

SENATE COMMITTEE ON
JUDICIARY

July 7, 1993 Hearing Room C
1:00 p.m. Tapes 209-213

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
 Kate Wrightson, Committee Coordinator
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Reconsideration/Work Session: HB 3148
 Public Hearing/Work Session: HB 2309, HB 2033,
HB
 3233, HB 3578, HB 2984, HB 2246, HB 2247, HB 2479
 Work Session: HB 2976, HB 2759, HB 2477

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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 209, SIDE A

003 CHAIR SPRINGER: Calls the meeting to order at 1:19 pm.

HB 2246: Grants subpoena power to Attorney General in criminal investigations.

WITNESSES: TED KULONGOSKI, ATTORNEY GENERAL
 PETER SHEPHERD, DEPARTMENT OF JUSTICE

009 TED KULONGOSKI: Testifies in support of the bill. The bill gives authority to the Attorney General's Office to issue subpoenas. Currently we must go to through the district attorneys. This involves unnecessary travel and expense. This bill has been introduced in past legislatures, but this bill does not contain any of the previously objectionable provisions. It reduces the cost of criminal

investigations because we have to rely on the grand jury subpoenas to secure evidence, and we have to make an appearance there. I would like to pursue violations of the Unlawful Trade Practices Act. I need to be able to issue subpoenas to investigate consumer fraud allegations. Passage of the bill would improve the quality and shorten the time of criminal investigations. It will allow us to secure documentary evidence without risking prematurely disclosing information to certain parties. The bill does not weaken the constitutional protections for criminal suspects. The bill grants a right to subpoenaed witnesses not available currently under the grand jury process. The target of the subpoena may seek relief from any prosecution on the grounds that the AG's subpoena is unreasonable or oppressive. The AG will continue to be limited to the same types of cases he is currently limited to. It doesn't decrease the power of the district attorneys.

078 PETE SHEPHERD: Nothing to add; happy to answer questions.

083 SHOEMAKER: What is the practice in other states?

086 SHEPHERD: There are some other states that grant this authority; as of last session there were four or five. Hawaii has this power. It is a minority of jurisdictions.

093 KULONGOSKI: It depends a great deal on the criminal prosecution powers the AG has. The bottom line is the Dept. of Justice would like as much power as the Board of Barbers and Hairdressers, and other boards.

MOTION: Sen. Hamby moves HB 2246 to the Floor with a "do pass" recommendation.

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

HB 2247: Allows court to grant continuance on its own motion for good cause.

WITNESSES: FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION
BOB ROCKLIN, DEPARTMENT OF JUSTICE
TED KULONGOSKI, ATTORNEY GENERAL

130 BILL TAYLOR: Reviews bill.

137 TED KULONGOSKI: Notes that the concerns from Ross Shepard, Oregon Criminal Defense Lawyers Association have been resolved, and no longer opposes the bill.

143 BOB ROCKLIN: Testifies in support of the bill. The purpose is to grant a court power to continue a case on its own motion. This recently came up in a Supreme Court case. Amendments have been proposed to clarify the statute (EXHIBIT A). This would allow the trial court to continue the trial for good cause on its own motion, due to illness of the judge or docket problems. The defendant still retains all other rights.

205 FRED AVERA: The Supreme Court opinion was a "3-1-3" opinion in question. The three dissenting judges included a footnote urging the legislature to allow a court to continue a trial on its own motion and that such an action would "harmonize" with other existing statutes.

222 ROSS SHEPARD: We have no objections to the bill.

MOTION: Sen. Hamby moved the amendments dated May 21, 1993.

VOTE: Hearing no objections, the amendments are adopted.

MOTION: Sen. Hamby moves HB 2247 as amended to the Senate Floor with a "do pass" recommendation.

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

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

WITNESSES DWAYNE HOFFSTETTER, DEPT. OF TRANSPORTATION

246 CHAIR SPRINGER: There were questions last week as to the relationship of this bill with HB 2900. The bill needs to be reconsidered.

MOTION: Chair Springer moves that the vote by which HB 3148 was passed be reconsidered.

VOTE: Hearing no objections, the motion passes.

