

SENATE COMMITTEE ON  
JUDICIARY

March 15, 1993      Hearing Room C  
1:15 p.m.      Tapes 52-53

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

MEMBERS EXCUSED:    Sen. Karsten Rasmussen

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

ISSUES DISCUSSED:    Work Session on SB 223, SB 353, SB 249, SB 245, SB 334.  
                              Public Hearing on SB 545

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

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 52, SIDE A

003      CHAIR SPRINGER:    Opens the hearing at 1:20 pm.

Work Session

SB 223: Allows parties to support orders to initiate proceedings to modify

                              support obligations in same manner as public enforcement agencies.

009 BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill, SB 223-1 amendments

                              (EXHIBIT B) and hand-engrossed amendments (EXHIBIT A).

                              >Reviews fee requirements and suggestions from Bill Linden.

035      BILL LINDEN, STATE COURT ADMINISTRATOR: Describes fee situation.

051      CHAIR SPRINGER:    What about fee level?

                              >Should bill be sent to Ways and Means?

LINDEN: Recommends fee be set at current circuit court levels - \$65 and

                              \$32.50.

                              >Bill needs to be included in appropriation and revenue process.

067 CHAIR SPRINGER: Reviews and clarifies suggested amendments.

LINDEN: Yes, for base civil filing fee.

072 CHAIR SPRINGER: Polls other witnesses for feedback.

073 CARL MYERS, OREGON STATE BAR: OSB wants to avoid fiscal impact to courts.

>Suggestions are appropriate and amounts are fine.

083 CHAIR SPRINGER: What about referral to Ways and Means.

MYERS: Prefer to avoid but assumes it will go there.

089 SEN. SHOEMAKER: Comments on increased demand on judicial system.  
>This may not address all fiscal issues.

LINDEN: Good point. Two reason to include in revenue process: account for revenue, and absorb work load.

106 CHAIR SPRINGER: Speculates on possible approaches to deal with bills containing a fiscal impact.  
>Requests advice of committee.

140 LINDEN: Reviews statistics: 8000 modifications per year.  
>Filing fee would discourage filing.

162 MYERS: Not clear this will increase case load and create budgetary problems.

183 CHAIR SPRINGER: Inquires about amendments to subsection 3.  
>Requests witnesses formulate amendments and come back to committee later this afternoon.

193 CARL STECKER, OREGON DISTRICT ATTORNEYS ASSOCIATION: Comments on amendment to section 3.  
>Suggests alterations to amendments to exempt filing fee for actions filed by state.

202 CHAIR SPRINGER: Recesses hearing on SB 223.

#### Public Hearing

SB 545: Provides that person may obtain writ of assistance to enforce custody provisions of order.

#### WITNESSES:

DAVID NEBEL, OREGON LEGAL SERVICES  
JACQUELINE ZIMMER, SEN. TRICIA SMITH

215 DAVID NEBEL: Submits and reviews written testimony in support of

the

bill (EXHIBIT C).

255 CHAIR SPRINGER: What rules specifically?

>Consulted with Council of Court Procedures?

>What jurisdiction does Legislature have to countermand Chief Justice  
and uniform rules.

266 NEBEL: Reference is to rules of civil procedure.

>Consulted with Bill Linden who doesn't have objections to intent, but  
some as to insertion of form into statute.  
>Court has inherent jurisdiction.  
>Continues review of written testimony.

344 SEN. SHOEMAKER: Address reasonable force provision?

>What are implications?

>What is reasonable force?

>Are officers trained?

>Can party to writ take action if officers do not take enforce?

NEBEL: Reasonable force language is used in writs of assistance and  
sheriffs will enforce.

>Deputies are told to look for reasonable force authorization in writs  
because of liability concerns.  
>Can't speak to level of force, although thinks it is fairly liberal.

395 SEN. SHOEMAKER: Presents example of restraining father while  
retrieving  
child.

NEBEL: Yes, but would like to check with sheriffs.

402 SEN. SHOEMAKER: Appears court is not asked to address force  
when  
issuing the writ, should court consider and order?

NEBEL: That is open to consideration.

420 TAYLOR: Notes confusion about language as a part of the form (writ)  
or  
statute.

427 NEBEL: Possible to remove form and replace with requirements for  
each  
form in the statute.

443 SEN. HAMBY: Is there any fee anticipated?

NEBEL: Believes it won't change practice. Courts issue writs  
currently.

