

SENATE COMMITTEE ON  
JUDICIARY

May 18, 1993           Hearing Room B  
1:00 p.m.   Tapes 163-164

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

MEMBERS EXCUSED:   Sen. Shoemaker

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

ISSUES DISCUSSED: Public Hearing & Possible Work Session on SB 912, SB  
101 8,  
                    SB 322, SB 1092, SB 1108, SB 1110  
                    Work Session on SB 1088, SB 724, SB 811, SB 769.

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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 163, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:17 pm. Comments on  
committee  
schedule.

SB 912: Creates crimes of unlawful disposal, storage or treatment  
of  
hazardous waste, unlawful transport of hazardous waste, unlawful  
air  
pollution, unlawful water pollution, environmental endangerment,  
refusing to supply information and supplying false

WITNESSES:

JEROME LIDZ, DEPARTMENT OF JUSTICE  
ROY HYDER, OREGON STATE POLICE  
DEAN RENFROW, OREGON STATE POLICE  
JIM WHITTY, ASSOCIATED OREGON INDUSTRIES  
HOLLY DUNCAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

DEAN RENFROW: Submits written testimony only in support of the bill

(EXHIBIT  
D).

ROY HYDER: Submits written testimony only in support of the bill (EXHIBIT  
C).

014 JIM WHITTY: Testifies in support of the bill.

028 JEROME LIDZ: Submits and reviews written testimony in support of  
the  
bill (EXHIBIT A & B).

179 CHAIR SPRINGER: SB 912-A4 amendments? What are the provisions?  
Do  
they vary from the bill?  
>Where do these come from?

185 TAYLOR: Supposed to be technical amendments from Legislative  
Counsel.

188 HOLLY DUNCAN: Reviews amendments which alter different sections of  
the  
bill and make certain word changes.

198 CHAIR SPRINGER: Notes need to check amendments with the bill.  
>Carries bill over for further review.

SB 1018: Authorizes court to require person convicted of driving while  
under  
the influence of intoxicants to attend victim impact treatment  
session.

WITNESSES:

JEANNE PRICE, MARION COUNTY VICTIM PANEL  
LAUREEN OSKOCHIL, MULTNOMAH COUNTY VICTIMS PANEL  
BARBARA STOEFFLER, MARION COUNTY VICTIMS PANEL

246 BARBARA STOEFFLER: Submits and reviews written testimony in support  
of  
the bill (EXHIBIT F).

281 MIKE LUTEN: Submits petitions and testifies in support of the  
bill  
(EXHIBIT H).

347 LAUREEN OSKOCHIL: Submits and reviews written testimony in support  
of  
the bill (EXHIBIT G).

410 JEANNE PRICE: Submits and reviews written testimony in support of  
the  
bill (EXHIBIT E).

TAPE 164, SIDE A

018 SEN. HAMBY: Notes increase is very small.

023 STOEFFLER: Describes victim panels further and notes they are  
run

primarily by volunteers.

034 MOTION: SEN. HAMBY: moves SB 1018 be sent to the floor with a DO  
PASS  
recommendation.  
VOTE: In a roll call vote all members present vote AYE. SEN. WEBBER &  
SEN. WEBBER are excused.

036 CHAIR SPRINGER: The motion CARRIES.  
SEN. HAMBY will lead discussion on the floor.

SB 724: Allows use of telephone testimony by party or witness in  
civil  
proceedings upon motion and showing of good cause.

040 CHAIR SPRINGER: Notes additional amendments and lack of  
conflict  
regarding changes to the bill.

046 QUIGLEY: Reviews SB 724-1 through SB 724-4 amendments (EXHIBIT I, J,  
K  
& L).  
>Reviews memorandum from Mark Kramer (EXHIBIT M).

080 SEN. HAMBY: Who offered -3 amendments?  
QUIGLEY: In response to Practice and Procedure Committee of OSB . They  
were concerned about overuse of telephone testimony.

