

SENATE COMMITTEE ON
JUDICIARY

May 26, 1993 Hearing Room C
1:00 p.m. Tapes 173-174

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

MEMBERS EXCUSED: Sen.

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

ISSUES DISCUSSED: Public Hearing & Possible Work Session on HB 2504, HB
332 0,
 HB 3125, HB 2976, HB 2957.
Work Session on HB 2596, SB 228, SB 245, SB 811,
SB
 410.

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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 173, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:23 pm.
>Calls Representative Kate Brown.

004 REP. BROWN: Present for several bills. Schedule is up the Chair.

006 SEN. RASMUSSEN: Moves Rep. Brown be made an honorary member of
the
committee.

HB 2957: Provides that marriage relationship of parties terminates 30
days
after entry of divorce decree regardless of whether appeal has been
filed.

WITNESSES:
REPRESENTATIVE KATE BROWN
ANN RYSTROM, CITIZEN

013 REP. KATE BROWN: Submits and reviews written testimony in support of the bill (EXHIBIT A).

028 ANN RYSTROM: Testifies in support of the bill.

072 CHAIR SPRINGER: Convinced everybody on the House side except Rep. Meek?

REP. BROWN: Yes, bill was opposed by Traditional Values Coalition.

078 CHAIR SPRINGER: Is your huSB and represented?

RYSTROM: He was represented.

080 REP. BROWN: Are you divorced?

RYSTROM: No, not yet. He filed brief in last two weeks.

082 REP. BROWN: When did you originally file?

RYSTROM: In 1990. Custody has been changed due to appeal. Unable to enforce judgments against him due to appeals.
>Harassment is the problem.

094 CHAIR SPRINGER: Notes there should be some sanctions for actions without merit.

RYSTROM: After the appeal that is possible.

099 MOTION: SEN. HAMBY: moves HB 2957A be sent to the floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. SMITH is excused.

107 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

SB 410: Allows Adjutant General to appoint individuals as temporary Assistant State Judge Advocates who are legally trained but need not be lawyers or members of Oregon State Bar.

113 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews bill and SB 410-1 amendments and engrossed version (EXHIBIT B & C).

139 SEN. RASMUSSEN: Why are we exempting judicial officers?

CHAIR SPRINGER: Calls Mike Caldwell to answer the question.

145 MIKE CALDWELL: Provides background information on the bill.
>Trying to clarify the roles of the Judge Advocates who have been

elected to judicial offices.

158 SEN. RASMUSSEN: What do tasks they are performing include?

CALDWELL: They include court martials, legal defense, supervising formulation of wills.

170 SEN. RASMUSSEN: They could assist in drafting a will which could be probated in Oregon state court?

CALDWELL: Correct, gives them the ability to perform that duty.

187 CHAIR SPRINGER: What is the pleasure of the committee?

193 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 410-1 amendments, dated

5/5/93, as further amended on lines 5 & 6 by counsel.

VOTE: Hearing no objection, the amendments are ADOPTED.

202 MOTION: CHAIR SPRINGER: moves SB 410, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. SMITH is excused.

207 CHAIR SPRINGER: The motion CARRIES.

SEN. BUNN 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.

210 QUIGLEY: Reviews bill and SB 811-2 amendments (EXHIBIT D).

222 DAVID FIDANQUE, ACLU: Testifies in support of the bill.

>Reviews machine engrossed amendments (EXHIBIT W).

>Notes typographical errors.

>Supports addition of provision of HB 2801 in this bill.

309 LAUREN MOUGHON, WOMENS RIGHTS COALITION: Testifies in support of the bill.

>Wants to include provisions of HB 2801 in the bill.

339 ANNABELLE JARAMILLO, COMMISSION ON HISPANIC AFFAIRS: Testifies in

support of the bill. Concurs with Moughon.

347 FIDANQUE: Notes addition of provision from line 15 in HB 2801 adding

employment discrimination is the only discrimination statute not

included in the bill.

364 CHAIR SPRINGER: Where in machine engrossed SB 811 are the HB
280 1 provisions?

FIDANQUE: They are not. Requesting that it be added.

370 CHAIR SPRINGER: Do we have a copy of HB 2801?
>Holds the bill for further review.

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

391 BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill and SB 245-1 and
-2 amendments (EXHIBIT E & F).

413 CHAIR SPRINGER: Notes reluctance concerning -1 amendments.
>Who is the proponent?

TAYLOR: At the request of the Interim Judiciary Committee for the
Judicial Administration Committee.

TAPE 174, SIDE A

009 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Reviews amendments.
>Notes understanding that the trial lawyers would accept fee increase
if it was the same for defendant and plaintiff.

