

SENATE COMMITTEE ON  
JUDICIARY

June 30, 1993                      Hearing Room C  
1:00 p.m.                              Tapes 205-206  
MEMBERS PRESENT: Sen. Dick Springer, Chair  
                  Sen. Jeannette Hamby  
                  Sen. Karsten Rasmussen  
                  Sen. Bob Shoemaker  
                  Sen. Gordon Smith  
                  Sen. Catherine Webber

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

ISSUES DISCUSSED:                      Work Session: SB 453, HB 2244, HB 2759, HB 2854, HB  
343 1                                      Public Hearing/Work Session: HB 2248, HB 3148, HB 2887

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statements made during tints session. Only text enclosed in quotation marks  
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please refer to the tapes.  
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TAPE 205, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:49 pm. Sen. Shoemaker is  
excused.

HB 2248: Defines actual notice requirements for tort claims against state  
and local governments.

WITNESSES: DAN HARTMAN, DEPARTMENT OF GENERAL SERVICES  
LYNN ROSIK, ATTORNEY GENERAL  
CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION  
PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES

015 DAN HARTMAN: Submits and reviews written testimony in support of the  
bill (EXHIBIT A).

045 LYNN ROSIK: Testifies in support of the bill. The purpose in bringing  
it forward to the committee was to respond to recent cases where the  
Supreme Court asked the legislature to reexamine the ambiguities within the  
Tort Claims Act. We are comfortable with the removal of sections 2 and 3  
and with Mr. Williamson's suggested changes.

070 CHAIR SPRINGER: The Dept. of General Services is recommending the -A2  
amendments, and Charlie Williamson is recommending the -A3. (EXHIBIT B).  
Senate Committee on Judiciary June 30, 1993 - Page 2

071            ROSIK: Yes.

080 CHARLIE WILLIAMSON: Testifies in support of the -A3 amendments; they  
represent a compromise. The purpose of section 4 is for the Dept. of  
General Services to go to other state agencies and claim responsibility. It  
is not to affect the actual notice. General Services do not want the  
agencies acting independently regarding claims.

125 PAUL SNIDER: Testifies in support of the -A2 amendments. Sections 2 and  
3 would sign)ificantly add to the cost of doing business in government  
without any offsetting benefit.

133 CHAIR SPRINGER: How would that happen?

137  
employees. In  
doing

SNIDER: This would create a claim by all public employers against their

that, insurance will be required for things that are not currently covered.

MOTION: Chair Springer moves adoption of the -A2 and -A3 amendments.

VOTE: Hearing no objection, the motion is adopted.

pass"

MOTION: Chair Springer moves HB 2248 as amended to the Floor with a "do

recommendation.

carry

VOTE: The motion passes 5 - 0. Sen. Shoemaker excused. Sen. Webber will

the bill on the Floor.

HB 2244: Authorizes use of uniform citation for forest fire protection statute and rule violation.

163  
major  
issues

QUIGLEY: Reviews the bill and the amendments (EXHIBIT B). There were two

attorney and attorney

that arose during the public hearing. One had to do with the district

Class A misdemeanor

general's roles in the fire prevention statutes. The second issue was the

and clarify that the

and its interplay with the arson statutes. The amendments correct an error,

abatement, fire abatement,  
or

AG is responsible for the investigation of liability costs for hazard

that nothing in  
this

damages under this chapter. A separate (conceptual) amendment makes clear

Act is intended to interfere with the arson statute.

204  
and

FRED ROBINSON, DEPARTMENT OF FORESTRY: Testifies in support of the bill

proposed amendments.

MOTION: Sen. Hamby moves the five proposed amendments.

VOTE: Hearing no objection, the amendments are adopted.

MOTION: Sen. Hamby moves HB 2244 as amended to the Floor with a "do pass"

recommendation.

carry the

VOTE: The motion passes 5 - 0. Sen. Shoemaker excused. Sen. Hamby will

bill on the Floor.

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Senate Committee on Judiciary June 30, 1993 - Page 3

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

WITNESSES: TOM JOHNSON, HEALTH DIVISION BRAIN DELASHMU=, OGOSH

-3  
amendments

242 QUIGLEY: Reviews the bill and -3 and -4 amendments (EXHIBITS D,E). The

funds are not

contain the federal language that's required to ensure that the block grant

age of 18 will  
need

jeopardized and language suggested by Sen. Rasmussen that minors under the

that the training will

to get parental consent before getting involved in these operations and

include some training by a district attorney. The -4 amendments contain

everything found in

the -3 amendments but are more specific regarding rule adoption.

278 SEN. RASMUSSEN: Reviews issues and rationale for amendments. One concern was whether

we were likely to get into criminal proceedings with this activity, and the Health Division

believed there would be more involvement. This led me to wonder whether there shouldn't be

more interaction with law enforcement agencies. I also asked that there be parental consent

(EXHIBIT G).

297 TO M JOHNSON: It would result in more criminal activity being discovered, and believe it

would be helpful to specify the training as the -3 and ~ amendments do.