257 KAREN QUIGLEY: Reviews the bill and -1 amendments (EXHIBIT B), which addresses the discrepancy between a Class B misdemeanor in HB 2900 and a Class B traffic infraction in HB 3148. If HB 2900 becomes law, then

section 4 of HB 3148 will be repealed and the penalty provision will apply to all unlawfully using the traffic control device.

MOTION: Sen. Hamby moves the -1 amendments to HB 3148.

VOTE: Hearing no objections, the amendments are adopted.

281 DWAYNE HOFSTETTER: Jeff Johnson of Tualitan Valley Fire and Rescue
and he wanted it understood this would allow the Commission to adopt rules to determine use of emitters.

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

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

HB 2309: Establishes procedures for investigation, hearing and sanctions by Senior and Disabled Services Division or Area Agency on Aging for abuse of resident of long term care facilities.

WITNESSES: REPRESENTATIVE FRANK SHIELDS, HOUSE DISTRICT 16

323 REP. SHIELDS: Submits and reviews written testimony in support of the bill (EXHIBIT C).

433 SHOEMAKER: The current definition of abuse defines abuse as occurring when an injury appears to be caused by something other than the explanation provided; proof is not needed.

449 SHIELDS: Many things can happen in nursing homes, and investigations are the only way to discern what really happened.

475 SHOEMAKER: After the investigation there are sanctions imposed?

477 SHIELDS: Correct, if it is determined there is neglect or if abuse is committed by individuals. There is a hearings process to protect the accused and it is a long and involved. Timelines are realistic. Progress reports are provided.

TAPE 210, SIDE A

042 SMITH: Asks if firing an employee would run afoul of a union contract.

056 SHIELDS: The target was someone who had abused a resident in the
past
and moved on to another nursing home without anything on their
employment record.

069 CHAIR SPRINGER: Will return to this bill.

HB 3233: Adds county service district authorized to provide enhanced
law
enforcement services to definition of "law enforcement unit."

WITNESSES: PETER WANLESS, SUNRIVER DEPARTMENT OF PUBLIC SAFETY
GREG BROWN, DESCHUTES COUNTY SHERIFF
DAN CLINKENBEARD, SUNRIVER OWNERS ASSOCIATION

077 PETER WANLESS: Submits and reviews written testimony in support of
the
bill (EXHIBITS D, AA). These police officers do the same things as the
county sheriff's office and deserve training.

101 GREG BROWN: Testifies in support of the bill. For 15 years
the
Deschutes County Sheriff has had a good working relationship with
Sunriver and Black Butte Dept. of Public Safety. They are like deputy
sheriffs except they cannot be certified by the Board of Public
Standards and Training. Certification will add to the professionalISM
of the agency. The limits it to those who are working in service
districts or police agencies working under a county sheriff.

123 WEBBER: Does only apply to Sunriver?

124 BROWN: It applies to two or three specific places including
Sunriver.
The determining factor would be if they are working under a sheriff.

144 WEBBER: There is the possibility there are other qualifying
police
forces?

145 BROWN: Yes.

146 WEBBER: Does the private police force then become public
corporations,
eligible for the Public Employees Retirement System?

149 BROWN: No. Sunriver and Black Butte has access to LEMS and Black
Butte
is eligible for PERS because they are a county service district.

160 DAN CLINKENBEARD: Testifies in support of the bill. Clarifies that
the
Sunriver police work under the community association form of
government.

The department is financed by owner assessments.

165 WEBBER: Would you be covered under the Tort Claims Act?

167 CLINKENBEARD: Yes, because we are commissioned by the sheriff.

178 BROWN: I'm not sure if that has been tested. A person harmed
could probably sue both the county and the homeowner association.

185 WEBBER: How would the training slots be divided up and who would
pay for them?

187 BROWN: They would be divided up as they are now. Each agency that
has new officers in need of training contact BPST and schedule them.
Sunriver already issues traffic citations that go through Deschutes
County district court and those would pay for training (EXHIBIT E);
they are already providing money to pay for the training, they are just not
getting the benefit of it.

