

SENATE COMMITTEE ON
JUDICIARY

July 30, 1993 Hearing Room C
1:00 p.m. Tapes 235, 236

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Gordon Smith
 Sen. Bob Shoemaker
 Sen. Catherine Webber

MEMBERS EXCUSED:

STAFF PRESENT: Bill Taylor, Committee Counsel
 Karen Quigley, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Reconsideration & Work Session: HB 2737
 Public Hearing/Work Session: HB 2166, SB 1135,
HB
 2262, HB 2734
 Work Session: HB 2381

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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.

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TAPE 235, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:18 pm.

HB 2737: Provides for forfeiture and destruction, use for law enforcement,
 donation or sale of deadly weapons used during commission of crime
or
 unlawfully possessed.

WITNESSES: REP. AVEL GORDLY, HOUSE DISTRICT 19

009 REPRESENTATIVE AVEL GORDLY: Offers amendment (EXHIBIT A), which deals
 with licensed and unlicensed gun dealers.
 _ Current law recognizes two classes of gun dealers, federal licensees
 who are also required to observe Oregon law, and nonlicensed
dealers
 who do not have to observe Oregon gun law. The amendment (was HB

3157) requires that all gun transactions go through a licensed gun dealer.

_ Two young men shot a Head Start worker today. Hopes the legislature will do something to address prevalence of guns in society.

076 BILL TAYLOR: Will need to delay action on the bill.

Legislative

Council has informed the committee that HB 2737 conflicts with SB 334 in substance.

HB 2734: Adds trespass to forest practice protections.

WITNESSES: REP. DAVE MCTEAGUE, HOUSE DISTRICT 25

RAY WILKESON, OREGON FOREST INDUSTRIES COUNCIL

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

088 REPRESENTATIVE DAVE MCTEAGUE: Requests that bill be stripped of all

provisions with the exception of section 4 (2) (EXHIBIT B).

_ Fisheries restoration parties are trying to gain landowners cooperation in projects.

_ This amendment limits liability on fish and wildlife habitat improvement projects with the exception of death and injury claims.

126 RAY WILKESON: Testifies in support of the amendments. Members of the

Oregon Forest Industries Council are being asked to do fishery restoration projects, and they would like to do so, but fear liability (EXHIBIT D).

177 CHARLIE WILLIAMSON: Does not oppose amendments. Recommends deleting

"injury or" on lines 7 and 10 of the amendments, and adding "claims for death or" on line 17 following "to."

MOTION: Chair Springer moves the -A2 amendments, amended as follows: on line 7 delete "injury or"; on line 8 inserting "done in cooperation and consultation with" following "project"; deleting "injury or" on line 10; inserting "claims for death or" following "to" on line 17.

VOTE: Hearing no objections, the -A2 amendment, as amended, is adopted.

MOTION: Chair Springer moves HB 2734 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 5 - 0. Sen. Shoemaker excused. Sen. Rasmussen will carry the bill on the Floor.

SB 1135: Specifies priorities in goods between consignors and creditors relating to goods on consignment.

WITNESSES: FRANK BRAUNER, OREGON BANKERS ASSOCIATION

235 FRANK BRAUNER: Submits and reviews written testimony in support of the bill (EXHIBIT C). This bill is similar to SB 575 which this committee has already sent out of committee.

_ There has been some informal discussion on how this bill would affect a pawn shop. A gun could be consigned to a pawn shop for sale. It is our opinion that this does not change the statute; it clarifies that the one section of the UCC deals with secured consignments and one deals with unsecured consignments.

_ There is nothing in this bill that affects the agriculture produce lien or the grain producers lien.

280 CHAIR SPRINGER: How is SB 1135 different than SB 575?

285 BRAUNER: SB 575 contains wording from the UCC narration for clarification purposes. Some of the agricultural interests are uncomfortable with that now, and it is removed from SB 1135.

MOTION: Sen. Hamby moves SB 1135 to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 4 - 0. Senators Shoemaker and Smith excused. Sen. Smith will carry the bill to the Floor.

HB 2381: Extends sunset on asset forfeiture law to December 31, 1997.

WITNESSES: PETE SHEPHERD, DEPARTMENT OF JUSTICE
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
GEORGE STEVENSON, CITY OF SALEM

317 TAYLOR: Reviews bill and the -A26 amendments, (EXHIBIT E). The amendments set forth proportionality and mitigation. They are the same as the -A23 amendments (already adopted) except section 14 has been rewritten.

