

SENATE COMMITTEE ON
JUDICIARY

June 25, 1993 Hearing Room C
1:00 p.m. Tapes 201-202

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

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

ISSUES DISCUSSED: HB 2741 - Public Hearing & Work Session
 HB 2349 - Public Hearing & Work Session
 HB 2083 - Work Session
 HB 3018 - Public Hearing & Work Session
 HB 2543 - Work Session
 HB 2976 - Work Session
 SB 453 - Work Session

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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 201, SIDE A

003 SEN. SHOEMAKER calls the meeting to order at 1:20 p.m. in the absence of
 the Chair and opens a public hearing on HB 2741.

PUBLIC HEARING & WORK SESSION
HB 2741 A-ENG. - Expands crime of assaulting public safety officer.

WITNESSES: Bob Keyser, Oregon Council of Police Associations

 DEAN RENFROW, Criminal Investigation Division Director of the Oregon State Police, submits written testimony in support of HB 2741 (EXHIBIT

A).

015 BOB KEYSER, representing the Portland Police Association and the Oregon Council of Police Associations, and the Oregon Law Enforcement Legislative Committee, submits prepared statements for Leo F. Painton, Portland Police Association (EXHIBIT B) and Bill Cross, Oregon Association Chiefs of Police (EXHIBIT C), and speaks in support of HB 2741.

070 SEN. WEBBER comments teachers are complaining that students are

spraying

mace in the hallways and that a number of people have had reaction to it, and asks if anyone raised the issue of general air pollution?

080 KEYSER: The bill is not intended to address the issue, but it will be reviewed over the interim.

108 MOTION: SEN. HAMBY moves that HB 2741 A-Eng. be sent to the Floor with a DO PASS recommendation.

110 VOTE: In a roll call vote all members present vote AYE. SEN. SPRINGER is EXCUSED.

115 CHAIR SHOEMAKER declares the motion PASSED.

(Tape 201, Side A)

PUBLIC HEARING

HB 2349 A-Eng. - Expands class of people to whom Family Abuse Prevention Act applies.

WITNESSES: David Nebel, Oregon Coalition Against Domestic and Sexual Violence, family law practitioners and legal aid programs
Laurie Wimmer, Commission for Women

A prepared statement submitted by Rep. Kevin Mannix in support of HB 2349 is hereby made a part of these minutes (EXHIBIT D).

DAVID NEBEL, Oregon Coalition Against Domestic and Sexual Violence and the Family Law Task Force on Oregon's legal aid programs, submits and reviews written testimony in support of HB 2349 (EXHIBIT F) and explains that the HB 2349-3 amendments (EXHIBIT E) were requested by Rep. Mannix and would allow a court to give relieve ex parte, as part of a restraining order. That would require the respondent to move out of the residence that is jointly held by the petitioner and the respondent.

176 CHAIR SHOEMAKER: What does "held" mean?

175 NEBEL: It is getting at a rental agreement.

191 CHAIR SHOEMAKER suggests amending the language to say "jointly owned or rented."

191 NEBEL agrees with the language suggested by Chair Shoemaker.

196 NEBEL explains that the hand-amended HB 2349-A6 amendments (EXHIBIT G) do two things: expands the group of people who can get relief under the Abuse Prevention Act, and deletes the language on co-habitation to avoid confusion.

220 SEN. SMITH questions what the standard of proof will be and states
his concern about false reporting.

225 NEBEL: If that were misrepresented in the complaint then respondent
can request hearing and address the issue in a very timely manner. There
is a fast track to deny the allegations.

Discussion continues about the standard of proof and detrimental
effects of a charge against innocent people.

352 SEN. HAMBY questions if an older couple, not married, living together
without sex, would be covered if either were abused.

363 NEBEL: That is correct, but I don't believe it was the intent of the
legislature to cover that situation because they are not co-habiting
because co-habiting implies a sexually intimate relationship.

410 NEBEL continues review of the HB 2349-A6 amendments.

456 SEN. SHOEMAKER questions the need for the last phrase of (d) "of the
respondent" in the HB 2349-A6 amendments.

TAPE 202, SIDE A

022 NEBEL reviews intent of the phrase and concludes that (d) is
superfluous.

035 SEN. SHOEMAKER: The deletion of line 45, page 2 and line 1 page 3
and the new language on line 2 of page 3 is a concern because it is
unspecific?