203 HAMBY: Didn't this issue come up in the reorganization committee?

204 BROWN: It did, and it was decided at that time that the Act
didn't allow Sunriver police to participate in BPST, so there need to be a
clarification in the law.

215 WEBBER: Sunriver wasn't approved.

216 BROWN: Black Butte was funded differently.

222 CLINKENBEARD: Currently, the Sunriver Police Department has
the responsibility to enforce law in Sunriver and to provide backup to the
Deschutes County Sheriff. We need the training that is commensurate
with that authority, and we are already paying into the state fund
that finances that training.

245 CHAIR SPRINGER: If you have to take someone into custody, do you have
a detention facility?

246 WANLESS: Sunriver has a very small interview room; we usually
transport them to the Deschutes County Jail.

259 SHOEMAKER: This bill doesn't put Sunriver officers into the
PERS system, but will that be sought later?

261 WANLESS: Training is all we are looking for.

HB 2309: Establishes procedures for investigation, hearing and sanctions
by
Senior and Disabled Services Division or Area Agency on Aging for
abuse of long term care facilities.

WITNESSES: SALLY GOODWIN, OREGON ASSOCIATION OF HOMES FOR THE AGING
PENNY DAVIS, OREGON CITIZENS COALITION FOR BETTER NURSING HOME
CARE
PHYLLIS RAND, GOVERNORS COMMISSION ON SENIOR SERVICES
JANICE FIGNER, OREGON ASSOCIATION OF AREA AGENCIES ON AGING
RANDY POPPEN, OREGON ASSOCIATION OF AREA AGENCIES ON AGING

330 SALLY GOODWIN: Submits and reviews written testimony in support of
the
bill (EXHIBIT F). The bill has gone through many changes since it was
first introduced.

347 PHYLLIS RAND: HB 2309 works to strengthen Oregon's long term
care
system. It is important there be a broad definition of abuse for
reporting purposes, access to facilities to investigate complaints,
quick investigations, follow up, and appropriate action taken when
abuse
has occurred. Good information must be available to consumers about
nursing facilities (EXHIBIT BB).

HB 2479: Permanently revokes driving privileges of person convicted of
murder
or manslaughter.

WITNESSES: REPRESENTATIVE TIERNAN, HOUSE DISTRICT 24
STEVEN DOELL, CITIZEN
COLLEEN DOELL, CITIZEN
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSN.

408 REP. TIERNAN: Describes an incident in Lake Oswego where a
teenager
intentionally killed a young girl with his car. If the teenager had
shot the girl, he would have been banned from owning a gun upon
release
from prison, yet this teenager will be able to get a driver's license
upon release, despite the use of a vehicle as a murder weapon. The
intentional use of a car to kill someone doesn't happen often, but
there
is more than one incident on record.

468 COLLEEN DOELL: Testifies in support of the bill (EXHIBIT G).

TAPE 209, SIDE B

078 STEVEN DOELL: Testifies in support of the bill. Opposes a hardship exemption to the prohibition of having a drivers' license (EXHIBIT H).

112 CHAIR SPRINGER: Just because we take away someone's license doesn't mean they don't drive. How do we avoid having a "feel good" bill that doesn't really address the problem?

130 STEVEN DOELL: Why pass any law in that case? We pass laws to protect society and sanction people for inappropriate behavior. If we take that position we would never pass any laws. It comes down to consequences and taking responsibility for your actions.

152 ROSS SHEPARD: Reviews -A2 amendments (EXHIBITS H). The amendments limit the revocation period to five years upon release of the defendant and would allow the defendant to apply to DMV for a permit to drive back and forth to work. Suggests requiring the person's parole officer support the application of the hardship license. Murderers have a low recidivism rate.

167 HAMBY: Is the definition of "hardship" limited to employment?

168 SHEPARD: I believe that definition is limited to employment.

178 HAMBY: Explains the -A3 amendments (EXHIBIT I). The amendments would allow immobilization of a vehicle following a Driving Under the Influence conviction. The bill passed the Senate but will not receive a hearing in the House because the committee is closed.