087 CHARLIE WILLIAMSON: Cites letter from Suzanne Noland (EXHIBIT N).  
>Concerned about balance of believability of testimony. Important for  
court to see witness to aid in determination of truth.  
>Telephone testimony should be used as last resort.  
>Not opposed to bill with -3 and -4 amendments.

108 CHAIR SPRINGER: Inquires if language in the -1 amendments  
were  
acceptable to the committee, including the conceptual amendments  
regarding additional means of communication.

113 SEN. HAMBY: Prefers conceptual change from counsel.

114 QUIGLEY: Further reviews amendments in -1 to subsection 7.

121 MOTION: CHAIR SPRINGER: moves to ADOPT SB 724-1 amendments,  
dated  
5/5/93.  
VOTE: Hearing no objection, the amendments are ADOPTED.

126 MOTION: CHAIR SPRINGER: moves to ADOPT SB 724-2 amendments,  
dated  
5/5/93.  
VOTE: Hearing no objection, the amendments are ADOPTED.

129 MOTION: CHAIR SPRINGER: moves to ADOPT SB 724-3 and SB  
724 -4

amendments, dated 5/5/93 & 5/14/93, respectively.

VOTE: Hearing no objection, the amendments are ADOPTED.

130 MOTION: CHAIR SPRINGER: moves SB 724, 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 &

SEN. SHOEMAKER are excused.

137 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

SB 811: Prohibits employer from discriminating against employee for  
engaging

or participating in political activities or becoming candidate for  
public office.

142 QUIGLEY: Reviews bill and amendments.

150 DAVID FIDANQUE, ACLU: Reviews SB 811-1 amendments with  
hand-engrossed  
version (EXHIBIT O & P).

239 SEN. SMITH: When exemptions are changed from 5 to 1 for number  
of  
employees in a business, how does that effect small family businesses  
who might legitimately seek to discriminate?

247 FIDANQUE: Couldn't see any basis for distinguishing between this  
type  
of discrimination and other protected classes.  
>Regarding discrimination based on handicap there are financial  
considerations related to ADA requirements.  
>5 or more is based on California standard.

266 CHAIR SPRINGER: What is the pleasure of committee, 1 or 5?

271 SEN. HAMBY: Is Sen. Smith satisfied?

SEN. SMITH: Not sure.

273 CHAIR SPRINGER: Requests further review by counsel.

QUIGLEY: On page 2, Fidanque amendments add sentence after "written  
notification to the Secretary of State.", stating "If the Secretary of  
State believes the allegations of the complaint would also be subject  
to  
criminal penalty under the provisions of ORS 260,"; drop two lines and  
insert, "the Secretary of State shall refer the matter to the Attorney

General in a manner provided by ORS 260.345 and the Commissioner shall suspend all investigations and proceedings under ORS 659.050 until completion of any investigation by the Attorney General."

293 CHAIR SPRINGER: Holds bill for further consideration.

SB 769: Authorizes selected jurisdictions in state to operate photo radar demonstration project.

297 QUIGLEY: Reviews bill and conceptual amendments by Sen. Webber.

312 SUSAN SCHNEIDER, CITY OF PORTLAND: Testifies in support of the bill.  
>Submits and reviews amendments (EXHIBIT Q).

339 LINDA MANG, CITY ATTORNEY'S OFFICE: Testifies in support of the bill.  
>Comments on presumption that registered owner is the operator of vehicle at the time of the citation. Reviews declaration of rebuttable presumption .

365 CHAIR SPRINGER: Questions Sen. Webber's intent with her amendments?  
Did she want to add Salem or all of Marion and Polk counties?

371 SCHNEIDER: Believes her intent was to include Marion and Polk counties.  
County Sheriffs expressed and interest.  
>No objections to her amendments.

378 CHAIR SPRINGER: Any other amendments?

QUIGLEY: No.

382 SEN. RASMUSSEN: Please review process particularly whether there is a photo of the driver in the vehicle that is cited?