TAPE 53, SIDE A

027 JACQUELINE ZIMMER: Testifies in support of the bill. Clarifies  
current

common law.

057 SEN. SHOEMAKER: This writ wouldn't help with belongings?

NEBEL: Correct, unless there is a court order addressing belongings.

063 SEN. SHOEMAKER: If statutory writ of assistance to retrieve child exists and not to retrieve property, doesn't that eliminate common law writ

NEBEL: That is precisely why subsection 2 of Section 2 exists.

072 CHAIR SPRINGER: Clarify problem in Polk county?  
>Did individual approach the court?  
>Would new legislation help if biggest hurdle may be ignorance of laws and remedies?

080 ZIMMER: Unaware of any problem generally in Polk county.  
>More difficult for women to retrieve children than men.

093 SEN. BRYANT: Comments on civil side and fees. Are fees a consideration?

101 SEN. SHOEMAKER: Urges Nebel to broaden writ to apply to different issues including property.

107 NEBEL: Adds that Sheriffs Association has no objection to the bill.

112 CHAIR SPRINGER: Who is their representative?

NEBEL: Mr. Spencer.

SB 223: Allows parties to support orders to initiate proceedings to modify support obligations in same manner as public enforcement agencies.

120 CHAIR SPRINGER: Reconvenes hearing on SB 223.

122 TAYLOR: Reviews new amendments to SB 223 (EXHIBIT D).

135 SEN. SHOEMAKER: Appropriate to have a cross reference to fee enabling provisions rather than specific reference to fees, so that fees will change automatically?

139 LINDEN: That exists in chapter 21. Additional cross reference possible, but doesn't expect fee changes this session.

148 CHAIR SPRINGER: Can anyone suggest appropriate language?

153 TAYLOR: Suggests appropriate amendment language.

161 LINDEN: Reference ORS 21.110.

169 MOTION: CHAIR SPRINGER: moves SB 223-1 amendments, dated 3/15/93  
as  
further amended with counsel's language and reference to ORS 21.110.

176 SEN. WEBBER: Does imposition exemption for entities initiating  
case  
belong in other section?

MYERS: There is specific exemption, but want it referenced twice.

185 SEN. WEBBER: So it is in other statute?

MYERS: Yes.

187 VOTE: Hearing no objections the amendments are adopted.

188 MOTION: CHAIR SPRINGER: moves SB 223, AS AMENDED, be referred to  
Ways  
and Means committee.

VOTE: In a roll call vote all members present vote AYE. Sen. Rasmussen  
is excused.

#### Work Session

SB 353: Expands criteria used to set earlier release date of prisoner  
by  
State Board of Parole and Post-Prison Supervision.

209 TAYLOR: Reviews bill and amendments.

230 SEN. WEBBER: States concerns about breadth of opening and the bill  
in  
general. Will probably not vote in favor.

235 SEN. SHOEMAKER: Expresses concerns about certain provisions relating  
to  
elderly and disabled prisoners.

257 CHAIR SPRINGER: Perhaps this needs some work. Additional comments  
from  
Sen. Hamby?

272 SEN. HAMBY: Recalls concerns.

275 SEN. SHOEMAKER: Could move amendments.

278 SEN. WEBBER: Wouldn't address my concerns relating to broad  
policy  
implications.

291 CHAIR SPRINGER: Carries bill over for further work.

295 SEN. SHOEMAKER: Amendments should apply to section 2.

SB 249: Requires presiding judge to establish local criminal  
justice  
advisory councils in each county in judicial district.

CAPTAIN LEE ERICKSON, OREGON STATE POLICE submitted written testimony only in support of the bill (EXHIBIT F).

30 TAYLOR: Reviews bill and amendments including SB 249-2 amendments (EXHIBIT E).

347 BILL LINDEN: Reviews SB 249-2 and hand-engrossed amendments.  
380 SEN. SHOEMAKER: You don't mean specifically who needs to be present, just who needs a representative?

LINDEN: Correct, those who must participate personally or through representative.

393 MOTION: CHAIR SPRINGER: moves to ADOPT SB 249-2 amendments.  
VOTE: Hearing no objection, the amendments are ADOPTED.

402 CHAIR SPRINGER: Reminds committee that SB 249-2 amendments also amend the relating clause.

410 MOTION: CHAIR SPRINGER: moves SB 249, AS AMENDED, be sent to the floor with a DO PASS recommendation.  
VOTE: In a roll call vote all members present vote AYE. Sen. Rasmussen is excused.