051 CHAIR SPRINGER: What portions of -1 are we keeping?

SNIDER: Task force agreed to 2 funding sources, a portion of existing
county corrections assessment and an increase in filing fees. Still
agree.
>-2 only provide for fee increase.
>Suggests substituting -2 for section 1 of -1 amendments.

071 CHAIR SPRINGER: How much money do we need to provide adequate
security in the state?

075 BILL LINDEN, STATE COURT ADMINISTRATOR: Reviews financial needs.
>Estimate that \$6 surcharge along with county assessment would raise
about \$3.5 million over the next biennium.

088 SEN. SHOEMAKER: What about cases with multiple parties?
>This charges for each party on both sides, what about a limitation?

LINDEN: A "shall not exceed" limitation would be one way.

100 SEN. SHOEMAKER: Unsure of the appropriate limit?

LINDEN: We may just have to agree on an amount.

105 CHAIR SPRINGER: How do you apportion fee among parties?

SEN. SHOEMAKER: Let them work it out.

111 CHAIR SPRINGER: What is the split of additional fee and the county assessment?

SNIDER: Depends on how you count it. Counties believe they are already providing significant amount.
>County contribution is 10%.

123 SEN. WEBBER: How much is capitol expense versus operating expense?

LINDEN: Don't have precise figures.
>First 2 years the amount spend on capitol acquisition would be high.
>Operating expense will probably be in personnel.

139 SEN. WEBBER: I assume that will be reviewed in Ways and Means?

LINDEN: If the bill is reviewed by Ways and Means then details will be added.

145 CHAIR SPRINGER: So every small claims action, every debt collection, every case subject to fee that is an additional cost collected as part of judgment?

LINDEN: Yes.

150 SEN. SHOEMAKER: How about small claims? Is that fair?

LINDEN: Some of the most volatile situations have occurred in small claims courts.
>Taking small claims out would remove significant case load and result in fee increases to maintain the collection amount.

164 SEN. SHOEMAKER: What is small claims filing fee?

LINDEN: \$45 for plaintiff's and \$22.50 for defendants.

170 CARL STECKER, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Notes that the state is exempted from any fees in cases in which it has an interest.

CHAIR SPRINGER: Concurs.

178 MOTION: SEN. SHOEMAKER: moves to ADOPT SB 245-1 amendments, dated 3/30/93, deleting section 1; and SB 245-2, dated 5/26/93, further amending to provide maximum fee of \$30 per pleading.

187 SEN. RASMUSSEN: Please state the motion again, concerning fee
per pleading?

SEN. SHOEMAKER: Restates the motion.

200 SEN. RASMUSSEN: Is amended pleading a pleading?

SEN. SHOEMAKER: No. Intend this to be conceptual reflecting that this
applies only to initial complaint and response to pleading.

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

215 MOTION: SEN. HAMBY: moves SB 245, AS AMENDED, be sent to Ways
and Means with a DO PASS recommendation.

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

226 CHAIR SPRINGER: The motion CARRIES.

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

228 CHAIR SPRINGER: Returns to SB 811. Committee has HB 2801 to review.

234 REPRESENTATIVE KATE BROWN: Submits and reviews written testimony
in support of the bill (EXHIBIT G).

254 DAVID FIDANQUE, ACLU: Reviews amending HB 2801 into SB 811.
>Page 4, engrossed version; substantive section already appears in SB
811, ORS 659.121. Need to add reference on line 45, page 4; insert ORS
659.030 (1).
>Page 5, engrossed version; from HB 2801, page 2, line 25 and 31. Add
lines 25-34 from HB 2801 after line 45 of SB 811, engrossed.

285 CHAIR SPRINGER: Expresses concern about effective date and how
it effects cases currently under review.
>Section 5, SB 811 notes applicability of conduct on or after the
effective date, HB 2801 describes different actions which may be
extant.

302 REP. BROWN: Believes Womens Rights Coalition would support making
it consistent with lines 44-45.

310 CHAIR SPRINGER: Notes litigation in workers compensation law with minimal results.

FIDANQUE: Concurs on need to simplify.

313 CHAIR SPRINGER: Urges proponents to meet with counsel to clarify the provision.

318 SEN. SHOEMAKER: What is the standard for assessing punitive damages?

REP. BROWN: No idea.

324 FIDANQUE: Notes provision has been in statutes for years.

SEN. SHOEMAKER: Aware of that fact but expresses concern about extending it.

329 REP. BROWN: Punitive damages are available for injured and disabled workers currently, but will provide the standard.

HB 2504: Allows family court department to be established in any judicial district upon written application to Chief Justice of Supreme Court.

