

SENATE COMMITTEE ON
JUDICIARY

May 10, 1993 Hearing Room C
1:00 p.m. Tapes 150 - 151

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

STAFF PRESENT: Karen Quigley, Legislative Counsel
 Bill Taylor, Legislative Counsel
 Kate Wrightson, Committee Administrator
 Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Work Session on SB 499, SB 500, SB 1064, SB 1019, SB
94,
SB 916, SB 640.
Public Hearing and Possible Work Session on SJR 39,
SB
895 , SB 462.

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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 150, SIDE A

003 CHAIR SPRINGER: Opens hearing at 1:15 p.m.

WORK SESSION

SB 916:

Requires petition for adoption be served to grandparents and persons
who
have established custody, visitation or other rights.

023 TAYLOR: Gives overview of SB 916-3 and machine engrossed
amendments.
(EXHIBIT A)

034 CHAIR SPRINGER: Have we addressed the issue of a person's
visitation
rights being cut off in the past due to an interpretation of the law?

The court could decide the issue.

048 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 916
machine-engrossed
5-10-93 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

050 MOTION: CHAIR SPRINGER: Moves that SB 916 as amended be sent to
the
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Webber is
EXCUSED.

53 The motion is ADOPTED.

SB 1064: Exempts holder of concealed handgun license from background
checks
when purchasing
handguns.

TAYLOR: Gives overview of SB 1064-1 and machine-engrossed amendments.

(EXHIBIT C, D)

067 SEN. RASMUSSEN: There was some question from some organization.
I'm
wondering if they could update us?

TAYLOR: John Nichols says his organization has yet to take a position
on
bill and that it would be some time.

074 CHAIR SPRINGER: Senator Yih said to go ahead with the bill and
Nichols
will have an opportunity to address issues on the House side.

082 SEN. SHOEMAKER: Are we satisfied that there are no statutes
of
limitations that are longer than three years?

094 LEE ERICKSON, OREGON POLICE DEPARTMENT: The dealer is required to keep
a
copy of the form so long as he's federally licensed. The city must
keep
a copy for 3 years, but a backup copy is continually kept at the
dealer.

105 SEN. SHOEMAKER: If the dealer goes out of business would that source
be
lost?

ERICKSON: The dealer is required to turn records in to local law
enforcement or BATF.

113 SEN. SHOEMAKER: Do they keep records for substantial time?

ERICKSON: I don't know.

SEN. SHOEMAKER: So, you're not sure that the dealer's records would be available when needed. Are we satisfied with the city's limit to keep records for three years?

123 NICHOLS: A dealer is required by federal law to keep all records while in business and then return records to the Bureau of Alcohol, Tobacco and Firearms. Then they are theoretically available "forever", in accordance with the Federal Code.

SEN. SHOEMAKER: We could leave it at five years and let the House deal with that.

139 MOTION: CHAIR SPRINGER: Moves to ADOPT the retention of the language "retain 5 years" at the bottom of pg. 1, line 40 of machine-engrossed amendments.

VOTE: Hearing no objection the amendments are ADOPTED. Sen. Webber is EXCUSED.

145 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 1064 amendments as amended.

VOTE: Hearing no objection the amendments are ADOPTED.

148 MOTION: CHAIR SPRINGER: Moves that SB 1064 as amended be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Webber is EXCUSED.

The motion is ADOPTED.

PUBLIC HEARING & POSSIBLE WORK SESSION

SJR39: Proposes constitutional amendment to create right to privacy.

165 SEN. HAMBY: Gives overview of copies of the Constitution of Florida.
(EXHIBIT E)

193 CHAIR SPRINGER: Is this similar to the Alaska Constitution?

SEN. HAMBY: I don't know. I only checked with Florida.

204 SEN. SHOEMAKER: Do you know when this was adopted by the Florida?

SEN. HAMBY: I think it was 1986.

209 CHAIR SPRINGER: Let's hold this until the end of the hearing.

WORK SESSION

SB 94: Decreases blood alcohol concentration requirement for adult drivers to .04.