197 REP. COURTNEY: Clarifies that House Judiciary hasn't closed; some major things have happened in the last 24 hours.

214 SHOEMAKER: How do you feel about attaching the amendment to this bill?

216 COURTNEY: Supports both bills, and if it doesn't endanger HB 2479 will support the amendment.

232 SMITH: Do you feel it would help or hurt HB 2479?

238 COURTNEY: It could end up in conference committee; the House has

already approved the bill before you. The worst thing that would happen is that the bill would die in conference committee.

256 HAMBY: Was there any consideration of the hardship clause?

261 COURTNEY: There was consideration, but the committee chose not to include it. Many did not want to allow a license to be given even after 10 years.

269 CHAIR SPRINGER: Need to contact Rep. Tiernan regarding amendments.

291 COURTNEY: Adds that he discussed the Hamby amendments with Rep. Tiernan who was willing to accept them.

300 CHAIR SPRINGER: Will hold bill for further review.

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

WITNESSES: REP. PETER COURTNEY, HOUSE DISTRICT 33
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSN.
DAVE FIDANQUE, AMERICAN CIVIL LIBERTIES UNION
JOANNE FULLER, DEPT. OF CORRECTIONS

310 TAYLOR: Reviews the -A11 amendments (EXHIBIT J). It removes juveniles from the bill, and removes those convicted of indecent exposure. The hand amendments to them limit the bill to those convicted of sex crimes as defined in ORS 181.517(1)-(4). The -A8 amendments (EXHIBIT K) are Sen. Hamby's.

338 SEN. HAMBY: This is based on the medical treatment model that has shown to decrease recidivism rates of pedophiles and aggressive rapists below five percent. This was SB 935 and it passed the Senate.

352 CHAIR SPRINGER: Do you support the -A8 amendments?

354 COURTNEY: Yes.

356 ROSS SHEPARD: Testifies in support of the bill.

362 DAVID FIDANQUE: Submits and reviews written testimony in support of the bill (EXHIBIT L). Recommends additional amendments to the -A11 amendments. The offenses that trigger the notification should also be conformed in section 3, lines 21-22, to delete public indecency and to

limit the offenses found in ORS 181.517(1)-(4). Subsection 2 of section

3 should also be tied in to those definitions.

389 JOANNE FULLER: Supports the bill with the -All amendments.

397 TAYLOR: Another issue before the committee last time was concern from landlords association regarding notice. If notice was sent to the agent of the apartment building, was there a duty for the agent to notify the tenants? If there is no duty, it should be clearly expressed in the record. Reviews changes to be made to the -All amendments.

453 WEBBER: Those offenses are rape, sodomy, sex abuse.

458 SHEPHARD: These are felonies, except for sex abuse in third degree, which is a misdemeanor.

TAPE 210, SIDE B

044 COURTNEY: The intention of the bill is not to create liability for landlords.

052 SHOEMAKER: Why has the Dept. of Corrections been added?

056 WEBBER: The Board of Parole has responsibility over post-supervision plans. The language used in the original bill was "probation department" which is an non-entity. There needs to be a policy decision whether the decision should be made by the judge or by rule within the Dept. of Corrections.

065 SHOEMAKER: Expresses belief that it should not be by rule, because it is a significant sanction. It should be done on an individual basis.

070 SHEPARD: Prefers it not be done by the court on serious crimes.

074 SHOEMAKER: Suggests the Board of Parole for those on parole, and the court for those on probation.

075 WEBBER: States need to include specific language limiting landlord liability.

092 SHOEMAKER: Regarding someone under the jurisdiction of the Psychiatric Security Review Board, instead of requiring a determination that the person presents a risk to the public, we have a standard that the

person

might present a risk. Why the lesser standard?

102 COURTNEY: If you are suggesting deleting the word "might" I don't have a problem with that.

108 FIDANQUE: That language just didn't get picked up in the various amendments. The A-Engrossed bill talked about people who were required to register.

122 SHOEMAKER: The -All amendments provide that once this determination has been made the agency supervising the person SHALL notify the appropriate person, and the ACLU recommended the word MAY. I am more inclined to support "may."