417 CHAIR SPRINGER: The motion CARRIES.  
SEN. BRYANT will lead discussion on the floor.

SB 245: Requires Chief Justice of Supreme Court to establish minimum standards for state court security.

PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Submits and reviews written testimony in opposition to the bill.

433 TAYLOR: Reviews bill, amendments and letter from Paul Snider.

TAPE 52, SIDE A

013 BILL LINDEN, STATE COURT ADMINISTRATOR: Urges favorable consideration.  
>This may be the only bill we get to address court security issue.

035 CARL MYERS, OREGON STATE BAR: Testifies in support of the bill.

053 SEN. SHOEMAKER: What happens if bill passes with no funding mechanism?

LINDEN: Districts would have to have negotiating process to determine implementation.

062 SEN. SHOEMAKER: Does the Chief Justice have authority to  
compel  
compliance.

LINDEN: Yes, the bill provides the authority for Chief Justice to  
establish standards and presiding judge to determine methods to meet  
those standards.

085 SEN. WEBBER: Individuals can walk into court with weapon  
with  
appropriate licenses?

LINDEN: That is the case. Most courthouses have notices that weapons  
are not allowed in courthouse.

097 SEN. WEBBER: Courthouses look like they are falling apart? Is  
there  
any planning for these buildings.

LINDEN: No, but this task force could be the vehicle to provide for  
maintenance planning and security.

129 SEN. HAMBY: Lane county has a metal detector is that right?

LINDEN: Yes.

137 SEN. HAMBY: Comments that some counties have addressed ad hoc.

CHAIR SPRINGER: Comments on Multnomah county situation.

147 FRED NEIL, LEGISLATIVE RELATIONS: Doesn't understand Linden's urge  
to  
pass. Amendments were approved and are available from task force.

157 CHAIR SPRINGER: What is bill number.

NEIL: No idea.

159 LINDEN: 600 series.

CHAIR SPRINGER: What does HB 3176 provide?

162 NEIL: Allows usage of 10% of county corrections fee to fund  
courthouse  
security.

>Also up to 25% surcharge on certain civil filing fees to create  
funding  
for courthouse security.  
>Creates dedicated funding source.

189 CHAIR SPRINGER: Notes bill number is SB 625, introduced by Judiciary  
at  
request of Gary Hansen, Multnomah County Commissioner.

196 SEN. WEBBER: Requests staff draft amendment prohibiting weapons

in  
courthouses even with licenses.

199 SEN. HAMBY: Comments on similar amendment in next bill.

205 LINDEN: Need to keep bill moving due to uncertainty of funding.

217 CHAIR SPRINGER: Holds bill to review later in hearing, perhaps  
take  
action or defer to later.

SB 334: Adds person in possession of firearm or other dangerous  
weapon  
within school zone to category of persons subject to  
prosecution.

JIM COUGHLIN, FOUR CORNERS ROD AND GUN CLUB submitted written  
testimony  
on in opposition to the bill (EXHIBIT J).

GREGORY MCMURDO, DEPARTMENT OF EDUCATION submitted written testimony  
only in support of the bill (EXHIBIT K).

CHAIR SPRINGER: Reviews submitted testimony (EXHIBIT H).

264 SEN. HAMBY: Reviews amendments. States SB 334-8 amendments  
incorporate  
consensus amendments from last committee hearing.

273 TAYLOR: Reviews bill and amendments: machine engrossed and SB  
334 -8  
amendments (EXHIBITS I & L).

379 SEN. HAMBY: References page 2, line 15 which is the proposed  
container  
rule which broadens the bill.  
>Reviews recommendations from NRA (EXHIBIT G).

TAPE 53, SIDE B

003 SEN. HAMBY: Continues review of NRA amendments.

065 CHAIR SPRINGER: Comments on deadly force and choice of evils  
defense.  
>Additional amendment to engrossed version?

073 TAYLOR: Amendment to line 24, page 2, engrossed version needs to  
be  
added to SB 334-8 amendments.

077 CHAIR SPRINGER: Relating clause needs tightening.  
>Perhaps it should state "relating to possession of dangerous weapons  
in  
public places."?

087 SEN. SHOEMAKER: Bill also includes use. Perhaps just "relating  
to  
dangerous weapons in public buildings"?



090 CHAIR SPRINGER: Hearing no objections, allows counsel discretion to formulate appropriate relating clause with legislative counsel.