048 NEBEL suggests their coalition would be comfortable with language
that would specify a period of time or date.

058 SEN. SHOEMAKER: "From date, to date? I have been involved--from
blank to blank."

064 NEBEL: I think that would be acceptable.

072 LAURIE WIMMER, Executive Director, Commission for Women, submits and
reviews written testimony in support of HB 2349 (EXHIBIT H).

085 SEN. SMITH: Are there other remedies at law that protect people from
being beaten?

087 WIMMER responds that she is not a lawyer and can't answer the
question and speaks to complaints their office receives on a daily basis.

100 SEN. SHOEMAKER: This isn't to say that a one night stand would
disqualify someone from the remedy. But the judge has a right to know
the nature of the relationship.

105 WIMMER comments she hopes that this won't establish legislative
intent--that because of a short term relationship the complaint would
be
less valid.

112 MARNAE HALTER-CUNNINGHAM, Special Counsel for Rep. Mannix: In the
original printed HB 2349 Rep. Mannix wanted to remove the two-year
limitation on co-habiting because it is important to keep site of
the
fact that it is the element of the abuse and not the sexual
relationship
that is the point of the Family Abuse Prevention Act. I think he
would
have strong opinions on putting a time limit on it.

125 CHAIR SPRINGER delays action on the bill until later in the meeting.

(Tape 202, Side A)

WORK SESSION FOR PURPOSE OF RECONSIDERATION

HB 2083 A-ENG. - Expands membership of local citizen review boards.

136 MR. TAYLOR explains that a work session is needed for the purpose of
reconsideration of the vote by which HB 2083 passed the committee and
the adoption of conflict amendments.

138 MOTION: CHAIR SPRINGER moves that the vote by which HB 2083
passed, be reconsidered.

139 VOTE: CHAIR SPRINGER, hearing no objection to the motion,
declares the motion PASSED. All members are present.

140 MS. QUIGLEY explains the HB 2083-A2 conflict amendments (EXHIBIT I).

168 MOTION: SEN. SHOEMAKER moves that the HB 2038-A2 amendments
(EXHIBIT I) BE ADOPTED.

170 VOTE: CHAIR SPRINGER, hearing no objection to the motion,
declares the amendments ADOPTED.

171 MOTION: SEN. SHOEMAKER moves that HB 2083 A-Eng., as amended,
be
sent to the Floor with a DO PASS recommendation.

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

186 CHAIR SPRINGER declares the motion PASSED. Senator Shoemaker will
lead
discussion on the Floor.

(Tape 202, Side A)

PUBLIC HEARING & WORK SESSION

HB 3018: Enacts Uniform Interstate Family Support Act.

WITNESSES: Deborah Wilson, Department of Justice
Rep. John Schoon
John Ellis, Department of Justice
Carl Stecker, Oregon District Attorney's Assoc.
Maureen McKnight, Oregon Legal Services

A prepared statement submitted on behalf of OgleSB y H. Young, National Conference of Commissioners on Uniform State Laws, is hereby made a part of these minutes (EXHIBIT K).

215 DEBORAH WILSON, Department of Justice, submits and reviews written testimony in support of HB 3018 (EXHIBIT L). Section 28, paragraph (7), on page 9, lines 7-9, deals with an adverse inference being able to be drawn when a party refuses to testify. We agree that section could be taken out without harming the bill.

271 SEN. SHOEMAKER: How many states have adopted this?

272 WILSON responds the ones she knows about are Arizona, Arkansas, Texas and Montana. It is before the Governor in Washington and has passed the House in California.

276 SEN. SHOEMAKER: Has the suggested deletion been deleted?

276 WILSON: It has not been deleted in any state and is not expected to be deleted in Washington or California. It is different than our Evidence Code. This would be an exception to the Oregon Evidence Code.

295 REP. JOHN SCHOON explains he introduced the bill and first became involved in this issue because of a constituent who could not collect child support payments because her huSB and had moved to another state. Passage in Washington and California will take care of 50 percent of the cases and will go a long ways in resolving the problems for those who have problems with their ex-spouses who have moved out of state.

