PARKS: Asks about public investment fraud and the sentencing guidelines concerning theft by deception.

033 AVERA: Discusses the guidelines of sentencing for fraud.

051 REP. TIERNAN: Asks about land appraisal in SB 321.

WORK SESSION ON SB 322

061 MOTION: REP. BAKER: Moves to AMEND SB 322 by deleting "shall" and inserting "may" on pg. 4, line 25.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

066 MOTION: REP. BAKER: Moves SB 322 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Rep. Brown to carry to the floor

WORK SESSION ON SJR33

085 CAROLE SOUVENIR, COMMITTEE COUNSEL: SJR 33 proposes constitutional amendment to prohibit person convicted of felony during period extending from date of election through term of office from serving in either

house of Legislative Assembly. (EXHIBIT D)

100 REP. BAKER: Moves that the rules be suspended for reconsideration of SJR33, in order to adopt amendments.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

105 MOTION: REP. BAKER: Moves to ADOPT SJR33-3 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

107 MOTION: REP. BAKER: Moves SJR33 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Rep. Tiernan to carry to the floor

WORK SESSION ON SB 1078

123 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 1078 requires Department of State Police to supply criminal identification data to Teacher Standards and

Practices Commission or Department of Education concerning teachers, administrators, personnel specialists, school nurses, other school district employees. (EXHIBIT E)

125 MOTION: REP. BAKER: Moves to suspend the rules for the purpose of reconsidering passing SB 1078 to the floor.

VOTE: Hearing no objections the motion is ADOPTED. Rep. Brian, Edmunson, and

Mason are excused.

130 MOTION: REP. BAKER: Moves to reconsider the vote by which the committee passed SB 1078.

VOTE: Hearing no objections the motion is ADOPTED. Rep. Brian, Edmunson, and

Mason are excused.

136 MOTION: REP. COURTNEY: Moves to ADOPT SB 1078 -9 AMENDMENTS, and the deletion of the subsequent referral to Appropriations. VOTE: Hearing no objections the amendments are ADOPTED, and the referral is

dropped. Rep. Brian, Edmunson, and Mason are excused.

143 REP. BAKER: Asks about the intent of SB 1078-9 amendments.

144 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains why there was a change in the amendments.

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

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Rep. Courtney to carry to the floor

WORK SESSION ON HB 2657

161 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2657 requires all person providing day care for compensation to obtain certificate of

registration without inspection, group child care or child care center certificate from Children's Services Division. (EXHIBIT F)

177 MOTION: REP. BROWN: Moves to suspend the rules for the purpose of reconsideration.

VOTE: Hearing no objections the rules are SUSPENDED. Rep.  
Brian, Edmunson, and

Mason are excused.

182 MOTION: REP. BROWN: Moves to reconsider the vote on HB 2657.

VOTE: Hearing no objections the amendments are ADOPTED. Rep.  
Brian, Edmunson, and Mason are excused.

188 MOTION: REP. BROWN: Moves to ADOPT HB 2657-13 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Rep.  
Brian, Edmunson, and Mason are excused.

193 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses revised fiscal,  
which would increase the fee to \$35.

209 MOTION: REP. BROWN: Moves to AMEND HB 2657 by requiring a \$35 fee  
and the ability to waive that fee by the court, upon showing

financial hardship. VOTE: Hearing no objections the amendments are  
ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

214 MOTION: REP. BROWN: Moves HB 2657 AS AMENDED TO THE FLOOR with  
a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno,  
Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Reps. Brown, Naito to carry to the floor

WORK SESSION ON SB 210

230 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 210 relating to  
retirement benefits. (EXHIBIT G)

242 MOTION: REP. BAKER: Moves to suspend the rules to reconsider SB  
210 .

VOTE: Hearing no objections the amendments are ADOPTED. Rep.  
Brian, Edmunson, and Mason are excused.

246 REP. BROWN: Discusses the fees and cost as state in the bill.

262 REP. TIERNAN: Proposes amendment placing a cap on the fee of  
\$300.

289 MOTION: REP. TIERNAN: Moves to AMEND SB 210 by placing a cap  
on the \$300 fee.

VOTE: Hearing no objections the amendments are ADOPTED. Rep.  
Brian, Edmunson, and Mason are excused.

292 MOTION: REP. TIERNAN: Moves to ADOPT SB 210-10 AMENDMENTS AS AMENDED.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

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

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Rep. Tiernan to carry to the floor

RE-OPENS WORK SESSION ON SB 321

317 REP. BAKER: Wants to narrow the discretion of "willfully".

333 CHAIR PARKS: Asks about a "false report". States suggested amendment.

366 CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses liability of false claims.

377 REP. BAKER: Was the intent designed to influence?

378 CAROLE SOUVENIR, COMMITTEE COUNSEL: Correct, to influence the State Treasures Department.

380 REP. BAKER: Discusses the prosecutor's responsibility. Wants to rephrase the federal language as stated in the bill.

394 CAROLE SOUVENIR, COMMITTEE COUNSEL: States the rephrased federal language concerning fraud.

405 REP. BAKER: Suggests deleting words after "report" on pg. 1, line 6.

411 MOTION: REP. BAKER: Moves to AMEND SB 321 by deleting the language following "report", on pg. 1, line 6. The coma would then become a period.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brian, Edmunson, and Mason are excused.

419 MOTION: REP. BAKER: Moves SB 321 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Edmunson, Mason

Rep. Brown to carry to the floor

453 CHAIR PARKS: Adjourns the meeting at 2:35 p.m.

Submitted by:

Reviewed by:

Sarah May  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 321 - Committee Counsel - 1 page B - Testimony on  
SB 321 - Committee Counsel - 1 page C - Testimony on SB 321 - Committee  
Counsel - packet D - Proposed Amendments to SJR33 - Committee Counsel -  
2 pages E - Proposed Amendments to SB 1078 - Committee Counsel - 10  
pages F - Proposed Amendments to HB 2657 - Committee Counsel - 11 pages  
G - Proposed Amendments to SB 210 - Committee Counsel - 2 pages