WITNESSES:

JUDGE STEPHEN HERRELL

PHILIP COOK, PACE INSTITUTE FOR FAMILIES IN TRANSITION

SHARON FLUES, PACE INSTITUTE FOR FAMILIES IN TRANSITION

KATHARINE ENGLISH, FAMILY COURT SUBCOMMITTEE OF JUVENILE JUSTICE

MICHAEL WELLS, OREGON STATE BAR

341 JUDGE STEPHEN HERRELL: Submits and reviews written testimony in support of the bill (EXHIBIT K).

TAPE 173, SIDE B

003 JUDGE HERRELL: Continues testimony in support. Submits amendments to the bill (EXHIBIT H & I).

043 SEN. SHOEMAKER: HB 2504-A5 amendments contained in engrossed version?

TAYLOR: Yes.

050 HERRELL: Urges committee move the bill with the -A5 amendments.

058 KATHARINE ENGLISH: Testifies in support of the bill.

121 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: Submits and reviews written testimony in support of the bill (EXHIBIT J).

141 HERRELL: Notes that this is not only a Portland county bill.
Josephine
county is on track, as well as Deschutes and Marion.

148 SEN. HAMBY: I thought Washington county was interested?

HERRELL: Understands they are interested, but they haven't committed
yet.

150 SEN. HAMBY: Notes support for the bill but would like to see method
to
report back.

155 CHAIR SPRINGER: Who is the proponent of -A5?

TAYLOR: They are technical problems with the bill noted by Legislative
Counsel.

163 CHAIR SPRINGER: Any other issues technical or otherwise?
TAYLOR: Nothing of substance.

175 PHILIP COOK: Testifies in support of the bill.

246 SHARON FLUES: Testifies in support of the -A4 amendments. Concurrs
with
Cook.

254 MICHAEL WELLS: Testifies in support of the bill.
>Opposed to -A4 amendments.

262 CHAIR SPRINGER: HB 2504-A4 amendments have been withdrawn, may be
able
to deal with them in another bill.

271 MOTION: SEN. SHOEMAKER: moves to ADOPT HB 2504-A5 amendments,
dated
5/25/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

286 MOTION: moves HB 2504, A-Engrossed, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

295 CHAIR SPRINGER: The motion CARRIES.

HB 2596: Allows federal officer to arrest person when officer is aiding
state
or local peace officer.

305 TAYLOR: Reviews bill and HB 2596-1 amendments with the
engrossed
version of the bill (EXHIBIT L & M).

321 FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Reviews HB
259 6-1
amendments.

372 CHAIR SPRINGER: Parallel to subsection b of the engrossed bill?

AVERA: Yes. Language currently on line 21 would be added to the end of subparagraph a.

381 CHAIR SPRINGER: Amendments have been reviewed by federal authorities.

JOHN ELMS, POSTAL INSPECTOR: Yes. They actually enhance the bill.

386 MOTION: CHAIR SPRINGER: moves to ADOPT HB 2596-1 amendments, dated 5/14/93, with additional language added to line 23; "for any crime committed in the federal officers presence, if the federal officer has probable cause to believe the arrested person committed the crime".
VOTE: Hearing no objection, the amendments are ADOPTED.

399 MOTION: CHAIR SPRINGER: moves HB 2596, AS AMENDED, be sent to the floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

404 CHAIR SPRINGER: The motion CARRIES.

SEN. RASMUSSEN 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.

410 CHAIR SPRINGER: Where are we on this?

420 DAVID FIDANQUE: Reviews further amendments to the bill.
>Page 2, HB 2801; intent is to change line 25, section 2 to section 6, reading "the amendments to ORS 659.121 by section 4 of this Act apply only to conduct occurring on or after the effective date of this Act".
>Lines 26-30 deleted; line 31, insert section 7 replacing section 3 and change section 1 to section 4.

451 REPRESENTATIVE KATE BROWN: Responding to Sen. Shoemaker's question concerning standard of proof in punitive cases: Cites ORS 41.315 (1) which requires clear and convincing evidence.

TAPE 174, SIDE B

024 SEN. SHOEMAKER: That standard applies to every place in statutes where punitive damages are allowed?

REP. BROWN: Yes. That is the understanding.

027 CHAIR SPRINGER: Reviews revisions to engrossed version on SB 811.
Any additional amendments?

032 QUIGLEY: Additional suggested amendment to page 4, line 45
insert
citations ORS 659.030 (1).
>Reviews engrossed SB 811 and additional amendments.

038 MOTION: CHAIR SPRINGER: moves to ADOPT machine engrossed
amendments,
as further amended to include changes by counsel.
VOTE: Hearing no objection, the amendments are ADOPTED.

041 MOTION: moves to ADOPT amendments inserting appropriate of
sections
from HB 2801, AS AMENDED to include the Fidanque amendments, into SB
811.
VOTE: Hearing no objection, the amendments are ADOPTED.

054 MOTION: SEN. HAMBY: moves SB 811, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

058 CHAIR SPRINGER: The motion CARRIES.

CHAIR SPRINGER will lead discussion on the floor.