220 CHAIR SPRINGER: Gives overview of SB 94-1 through SB 94-3 amendments. (EXHIBIT G, H, I)

TAYLOR: The SB 94-1 are the Class C felony for DUUI. "Twice" should be changed to "Thrice".

256 SEN. HAMBY: Do we have an estimate of just sheer numbers?

TAYLOR: There are about 855 third time convictions for DUUI costing about \$45,000 per year.

268 CHAIR SPRINGER: Will this have to go to Ways & Means?
- I sense it'll be more than \$50/case.

286 SEN. RASMUSSEN: This ought to go to Ways & Means.

290 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 94-1 amendments with the additional language on pg. 2, line 3 changing "twice" to "thrice".
VOTE: Hearing only one objection the amendments are ADOPTED. Sen. Rasmussen OBJECTS.

327 SEN. HAMBY: What about the seven day time period on pg. 1, line 11 of the -2 amendments?

329 MOTION: CHAIR SPRINGER: Moves to ADOPT retention of 30 days on pg. 1, line 11 of SB 94-2 amendments.

VOTE: Hearing no objection the amendment is ADOPTED.

334 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 94-2 amendments as amended.

VOTE: Hearing no objection the amendments are ADOPTED.

338 MOTION: Moves that SB 94 as amended be sent to the Ways & Means Committee with a DO PASS recommendation.

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

The motion is ADOPTED.

346 SEN. SHOEMAKER: Only 6% of arrests blew less than .08 after the sobriety

test. So, 94% of arrests are people blowing more than .08, which indicates that reducing the B.A.C. level would higher the number of people being convicted.

SB 1019: Repeals sunset provision of ignition interlock requirements.

374 CHAIR SPRINGER: At the last meeting we adopted two sets of amendments.

393 MOTION: CHAIR SPRINGER: Moves the ADOPTION of rescinding the SB
101 9-A6
amendments.

VOTE: Hearing no objection the amendment is ADOPTED.

413 MOTION: CHAIR SPRINGER: Moves SB 1019 A engrossed as amended to
the
Floor with a DO PASS recommendation.

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

The motion is ADOPTED. CHAIR SPRINGER will CARRY.

TAPE 151, SIDE A

SB 400 & 500

017 QUIGLEY: Gives brief overview of SB 499 & SB 500 -2 amendments.
(EXHIBIT
L, M, P, R)

090 JOHN MANGAN, STANDARD INSURANCE: Testifies on SB 500-2 amendments.
- Sec. 220 of SB 500 has been changed to original form.

110 FRANK BRAUNER, OREGON BANKERS' ASSOCIATION: Submits proposed
amendments
to SB 500. (EXHIBIT S)
- Financial records shouldn't be made public.
- OBA amendments restore the exemption that are still appropriate
and
the banking board's roll is repealed.

163 QUIGLEY: Refers to memo from Secretary of the State's office.
(EXHIBIT
Q)

176 SEN. RASMUSSEN: Do these two bills alter the substantive law
with
respect to your industry and if so, how?

BRAUNER: They do alter state law in the collection of Board minutes.
They aren't covered by the Federal agencies.

228 BRUCE BISHOP, KAISER PERMANENTE: Submits and reviews written
testimony
in opposition to SB 499 and SB 500. (EXHIBIT T)

375 PHIL KEISLING, SECRETARY OF STATE: Submits and reviews written
testimony
in support of SB 499-3 and SB 500-3 amendments. (EXHIBIT O)

TAPE 150, SIDE B

026 SEN. SHOEMAKER: On page 3, line 14 if a person requests
confidentiality
when filing a complaint the public body shall withhold the identity.

What is the nature of the hearing in which the person seeking
disclosure
would be put to this proof? Would that be a public hearing?

KEISLING: Its not a formal hearing.

045 SEN. SHOEMAKER: Can determination, of whether there will be
disclosure,
in itself lead to or be that disclosure?

KEISLING: The question has never come up because that isn't a public
hearing.