389 KATE DEAN, TRANSPORTATION OFFICE: There will be a photo including the person, car and license plate.

398 SEN. RASMUSSEN: Why do we need a rebuttable presumption?

MANG: Current requirement of the statute is that police be able to identify the person who committed violation. Owners are required to keep records with Department of Motor vehicle.  
>Rebuttable presumption states it is reasonable to assume that owner is the current operator. That has been upheld by Oregon Court of Appeals.

430 SEN. RASMUSSEN: Why do we need presumption if you have photo?

MANG: Citation is sent to registered owner, who may not be the driver.

>Picture has not been reviewed against the identity of the owner.

450 SEN. RASMUSSEN: If person doesn't dispute the citation, then the presumption creates conviction and the burden is shifted.

456 MANG: It doesn't shift the burden, it is an evidence issue that statute states registration is sufficient to convict unless there is evidence otherwise.

464 SEN. RASMUSSEN: That essentially shifts burden of proof by creating that presumption.

MANG: Doesn't think it technically shifts the burden of proof.

470 SEN. RASMUSSEN: If person doesn't show then they are convicted.

MANG: Correct.

483 SEN. RASMUSSEN: Except in this bill, summons is mailed.  
>Clarifies number of concerns from Sen. Shoemaker including mailing the summons, the rebuttable presumption and notice to drivers. Have those been addressed?

TAPE 163, SIDE B

035 DEAN: Yes.  
>Regarding notice to drivers, intend to utilize reader board and signs to inform drivers they have been recorded and photographed.  
>All districts will post signs indicating drivers will be entering photo/radar zones. In addition there will be a public education campaign.

056 CHAIR SPRINGER: Sen. Webber has conceptual amendments to the bill?

SEN. WEBBER: Yes. Clarifies conceptual amendment to add Marion and Polk County.

065 MOTION: CHAIR SPRINGER: moves to ADOPT Sen. Webber amendments to section 1, subsection 1; listing Marion and Polk Counties.  
VOTE: Hearing no objection, the amendments are ADOPTED.

067 MOTION: CHAIR SPRINGER: moves to ADOPT City of Portland amendments.  
VOTE: Hearing no objection, the amendments are ADOPTED.

072 SEN. RASMUSSEN: Did we add "registered" to mail in line 6, page 2?

CHAIR SPRINGER: No. Using certified rather than registered when mailing notices and summons.

079 SEN. RASMUSSEN: Could proponents comment on that language?

MANG: Provides information about whether the document has been received. Mailing by regular mail in sufficient in traffic cases.

090 SEN RASMUSSEN: No desire to hold things up, but unsure how he will vote later.

093 MOTION: CHAIR SPRINGER: moves SB 769, 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 &

SEN. SHOEMAKER are excused.

097 CHAIR SPRINGER: The motion CARRIES.

SEN. SHOEMAKER will lead discussion on the floor.

SB 1092: Provides that fingerprints and photographs of child found within

jurisdiction of juvenile court for having committed act which if

committed by adult would be felony may be kept in central state

depository with those of adults.

100 QUIGLEY: Reviews bill, Travis amendments and Bloom amendments (EXHIBIT

R & S).

131 TIM TRAVIS, JUVENILE RIGHTS PROJECT: Reviews amendments and testifies

in support of the bill.

152 JACQUIE BLOOM, CITY OF PORTLAND: No position on the Travis amendments.

>Reviews her amendments. 5 year expungement time period is based on current statute.

173 TRAVIS: Amendment changes to three years because it is the adult time

period for expungement.

180 CHAIR SPRINGER: Are there other amendments? SB 1092-2?

TRAVIS: Yes. List of offenses to which the bill applies.

192 CHAIR SPRINGER: Did we have -1 amendments?

QUIGLEY: -1 did not include intimidation.

197 BLOOM: Regarding the list, the original bill covered all felony acts.  
The bill has been negotiated and now includes the really serious felonies.