352 PETE SHEPARD, DEPARTMENT OF JUSTICE: No objection to -A26 amendment.

361 ROSS SHEPARD: Concur.

MOTION: Chair Springer moves adoption of the -A26 amendments.

VOTE: Hearing no objections, the amendments are adopted.

365 TAYLOR: The -A21 amendments (EXHIBIT F) are brought to us from the
City
of Salem.

373 GEORGE STEVENSON: This is a housekeeping amendment
regarding
publication of notice of seizure forfeiture.
_ Current law does not require publication of the names of people who
have interest in the property, nor the estimate of value of the
seized property. The amendments clarify that the estimated value
need not be published. Lienholders should have already been
notified.

MOTION: Chair Springer moves to adopt the -A21 amendments.

VOTE: Hearing no objection, the amendment is adopted.

433 TAYLOR: Reviews -A27 amendments (EXHIBIT G). They provide
that
firearms/deadly weapons are subject to seizure when found in
courthouses, schools, and the State Capitol while the legislature is
in
session. The gun license of that owner shall be revoked.

450 CHAIR SPRINGER: Is there a need to mention who should be exempted,
such
as police and security officers?

460 TAYLOR: There may be a need to do that.

463 SPRINGER: This should be done, and could be conceptually.
TAPE 236, SIDE A

035 RASMUSSEN: Voices concern regarding fate of the bill with the
-A27
amendments. The House Judiciary Committee is not aware of this
amendment.

049 HAMBY: SB 334 contained language allowing for forfeiture of weapons
in
these circumstances and that was acceptable to the House, was it not?

055 TAYLOR: Currently, if one is convicted of felony, then the gun can
be
forfeited. This would not require a criminal conviction, merely a
civil standard.

MOTION: Sen. Hamby moves to adopt the -A27 amendments, with the
conceptual amendment to exempt bonafide law enforcement personnel from

the prohibition.

VOTE: The motion fails, 3-3. Sen. Smith, Rasmussen, Shoemaker voting no. Sen. Springer, Webber, Hamby voting aye.

070 CHAIR SPRINGER: Any comment on the proposed -A28 amendments (EXHIBIT H)?

072 SEN. RASMUSSEN: They have been withdrawn.

MOTION: Sen. Rasmussen moves HB 2381 to the Senate Floor with a "do pass" recommendation.

077 SHOEMAKER: Is in favor of the amendments, but is afraid of the political effect of adopting them. Can anyone speak to that?

082 ROSS SHEPARD: The House will realize that they have to have this bill or there will be no forfeiture law at all.

088 PETE SHEPHERD: Does not know affect of amendment on passage of the bill.

097 CHAIR SPRINGER: I am ready to include the amendment; it is similar to other legislation.

MOTION: Sen. Shoemaker moves to reconsider the vote by which the committee failed to pass the -A27 amendment.

VOTE: With Sen. Rasmussen dissenting, the committee moves to reconsider the vote.

MOTION: Sen. Hamby moves the -A27 amendments.

VOTE: The motion passes, 4-2. Sen. Smith, Rasmussen voting no.

MOTION: Chair Springer moves HB 2381 as amended, to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 4-2. Sen. Smith, Rasmussen voting no.

128 SEN. RASMUSSEN: Serves notice of a possible minority report.

HB 2262: Requires filing by agency of written delegation of rulemaking authority with Secretary of State before filing of any rule adopted under delegated authority.

WITNESSES: MIKE GREENFIELD, SECRETARY OF STATE
WILLIAM FUNK, LEWIS & CLARK LAW SCHOOL

ELIZABETH HARCHENKO, ATTORNEY GENERAL
DARLENE LOYD, ADULT & FAMILY SERVICES

134 KAREN QUIGLEY: Reviews bill and amendments (EXHIBITS I, J).
The amendments were suggested by Dave Frohnmayer. There was some concern regarding the delegation of rulemaking authority (section 1) being too limited to just one individual, and the amendments reflect that change.

_ Points out changes as noted in Exhibit L.

198 MIKE GREENFIELD: Dave Frohnmayer suggested the amendments in conversations with Secretary Keisling.

_ Page 3, lines 15-20 are being eliminated, as it would be easy to fight rules based on this.

_ The Executive Department supports the amendments.

_ We are asking that rules be copyrighted, as well.

