

SENATE COMMITTEE ON  
JUDICIARY

January 29, 1993 Hearing Room C  
1:00 p.m. Tapes 10-11

MEMBERS PRESENT: Sen. Dick Springer, Chair  
Sen. Jeannette Hamby  
Sen. Bob Shoemaker

MEMBERS EXCUSED: Sen. Grattan Kerans  
Sen. Neil Bryant  
Sen. Catherine Webber

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

ISSUES DISCUSSED: Public hearing on SB 208, SB 246, SB 216, SB 212, SB 230

Public hearing and work session on SB 243, SB 247,  
SB  
101

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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 10, SIDE A

003 CHAIR SPRINGER: Convenes the hearing at 1:00pm.

006 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews committee agenda.

LC 987

013 QUIGLEY: Introduces LC 987 at the request of the Oregon Trial  
Lawyers  
Association.

MOTION: CHAIR SPRINGER moves LC 987.  
>Hearing no objection, so introduced.

SB 208: Allows notice of appeal to be filed with clerk of trial court  
for  
purpose of time limitations on filing.

WITNESSES:

BOB OLESON, OREGON STATE BAR  
JIM CALLAHAN, OREGON STATE BAR

BILL RICHARDSON, CHIEF JUDGE, COURT OF APPEALS  
BILL LINDEN, STATE COURT ADMINISTRATOR  
SALLY AVERA, PUBLIC DEFENDER

OLESON: Introduces Jim Callahan.

038 CALLAHAN: Bill addresses two problem areas: service defects and filing of notice of appeal in wrong court.  
>Service issue best illustrated in Harris v. Harris (104 Or App 213)  
Service defects, such as typographical errors, incorrect address labeling, etc. should not result in appeal being thrown out.  
>Inadvertent filing of appeal in wrong court. Transfer of venue should be allowed to permit meritorious appeals. This change is opposed by criminal lawyers and public defenders. Concerned about civil side not criminal, criminal is protected by "safety net" which allows appeals filed late to continue under certain circumstances.

124 SEN. SHOEMAKER: Did you consider similar safety net for civil cases?

CALLAHAN: Committee did not examine that. Federal system has a safety net at discretion of the court.

135 SEN. SHOEMAKER: Worth review?

CALLAHAN: Yes. Committee wanted to remove it from jurisdictional area and leave it to the discretion of the court. Committee should review safety net idea. Continues testimony.  
>Language of bill needs some work.

166 BILL RICHARDSON, COURT OF APPEALS: Suggests possible amendments to bill.  
>P.1, sub 4, line 15. Legislation allows filing in wrong court (trial court for example). It is not limited to transfer of venue when appeal filed in wrong court.  
>Line 20: Policy decision. Problem with party to appeal.  
>P. 2, 10-13: Unclear what remains of jurisdictional requirements.  
>Impact on Court of Appeals could be an increase in motions and therefore work load, which would increase litigation on the basis of dismissal. Concerned with added paperwork and staff resources necessary to implement.

235 SEN. BRYANT: How many cases per year have inadvertent filing?

RICHARDSON: Probably very few. Minimal.

244 SEN. SHOEMAKER: Is there another way to get at problem?

RICHARDSON: Careful attention. This bill doesn't do it. Certification of misfiling is possible but language must be carefully formulated to avoid misfiling as a practice.

257 SEN. SHOEMAKER: Is there a different approach or different process to deal with honest mistake?

RICHARDSON: Few appeals misfiled. Some are filed late. If this was exception rather than practice then that would be acceptable.

301 BILL LINDEN, STATE COURT ADMINISTRATOR: Spoke with OSB, will attempt

amendments.

>Provides statistics on dismissals: Average 20 per month. Reviewed 48 over two months: 18 had missed filing deadline, 20 filed with no final judgement, 7 filed prior to trial court ruling on new trial, 2 agency review cases, 1 failure to notify D.A. Few cases are effected by this legislation.

340 SALLY AVERA, PUBLIC DEFENDER: Submits and reviews written testimony

(EXHIBIT A). Proposes amendment in written testimony: would insert "civil" before each reference to appeal. Would amend to apply bill to civil cases only.

SB 246: Allows city or county to approve creation of certain purported lots

or parcels under certain conditions.

WITNESSES:

WALTER GOWELL, OREGON STATE BAR, REAL ESTATE SECTION

WALTER WARD

408 GOWELL: Submits and reviews written testimony (EXHIBIT B).

Overturns

decision in Kilian v. West Linn. Submits proposed amendment in written testimony.

>Bill does not result in substantive change in law.

TAPE 11, SIDE A

052 SEN. SHOEMAKER: What is a typical factual example? What is problem?

GOWELL: Land division may have occurred over time and records kept

sparsely so that lots and zones have not been delineated and while deed has been transferred a new parcel has not been created with land use authorities. Land then absorbed into a local community entity where land use zoning may differ with deeded size of land. Kilian decision requires approval by all land-owners on land use parcel to consent to any action on the land. Delegates legislative veto to private property owners.

088 WALTER WARD: Reviews zoning history on his lot in Lake Oswego. Oswego has reversed its zoning rulings several times. Appeal to LUBA upheld final Oswego decision that lot was not build-able. Comments and explains the impact of Kilian decision on his attempts to legalize his land which has been deemed an illegal lot under the Kilian rule. Urges passage of bill.

SB 216: Provides that form of conveyance is not necessarily factor in determining market value of property.

WITNESSES:

WALTER GOWELL, OREGON STATE BAR  
JOHN TOTTEN, PRIVATE CITIZEN

212 GOWELL: Submits and reviews written testimony (EXHIBIT C). Form of conveyance is not a factor in determining market value.