204 CHAIR SPRINGER: So the -2 amendments accomplish your goal?

BLOOM: Yes. In addition, the bill now focuses on only the state system, deleting the federal depository.

210 SEN. HAMBY: Clarifies that provision is on line 5.

213 MOTION: CHAIR SPRINGER: moves to ADOPT amendments to line 5 deleting reference to federal depository.  
VOTE:Hearing no objection, the amendments are ADOPTED.

215 MOTION: CHAIR SPRINGER: moves to ADOPT SB 1092-2 amendments.  
VOTE: Hearing no objection, the amendments are ADOPTED.

219 CHAIR SPRINGER: Concerning the Travis amendments, do we go with those or Bloom amendments?

QUIGLEY: Need to consider with Travis amendments the change from 5 years to 3 years.

224 CHAIR SPRINGER: Comfortable with 3 if other members are. Do we need to expand the definition of records? Where would that occur?

229 QUIGLEY: In ORS 419.800, subsection 4, definition of records.  
>Any opposition to that provision?

TRAVIS: no.

236 MOTION: CHAIR SPRINGER: moves to ADOPT definition of records conceptual amendments.  
VOTE: Hearing no objection, the amendments are ADOPTED.

240 SEN. WEBBER: Would like to discuss the issue somewhat.  
Regarding automatic expungement, there is a public interest and court can refuse to expunge if it finds it is in the public interest?

247 TRAVIS: Only if I apply early under 815. Reviews expungement conditions.

260 SEN. WEBBER: So if I have been convicted of murder and rape and 5 years passes then there is an automatic expungement and the court cannot keep my file active?



TRAVIS: Automatically expunged if the proceeding was started. >Reviews expungement language regarding the start of the process.

274 SEN. WEBBER: So we would be eliminating the requirement for hearing?

TRAVIS: No. Because the rest of the scheme hasn't been amended.

281 SEN. WEBBER: Automating only the application to the court.

TRAVIS: Yes. Current practice in many counties.

288 MOTION: CHAIR SPRINGER: moves to ADOPT Travis amendments.

290 SEN. SMITH: Prefers to leave time limit at 5 years.

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

296 QUIGLEY: Committee needs to review additional amendments to SB  
109 2-2 amendments, the Bloom amendments.

313 MANG: Notes that given the amendments already adopted, subsection 8  
of Bloom amendments would not be necessary.

TRAVIS: Clarifies that expungement list will address the issue.

328 MOTION: CHAIR SPRINGER: moves to ADOPT Bloom amendments.

VOTE: Hearing no objection, the amendments are ADOPTED.

337 MOTION: SEN. WEBBER: moves SB 1092, AS AMENDED, be sent to the  
floor with a DO PASS recommendation.

340 SEN. RASMUSSEN: Inquires of Travis' opinion now that the committee  
has adopted the amendments?

TRAVIS: It is a reasonable bill.

357 SEN. HAMBY: Regarding list of crimes, are there any you would drop?

367 TRAVIS: No, there are people charged with the crimes who should  
be included in registry and some who shouldn't. It depends on the case.  
>Good that this is permissive, not mandatory.

384 MOTION: SEN. WEBBER: moves to ADOPT amendments deleting Assault 3  
on line 19.

VOTE: Hearing no objection, the amendments are ADOPTED.

392 VOTE: In a roll call vote SEN. HAMBY, SEN. SMITH, SEN. WEBBER,  
SEN.

SHOEMAKER and CHAIR SPRINGER vote AYE. SEN. RASMUSSEN votes NAY.

398 CHAIR SPRINGER: The motion CARRIES.

SEN. WEBBER will lead discussion on the floor.

SB 1088: Punishes failure to wear protective headgear while operating bicycle  
or while riding as passenger on bicycle by maximum fine of \$25 if  
person is under 16 years of age and operates bicycle on highway.

