

SENATE COMMITTEE ON
JUDICIARY

March 17, 1993 Hearing Room C
1:00 p.m. Tapes 54-56

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

MEMBERS EXCUSED:

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

ISSUES DISCUSSED: Work Session on SB 285, SB 227, SB 211, SB 214, SB 334.
 Public Hearing on SB 206, SB 64, SB 461, SB 539.
 Public Hearing and Possible Work Session on HB 2476

[--- 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 54, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:07 pm.

Work Session

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

009 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews bill, SB 285-1 and SB
285 -2
 amendments (EXHIBITS A & B).

CHAIR SPRINGER: Calls witnesses.

032 DON DOUGLAS, OSB : Reviews amendments.
 >Amendment prohibits professionals from forming limited liability
 companies.

042 CHAIR SPRINGER: No problem with deleting emergency clause?

DOUGLAS: Correct. Will it be over by August?
048 SEN. SHOEMAKER: Date certain? January 1?

050 QUIGLEY: Does that conflict with SB 285-2 amendments contingent
on
passage of HB 2024?

053 CHAIR SPRINGER: Doesn't think so. Committee can amend HB 2024.

056 DOUGLAS: Could amend either to mirror the other. Problem would
be
passing one and not the other because it creates inconsistent
reporting
with Corporation Commission.

059 CHAIR SPRINGER: Merit to the idea of inserting a date certain in
both
bills?

064 WILLIAMSON: Questions whether amendment language will
effectively
prohibit professionals from organizing llc's?

DOUGLAS: Reviews amendments further and clarifies.

077 MOTION: CHAIR SPRINGER: moves to ADOPT SB 285-1 amendments,
dated
3/12/93, as further amended on page 2 to include date certain of
January
1, 1994 as effective date.
VOTE: Hearing no objections, the amendments are ADOPTED.

082 MOTION: CHAIR SPRINGER: moves to ADOPT SB 285-2 amendments,
dated
3/12/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

085 MOTION: CHAIR SPRINGER: moves SB 285, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

092 CHAIR SPRINGER: The motion CARRIES.

CHAIR SPRINGER will lead discussion on the floor.

SB 227: Requires establishment of juvenile advisory councils in all
counties
regardless of size.

100 CHAIR SPRINGER: Reviews testimony in opposition to the bill received
in
his office.

108 QUIGLEY: Reviews bill and SB 227-1 amendments (EXHIBIT C).

LARRY OGLESB Y, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION:

Testifies with concerns about the bill.
>Points out that system already exists in most counties.

>Suggests deleting section 5 from SB 227-1 amendments.
>Sunset provision should be included to ensure further review.

164 KINGSLEY CLICK, DEPUTY STATE COURT ADMINISTRATOR: Testifies in support of the bill and amendments.

188 SEN. HAMBY: Counties are eager to move from old juvenile justice court to family court, how would bill impact that?

196 OGLESB Y: If it becomes law, more duplicative because many of the same people will be involved.

201 SEN. BRYANT: How do different youth services commissions interface with advisory committee?

OGLESB Y: Many of the same people are involved, but the commissions are not mandated to work with advisory committee in this bill.

213 KINGSLEY: Focus of juvenile justice council's is to review court processes, indigent defense, prosecution, children's services.
>Youth services commissions have different focus.

227 CHAIR SPRINGER: Inquires as to committee inclination on the bill.

229 SEN. RASMUSSEN: Expresses intention to vote no on the bill.

233 SEN. BRYANT: Where are care team proposals?

234 SEN. HAMBY: Comments initially that the bills are in the House but clarifies that Interim Judiciary committee allowed courts option to move to family court situation.
>Interim draft on court issue is on Senate side.

244 OGLESB Y: Family court bill is in House Judiciary.

247 SEN. SHOEMAKER: Reason for committee opposition?

SEN. WEBBER: Concerned about creating another organization with so many other issues such as reorganization, service issues, and child care teams. This can be accomplished voluntarily.

259 SEN. SHOEMAKER: With new juvenile code, and extra attention, it is important to have group in each county to address issues.
>This will help counties that don't have it and won't effect those who do.

272 CHAIR SPRINGER: Proposes adopting amendments and proceeding to roll

call.

274 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 227-1 amendments,
dated 2/16/93, as further amended to delete subsection 5, lines 9-11 on page
2, and insertion of conceptual sunset of June 30, 1995.
VOTE: Hearing no objection, the amendments are ADOPTED.