SEN. SHOEMAKER: Professional appraisal standards that do allow form of deed to affect appraisal?

GOWELL: Defers to John Totten.

281 JOHN TOTTEN, APPRAISAL INSTITUTE: Supports bill. Provides background information. Appraisers in Oregon are guided by Uniform Standards of Professional Appraisal Practice. Appraisers should be allowed to use their judgement in evaluating sale prices and establishing market value. Without legislation appraisal costs could increase, and appraisals may be of lesser quality.

376 SEN. SHOEMAKER: Professional appraisal standards?

TOTTEN: Yes, Uniform Standards of Professional Appraisal Practices,

formulated by Appraisal Foundation, adopted by Appraisal Certification and Licensure Board. Standards are silent on whether to consider form of conveyance.

407 SEN. SHOEMAKER: Does Standard list number of factors for evaluation?

TOTTEN: Standard doesn't. Appraisal of Real Estate text used to evaluate appraisals does list a number of factors. Issue is covered under conditions of sale. Issue is covered in teachings and practices already.

SEN. SHOEMAKER: Please include extract with record.

TOTTEN: Will do so. (EXHIBIT D).

SB 212: Exempts from execution amounts received by debtor under certain agreements for sale of real or personal property to the extent that amounts are to be paid to another person.

WITNESSES:

WALTER GOWELL, OREGON STATE BAR

TAPE 10, SIDE B

009 GOWELL: Submits and reviews written testimony (EXHIBIT E).  
New exemption to garnishment statute. Only questioning response comes from debtor/creditor section of OSB . Could return with amendments.

068 SEN. SHOEMAKER: Notice of exemption on p. 4, line 8-10?  
Consider exception should be more complete on information imparted.

083 GOWELL: Notice goes to garnishee but not person who receives garnishment, but whose property is being garnished, the seller.

100 SEN. SHOEMAKER: Notice goes to debtor?

GOWELL: Yes. Debtor may be able to apply for an exemption.

108 SEN. SHOEMAKER: Does debtor have to claim an exception or are they accorded?

GOWELL: Holder of money should have the benefit of exemption. Can't address question directly.

116 SEN. SHOEMAKER: Is this sufficient notice?

GOWELL: Will review.

122 CHAIR SPRINGER: Effective date? Does January 1, 1994 make sense?

GOWELL: Yes, that is acceptable.

SB 230: Revises Business Corporation Act.

WITNESSES:

ANDY MORROW, OREGON STATE BAR

CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

144 MORROW: Submits and reviews written testimony (EXHIBIT F).

Received

request from trial lawyers to delay this proposal to give them time to review.

297 SEN. SHOEMAKER: Section 14 states agreement is valid for ten years

unless agreement provides otherwise, could that be a trap for unwary?

MORROW: Date selected because of provision in voting trust statutes that limits agreements to ten years. Measure could be amended. Will be reviewed.

337 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: No objections

except for section 12 and 15. Need standards for reasonable restrictions. Proposes amendments be formulated. Questions need for 12 and 15.

Public Hearing and Work Session

SB 243: Increases filing fee from \$10 to \$50 in Oregon Tax Court

378 QUIGLEY: Reviews intended purpose of the bill.

392 CHAIR SPRINGER: No opposing testimony?

394 QUIGLEY: Correct.

397 CHAIR SPRINGER: Fiscal impact referral to Ways and Means.

403 QUIGLEY: After conferring with representatives there is no need for referral to Ways and Means.

415 MOTION: CHAIR SPRINGER: moves SB 243 be sent to Floor with DO PASS recommendation.

419 VOTE: In a roll call vote all members present vote AYE. SEN. BRYANT,  
SEN. KERANS are excused.

426 CHAIR SPRINGER: The motion CARRIES.

432 SEN. WEBBER will lead discussion on the Floor.

SB 247: Clarifies distribution of filing fee aid in marijuana and  
DUII  
diversion cases to emphasize that defendant pays evaluator  
directly.

BILL TAYLOR, COMMITTEE COUNSEL: Reviews intended purpose of the bill.  
No  
amendments, opposition, revenue impact or fiscal impact to the bill.

459 MOTION: SEN. HAMBY: moves SB 247 to the Floor with DO  
PASS  
recommendation.

463 VOTE: In a roll call vote all members present vote AYE. SEN. BRYANT  
and  
SEN. KERANS excused.

468 CHAIR SPRINGER: The motion CARRIES.

474 SEN. BRYANT will lead discussion on the Floor.

SB 101: Requires suspension of driving privileges for operators of  
commercial  
motor vehicles convicted of violating out-of-service orders or  
notices.

485 CHAIR SPRINGER: Understands we will refer to Transportation.  
Reserves  
right to bring it back.

TAPE 11, SIDE B

040 MOTION: SEN. SHOEMAKER: Moves to refer SB 101 to Transportation  
without  
recommendation.

044 VOTE: In a roll call vote all members present vote AYE. SEN. BRYANT  
and  
SEN. KERANS are excused.

CHAIR SPRINGER: The motion CARRIES.

CHAIR SPRINGER: Adjourns hearing at 2:30pm.

Submitted by:

Reviewed by:

Kirk Bailey  
Assistant

Bill Taylor  
Administrator

EXHIBIT LOG:

- A - Testimony on SB 208 - Sally Avera - 7 pages
- B - Testimony on SB 246 - Walter Gowell - 4 pages
- C - Testimony on SB 216 - Walter Gowell - 3 pages
- D - Extract from Appraisal of Real Estate, Testimony on SB 216 - John Totten  
- 1 page
- E - Testimony on SB 212 - Walter Gowell - 2 pages
- F - Testimony on SB 230 - Andy Morrow - 4 pages.