

SENATE COMMITTEE ON  
JUDICIARY

February 12, 1993 Hearing Room C  
1:00 p.m. Tapes 24-25

MEMBERS PRESENT: Sen. Dick Springer, Chair  
Sen. Neil Bryant  
Sen. Jeannette Hamby  
Sen. Bob Shoemaker  
Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Grattan Kerans

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

ISSUES DISCUSSED: Executive Appointment  
Public Hearing on SB 285, SB 229, SB 232, SB 237,  
SB  
244 .  
Work Session on SB 258, SB 216

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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 24, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:08pm.

008 JUSTICE EDWIN PETERSON, SUPREME COURT: Submits and reviews written testimony in support of SB 229 (EXHIBIT A).

058 CHAIR SPRINGER: Timeline for final report?

PETERSON: Timeline done by July 1993.

KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews LC drafts.

LC 1701: Relating to policy of state regarding children in juvenile court system, at request of Juvenile Rights Project. (EXHIBIT N)

LC 1702: Relating to informal disposition agreements, at request of Juvenile Rights Project. (EXHIBIT O)

LC 2054: Relating to search, at request of Oregon Criminal Defense  
Lawyers  
Association. (EXHIBIT P)

LC 2262: Relating to secured transactions, at request of Oregon  
Banker  
Association. (EXHIBIT Q)

LC 2263: Relating to trusts, at request of Oregon Bankers  
Association.  
(EXHIBIT R)

LC 2264: Relating to public financial administration, at request of  
Oregon  
Bankers Association. (EXHIBIT S)

LC 2317: Relating to insurance, at request of Oregon Trial  
Lawyers  
Association. (EXHIBIT T)

LC 2458: Relating to restitution by juveniles, at request of Oregon  
Trial  
Lawyers Association. (EXHIBIT U)

LC 2460: Relating to motor vehicle insurance, at request of Oregon  
Trial  
Lawyers Association. (EXHIBIT V)

LC 2706: Relating to access to certain records, at request of Oregon  
Advocacy  
Center. (EXHIBIT W)

LC 2970: Relating to assault against medical personnel, at request  
of  
Amalgamated Transit Union. (EXHIBIT X)

112 MOTION: CHAIR SPRINGER moves introduction of LC drafts.

121 VOTE: CHAIR SPRINGER: Hearing no objection, aforementioned LC  
drafts  
are introduced.

#### EXECUTIVE APPOINTMENT

126 CHARLES DAVIS, Nominee for Commission on Judicial Fitness and  
Disability

141 MOTION: SEN. SHOEMAKER moves to CONFIRM nomination of CHARLES DAVIS  
to  
the Commission on Judicial Fitness and Disability.

150 CHAIR SPRINGER: Reviews statutory requirements. Governor's  
appointee?

DAVIS: Yes.

162 VOTE: In a roll call vote all members present vote AYE. SEN. KERANS  
is  
excused.

SEN. SHOEMAKER will lead discussion on the floor.

PUBLIC HEARING

SB 285: Establishes procedures, regulations and fees for formation and operation of limited liability companies.

WITNESSES:

DON DOUGLAS, OREGON STATE BAR

DAVID CULPEPPER, OREGON STATE BAR

CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

193 DON DOUGLAS: Submits and reviews written testimony in support of the bill (EXHIBIT B).

CULPEPPER: Comments on IRS classification issue.

250 DOUGLAS: Reviews corporate organization.

>Legislation will make partnerships and S corporation obsolete.

>Not aware of any opposition, except possibly from Oregon Trial

Lawyers

Association.

>Amendments proposed by Oregon Trial Lawyers Association (Included in

EXHIBIT B).

>Potential issue: whether professionals may use limited liability companies.

336 CULPEPPER: SB 285 excludes professionals so it is not an issue.

>Entity intended for small business.

347 WEBBER: Intent is to exclude professional businesses, doctors and lawyers?

DOUGLAS: Correct.

355 WEBBER: Tax-motivated rather than shifting of liability type of bill?

DOUGLAS: Professionals not allowed to use this.

>Not purely tax issue.