283 MOTION: SEN. SHOEMAKER: moves SB 227, AS AMENDED, be sent to the
floor with a DO PASS recommendation.

286 SEN. RASMUSSEN: Don't want to force counties to do something they
can do themselves.

303 SEN. WEBBER: Didn't realize there was a sunset which would make me
feel different about the bill.

307 VOTE: In a roll call vote SEN. BRYANT, SEN. HAMBY, SEN. SHOEMAKER,
SEN. WEBBER and CHAIR SPRINGER vote AYE. SEN. RASMUSSEN votes NAY.

CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

SB 211: Allows persons who are interested in trust to modify terms of
trust or clarify interpretation of trust by written agreement filed in
circuit court.

321 CHAIR SPRINGER: Holds bill to allow for further amendments.

SB 214: Requires claims against estate of decedent that are insured
be presented to personal representative in same manner as other
claims.

344 QUIGLEY: Reviews bill and SB 214-2 amendments (EXHIBIT E & H).

389 WARREN DERAS, OREGON STATE BAR: Submits written testimony
and amendments in support of the bill (EXHIBIT D).

421 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Testifies
in support of the bill.

463 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 214-2 amendments,
dated 3/15/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

469 MOTION: SEN. SHOEMAKER: moves SB 214, AS AMENDED, be sent to the
floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

CHAIR SPRINGER: The motion CARRIES.

SEN. SHOEMAKER will lead discussion on the floor.

TAPE 55, SIDE A

Public Hearing

SB 206: Provides that statements, written notes and reports made for purpose of critical incident stress debriefings are privileged, not subject to discovery and may not be admitted in evidence in judicial or administrative proceedings.

WITNESSES:

ALEC JENSEN, OREGON CRITICAL RESPONSE TEAM

PHIL LEMMAN, CITY OF EUGENE

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

TRACY DAVIES, SHERIFFS ASSOCIATION

BILL CROSS, OREGON ASSOCIATION OF CHIEFS OF POLICE

049 ALEC JENSEN, OREGON CRITICAL RESPONSE TEAM: Testifies in support of the bill.

089 SEN. SHOEMAKER: Is there need for the phrase defining employment to include volunteers?

JENSEN: Amending line 14 would read better.

101 PHIL LEMMAN: Testifies in support of the concept of the bill. Concerned about language recommended by Jensen.

119 SEN. SHOEMAKER: Line 12, defines debriefing, why limitation for organizations who may offer?

JENSEN: Cannot think of reason.

127 SEN. SHOEMAKER: Suggests alternative language.

JENSEN: Pleased with broad language, so that would be acceptable.

132 SEN. WEBBER: Addresses Sen. Shoemaker's question. >Concern about employer engaging in quasi-counseling.

SEN. SHOEMAKER: Risk is employer doing this to create cover-up?

139 SEN. HAMBY: Language "or other organization" is broad already.

142 CHAIR SPRINGER: Bill will be back for work session, amendments can be addressed then.
>How will victims family or public know job was done correctly?
>Will this be a veil to discourage informing public?

JENSEN: Shouldn't be. Describes the debriefing and clarifies that internal investigations will not be treated as critical incident stress debriefings.

165 LEMMAN: Concur.
>Debriefings are strictly for officer or employee involved to ensure safety and mental health. Questions of appropriate action would be reviewed by another process which would be open to the public.

172 CHAIR SPRINGER: Comments on issue in Washington.
>Can this serve as bar to federal investigation? Cites Rodney King case.

188 JENSEN: Don't know.

190 LEMMAN: Doesn't know how it plays into existing client/counselor privilege.
>Bill eliminates records as public records.

199 CHAIR SPRINGER: Comments on SB 499 and SB 500.

206 LEMMAN: Exemption is consistent with current law and recommendations of Public Records Advisory Council.

212 TRACY DAVIES: Testifies in support of the bill.

226 SEN. WEBBER: Comments in support of this bill.

245 BILL CROSS: Testifies in support of the bill.

260 CHARLIE WILLIAMSON: Testifies with concerns about the bill.
>Concerned that important information may be contained in stress debriefings vital to investigations and trials.
>Questions need and reason for expansion.

312 SEN. SHOEMAKER: Suggests conference with Williamson to work out amendments.
>Need for debriefing after critical incident is vital without protecting unlawful behavior. Compromise should be available.

330 CHAIR SPRINGER: Reviews incident in Portland where police utilized excessive force.
>Carries over for further review and amendments.

SB 64: Provides civil penalties of up to \$10,000 per day for permitted mining operation.