310 SEN. RASMUSSEN: Any other feedback?

315 JOHNSON: Doesn't believe they could comply and conform with federal statutes; how would

we know what inspections have been conducted where, what the level of availability of tobacco

products to underage individuals was? It would completely take the Health Division out of the

main role in doing the inspections.

329 SEN. RASMUSSEN: The entrapment issue troubles me. Is the goal inspection or enforcement?

344 JOHNSON: My understanding of the difference between entrapment and non-entrapment is the

degree to which an underage person would encourage the sale. It would not be entrapment if the

minor tried to buy tobacco, was turned down, and they walked out as opposed to continually

asking the clerk to sell the product.

364 RASMUSSEN: Is the focus law enforcement or inspection?

366 JOHNSON: Federal law requires that the state prove that it is serious about enforcing the law,

and providing them with information regarding whether we are impacting the sales of tobacco

products to minors.

379 WEBBER: Is there any history of children being assaulted doing this?

380 JOHNSON: Other states do use children in this capacity, and I am unaware of any assaults.

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Senate Committee on Judiciary June 30, 1993 - Page 4

393 BRIAN DELASHMUTT: Minors have been used and are being used. Minors in these

operations do not consummate the sale; if cigarettes are put on the counter for them they do not

take them. The bill would allow the minor to consummate the sale without the minor being in

violation of the law (possession of tobacco). In response to the question of whether this could

be done by surveillance, or by observation and questioning - that approach probably wouldn't

work.

443 SMITH: Are the kids paid?

450 DELASHMUTT: I am only aware of it being voluntary; it is associated with college or high school anti-drug groups.

470 SMITH: Do you object to the parental notice?

471 DELASHMUTT: We have no objections to the -3 or ~ amendments.  
483 SMITH: What is the legal liability of the state if the kids are hurt?

TAPE 206, SIDE B

038 CHAIR SPRINGER: General Services have left, and they might have been able to answer that.  
My sense is that a common law remedy would apply. Technically they would be an agent of the state.

045 SMITH: It is a vague area. It is naive to think the minors are not in some danger.

050 DELASHMUTT: The information collected has been useful in determining where the problems are. The information hasn't been helpful in figuring out what to do once the information has been collected.

060 HAMBY: Wouldn't the enforcement abilities of the police add to the "clout" the Health Division has?

073 DELASHMUTT: A combination of both would be best. The OLCC has enforcement ability as well as the district attorney. This crime tends to be a low priority with district attorneys.

123 CHAIR SPRINGER: This has a fiscal impact of \$150,000 (EXHIBIT E); is there a way to avoid the Ways & Means Committee?

128 JOHNSON: We will have to find the money to do this, otherwise we lose \$3.6 million.

MOTION: Sen. Rasmussen moves to adopt the -4 amendments. Can't see two agencies doing this, and law enforcement does not have the resources.  
VOTE: Hearing no objections, the motion passes.

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Senate Committee on Judiciary June 30, 1993 Page 5

MOTION: Sen. Rasmussen moves SB 453 as amended to the Senate Ways & Means Committee by prior referral.

VOTE: The motion is adopted 5 - 0. Sen. Shoemaker excused.

150 Testimony submitted but not discussed (EXHIBIT H).

HB 3148: Modifies definition of "traffic control device."

WITNESSES: JEFF JOHNSON, TUALATIN VALLEY FIRE AND RESCUE DWAYNE HOFSTETTER, DEPARTMENT OF TRANSPORTATION BURTON WEAST, TUALATIN VALLEY FIRE AND RESCUE 160 QUIGLEY: Reviews bill and amendments. The House concurred with Senate amendments to HB 2900 which pertains to the unlawful possession, use, or distribution of a traffic control signal operating device. Maybe the proponents could discuss why this bill is still necessary.

180 BURTON WEAST: Testifies in support of the bill. HB 2900 provides a penalty for the unauthorized use of these devices and provides that they can be seized. HB 314 8 allows the ODOT to regulate them, including frequencies, who is using them, and making sure that no more

than one emergency vehicle is trying to change the signal light at a time. We are not aware of any conflicts between the two bills, and HB 3148 provides regulation for those who use the devices legitimately, while HB 2900 addresses illegal use.

220 JEFF JOHNSON: Submits and reviews written testimony in support of the  
bill from the  
Mayor

of Beaverton (EXHIBIT I). Shows committee an example of a bootlegged  
traffic control  
device.

250 DWAYNE HOFSTETTER: Testifies in support of the bill (EXHIBIT J.  
285 SEN. HAMBY: There were rumors that Tri-Met was considering use of the  
device and  
ODOT

was considering using it for carpooling. Where is that now?

296 HOFSTETTER: There are some other options being developed. Emergency  
service providers

would have priority.

MOTION: Sen. Rasmussen moves HB 3148 to the Senate Floor with a "do pass"  
recommendation.

VOTE: The motion passes, 5-0. Sen. Shoemaker excused. Sen. Rasmussen will  
carry

the bill on the floor.

HB 2854: Removes two-year statute of limitation

325 BILL TAYLOR: This bill allows a husband and or wife to be sued jointly or  
separately for the expenses of family or education of children.