316 SEN. RASMUSSEN expresses appreciation for Rep. Schoon's efforts.

322 CARL STECKER, Oregon District Attorney's Association, testifies in support of HB 3018.

334 MAUREEN MCKNIGHT, Oregon Legal Services, submits written testimony and speaks in support of HB 3018 (EXHIBIT J).

349 MOTION: SEN. RASMUSSEN moves that HB 3018 be amended: on page 9, delete lines 10-12.

352 VOTE: CHAIR SPRINGER, hearing no objection to the motion,

declares the motion PASSED.

354 MOTION: SEN. RASMUSSEN moves that HB 3018, as amended, be sent
to
the Floor with a DO PASS recommendation.

360 CHAIR SPRINGER advises the members there is a commentary that the
committee should adopt by reference so it will serve as part of the
record. That will be a part of the motion and the intent of the
committee.

364 VOTE: In a roll call vote, all members are present and vote
AYE.

368 CHAIR SPRINGER declares the motion PASSED. SEN. RASMUSSEN will lead
discussion on the Floor.

(Tape 202, Side A)

PUBLIC HEARING (Cont'd) & WORK SESSION

HB 2349 - Expands class of people to whom Abuse prevention Act applies

WITNESS: Rep. Kevin Mannix

371 REP. MANNIX: There are two time frames. One stays in the law: that
there had to have been an act of abuse within the preceding 180 days
in

order to seek a restraining order and protection under the Family
Abuse
Protection Act. The only provision that changes is whether or not you

had had a relationship with that person within the last two years.

The

proposal in the bill is to say why does it matter whether you had a
relationship five, ten or three years ago, as opposed to within two
years if there was an act of abuse against you in the last 180 days,
then let's allow you access to courts. We are mainly concerned with

the

fact that you had a prior relationship at some time. That is

emphasized

because the bill doesn't include all the other statutory references.
There is a statutory requirement that an abusive incidence must have
occurred within the last 180 days. The requirement that there be a
finding of such an abusive incident, I think, deals with the concern
about somebody making a false claim. The court will have to hold a
hearing and determine that there was an attempt to cause or
intentionally, knowingly or recklessly caused bodily injury or that

you

caused another to engage in involuntary sexual relations by force or
threat of force. Those are things that are going to have to have
happened in the last 180 days in order to trigger the rest of the act.

421 SEN. SHOEMAKER: The amendment I suggested is on page 3, line 2. The
amendments being proposed would delete the last line on page 2 and the
top line of page 3. It leaves the simple statement, "I have been
involved in a sexually intimate relationship with the respondent--".

I

think we should ask the petitioner to specify the dates of the
relationship because it is relevant to the court's consideration.

445 REP. MANNIX: I agree, it is an excellent suggestion.

451 SEN. SMITH reiterates his concerns about false accusations.

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017 REP. MANNIX: It is a routine court proceeding. In filing the
petition,
the person is going to have to alleged that within the previous 180
days
an abusive act had to occur. A person can be brought to court for
filing a false petition.

045 SEN. SHOEMAKER: A concern of the committee is also the precise
meaning
of the word "held". The response was that it probably meant rented.
The committee felt it might be appropriate to say "owned or rented".

047 REP. MANNIX: I agree.

054 MOTION: CHAIR SPRINGER moves that the HB 2349-A3 amendments,
as
amended, BE ADOPTED.

054 VOTE: CHAIR SPRINGER, hearing no objection to the motion,
declares the motion PASSED.

055 MOTION: CHAIR SPRINGER moves that the HB 2349-A6 amendments,
as
amended, BE ADOPTED.

056 SEN. SHOEMAKER explains that the HB 2349-A6 amendments are amended by
the hand-written language and the deletion of (d) in the hand-written
portion.

059 MOTION: CHAIR SPRINGER amends his motion to include the
explanation offered by Sen. Shoemaker.

060 MR. TAYLOR: I assume the amendment would also include on page 3 in
line
2, the following: "I have been involved in a sexually intimate
relationship with the respondent..."and adding "from _____19__ to
_____19__."

