

SENATE JUDICIARY
COMMITTEE

April 9, 1993 Hearing Room C
1:00 p.m. Tapes 97-99

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

MEMBERS EXCUSED: Sen. Jeannette Hamby

STAFF PRESENT: Bill Taylor, Committee Counsel
 Kate Wrightson, Committee Coordinator
 Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing and Work Session on SB 1091.
 Public Hearing on SB 732, SB 721, SB 725.
 Work Session on SB 288, SB 361, SB 210 and SB 743.

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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 97, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:08 p.m.

PUBLIC HEARING

SB 732:
 Establishes procedure for trial violations.

011 FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Submits and reviews written testimony in support of SB 732. (EXHIBIT A, B, C)
 - Submits proposed SB 732-1 amendments

112 ROSS SHEPARD, OCDLA: Testifies in support of SB 732.
 - We have a problem with Art. 1, Sec. 12 with the Oregon Constitution concerning Double Jeopardy.

150 AVERA: Continues testimony.

WORK SESSION

SB 1091:

Adds increases in average weekly wage to calculation of certain permanent total disability benefits.

188 MOTION: SEN. SHOEMAKER: Moves that SB 1091 be sent to the Labor Committee WITHOUT RECOMMENDATION.

VOTE: Hearing no objections the motion CARRIES.

WORK SESSION

SB 288:

Revises professional corporation law.

199 BILL TAYLOR, COUNSEL: Gives overview of SB 288-4 hand engrossed

amendments. (EXHIBIT D, E)
- Sec. 2, line 5, pg. 2
- Changed grandfather provision to 1992
- Pg. 2, lines 30-33
- Pg. 3, line 10

300 SEN. SHOEMAKER: Are we satisfied that that does dramatically convey what we intend? Omissions are to be only negligent or wrongful that lead to liability and not simply omissions? I'm not sure that the word "or" helps.

320 SEN. G. SMITH: I think its better with the "or".

335 Taylor: Continues with overview of amendments.

358 SEN. SHOEMAKER: It also limits the liability to the person receiving the service. Vicarious liability then is only to client not to anyone else? Why should it be so limited if direct liability isn't so limited?

379 TAYLOR: More overview of amendments.

TAPE 98, SIDE A

020 CHARLES WILLIAMSON: Testifies in support of SB 288.

026 SEN. SHOEMAKER: Should it just be limited to liability to the client? Its limited to liability to the person receiving the service would mean no joint or several liability by the shareholders of a corporation to some third party who may have a claim against the negligent shareholder.

034 WILLIAMSON: I think it was the intent for those people to be covered.

- It was intended that the professional claims would not be affected.

041 SEN. SHOEMAKER: It has a reach beyond that, doesn't it?

WILLIAMSON: It may.

065 TAYLOR: Continues with overview.

068 MOTION: SEN. SHOEMAKER: Moves to ADOPT the SB 288-4 amendments and that SB 288-4 be further amended on line 14, delete the words "a person receiving the service" and replace with "to persons who were intended to benefit from the service or services". And on pg. 2, line 16 strike all of it and substitute "persons who were intended to benefit from the service or services". And in SB 288 on pg. 5, line 44 the reference to "engineers licensed under the statute or the laws or another state" should be deleted and this change added to the SB 288-4 amendments.

VOTE: Hearing no objection the SB 288-4 amendments are ADOPTED.

183 SEN. G. SMITH: I'm wondering if there was any opposition to this bill and if it has gone away due to the amendments?

CHAIR SPRINGER: This is the culmination of three years work. I'm not aware of any organized opposition.

194 SEN. SHOEMAKER: The debate was whether there should be a release of joint and several liability entirely. That is vicarious liability.

210 MOTION: CHAIR SPRINGER: Moves SB 288 AS AMENDED to the Floor with a DO PASS recommendation.

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

217 The motion CARRIES. SEN. SHOEMAKER will CARRY the bill.

SB 361:

Authorizes court or hearings officer to order obligor to make periodic, lump sum or other payments toward support arrearage.

218 TAYLOR: Gives brief overview of SB 361

231 KARL STECKER, SUPPORT ENFORCEMENT DIVISION: Gives overview of
the
amendments. (EXHIBIT F)
- SB 361-1 amendments give circuit court authority to order a
premium payment towards the child support arrearage over and above
the amounts otherwise required by court order.
- SB 361-2 amendments at request of employment division.

252 TAYLOR: The engrossed version does not include so many changes as
made
in the SB 361-2 amendments. Do you believe line 7 clarifies?

STECKER: Yes, that would be adequate.

265 MOTION: CHAIR SPRINGER: Moves that SB 361-2 amendments be ADOPTED.

VOTE: Hearing no objection the amendments are ADOPTED.