WITNESSES:

GARY LYNCH, DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES
DAVID ENGSTROM, OREGON CONCRETE AND AGGREGATE ASSOCIATION

362 LYNCH: Submits and reviews written testimony in support of the
bill
(EXHIBITS I & J).

398 SEN. SHOEMAKER: No limitation of \$10,000 fine to blatant violations
in
the bill. Should there be?
>Is the intent to establish by rule and is that customary?

LYNCH: Didn't realize provision wasn't in the bill. May be an
oversight that needs amendment.

418 SEN. SHOEMAKER: Reviews cite of \$10,000 penalty. Sections are not
in
front of committee.

LYNCH: Concept was to define violations for penalty and to expand in
rule with a matrix.

447 CHAIR SPRINGER: Similar to authority given to other natural
resource
agencies with similar matrix's?

464 SEN. SHOEMAKER: Is statute setting substantial penalties comparable
to
other agencies?

472 CHAIR SPRINGER: That information can be obtained before work
session.
>No opposition?

486 LYNCH: Correct.

TAPE 54, SIDE B

028 SEN. BRYANT: Requests additional background information.

038 DICK ENGSTROM: Testifies in support of the bill.

SB 461: Defines "person" to include trusts for purposes of
Uniform
Partnership Law.

WITNESSES:

KEN SHERMAN, OREGON BANKERS ASSOCIATION
FRANK BRAUNER, OREGON BANKERS ASSOCIATION
ALAN BENNETT, OREGON BANKERS ASSOCIATION
CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION
WARREN DERAS, OREGON STATE BAR

053 CHAIR SPRINGER: Reviews LC draft.

LC 3823: At the request of Chuck Dimond.

060 MOTION: CHAIR SPRINGER: moves introduction of LC draft.

VOTE: Hearing no objection, draft is introduced.

062 CHAIR SPRINGER: Reviews general committee business.

072 KEN SHERMAN: Introduces Allen Bennett.

074 ALLEN BENNETT: Testifies in support of the bill. Submits and reviews written testimony by Kris Jon Gorsuch in support of the bill (EXHIBIT K).
>Proposes amendment to page 1, line 13 deleting "if permitted" and inserting "unless expressly prohibited".

212 SEN. SHOEMAKER: Is partnership defined in Chapter 68, to include all joint ventures?

SHERMAN: Not sure chapter makes reference to joint venture but definition has that effect.

224 >Reviews case which created bill.

264 SEN. SHOEMAKER: Does bill need additional language in line 22-23?

SHERMAN: No objection. Negligence is broad enough.

274 SEN. SHOEMAKER: Section 3 takes different approach, do we need consistent language?

SHERMAN: No objection.

284 CHAIR SPRINGER: Does this need an emergency clause?

BENNETT: Won't effect current case.
>Effective date would be fine.

298 CHAIR SPRINGER: Case is currently on appeal?

BENNETT: No, it was settled.

311 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Submits and reviews written testimony in support of the bill (EXHIBIT L).
>Submits amendments to the bill (EXHIBIT M).

364 WARREN DERAS, OREGON STATE BAR: Testifies in support of the bill.

434 CHAIR SPRINGER: Brawner materials quote Bankruptcy Court opinion, regarding unlimited personal liability for administration of a trust, was that a misstatement?

DERAS: No. Common law liability is significant. Statutory limitations are numerous.

TAPE 55, SIDE B

SB 539: Deletes requirement that applicant's race be listed on application for marriage license.

WITNESSES:

JUDITH MCGINTY, SEN. JOYCE COHEN
TODD ELNER, CITIZEN
TIEL JACKSON, CITIZEN
SENATOR TRICIA SMITH
SENATOR BILL KENNEMER

033 JUDY MCGINTY: Submits and reviews written testimony in support of the bill (EXHIBIT N).
>Submits written testimony from William Saxe WiHRin support of the bill (EXHIBIT P).

089 SENATOR TRICIA SMITH: Testifies in support of the bill.

106 SEN. HAMBY: What about previous marriage question?

SEN. SMITH: Suspects there is other information that is unnecessary.

116 MCGINTY: Possible legal situation where that information is necessary, such as a case of bigamy.

121 SEN. SMITH: However, when marriage license application is made no request is made for divorce decrees or other information.

125 CHAIR SPRINGER: Question could be raised with Sen. Cohen.

128 SEN. KENNEMER: Testifies in support of the bill on behalf of constituent, Mr. Coleman.
>Proposes amendment regarding prohibition of marriage between cousins.