064 MOTION: CHAIR SPRINGER further amends his motion to include the
insertion for the dates.

065 VOTE: CHAIR SPRINGER, hearing no objection to the motion,
declares
the motion PASSED.

065 MOTION: CHAIR SPRINGER moves that HB 2349 A-Eng., as amended,
be
sent to the Floor with a DO PASS recommendation.

068 VOTE: In a roll call vote, all members are present and vote
AYE.

070 CHAIR SPRINGER declares the motion PASSED. SEN. SHOEMAKER will lead

discussion on the Floor.

(Tape 201, Side B)

PUBLIC HEARING

HB 2543 - Modifies provisions of Uniform Commercial Code Article 2A
concerning leases.

076 MS. QUIGLEY reviews the bill and advises the committee there are
conceptual amendments and the previously adopted A2 amendments
relating
to track leasing.

085 SEN. SHOEMAKER: The differences between the Debtor-Creditor Section
and
the Uniform Commission group is that the Debtor-Creditor Section
thought
we should stick with the somewhat broader definition and less document
definition that our law presently has. The other set of amendments
were
of less substance and less strongly held regarding other places within
the bill. After talking to people involved and reading a letter from
Schwabe Williamsom, it is my recommendation that we stay with the
present definition of finance lease and amend the bill in that
respect,
and not make any other amendments.

105 CARL MYERS, Oregon State Bar: The changes suggested by Sen.
Shoemaker

are appropriate and have been okayed by the parties involved.

112 MS. QUIGLEY reviews the amendments as proposed by Sen. Shoemaker:
Section 1(1)(g) on page 1 of the A-Engrossed bill, lines 29 through 30
and on page 2, in lines 1-29 delete the bold language and restore the
existing language. She also explains that because of the amendment,
there will be no extended effective date for the bill.

120 MOTION: CHAIR SPRINGER moves that HB 2543 A-Eng. BE AMENDED as
stated by Ms. Quigley.

120 VOTE: CHAIR SPRINGER, hearing no objection, declares the
motion
PASSED.

122 SEN. SHOEMAKER: Is there official commentary to this bill by the
Uniform Commission?

CHAIR SPRINGER: They can submit that for the record.

127 MOTION: SEN. SHOEMAKER moves that the Uniform Commission's
statement be made a part of the record on HB 2543 A-Engrossed.

130 AN UNIDENTIFIED PERSON comments from the audience that they will have
comments provided through Ms. Walters.

131 VOTE: CHAIR SPRINGER, hearing no objection to the motion,
declares the motion PASSED.

140 MOTION: SEN. SHOEMAKER moves that HB 2543 A-Engrossed, as amended, be sent to the Floor with a DO PASS recommendation.

141 VOTE: In a roll call vote, all members are present and vote AYE.

148 CHAIR SPRINGER declares the motion PASSED. SEN. SHOEMAKER will lead discussion on the Floor.

(Tape 201, Side B)

WORK SESSION

HB 2976 A-Eng. - Provides that judgment resulting from unpaid child support is valid for 20 years from date child support judgement is entered.

153 BILL TAYLOR, Committee Counsel, informs the committee that the HB 2976-A5 amendments (EXHIBIT N) are from John Ellis, Support Enforcement Division, and the HB 2976-A4 (EXHIBIT M) amendments are proposed by Legal Aid.

164 JOHN ELLIS, Support Enforcement Division, Department of Justice, submits the machine-engrossed version of HB 2976 with the HB 2976-A5 amendments (EXHIBIT O). HB 2976-A would have changed the Oregon law on child support judgments. Judgments now endure for 10 years after a payment is missed. Therefore, over a series of long period during which child support is owed, child support payments come due at different times during the life of the decree and expire 10 years later and can be renewed if they are renewed before the expiration. HB 2976 says that all child support judgments created by a divorce decree or other judgment expire 20 years after the decree is entered, all at the same time, and cannot be renewed. We agree with that. In the HB 2976-A5 version we have said that the provision "personal obligation" which picks up child support judgments that are alive and owing on the date of this new act that were created by a judgment entered before the date of this new act (that is, under the current law) can be collected for 23 years from the date of the decree. That would save the child support program and other judgment creditors the problem that if you have to go to court and renew your individual child support judgments, you have to do it several times during the life of the divorce decree. As a practical matter, people cannot or will not do that.