226 WILLIAM FUNK: States that he supports the bill, but opposes the deletion of lines 15-20 on page 3. This was one of the most important provisions in the bill to the advisory committee who developed the bill.

This is a last minute major change to the bill. The provision is not a major change in the law - it ensures that agencies do what they have supposed to do. Agencies do not always consider the comments they receive. The requirement that they respond in writing to the the substantive issues is a mere procedural requirement to ensure that they consider those comments. There is nothing in the law that would allow a judge to assess the adequacy of the response to the comments. It is like an economic impact statement. Recommends sunsetting the provision.

290 ELIZABETH HARCHENKO: Concurs with Funk. This provision was strongly

supported by the task force that developed the bill.

_ The scope of the instruction is broad; it was intended not to trip up agencies. They could group responses, or not respond to irrelevant comments.

_ If the committee keeps the language, the Executive Department requested an amendment on page 4, line 17 that would allow agencies to cure any perceived failure to comply with that with an amended filing.

329 CHAIR SPRINGER: Recesses committee due to a Call of the Senate at
2:10 p.m.

332 CHAIR SPRINGER: Reconvenes committee at 3:28 p.m.
_ resumes consideration of 2262.

344 QUIGLEY: Asks if anyone in the audience can speak to the
ramifications
of deleting lines 15-20 on page 3.

347 HAMBY: Concurs with previous testimony regarding the importance
of
maintaining the language.

357 GREENFIELD: Repeats that Dave Frohnmayer believes the language to
be
vague and would invite appeal of the rules because of the vagueness.
The Dept. of Justice suggested some amendment language, that if that
provision was left in, it would "repair part of that." Either version
is acceptable to us.

399 QUIGLEY: Reviews Harchenko corrections.

Discussion and clarification of the corrections and proposed
amendments.

460 QUIGLEY: There is a concern from agencies regarding the timing
of
filing the written responses at the same time they file the rules.

TAPE 235, SIDE B

022 DARLENE LOYD: Our Division prepares written responses to
comments
during the hearings process. The Secretary of State generally issues
one bulletin a month. Our division's hearings are generally held at
the
end of the month. After the hearing the responses to the comments are
written. We like to have the rules implemented at the first of the
month. There could be time constraints on the agencies for submission
of those comments.

050 CHAIR SPRINGER: Suggests providing that written response be
filed
within 30 days of the adoption of the rule.

054 LOYD: That would be acceptable. Could the response be made a part
of
the hearing record?

065 SHOEMAKER: Opposes subsection c, that there be a written response;
it's

too much bureaucracy. Requires much time and money.

070 LOYD: There may be 100 people with similar comments, and those
are summarized. That would require a single response.

075 SHOEMAKER: Trusts agency to do that; requirement is not necessary.

080 LOYD: There was testimony that hearings officers fall asleep
during testimony and do not listen to comments. This will force the agency to
deal with the comments.

095 CHAIR SPRINGER: Observes the same situation exists in the adoption
of laws.

100 SEN. WEBBER: Supports the requirement. Hears complaints often. If
it is onerous, the requirement can be eliminated in two years.

Discussion among members as to whether to include requirement.

135 MIKE GREENFIELD: We do not believe that the comments/responses need
to be filed with the Secretary of State; as long as they are filed with
the record, that will be sufficient.

138 CHAIR SPRINGER: We will delete the requirement that this be filed
in the Secretary of State's Office; we will allow them up to 30 days to
respond to the comments and have those comments available to the
public.

General discussion about the issue and support of amendments.

187 QUIGLEY: Reviews copyright amendment.

211 CHAIR SPRINGER: Adjourns committee at 3:50 pm.

Submitted by,

Reviewed by,

Kirk Bailey
Assistant

Bill Taylor
Counsel

EXHIBIT SUMMARY

- A - testimony, HB 2737, Rep. Gordley, 2 pgs.
- B - proposed amendments, HB 2734, staff, 1 pg.
- C - testimony, SB 1135, Brawner, 7 pgs.
- D - testimony, HB 2734, Wilkeson, 3 pgs.
- E - proposed amendments, HB 2381, staff, 5 pgs.
- F - proposed amendments, HB 2381, staff, 1 pg.
- G - proposed amendments, HB 2381, staff, 2 pgs.

H - proposed amendments, HB 2381, Rasmussen, 1 pg.
I - proposed amendments, HB 2262, staff, 2 pgs.
J - hand engrossed bill, HB 2381, staff, 2 pgs.