056 SEN. SHOEMAKER: So, the person seeking disclosure in a private
hearing
makes his case to the Custodian of the Record and if that case isn't
successful is that then an appealable decision?

KEISLING: Yes. Its appealable to the Attorney General and then to the
courts at the District Attorney level.

062 SEN. SHOEMAKER: Would those hearings be public?

KEISLING: The hearing itself may be.

074 NINA JOHNSON, SECRETARY OF STATE'S OFFICE: When it goes to court
those
records are under seal. The legal question is whether or not the law
allows disclosure.

SEN. SHOEMAKER: If you remove specific exemption that's putting
everything into the arena of this balancing test?

of
KEISLING: Each time someone wants to see a record there is some kind
hearing.

113 SEN. SHOEMAKER: But, I'm being advised that the entire hearing
process
maintains the confidentiality of the material that is sought to be
disclosed.

- On pg. 3A if a public body chooses to disclose may the person
resisting disclosure have that position reviewed and no disclosure

made until its done?

KEISLING: The only way that can happen is if you require every single time a Custodian of Public Records decided to disclose a public record that there be some kind of notice sent to the affected people.

160 SEN. SHOEMAKER: We now have a balancing test, instead of specific exemptions. When one wants disclosure of an exempt record and shows a persuasive argument and there is disclosure and the person of the record discovers this, is this what happens under this law?

174 BETH BRIDGES, CITY OF EUGENE: The balancing test requires that the Custodian weigh the public interest in disclosure against the public interest in non-disclosure.

SEN. SHOEMAKER: If the public agency is persuaded by one advocate, disclosure occurs, correct?

BRIDGES: No!

184 SEN. SHOEMAKER: What if he determines in favor of?

BRIDGES: Assuming they do determine that, then disclosure occurs.

KEISLING: Is there a provision in Oregon law that requires a Custodian to bring in the other person affected? The answer is NO. This law doesn't change that.

212 SEN. SHOEMAKER: The great bulk is that nothing has changed, but those that have had problems have gone to through the Legislative process to get exemptions so that they won't have to be exposed. The balancing test turns over all those exemptions.

KEISLING: There's also some backup systems that we haven't discussed. For example, medical records are exempt unless by clear and convincing evidence.

254 PHIL LEMON, EUGENE ATTORNEY'S OFFICE: There is no formal hearing process. Agencies seek council if they're gong to make a decision. There is a formal opportunity on the D.A. level to have the decision made.

317 SEN. G. SMITH: Can you explain the difficulty doing "in
camera"
hearings? I believe the exemptions are products of good deliberation
by
Legislators that haven't been bought off.

320 KEISLING: When do you decide when someone shouldn't be notified of
a
request and not given the chance to talk? There are hundreds of
thousands of records and information could be embarrassing to the
subject.

LEMON: Existing law doesn't have any notice requirements built into
it.

402 SEN. SHOEMAKER: Should we think about moderating these exemptions
so
that there would be a window to release those records which aren't
totally exempt?

TAPE 151, SIDE B

003 KEISLING: I think this is important to the committee. Many of
the
exemptions will be presumed to be an unreasonable invasion of privacy
and shall be withheld.

013 SEN. SHOEMAKER: In those situations there would be opportunity for
both
sides to be heard?

KEISLING: That is adding yet another level of comfort.

042 SEN. SHOEMAKER: You mentioned that medical records are exempt.
Are
those records still subject to a determination by a person or agency
without the benefit of a hearing from both sides?

KEISLING: Under the -2 and -3 amendments medical records are kept
under
the clear and convincing standard, there's an additional clause which
says they can't be subject to disclosure by the public body, except
for
what is listed in ORS.

075 SEN. WEBBER: I'm not sure this will do away with requests
for
disclosure. What are your feelings in terms of requests to the
Attorney General for legal advice to state agencies and local
government
people about how to deal with a balancing test?