HB 2976 A-Eng. includes a provision that allows for the ex parte renewal of judgments currently outstanding. The law today probably is that, but it is not universally accepted. We want to make that clear in the law.

On the HB 2976-A5 proposed amendments, line 27, page 2, the word "foreclosure" should be change to "execution". The title companies

are
concerned that we use the right word.

243 LAWRENCE GORIN, Attorney, and member of the Executive Board of the
Family and Juvenile Law Section, Oregon State Bar: Concerns are not
related to HB 2976, but to SB 251 which deals with property division
side judgments and how they would be renewed. The two bills cannot live
side by side; the concepts can be compatible with one another. Requests
that when 251 comes to conference that it be restored to the Senate form,
and therefore be compatible with HB 2976 that is before this committee
now.

284 SEN. SHOEMAKER: Are both versions of HB 2976 compatible with SB 251
as it left the Senate?

287 GORIN: The HB 2976-A5 amendments would be compatible with SB 251.
HB 2976 A-Eng. would be in conflict with SB 251 as passed by the Senate.
SEN. SHOEMAKER asks for an explanation of what SB 251 does.

309 MR. GORIN explains the provisions of SB 251.

400 MR. TAYLOR explains that the HB 2976-A4 amendments (EXHIBIT M) would
make the obligation good for 28 years after the date of birth of the
youngest child named in the judgement.

406 DAVID NEBEL, Oregon Legal Services: The HB 2976-A4 amendments do
what Mr. Taylor suggested; they would make child support judgements good
for 28 years from the date of the birth of the youngest child included in
the order. In respect to transitional cases, orders that are in
effect at the time this bill would take affect, the obligee they would simply
be governed by existing law, but the obligee would be able to go to
court upon motion and say they wanted to extend the judgment on the
basis it would be renewed for 28 years from the date of the birth of
the youngest child. Oregon Legal Services prefers this approach, but the
most important thing is to get something done about the transitional
cases. OLS can live with the HB 2976-A5 amendments presented by Mr.
Ellis.

443 CHAIR SPRINGER: Mr. Ellis, what is your opinion of the -A4 versus
the -A5 amendments?

444 MR. ELLIS: I think they are mutually exclusive; they take different
points of view.

TAPE 202, SIDE B

019 FRANK BRAUNER, Oregon Bankers Association and State Chartered Banks
of

Oregon: There are a couple of other problems that are not discussed in the bill, nor should they be. We are in favor of every effort to make sure the child support system works. We need knowledge of the judgment because they are not a part of the Secretary of State's filings. Second, they never get cleansed. This process needs to be look at to see that the judgments go away. We are comfortable with any amendments.

039 MOTION: CHAIR SPRINGER moves that the HB 2976-A5 amendments with the amendment on page 2, in line 27, substituting "execution" for "foreclosure" BE ADOPTED.

042 MOTION: SEN. RASMUSSEN moves that the HB 2976-A4 amendments be substituted for the HB 2976-A5 amendments.

050 SEN. RASMUSSEN explains that he sees the difference between the amendments. There are situations under the -A5 where it is possible for people to fall through the cracks in either existing or future decrees. The -A4, by picking the 28 year number, guarantees we won't have any of those and there won't be any renewal problems.

070 MR. NEBEL again explains the difference between the -A4 and -A5 amendments.

088 MR. ELLIS expresses his interpretation of the two amendments.

Discussion continues on differences in the -A4 and the A-5 amendments.

098 SEN. SHOEMAKER: I had suggested we move to a simple judgement which is much like -A4, get around the notice problem by simply providing it would be junior to any prior recorded liens--mortgages, trust deeds or any other kind of prior recorded liens that a title report might have picked up. So even though we have a judgement that now exists on real property and there is no special notice given of its renewal, it would be subordinate to any judgement that preceded the date of this act. That suggestion was received as a good idea and the response I got was that Mr. Brawner was not comfortable with it, or was more comfortable with the notice requirements.

15 MR. BRAUNER: That was never presented to me. I am very comfortable with that. That is, in effect, what we think happens today, but that formalizes it and makes it very clear that is the way it ought to be. We would support that.