404 QUIGLEY: Reviews bill and SB 1088-1, -6, -11, -12, -13, -14 &  
-16 amendments, with an engrossed version including the -6 through -14  
amendments (EXHIBITS T, U, V, W, X, Y, Z & AA).

TAPE 164, SIDE B

011 SEN. CEASE: Reviews amendments described by counsel.

050 CHAIR SPRINGER: Engrossed version includes the amendments you  
are supporting? -6 through -14?

SEN. CEASE: Correct. Including -16.

052 CLAUDIA BLACK, LEGISLATIVE ASSISTANT, SEN. CEASE: -1 replace  
-14 amendments.

QUIGLEY: Engrossed version includes -6, -11, -12, -13, -14  
amendments.

058 CHAIR SPRINGER: What does -1 do?

BLACK: -1 provides for \$25 fine and includes term "or rider" after  
operator. -14 only provided for fine.

063 CHAIR SPRINGER: -1 replaces -14?

BLACK: Correct.

SEN. CEASE: We also have -16 amendments.

068 MOTION: CHAIR SPRINGER: moves to ADOPT SB 1088-1, -6, -11, -12, -13,  
-16 amendments.

VOTE: Hearing no objection, the amendments are ADOPTED.

072 SEN. HAMBY: Refers to difficult floor session concerning  
traffic congestion; are you concerned about how some Senators may vote?

SEN. CEASE: Believes bill will have the votes. Seems to have  
bi-partisan support.

082 SEN. HAMBY: Considered it in relation to definition of  
highway.

Wonders how many young people go hunting along a highway in rural parts  
of the State.

SEN. CEASE: The definition is fairly broad. Difficulty will be on the House side.

093 MOTION: CHAIR SPRINGER: moves SB 1088, AS AMENDED, be sent to the floor with a DO PASS recommendation.  
VOTE: In a roll call vote all members present vote AYE. SEN. SHOEMAKER is excused.

099 CHAIR SPRINGER: The motion CARRIES.  
SEN. CEASE will lead discussion on the floor.

SB 1110: Allows court to transfer matter to another court after entry of judgment of decree for purposes of modification or enforcement.

110 SEN. RASMUSSEN: Reviews bill. Possible objections from State Court Administrator and judges.

133 KINGSLEY CLICK, STATE COURT ADMINISTRATOR: Inquires if committee intends to take action or hold the bill for further review?

135 SEN. RASMUSSEN: Open to holding bill to review concerns.  
CHAIR SPRINGER: Carries bill over to next hearing for further review.

SB 1108: Requires police officer compiling motor vehicle accident report to ask whether persons involved in accident are willing to have names released to attorneys for purposes of solicitation.

143 SEN. RASMUSSEN: Suggests carrying bill over for further review on 5/21/93.  
CHAIR SPRINGER: Carries bill over.

SB 811: Prohibits employer from discriminating against employee for engaging or participating in political activities or becoming candidate for public office.

145 CHAIR SPRINGER: Resumes consideration of SB 811.  
>Holds bill for consideration of other bills while awaiting Sen. Webber.

CHAIR SPRINGER: Resumes consideration of SB 912.

SB 912: Creates crimes of unlawful disposal, storage or treatment

of  
air hazardous waste, unlawful transport of hazardous waste, unlawful  
pollution, unlawful water pollution, environmental endangerment,  
refusing to supply information and supplying false

167 TAYLOR: Suggests witnesses. Reviews technical amendments.

173 CHAIR SPRINGER: Have we compared technical language with the bill  
and found it suitable?

TAYLOR: Yes. Reviews technical amendments.

176 CHAIR SPRINGER: What is the additional technical language?

TAYLOR: On page 3, line 9; delete "a misdemeanor" and insert "a  
criminal offense".

184 CHAIR SPRINGER: Would that include field burning?

TAYLOR: Unsure.

>In addition, page 3, line 9; "notwithstanding ORS 161.515, and  
161.565, subsection 1, unlawful air pollution in the second degree is  
a criminal offense punishable solely by a fine up to \$10,000".