127 FIDANQUE: The ACLU has been assured that it is not intended to be a mandatory notification requirement.

132 SHOEMAKER: In section 3, "required to register" needs to be changed to "convicted."

133 FIDANQUE: Yes.

142 RASMUSSEN: Expresses concern about bill. In section 2, line 23 forward, the notification to residential neighbors, the language is so broad that it could include the whole state. States that he won't vote for a bill that includes the address of the person (page 2, line 7). States that he will not support exempting landlords from liability, or section 4.

168 SHOEMAKER: Shares concern regarding the address.

169 JOANNE FULLER: The probation and parole officers that are members of the sex offender network have felt strongly that they would like the option of informing people of the address because there are situations where the picture/description of the offender does not provide enough information for families of who this is. This would be used selectively, with the worst offenders. Section 4 is the most important section of the bill for parole and probation officers because officers are very concerned about being held liable for providing notification.

If officers are required to provide notification then officers need the protection so officers are not held accountable for the actions of others.

210 RASMUSSEN: It is the concern with potential civil liability which will cause people to do it correctly.

219 HAMBY: Requests to consider the bill further on Friday.

222 SMITH: Notes the desire to see section 4 in the bill. Could you comment on section 4?

235 COURTNEY: Section 4 was put in because the House wanted the parole and probation officers to have this approach to provide public safety. The sex offender that lives next door to me also lives next door to a day care center, and his parole officer was not aware of this situation, and the parolee was forbidden to be around small children. We have not harassed this offender, but residents need to know. The House has worked very hard on this bill.

294 HAMBY: Differences could be worked out in conference committee.

295 COURTNEY: Not sure that it will necessarily go to conference committee.

325 CHAIR SPRINGER: Carries bill over for further consideration on Friday.

HB 2309: Establishes procedures for investigation, hearing and sanctions by Senior and Disabled Services Division or Area Agency on Aging for abuse of resident of long term care facilities.

333 CHAIR SPRINGER: What is Rep. Tiernan's opinion of amendments to the bill?

341 REP. TIERNAN: Apprised of Rep. Hamby's amendments and do not oppose them. Regarding the Shepard amendments, I understand the committee supports those amendments, but urges a 5-year suspension before qualifying for a hardship permit.

line MOTION: Sen. Rasmussen moves to amend the -A2 amendments, on 3, change "5" to "7" and then moves to adopt the revised

amendments

377 BILL TAYLOR: Another suggested change "person's parole officer
consents
to the permit" at the end of line 7.

MOTION: Chair Springer clarifies that the motion shall be the
adoption of the -2 amendments with both changes.

amending
MOTION: Sen. Hamby moves to further amend the motion, by
the -2 amendments such that there is a three-year no allowable
hardship provision, with the last four years eligible for a
hardship request.

VOTE: In a roll call vote, the motion fails 3 - 3. Voting aye:
Hamby, Webber, Smith Voting no: Rasmussen, Shoemaker, Springer.

473 CHAIR SPRINGER: Sen. Rasmussen's main motion is now before us.

VOTE: In a roll call vote, the motion fails 3 - 3. Voting aye:
Rasmussen, Shoemaker, Springer. Voting no: Hamby, Smith,
Webber.

TAPE 211, SIDE A

036 SEN. RASMUSSEN: Suggests a one-year absolute bar.

line
MOTION: Sen. Rasmussen moves to amend the -A2 amendments, by
substituting "5" for "7" on line 3; adding the language, "if the
person's parole officer consents to the permit" at the end of
7; and conceptually adding an absolute 1.5 year bar from a
hardship permit.

VOTE: In a roll call vote, the motion passes 5 - 1, Sen. Smith
voting "no."

MOTION: Sen. Hamby moves adoption of the -A3 amendments.

074 CHAIR SPRINGER: States that he will support the motion because of
his
belief that "gut and stuff" techniques should be reserved for
extraordinary circumstances. Does not want to endanger working
relationship with Rep. Parks.

080 SHOEMAKER: Concurr, but notes consent from sponsors. Suggests
passing
the -A3 amendments, checking with the House, then bring it back if

there
is a problem.

VOTE: The motion passes 5 - 1, Sen. Springer voting no.

MOTION: Sen. Hamby moves HB 2479 as amended to the Senate Floor
with a "do pass" recommendation.