122 ELLIS: I did have conversations with Senator Shoemaker and did

characterize our position on the -A5 amendments. I didn't mean to imply Mr. Brawner was uncomfortable with Sen. Shoemaker's idea because I did not present that idea to him.

138 SEN. SHOEMAKER: Does this complicate the situation?

139 BRAUNER: It does not.

Discussion is held on the 28 year time period.

166 ELLIS suggests 25 years as a compromise.

166 SEN. SHOEMAKER: Suggests that the committee not act on the bill today except in concept to allow Legislative Counsel to prepare the amendments.

170 CHAIR SPRINGER requests that Sens. Shoemaker and Rasmussen review the language from Legislative Counsel.

(Tape 202, Side B)

WORK SESSION ON SB 453

SB 453 - Exempts minors from prohibition against possession of tobacco if tobacco is possessed in conjunction with law enforcement operation.

176 MS. QUIGLEY reviews provisions of the bill and the SB 453-2 amendments (EXHIBIT Q) and calls the members' attention to a description of how searches would be conducted (EXHIBIT R).

219 SEN. RASMUSSEN: What are administrative agencies' rights and abilities to search? Maybe it ought to be law enforcement or in conjunction with law enforcement. Rather than "or" it ought to be "and" or something along those lines.

228 CHAIR SPRINGER: The Health Division already has some authority.

231 MIKE SKEELS, Administrator, Health Division, introduces Tom Johnson, Assistant Administrator, Environmental Health Programs and explains that the division currently administers regulatory programs in areas such as health care facilities, restaurants, swimming pools, tourists facilities, organizational camps, clinical laboratories--lots and lots of activities where there are unannounced inspections. The division also sends people into WIC-certified vendors to try to buy unauthorized foods as a fraud investigation. This happens to be a federally funded program and there is a requirement that we do that. There is legal authority to do it.

251 SEN. RASMUSSEN: Do you use minors in those situations?

252 DR. SKEELS: No, they are state employees or local health department employees acting on behalf of the division.

255 SEN. RASMUSSEN: Would there be a problem with the division consulting with law enforcement before using minors?

257 DR. SKEELS: My understanding is that the purpose of the bill is to make it legal for law enforcement to recruit minors for this purpose.

268 CHAIR SPRINGER announces that the committee will not act on the bill so that Sen. Rasmussen will have time to study the materials and that the bill will be back on the agenda for Wednesday.

323 CHAIR SPRINGER requests that staff provide to the committee a status report on all bills passed by the committee and declares the meeting adjourned.

Transcribed and submitted by,

Reviewed by,

Annetta Mullins
Assistant

Bill Taylor
Committee Counsel

EXHIBIT SUMMARY

- A - HB 2741, prepared statement, Dean Renfro, 2 pp
- B - HB 2741, prepared statement for Portland Police Association, Bob Keyser, 2 pp
- C - HB 2741, prepared statement for Oregon Association of Chiefs of Police, Bob Keyser, 1 p
- D - HB 2349, prepared statement, Rep. Mannix, 1 p
- E - HB 2349, HB 2349-A3 amendments, Rep. Mannix, 1 p
- F - HB 2349, prepared statement, David Nebel, 2 pp
- G - HB 2349, HB 2349-A6 amendments, David Nebel, 1 p
- H - HB 2349, prepared statement, Laurie Wimmer, 1 p
- I - HB 2083, HB 2083-A2 amendments, staff, 5 pp
- J - HB 3018, prepared statement, Maureen McKnight, 1 p
- K - HB 3018, prepared statement for OlgSB y H. Young, unknown, 6 pp
- L - HB 3018, prepared statement, Deborah Wilson, 78 pp
- M - HB 2976, HB 2976-A4 amendments, David Nebel, 3 pp
- N - HB 2976, HB 2976-A5 amendments, John Ellis, 1 p
- O - HB 2976, hand-engrossed bill with HB 2976-A5 amendments, John Ellis, 4 pp
- P - NOT USED
- Q - SB 453, SB 453-2 amendments, unknown, 1 p
- R - SB 435, search description, Skeels, 7 pp