KEISLING: A lot of agencies find that they don't have to ask for formal advice.

110 SEN. WEBBER: It could cause an explosion in requests for information.

LEMON: I can't see that happening. Most agencies have people that deal with these requests.

127 SEN. WEBBER: Do you see any increased cost in terms of local government to get clarification?

BRIDGES: The impact will be neutral.

144 SEN. WEBBER: How do you deal with concerns about inmates? How would you deal with concerns about state prisoners learning of a parole board member's personnel file? This bill doesn't mention safety as a criteria.

BRIDGES: The Public Records Advisory Council is concerned about the safety of employees. The Personal Privacy Exemption includes home addresses, telephone numbers and personnel files.

179 LEMON: The non-disclosure of these records has the highest standards in this bill and they "shall exempt unless clear and convincing evidence is presented.

197 SEN. WEBBER: One could argue that public safety wouldn't fall into that balance.

LEMON: Under current law its hard to meet the standard to get your address and phone number protected. Jordan vs. DMV One usually has to have a history of harassment.

SEN. WEBBER: I'd rather have it clearly stated under the Public Safety Exemption.

no - Is there any way this bill can be read so the DMV could say that one has access to these records?

237 LEMON: No. This bill gives a common means to not disclose in a way that's common to records.

SEN. WEBBER: Why was the decision made not to say this information won't be released?

LEMON: That is what we've done over and over in public law in the past.
If we do it for one thing than how many other things will we do it for?

318 SEN. WEBBER: So, you envision state agencies getting into rule making where they do set up some exemptions? How do you see the rule making pieces filling in the blanks?

LEMON: Most Custodians deal with those questions without a rule making process.

339 SEN. WEBBER: Because they have an absolute?

LEMON: No. I don't know of any agency that has rules that implement the balancing test.

- We envision this bill as taking some things that are off limits and moving them under the same place where other records are being judged.

SEN. G. SMITH: I wonder this will cause profession to infactuate internal disciplines and corrections, which could create bad government.
All for the sake of trying to have open government.

384 KEISLING: That question speaks to SB 499 (investigations of licensed professions). We have addressed the main concern by saying that complainants who request non-disclosure of names would be treated in the same way as medical records are treated.

453 CHAIR SPRINGER: I don't think we have four votes to move the bill today.

We'll bring this back Wednesday night.
- Sen. Rasmussen moves that we reconsider SB 916.

488 CHAIR SPRINGER adjourns hearing at 3:10 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal

Bill Taylor
Karen Quigley

EXHIBIT LOG

- A - Machine-engrossed and SB 916-3 amendments-staff-2 pgs.
- B - Testimony on SB 916-Margaret Frye-1 pg. *
- C - Proposed SB 1064-1 amendments-staff-1 pg.
- D - Machine-engrossed SB 1064 amendments-staff-2 pgs.
- E - Testimony on SJR39-Jeanette Hamby-4 pgs.
- F - Hand-engrossed SB 895 amendments-staff-1 pg. *
- G - Proposed SB 94-1 amendments-staff-1 pg.
- H - Proposed SB 94-2 amendments-staff-1 pg.
- I - Proposed SB 94-3 amendments-staff-10 pgs.
- L - Hand-engrossed SB 499-2 amendments-Phil Kiesling-17 pgs.
- M - Proposed SB 499-2 amendments-staff-2 pgs.
- N - Testimony on SB 499 & SB 500-Cheryl Hall-3 pgs.
- O - Hand-engrossed SB 499-3 & SB 500-3 amendments-Keisling-4 pgs.
- P - Hand-engrossed SB 500-2 amendments-Phil Keisling-14 pgs.
- Q - Testimony on SB 499 & SB 500-Phil Keisling-1 pg.
- R - Proposed SB 500-2 amendments-Phil Keisling-8 pgs.
- S - Testimony on SB 500-Frank Brawner-3 pgs.
- T - Testimony on SB 500-Bruce Bishop-6 pgs.

* Submitted written testimony only.