280 MOTION: CHAIR SPRINGER: Moves that SB 361 AS AMENDED be sent to
the
Floor with a DO PASS recommendation.

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

286 The motion CARRIES. SEN. WEBBER will CARRY the bill.

SB 210:

Provides that decrees, orders and settlement agreements in divorce,
annulment and separation proceedings may provide that retirement
benefits from any public employer retirement system, including Public
Employees' Retirement System, be paid to spouse or

292 TAYLOR: It should be referred to ways and means and doesn't have a
prior
referral, but should because of its impact on PERS.

309 CLARK WILLIAMS, OREGON STATE BAR: Presents SB 210-1 amendments and
SB
210-2 amendments.

- The -1 amendments are basically a rewrite of the whole bill.
- The -2 amendments proposed by Mr. Selby's office.

327 CHAIR SPRINGER: Do we have some clear amendments?

- The SB 210-1 amendments by the Oregon State Bar (EXHIBIT G)
- SB 210-1A amendments with April 6 fax date, which is by OSB and

further amended. (EXHIBIT I)

- SB 210-2 Three pages with strikeouts, City of Portland
- SB 210-2A The final and current version of the City of Portland

(EXHIBIT H)

TAPE 97, SIDE B

011 CLARK WILLIAMS, OREGON STATE BAR: Explains SB 210-1 amendments.

028 BOB ANDREWS, PERS: Gives overview of SB 210-1 and SB 210-1A amendments.

038 BILL SELBY, PORTLAND CITY ATTORNEY OFFICE: Overview of SB 210 -2 amendments.

050 SEN. RASMUSSEN: We're going to require that X-spouse (wife) cannot receive any retirement benefits until the X-spouse (husB and)retires?

And the reason is for expense associated with PERS?

059 ANDREWS: It is fundamentally the problem we have in modifying our program and the administration of the pension system that we manage to accommodate setting up separate types of accounts for alternate payee.

066 SEN. RASMUSSEN: Do we have anyone else here who is going to tell us about whether that's acceptable to the Bar?

WILLIAMS: We still believe its important to allow an alternate payee to begin receiving benefits at members retirement age. We acquiesced to the PERS on this issue because of the concern about financial impact.

074 SEN. RASMUSSEN: I think this is a lousy idea. It keeps two people connected who do not wish to continue to be connected. I continues to

allow a person, potentially the husB and, in a position of some influence in a marriage.

WILLIAMS: That's correct.

089 ANDREWS: Whether we decouple the bill in itself, the system is neither opposed or in support of. We are fundamentally neutral. Just concerned with the cost of administering program.

100 CHAIR SPRINGER: Can you give us ballpark figure?

ANDREWS: We estimated \$1,197,500. With ongoing cost in a successive biennium 1995-97 of \$377,618.

111 SEN. SHOEMAKER: Are those costs due exclusively to this one thing that we're debating today or is it all changes?

ANDREWS: It is the changes that would be needed to accommodate the decoupling and also the retroactive provisions.

121 SEN. SHOEMAKER: How much of that total cost would be due to the decoupling aspect that would allow each spouse to check his or her own time for benefits to begin?

ANDREWS: I do not have that specific amount available at the moment, but it is a substantial amount in the area of modifying our software in the decoupling area.

130 SEN. SHOEMAKER: Simple decoupling means that you split pension benefits between the two spouses? Maybe I don't understand the bill.

136 ANDREWS: We can, today, pay a benefit, but not before somebody retires.

138 WILLIAMS: The bill does three things: 1) to allow one's benefits to commence to the member 2) allowing alternate to pay to commence before member retires and 3) retroactivity.

147 SEN. SHOEMAKER: So, the costs that are in your letter of FEB. 12 would be for all three changes to be put into your software and used there after?

ANDREWS: Yes.

150 SEN. SHOEMAKER: Simple decoupling is simply allowing each spouse to select different benefits. Complex decoupling describes that you give them each right to choose when those benefits shall begin. How much is total cost attributable to administering the complex decoupling?

ANDREWS: Essentially the SB 210-1 amendments do that. Around \$194,000 and start up cost are \$146,000 and an ongoing cost of \$63,000 for simple decoupling.

168 SEN. SHOEMAKER: Most of the cost enters that complex piece?

ANDREWS: Yes.

171 SEN. G. SMITH: Starting with line 11, pg 1...Is family law in Oregon such now that PERS and other are required to make these kinds of determinations when there is not a contract of marriage? "Of separation from the marriage" what does that refer to? Is that common law partners?

184 SEN. RASMUSSEN: I believe that refers to the provision of the statute, which allows for a legal separation to the married party.