372 WEBBER: Other advantages are membership, foreign interest, etc.?

DOUGLAS: Yes.

375 SEN. SHOEMAKER: If adopt SB 285, could professionals incorporate as limited liability corporation?

DOUGLAS: No, language in section 19 (2) precludes.

387 SEN. SHOEMAKER: Have you followed up on suggestions from Oregon Trial Lawyers Association.

DOUGLAS: No, further modification will be needed.

401 SEN. SHOEMAKER: 19(2) limits strength to applicable rules and  
laws  
prohibiting professional service being rendered by corporation.

CULPEPPER: Appears understanding that SB 288 contained a prohibition  
against professionals using business corporation was wrong.  
>Attempt was make two bills consistent.

425 SEN. SHOEMAKER: Would like to have SB 285 stand alone.

CHAIR SPRINGER: Urges witnesses and counsel formulate compromise  
language.

433 SEN. BRYANT: Foreign limited liability corporation would have  
to  
re-form as another corporation to operate in Oregon.

DOUGLAS: Foreign corporations will not operate here for fear of being  
treated as partnership.

449 SEN. BRYANT: Do other states allow professionals to form  
limited  
liability corporation?

DOUGLAS: Depends on the state.

467 SEN. SHOEMAKER: Easy way for S corporation to convert to  
limited  
liability corporation?

CULPEPPER: Short answer: not an easy way.  
>Corporation would have to essentially liquidate to accomplish.

497 SEN. SHOEMAKER: No way around that?

TAPE 25, SIDE A

032 DOUGLAS: You can do it but it may trigger a tax that would  
be  
prohibitive.

037 SEN. SHOEMAKER: Efforts in Congress to facilitate?

DOUGLAS: Read information on possible exception.

039 SEN. SHOEMAKER: Substantive reason why transition shouldn't be easy?

DOUGLAS: As a matter of policy, no.

053 DOUGLAS: Other states have determined neutral revenue impact.

062 WEBBER: If member is acting with apparent authority, liability  
is  
unchanged? They are still acting under agency?

CULPEPPER: Two scenarios: Limited liability corporation may have members and managers who need not be members.

>Bill allows limited liability corporation to choose.

>Articles of organization determine authority based on determination of members or members/managers.

087 DOUGLAS: Cites section 30(2).

>Does not change law on apparent authority.

099 WEBBER: New members limited by passive loss rules?

CULPEPPER: Passive activity loss rules will apply except for one situation.

127 SEN. SHOEMAKER: Nothing in section 30 that would change common law on apparent authority, bill deals with specific situation of granting apparent authority to managers.

DOUGLAS: That is correct.

153 CHARLES WILLIAMSON: Willing to work with OSB .

>Not opposed but desire amendment.

169 CHAIR SPRINGER: Contact from Corporations Commissioner or state agencies on this bill.

173 QUIGLEY: Representatives from Secretary of State's office working with Oregon State Bar on the bill.

ASSOCIATED OREGON INDUSTRIES submits written testimony only generally in support of the bill (EXHIBIT B-1).

SB 229: Requires court to appoint certified court interpreters if available,  
willing and able to serve.

WITNESSES:

NARGESS SHADHEH, TASK FORCE ON RACE

MICHAEL DALE, OREGON LEGAL SERVICES

CARL GARDNER, DISABILITIES COMMISSION

BILL LINDEN, STATE COURT ADMINISTRATOR

199 NARGESS SHADHEH: Testifies in support of the bill.

218 CARL GARDNER: Submits and reviews written testimony on behalf of Eugene

Organ, in support of the bill (EXHIBIT D).

>Not opposed to amendments.

239 MICHAEL DALE: Submits and reviews written testimony in support of the bill (EXHIBIT C).

>Proposes amendments.

335 CHAIR SPRINGER: How many other populations (Asians, hearing impaired, etc.) need translation? Other needs?

DALE: Correctly identified issues.

>Dialects are an issue in the migrant farm-worker situation.

>May need uncertified interpreter in some cases.

380 BILL LINDEN: Submits and reviews written testimony with proposed amendments (EXHIBIT E).

>Measure has subsequent referral to Ways and Means.