>Inquires of Bradley, what would happen if district attorney did not  
follow provisions of the bill?

199 JOHN BRADLEY, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE:

Before

charge can be brought under the statute the district attorney or  
Attorney General has to approve prosecution.

>Reason is that the environmental area is less than crystal clear on  
violations.

>Compromise was the requirement for felony guidelines prior to filing  
of charges.

259 TAYLOR: If the D.A. or A.G. failed to certify, then the  
indictment could be attacked? Motion to quash?

BRADLEY: Yes. Motion to set aside.

263 TAYLOR: Could be brought prior to trial?

BRADLEY: Yes.

265 DAVE NELSON, OREGON SEED COUNCIL: Testifies with concerns about  
the bill.

>Concerned about field burning issue and the DEQ rules.

>Agreed to resolve conflicts on the House side.

311 SEN. RASMUSSEN: Expresses desire to hold the bill for further review.

319 CHAIR SPRINGER: Carries over remaining agenda for 5/21/93 hearing.  
>Suggests adopting amendments before carrying the bill over.

323 MOTION: moves to ADOPT amendments reviewed by counsel above.  
VOTE: Hearing no objection, the amendments are ADOPTED.

325 MOTION: moves to ADOPT SB 912-A4 amendments, dated 5/18/93.  
VOTE: Hearing no objection, the amendments are ADOPTED.

330 SEN. SMITH: Notes for Sen. Rasmussen the time that Agriculture Committee has spent on this bill.  
>Notes it is a good compromise package that deserves to pass.

354 SEN. HAMBY: Notes support for the bill if a motion is made.

354 MOTION: SEN. SMITH: moves SB 912, AS AMENDED, be sent to the floor  
with a DO PASS recommendation.  
VOTE: In a roll call vote all members present vote AYE. SEN. SHOEMAKER  
is excused.

361 CHAIR SPRINGER: The motion CARRIES.  
  
SEN. CEASE will lead discussion on the floor.

379 CHAIR SPRINGER: Adjourns hearing at 3:00 pm.  
  
Submitted by: Reviewed by:  
  
Kirk Bailey Bill Taylor  
Assistant Administrator

EXHIBIT LOG:

A - Testimony on SB 912, Jerome Lidz, 2 pages  
B - Amendments to SB 912, 12 pages  
C - Testimony on SB 912, Roy Hyder, 4 pages  
D - Testimony on SB 912, Dean Renfrow, 4 pages  
E - Testimony on SB 1018, Jeanne Price, 4 pages  
F - Testimony on SB 1018, Barbara Stoeffler, 2 pages  
G - Testimony on SB 1018, Laureen Oskochil, 1 page  
H - Testimony on SB 1018, Mike Luten, packet  
I - Amendments to SB 724, Staff, 1 page  
J - Amendments to SB 724, Staff, 1 page  
K - Amendments to SB 724, Staff, 2 pages  
L - Amendments to SB 724, Staff, 1 page  
M - Testimony on SB 724, Mark Kramer, 2 pages  
N - Testimony on SB 724, Suzanne Noland, 2 pages  
O - Amendments to SB 811, Staff, 4 pages  
P - Amendments to SB 811, Staff, 2 pages  
Q - Amendments to SB 769, Susan Schneider, 1 page  
R - Amendments to SB 1092, Tim Travis, 2 pages

S - Amendments to SB 1092, Jacquie Bloom, 2 pages  
T - Amendments to SB 1088, Staff, 2 pages  
U - Amendments to SB 1088, Staff, 1 page  
V - Amendments to SB 1088, Staff, 1 page  
W - Amendments to SB 1088, Staff, 1 page  
X - Amendments to SB 1088, Staff, 1 page  
Y - Amendments to SB 1088, Staff, 1 page  
Z - Amendments to SB 1088, Staff, 1 page  
AA - Amendments to SB 1088, Staff, 1 page