151 TODD ELLNER: Submits and reviews written testimony in support of the bill (EXHIBIT O).

251 TIEL JACKSON: Testifies in support of the bill.

277 SEN. SHOEMAKER: Notes that form goes beyond statutory authority.

285 SEN. HAMBY: Questions whether other documents have the same problem?

289 CHAIR SPRINGER: Comments that governors forms have same problem.

SB 211: Allows persons who are interested in trust to modify terms of trust or clarify interpretation of trust by written agreement filed in circuit court.

298 CHARLES MAURITZ: Submits and reviews written testimony and

amendments

in support of the bill (EXHIBIT G).

>Counsel has included the necessary amendments.

>Reviews SB 211-3 amendments (EXHIBIT F).

338 QUIGLEY: Is subsection 4 of SB 211-3 amendments superfluous?

MAURITZ: Not essential.

348 CHAIR SPRINGER: Asks Mauritz to review proposed amendments to SB
211 -3

amendments on lines 2-4.

MAURITZ: Remove beginning line and "except as" on second line. Insert

"In proceedings under sections 2 through 5 and 7 of this 1993 Act, the
clerk shall charge all additional fees".

366 SEN. SHOEMAKER: Refers to note on section 4, page 2.

MAURITZ: That is the primary purpose of current amendments.

396 MOTION: CHAIR SPRINGER: moves to ADOPT SB 211-3 amendments
dated

3/16/93, as further amended.

VOTE: Hearing no objections, the amendments are ADOPTED.

402 MOTION: CHAIR SPRINGER: moves SB 211, AS AMENDED, be sent to the
floor

with a DO PASS recommendation..

VOTE: In a roll call vote all members present vote AYE.

408 CHAIR SPRINGER: The motion CARRIES.

SEN. RASMUSSEN will lead discussion on the floor.

SB 334: Adds person in possession of firearm or other dangerous weapon
within

school zone to category of persons subject to prosecution.

416 TAYLOR: Need to vote to bring bill back to committee.

422 MOTION: CHAIR SPRINGER: moves to RECONSIDER SB 334.

VOTE: Hearing no objection, SB 334 is RECONSIDERED.

425 TAYLOR: Reviews SB 334-9 amendments (EXHIBIT Q).

454 MOTION: SEN. HAMBY: moves to ADOPT SB 334-9 amendments, dated
3/17/93.

457 SEN. SHOEMAKER: Confused by the amendments in SB 334-9.

460 TAYLOR: Amendments are the same as SB 334-8 amendments except for
lines

20 on.

466 SEN. SHOEMAKER: What if gun is in the trunk of a car?

476 SEN. HAMBY: Container can include trunk or glove compartment as long
as

it is contained.

TAPE 56, SIDE A

029 SEN. SHOEMAKER: A container on a motor vehicle?

SEN. HAMBY: Police have counseled that glove compartments are sufficient.

036 SEN. SHOEMAKER: If committee is comfortable then we can go forward.

042 VOTE: Hearing no objection, the amendments are ADOPTED.

043 MOTION: SEN. HAMBY: moves SB 334, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

046 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

047 CHAIR SPRINGER: Convenes hearing on HB 2476.

>SEN. WEBBER is noted as an aye vote on SB 285.

HB 2476: Makes technical changes to internal references in Oregon statutes.

054 KATHLEEN BEAUFAIT, LEGISLATIVE COUNSEL: Testifies in support of the

bill.

>Reviews bill generally.

082 MOTION: SEN. HAMBY: moves HB 2476 be sent to the floor with a DO PASS

recommendation.

VOTE: In a roll call vote all members present vote AYE.

090 CHAIR SPRINGER: The motion CARRIES.

SEN. RASMUSSEN will lead discussion on the floor.

092 CHAIR SPRINGER: Adjourns hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

- A - Amendments to SB 285, 2 pages
- B - Amendments to SB 285, 3 pages
- C - Amendments to SB 227, 2 pages
- D - Testimony on SB 214, Warren Deras, 6 pages
- E - Amendments to SB 214, 1 page

- F - Amendments to SB 211, 2 pages
- G - Testimony on SB 211, Charles Mauritz, 3 pages
- H - Amendments to SB 214, 2 pages
- I - Testimony on SB 64, Gary Lynch, 2 pages
- J - Testimony on SB 64, Gary Lynch, 1 page
- K - Testimony on SB 461, Allen Bennett, 10 pages
- L - Testimony on SB 461, Charlie Williamson, 11 pages
- M - Amendments to SB 461, Charlie Williamson, 1 page
- N - Testimony on SB 539, Judy McGinty, 5 pages
- O - Testimony on SB 539, Todd Elner, 2 pages
- P - Testimony on SB 539, William Wihr, 10 pages
- Q - Amendments to SB 334, 3 pages