VOTE: The motion passes 6 - 0. Sen. Smith will carry the bill.

HB 3578: Conforms state building code to federal Americans with
Disabilities
Act and Federal Fair Housing Act.

WITNESSES: CHUCK STALSB ERG, CITY OF PORTLAND
BOB PIKE, ENVIRONMENTAL ACCESS
EUGENE ORGAN, OREGON DISABILITIES COMMISSION
PEGGY COLLINS, BUILDING CODES AGENCY
JACKIE BLOOM, CITY OF PORTLAND

120 REP. BROWN: States support of the bill.

130 CHUCK STALSB ERG: Submits and reviews written testimony in support
of
the bill (EXHIBIT M).

170 CHAIR SPRINGER: Were there any objections in the House?

175 JACKIE BLOOM, CITY OF PORTLAND: Objections were worked out in
the
House.

178 CHAIR SPRINGER: Notes additional letters of support from
other
interested parties (EXHIBITS M - P).

179 SHOEMAKER: Why should we go beyond ADA requirements?

187 BOB PIKE: Currently, Oregon has more stringent laws than the ADA.
The
1991 Legislature directed the Building Codes Agency to update building
codes such that they met ADA requirements, but not downgrade existing
requirements. To downgrade would be confusing to builders and
architects.

232 PEGGY COLLINS: Testifies in support of the bill.

239 EUGENE ORGAN: Submits and reviews written testimony in support of
the
bill (EXHIBIT Q).

MOTION: Sen. Shoemaker moves HB 3578 to the Floor with a "do
pass" recommendation.

VOTE: The motion passes, 4 - 0. Sen. Hamby and Rasmussen

excused. Sen. Shoemaker will carry the bill on the Floor.

HB 2984: Prohibits suppliers of utility services from transferring claim against tenant to owner under specified circumstances.

WITNESSES: EMILY CEDARLEAF, MULTIFAMILY HOUSING COUNCIL
JOHN VAN LANDINGHAM, LANE COUNTY LEGAL AID
SUSAN SCHNEIDER, LANE COUNTY LEGAL AID
FRED VAN NATTA, OREGON STATE HOME BUILDERS
SHARON FLEMING-BARRETT, AFFILIATED RENTAL HOUSING ASSOCIATION
KEVIN HANWAY, METRO MULTIFAMILY ASSN./SPECIAL DISTRICTS
PHILLIP YATES, AFFILIATED RENTAL HOUSING ASSN.

275 QUIGLEY: Notes committee receiving -8 amendments (EXHIBIT R).

279 EMILY CEDARLEAF: Submits and reviews written testimony in support of the bill (EXHIBIT S).

364 JOHN VAN LANDINGHAM: Submits and reviews written testimony with amendments in support of the bill (EXHIBIT T). The proposed amendment represents a disagreement between landlords and tenants.

434 SUSAN SCHNEIDER: Testifies in support of the bill. Notes letter from League of Oregon Cities (EXHIBIT U).

463 SMITH: Why should subsequent renter or a landlord should be responsible for a bill of a prior tenant?

470 SCHNEIDER: There are three available parties - the public utilities, tenant, and landlord. The position of the public utilities has taken is that the bill is first the responsibility of the tenant, then the landlord, then the utility.

TAPE 212, SIDE A

041 SMITH: Disagrees that the landlord is in a better position than the utility to know renter's likelihood of paying the bill - those are the parties the contract is with. The profit is to the utility.

051 SCHNEIDER: The landlord's property is not rentable with the services. Public utilities are not profit making.

059 VAN LANDINGHAM: Notes difference of opinion on this point. Current law prohibits utilities from transferring a claim against a prior tenant to an owner unless there is a written agreement. Some utilities will

require the owner to provide that written agreement, and get around the law. A Court of Appeals ruling states that a utility can deny service to a subsequent tenant if there is a lien right created by local law. Unless something is done that situation will continue.

069 SMITH: Isn't current law better then?

073 CEDARLEAF: We would like to be able to prevent local utilities from liening the property, but that isn't feasible - we've tried twice before. The solution in this bill is not perfect but right now we do not know the outstanding balance of the bill and we get the lien notice in June, after landlords have returned deposits. The City of Roseburg just filed a \$100,000 worth of intent to lien notices. This bill is better than the status quo.