>Anticipate fiscal/revenue impact on front end.

>Program will be self-supporting in long run due to fees.

467 SEN. BRYANT: Ethics testing? Interpreter should be familiar with procedures and ethics.

LINDEN: Yes, ethics will be an issue in testing.

TAPE 24, SIDE B

SB 232: Replaces certain references to county clerk with references to court clerk or court administrator.

WITNESSES:

JOHN KAUFFMAN, OREGON ASSOCIATION OF COUNTY CLERKS

044 JOHN KAUFFMAN: Submits and reviews written testimony in support of the bill (EXHIBIT F). Amendments will be proposed.

064 CHAIR SPRINGER: When do you expect amendments to be ready?

KAUFFMAN: Within two weeks.

SB 237: Prescribes procedure for county clerk to issue warrant for unpaid fee

for service provided by county clerk.

WITNESSES:

JOHN KAUFFMAN, OREGON ASSOCIATION OF COUNTY CLERKS

BILL LINDEN, STATE COURT ADMINISTRATOR

073 KAUFFMAN: Submits and reviews written testimony in support of the bill (EXHIBIT G).

>Will want to amend LC draft.

102 CHAIR SPRINGER: Lien issue can be touchy.

KAUFFMAN: Alternative (which has occurred in Jackson County) is to withdraw documents.

112 CHAIR SPRINGER: Accept credit cards as form of payment?

KAUFFMAN: Do not.  
>Credit companies would charge a fee for transaction.  
>Implementation would be difficult. Not all counties are on computer.

130 SEN. SHOEMAKER: Line 13 refers to fee, what do you mean by  
immediately?  
>What happens if bank makes mistake or bad check given negligently.

Process could assume guilt before innocence.

151 KAUFFMAN: Practice is to contact individual and resolve the  
situation  
before any other action taken. Fine if statute includes this process.

163 SEN. SHOEMAKER: Is publication sufficient notice? Certified  
mail  
sufficient? Appropriate to require notice by regular mail?

KAUFFMAN: I agree.

181 SEN. BRYANT: How big a problem in monetary terms?

KAUFFMAN: Doesn't happen that often, amount varies on size of  
document.  
>Average between \$25-35.

191 SEN. BRYANT: Is time and expense of recovering check  
prohibitive?  
Would credit card charge be more efficient?

207 BILL LINDEN: Submits and reviews written testimony (EXHIBIT H).

SB 244: Defines "person" for statutes relating to powers and duties of  
county  
clerks.

WITNESSES:

JOHN KAUFFMAN, OREGON ASSOCIATION OF COUNTY CLERKS

229 KAUFFMAN: Submits and reviews written testimony in support of the  
bill  
(EXHIBIT I).

276 CHAIR SPRINGER: Has work of task force, direct participation from  
staff  
or senators?

KAUFFMAN: No.

290 SEN. SHOEMAKER: Section 2, is "shall" right language?

KAUFFMAN: Section 2 will be amended. Will delete first sentence on  
line 16 and 17.

309 SEN. SHOEMAKER: Active language comes out?

KAUFFMAN: Correct.

214 SEN. SHOEMAKER: Page 3, section 5, clarify language? What kinds  
of documents or transactions?

KAUFFMAN: Section will also be amended. Describes documents.

WORK SESSION

SB 258: Increases amount of minimum damages that may be recovered  
for unlawful debt collection practices from \$200 to \$500.

350 QUIGLEY: Reviews bill. Reviews SB 258-1, SB 258-2 and SB  
258 -3 amendments.

395 CHAIR SPRINGER: Calls witnesses and reviews questions regarding  
SB 258-1 amendments.

409 SEN. SHOEMAKER: Has there been any contact with businesses for  
input?

SLOTTEE: Not aware of any. Clarifies provisions about businesses.

429 SEN. SHOEMAKER: Sole proprietor?

SLOTTEE: Yes, excluding partnerships, corporations.

450 MOTION: CHAIR SPRINGER: Moves to adopt the SB 258-1 amendments  
dated 2/10/93 (EXHIBIT J).

VOTE: CHAIR SPRINGER: Hearing no objection, the amendments are  
ADOPTED.  
SEN. KERANS is excused.