186 SEN. G. SMITH: You're not participating in these now where you are giving out benefits under this to someone without contract of marriage?

ANDREWS: No.

193 CHAIR SPRINGER: It seems like we had constitutional problem with the bill. I suggest that we carry this over until Tuesday.

204 SEN. SHOEMAKER: I'd like to have some careful calculation of the cost of trimming the complex decoupling provision and also the retroactive provision. And how significant are those costs to the PERS costs of the whole.

SB 743:
Requires forfeiture proceeds first deposited to Special Crime and Forfeiture Account to be used for peer drug education programs administered by Volunteers in Service to Oregon.

237 TAYLOR: Sen. Hamby suggests that we move it to the Ways and Means Committee.

265 CHAIR SPRINGER: Let's carry it over.

PUBLIC HEARING

SB 721:
Requires court to impose bench probation when sentencing defendant to probation unless certain findings are made.

273 MICHEAL GREENLICK, OCDLA: Submits and reviews written testimony in support of SB 721. (EXHIBITS J, K)

003 GREENLICK: Continues testimony

023 CHAIR SPRINGER: We got a letter from the State Court Administrators office. Is there anyone to testify?

024 DAVID FACTOR, OREGON CRIMINAL JUSTICE COUNCIL: Testifies in support of SB 721.
- Refers to Sec. 2 of bill
- Council's position that they'd be opposed to changing the guidelines reflected by this bill.
- The change brought about by this bill would allow those movements without any real reason.

043 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: Testifies in opposition to SB 721.

071 SEN. SHOEMAKER: Does the District Attorney's Association object to the third change?

AVERA: I assume that change was being requested in order implement the change that starts at bottom of page 3.

083 SEN. SHOEMAKER: How about the request by the defendant?

AVERA: In effect that is already in current law.

089 ANNE CHRISTEN, REPRESENTING BILL LINDEN: Submits and reviews written testimony in opposition. (EXHIBIT L)
- One of the concerns is how this bill would interrelate with SB 138 .

114 CHRISTEN: Continues testimony.
- Sec. 1 standards are general. Also, have concerns over the number of appeals by individuals who are placed on formal probation.
- Concerned about the provision that any defendant may request a PSI, which will cause delays in sentencing.

SB 725:
Requires appointment of counsel in juvenile dependency cases when child is victim of abuse by parent or guardian.

138 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews written testimony in opposition to SB 725. (EXHIBIT M)

384 ANNE CHRISTEN, STATE COURT ADMINISTRATORS OFFICE: Testifies in

opposition to SB 725.

- It saves money in Lane County and Multnomah County-in
approximately

35% of appointments made.

- Multnomah, Lane and Jackson counties would realize savings.
- Other counties would realize additional indigent defense costs.
- The overall savings would be around \$100,000 per biennium.

TAPE 99, SIDE A

003 CHRISTEN: Continues testimony.

034 TAYLOR: Explains history of bill.

059 SEN. WEBBER: Can someone describe the kind of case you're talking
about
that would not have an attorney?

CHRISTEN: For example, a 1 year old baby who has been taken into the
protection and care and placed in a Foster Home. The current law, upon
request, can appoint counsel to represent that child. The court could
determine that the child did not require an attorney to assist in
proceedings and could decide to appoint only a CASA.

074 SEN. WEBBER: I'm not understanding why you would and why you
wouldn't.
What would the attorney be arguing and the one not there?

081 TRAVIS: If CSD were not pursuing a plan to reunite the child then
the
child's attorney would be there to go with an intuit.

092 CHAIR SPRINGER: Adjourns meeting at 3:05 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Administrator

EXHIBIT LOG

- A - Proposed amendments to SB 732-1 Fred Avera-1 pg.
- B - Testimony on SB 732-Fred Avera-4 pgs.
- C - Testimony on SB 732-Bill Linden-2 pgs. *
- D - Hand-engrossed amendments to SB 288-staff-12 pgs.
- E - Proposed amendments to SB 288-4 staff-4 pgs.

- F - Hand engrossed amendments to SB 361-2 staff-2 pgs.
- G - Proposed amendments to SB 210-1 Oregon State Bar-8 pgs.
- H - Proposed amendments to SB 210-2 City of Portland-3 pgs.
- I - Proposed amendments to SB 210-2A Oregon State Bar-3 pgs.
- J - Testimony on SB 721-Micheal Greenlick-1 pg.
- K - Testimony on SB 721-Micheal Greenlick-3 pgs.
- L - Testimony on SB 721-Bill Linden-3 pgs. *
- M - Testimony on SB 725-Timothy Travis-8 pgs.

* Submitted written testimony only.