HB 3320: Deletes requirement that police officer using mobile tracking
device
under authority of warrant send receipt documenting things seized
or
observations made to person in apparent control of residence to
which
device has been tracked.

WITNESSES:

JACKIE BLOOM, CITY OF PORTLAND
PATRICK NELSON, PORTLAND POLICE BUREAU

077 JACKIE BLOOM: Testifies in support of the bill.

111 PATRICK NELSON: Submits and reviews written testimony in support of
the
bill (EXHIBIT N).

130 MOTION: CHAIR SPRINGER: moves HB 3320 be sent to the floor with a
DO
PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

133 CHAIR SPRINGER: The motion CARRIES.

SEN. WEBBER will lead discussion on the floor.

HB 3125: Creates Task Force on Family Law to develop nonadversarial system to help families undergoing divorce access services.

WITNESSES:

RICK RABBIN, CITIZEN

ELLEN LOWE, ECUMENICAL MINISTRIES

REPRESENTATIVE KATE BROWN

SEN. KENNEMER: submits letter with questions about the bill (EXHIBIT O).

WILLIAM HOWE: submitted written testimony only in support of the bill (EXHIBIT R).

LAURIE WIMMER, COMMISSION FOR WOMEN: submitted written testimony only in support of the bill (EXHIBIT Q).

143 RICK RABBIN: Submits and reviews written testimony in support of the bill (EXHIBIT S).

167 SEN. SHOEMAKER: Requests witness review the amendments?

172 RABBIN: Reviews HB 3125-A7 amendments (EXHIBIT P).
>Purpose is to include person with significant experience in domestic violence on the Task Force.

179 SEN. HAMBY: Would it preclude such an individual? The A Engrossed would not?

RABBIN: No. No.

188 SEN. HAMBY: Suggests establishing legislative intent for whomever eventually carries the bill.

193 CHAIR SPRINGER: Why do we need a new task force given the Governor's agenda to streamline state government? Any word from the Governor's office on this bill.

202 REP. BROWN: No word from the governors office. Thinks issue needs to be studied.

212 ELLEN LOWE: Testifies in support of the bill.

224 SEN. SHOEMAKER: Will there be a problem with concurrence on the House side with -A7's?

226 REP. BROWN: Unsure. Rep. Mason was concerned about adding somebody with those qualifications to the task force.

231 SEN. SHOEMAKER: What is your call?

REP. BROWN: Thinks it is important that we include explicitly.

235 CHAIR SPRINGER: Holds the bill for further review.

HB 2976: Provides that judgment resulting from unpaid child support is valid
for 20 years from date child support judgment is entered.

WITNESSES:

JOHN ELLIS, JUSTICE DEPARTMENT
DEBORAH WILSON, JUSTICE DEPARTMENT
MICHAEL WELLS, OREGON STATE BAR
MAUREEN MCKNIGHT, OREGON LEGAL SERVICES
LAWRENCE GORIN, CITIZEN

DEBORAH WILSON: Submits written testimony only in support of the bill
(EXHIBIT
T-V).

256 JOHN ELLIS: Testifies in support of the bill.

268 LARRY GORIN: Testifies in support of the bill.

273 MICHAEL WELLS: Testifies in support of the bill.

275 CHAIR SPRINGER: Holds bill for further review.

>Adjourns hearing at 3:00 pm.

Submitted by: Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

A - Testimony on HB 2957, Rep. Kate Brown, 1 page
B - Amendments to SB 410, Staff, 1 page
C - Amendments to SB 410, Staff, 1 page
D - Amendments to SB 811, Staff, 2 pages
E - Amendments to SB 245, Staff, 4 pages
F - Amendments to SB 245, Staff, 2 pages
G - Testimony on SB 811, Sen. Kate Brown, 1 page
H - Amendments to HB 2504, Staff, 2 pages
I - Amendments to HB 2504, Staff, 3 pages
J - Testimony on HB 2504, Maureen McKnight, 2 pages
K - Testimony on HB 2504, Stephen Herrell, 4 pages
L - Amendments to HB 2596, Staff, 1 page
M - Amendments to HB 2596, Staff, 2 pages
N - Testimony on HB 3320, Patrick Nelson, 3 pages
O - Testimony on HB 3125, Sen. Kennemer, 1 page
P - Amendments to HB 3125, Staff, 1 page
Q - Testimony on HB 3125, Laurie Wimmer, 1 page
R - Testimony on HB 3125, William Howe, 3 pages
S - Testimony on HB 3125, Rick Rabbin, 10 pages
T - Amendments to HB 2976, Deborah Wilson, 1 page
U - Amendments to HB 2976, Deborah Wilson, 4 pages
V - Testimony on HB 2976, Deborah Wilson, 4 pages

W - Amendments to SB 811, Staff, 5 pages