462 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 258-2 amendments  
dated 2/10/93 (EXHIBIT K).

VOTE: CHAIR SPRINGER: Hearing no objections the amendments are  
ADOPTED. SEN. KERANS is excused.

470 MOTION: CHAIR SPRINGER: Moves TO ADOPT SB 258-3 amendments  
dated 2/10/93 (EXHIBIT L).

VOTE: CHAIR SPRINGER: Hearing no objections amendments are ADOPTED.  
SEN KERANS is excused.

478 MOTION: CHAIR SPRINGER: Moves bill, AS AMENDED, be sent to the  
floor with a DO PASS recommendation.

486 VOTE: In a roll call vote all members present vote AYE. SEN. KERANS  
is excused.



492 CHAIR SPRINGER:: The bill CARRIES.

495 SEN. BRYANT will carry the measure on the floor.

TAPE 25, SIDE B

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

035 QUIGLEY: Reviews bill. Reviews fiscal impact: indeterminate.

043 QUIGLEY: Reviews amendments in hand-engrossed bill from Oregon State Bar (EXHIBIT M). Includes ORS cite.

054 JIM WILCOX, DEPARTMENT OF REVENUE: Request committee not pass bill and

hold for further review.

>Revenue analysis indicates bill not necessary.

>Bill will create confusion in property tax collection.

>McHaffie does not change statutory requirements.

>Bill assumes link between real market value and type of instrument

being used that does not exist.

>Contains obscure references to tax years.

>Appears to change appraisal practices.

100 WALTER GOWELL, OSB : Willing to work with Department of Revenue.

>Agree on purpose.

>Believes legislation is needed. McHaffie ruling is out of touch with practice.

122 SEN. SHOEMAKER: Offers observation about insert on line 23, is ORS cite correct?

GOWELL: 674.010-310 is essentially a licensing certification and educational statute where board is formed.

>Requires that national standards be formed.

>No other reference in ORS.

140 SEN. SHOEMAKER: Those standards by rule are required?

GOWELL: To maintain license, appraisers must comply with standards.

145 WILCOX: Raises concern. Lines 9 and 10 refer to real market value

determined by methods in accordance with rules adopted by Department of

Revenue which has been setting standards for tax purposes.

>Bill creates confusion as to which standards are appropriate for determining tax assessments.

160 CHAIR SPRINGER: No questions. Will hold bill for a couple weeks.

170 CHAIR SPRINGER: Adjourns hearing at 2:41pm.

Submitted by:

Reviewed by:

Kirk Bailey  
Assistant

Karen Quigley  
Administrator

EXHIBIT LOG:

A - Testimony on SB 229 - Justice Edwin Peters - 4 pages  
B - Testimony on SB 285 - Don Douglas - 6 pages  
B-1 - Testimony on SB 285 - J. Whitty - 1 page  
C - Testimony on SB 229 - D. Dale - 3 pages  
D - Testimony on SB 229 - E. Organ - 2 pages  
E - Testimony on SB 229 - Bill Linden - 11 pages  
F - Testimony on SB 232 - John Kauffman - 1 page  
G - Testimony on SB 237 - John Kauffman - 1 page  
H - Testimony on SB 237 - Bill Linden - 1 page  
I - Testimony on SB 244 - John Kauffman - 1 page  
J - Amendments to SB 258 - Staff - 4 pages  
K - Amendments to SB 258 - Staff - 4 pages  
L - Amendments to SB 258 - Staff - 1 page  
M - Amendments to SB 216 - Staff - 1 page  
N - LC 1701 - Staff - 2 pages  
O - LC 1702 - Staff - 1 page  
P - LC 2054 - Staff - 1 page  
Q - LC 2262 - Staff - 6 pages  
R - LC 2263 - Staff - 3 pages  
S - LC 2264 - Staff - 5 pages  
T - LC 2317 - Staff - 2 pages  
U - LC 2458 - Staff - 2 pages  
V - LC 2460 - Staff - 2 pages  
W - LC 2706 - Staff - 8 pages  
X - LC 2970 - Staff - 3 pages