098 SEN. SHOEMAKER: Are class c felonies for discharge of weapon in school zone and possession, intended to be cumulative?

SEN. HAMBY: No. Doesn't recall amendments.

113 TAYLOR: Understood it to be cumulative.

115 CHAIR SPRINGER: District attorney would argue they are distinct counts.  
>Doesn't address severity.

127 SEN. BRYANT: What happens to private bar owner who has a gun on the premises of his place of business?  
>Private property owner definition needs to be broader than residential.

140 SEN. HAMBY: Bill originally broader, Taylor recommended including residential limiting language.

146 TAYLOR: Clarifies but cannot say if another section of bill effects bar owner.

157 SEN. BRYANT: Wouldn't bill as currently drafted make him place him in violation of the law?

TAYLOR: Yes, if he was traversing a school zone.

166 SEN. BRYANT: Not concerned about traversing, only possession of firearm on the premises? Is that a violation?

TAYLOR: Doesn't appear to fit exemptions.

172 SEN. BRYANT: So he could be guilty of a class c felony and I don't think that is the intent.  
>On traversing of school grounds, sub c, is authorization to traverse necessary when school is not in session?

184 SEN. HAMBY: Refers to page one, section 2; bill does not apply to private property.

196 SEN. BRYANT: Requests further clarification.

200 SEN. HAMBY: Entire bill speaks only to a public building or school zone.  
>Exemptions effect only traversing.

207 SEN. WEBBER: Concerned about class c felony. Does sentencing

board

apply distinction regarding sanction rather than legislature?

213 CHAIR SPRINGER: Unless instructed otherwise, they would address as  
a  
class c felony.

215 SEN. WEBBER: So we can instruct?

CHAIR SPRINGER: Yes.

217 SEN. SHOEMAKER: Comments on class c felony.  
>Should provide amendment to section 3 ensuring applicability even if  
exempt under section 2.

239 CHAIR SPRINGER: Given concerns doesn't think we can take action.  
>Requests Sen. Hamby's opinion.

242 SEN. HAMBY: Would like to go forward.

246 SEN. BRYANT: To be guilty you have to be on public property  
within  
distance of 1000 feet?

SEN. HAMBY: Correct.

256 SEN. BRYANT: If on private property not effected by subsection 2?

SEN. HAMBY: Correct.

259 SEN. BRYANT: Insertion of "intentionally" is to protect  
unintentional  
possession of loaded firearm within the defined zone?

SEN. HAMBY: That is correct.

270 SEN. SHOEMAKER: Clarifies.

293 MOTION: SEN. HAMBY: moves to ADOPT SB 334-8 amendments, dated  
3/12/93,  
as further amended in machine engrossed version; with conceptual  
amendment to relating clause; inserting "private residential property"  
on line 24, page 2; and inserting after 3 (a), "even though exempt  
from  
section 2 of this Act".

319 SEN. WEBBER: Why not have two charges?

321 SEN. SHOEMAKER: Doesn't see what two charges adds except  
needless  
duplication of charges, guideline penalties, etc.

327 SEN. HAMBY: May be weaker but can be amended in the House.

338 VOTE: Hearing no objection the amendments are adopted.

340 MOTION: SEN. HAMBY: moves SB 334, AS AMENDED, be sent to the floor  
with  
a DO PASS recommendation.

343 VOTE: In a roll call vote all members present vote AYE. Sen.  
Rasmussen  
is excused.

351 CHAIR SPRINGER: The motion is ADOPTED.

SEN. HAMBY will lead discussion on the floor.

360 CHAIR SPRINGER: Reconsiders SB 240 and holds over for later hearing.  
>Adjourns hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey  
Assistant

Bill Taylor  
Administrator

EXHIBIT LOG:

- A - Amendments to SB 223, 1 page
- B - Amendments to SB 223, 1 page
- C - Testimony on SB 545, David Nebel, 3 pages
- D - Amendments to SB 223, Bill Linden, 1 page
- E - Amendments to SB 249, 2 pages
- F - Testimony on SB 249, Lee Erickson, 1 page
- G - Testimony on SB 334, John Lenzi, 3 pages
- H - Background information on SB 334, Staff, 1 page
- I - Amendments to SB 334, 4 pages
- J - Testimony on SB 334, Jim Coughlin, 1 page
- K - Testimony on SB 334, Gregoy McMurdo, 5 pages
- L - Amendments to SB 334, 3 pages