349 SEN. RASMUSSEN: Comments on broad "relating to" clause. Bills that have  
not moved could

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Senate Committee on Judiciary June 30, 1993 Page 6

be incorporated into the bill, such as SB 211.

370 CHAIR SPRINGER: If we incorporated SB 211, the bill would need to go to  
Ways and Means.

417 RASMUSSEN: I don't want to hold up a good bill.

MOTION: Sen. Hamby moves HB 2854 to the Floor with a "do pass"  
recommendation.

VOTE: The motion passes 5 - 0. Sen. Smith excused. Sen. Hamby will carry  
the bill to the Floor.

MOTION: Sen. Springer asks unanimous consent to allow Sen. Shoemaker to  
vote "aye" on HB 2248, HB 3148, SB 453, and HB 2244.

VOTE: Hearing no objections, the record shall reflect Sen. Shoemaker's  
"aye" vote.

HB 2759: Requires parole and probation office supervising certain sex  
offenders to notify community within 21 days of offender's release or  
change or residence in community.

WITNESSES: JANET ARENZ, AMERICAN CIVIL LIBERTIES UNION  
JANE DOE 2, CITIZEN

TAPE 205, SIDE A

030 JANET ARENZ: States opposition and introduces "Jane Doe 2."

040 JANE DOE 2: Submits and reviews written testimony in opposition of the  
bill (EXHIBIT K).

149 SEN. HAMBY: Is there anything that could have been done to help your

oldest son?

152 DOE: Oldest son needs treatment but will not accept it. He needs to be incarcerated and offered the option of treatment. This bill won't stop him. He has threatened his rape victims while awaiting trial.

200 SEN. HAMBY: Expresses hope that proposed amendments will help protect her youngest child.

HB 3431: Allows court to order person convicted of violation to pay restitution.

WITNESSES: BILL LINDEN, STATE COURT ADMINISTRATOR  
FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION  
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS  
ASSOCIATION

237 BILL LINDEN: Submits and reviews written testimony in support of the bill (EXHIBIT L).

290 FRED AVERA: Testifies in support of the bill and proposed amendments (EXHIBIT L) . Will save the state money. Supports

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Senate Committee on Judiciary June 30, 1993 - Page 7

300 ROSS SHEPARD: Testifies in support of the bill generally. It still does not address many problems created by court cases.

MOTION: Sen. Hamby moves the amendments proposed by Bill Linden.

VOTE: Hearing no objection, the motion passes.

MOTION: Sen. Hamby moves HB 3431 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 5 - 0. Sen. Rasmussen excused. Sen. Webber will carry the bill on the Floor.

HB 2887: Modifies and defines "sexual abuse" and "rape of child" when referring to sex acts against children.

WITNESSES: ARNIE GREEN, CHILDREN'S CARE TEAM TASK FORCE MEMBER FRED AVERA, OREGON DISTRICT ATTORNEYS ASSN.

353 ARNIE GREEN: Testifies in support of the bill. The bill is supported by the Interim Children's Care Team Committee, who heard the horrors of child abuse. A concern of the committee were the "mushy" definitions of abuse. This bill straightens out the language of the statute.

390 BILL TAYLOR: There is a need for a technical amendment (EXHIBIT M).

460 SEN. SHOEMAKER: Voices concern that amendments needs to be inserted in other places as well and definitions. Discussion follows.

TAPE 206, SIDE B

008 FRED AVERA: Not prepared to comment on technical matter. I would be more concerned if this was a criminal statute. As I understand it, ORS 418 defines when children are eligible for treatment and benefits.

050 SEN. SHOEMAKER: SB 904 contained definitions regarding abuse of women, and perhaps it

would be good to make the two consistent.  
057 AVERA SB 904 did redefine many of the sex crimes in the criminal code.

070 CHAIR SPRINGER: Carries bill over for further review. 085 CHAIR  
SPRINGER: Adjourns hearing at 3:19 p.m.

Submitted by, Reviewed by,

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Senate Committee on Judiciary

June 30, 1993 - Page 8

Kirk Bailey Bill Taylor

EXHIBIT SUMMARY

- A - testimony, HB 2248, Dan Hartman, 1 pg.
- B - proposed amendments, HB 2248, staff, 2 pas.
- C - testimony/proposed amendments, HB 2244, staff, 5 pas.
- D - proposed amendments, SB 4S3, staff, 2 pas.
- E - proposed amendments, SB 453, staff, 2 pas.
- F- testimony, SB 453, staff, 1 pg.
- G - proposed amendments, SB 4S3, Sen. Rasmussen, 1 pg.
- H - testimony, SB 453, Jeff Kushner, 1 pg.
- I - testimony, HB 3148, Rob Drake, 2 pas.
- J - testimony, HB 3148, Hofstetter, 3 pas.
- K - testimony, HB 2759, Jane Doe 2, 6 pas.
- L - testimony/proposed amendments, HB 3431, Bill Linden, S pas. M -  
proposed amendments, HB 2887, staff, 1 pg.

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