104 FRED VAN NATTA: Testifies in support of the bill. Relates personal experiences. It's very important that the property owner be notified of the delinquency.

143 KEVIN HANWAY: Testifies that Special Districts and Metro Multi-Family Assn. do not oppose the bill, but that this was a difficult decision. Tenants will continue to "skip" out on the last payment, and as a result, utility fees will increase. Tenants will have to pay a deposit to the utility or the landlord or both. This will hurt low income tenants.

194 SHARON FLEMING-BARRETT: Submits and review written testimony in opposition to the bill (EXHIBIT V) and -A7 amendments which return the bill to its original form. This is not the solution to what is a generally agreed upon problem. The collection of deposits by utilities would be a better solution.

287 SMITH: How do you respond to cities' contention that the utility is there to provide service, not make a profit?

293 FLEMING-BARRETT: Disagrees with that contention. The utility has the initial contact with the tenant and the record of the tenant.

319 PHILLIP YATES: Testifies in opposition to the bill. To the extent
this bill implies or grants a right to utilities to deny service, it has
constitutional problems. Generally, public utilities have a common law
duty to serve. What is a reasonable standard by which to cut off
service? The standards the privately owned utilities are held to by
the PUC would be reasonable for public utilities, as well. Private
utilities cannot deny service because a prior tenant did not pay. In
Section 2 it is explicitly stated that a utility can provide notice to
an owner and terminate service to the tenant without providing notice
to the tenant, which violates procedural due process. Private utilities
have extensive requirements regarding cutting off someone's power that
public utilities simply do not have. There is an equal protection
clause issue as well. A privately owned utility's rates reflect bad
debts; a public utility's bad debts are potentially shifted to social
service programs who pay for the utility to prevent cutting off the
utility (EXHIBIT W).

448 CHAIR SPRINGER: Did the House hear this?

452 FLEMING-BARRETT: Part of it, but not all.

454 CHAIR SPRINGER: This is the first time I've heard of these issues.
If people want this bill they need to work on it further.

487 SHOEMAKER: I will need to be persuaded that the bill does not
have constitutional problems.

TAPE 211, SIDE B

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

WITNESSES: JOHN ELLIS, DEPT OF JUSTICE
FRED AVERA, OREGON DISTRICT ATTORNEYS ASSN.
VIRGINIA VANDERBILT, LEGISLATIVE COUNSEL
FRANK BRAWNER, OREGON BANKERS ASSN.
BILL LINDEN, STATE COURT ADMINISTRATOR

051 JOHN ELLIS: Testifies in support of the bill. Reviews -A7
amendments (EXHIBIT X). Notes no opposition at the current time.

062 CHAIR SPRINGER: Who are the proponents of the -A6 and -A7 amendments?

063 TAYLOR: The -A7 are from the Support Enforcement Division and the -A6 amendments (EXHIBIT Y) are from Fred Avera and are similar to bill that was passed out of the Senate had has stalled in the House.

066 FRED AVERA: The -A6 amendments represent SB 855. I have not spoken to Rep. Parks, but it is my understanding that he did not want to schedule it for a hearing. If the Chair is not comfortable with this I will withdraw them.

081 CHAIR SPRINGER: Will check with Rep. Parks.

083 TAYLOR: I spoke with Rep. Parks who said he did not have any strong feelings about the amendments.

090 CHAIR SPRINGER: Unless Mr. Avera can check with Rep. Parks, the amendments probably shouldn't be included.

091 ELLIS: This idea has been around awhile and takes child support judgements, which now expire after ten years, and say they exist for 25 years from the date of the decree, not ten years from the date of the delinquency. Child support judgements enacted before the date of this Act will be considered junior to liens in effect on the date of the Act.

111 VIRGINIA VANDERBILT: Subsection (2) addresses the situation where there is a judgement that results from an unpaid child support obligation that was renewed under the previous ten year renewal requirement, and it was renewed prior to the effective date of this Act, and if that ten year renewal period would expire before the new 25-year period would expire, for that period of time after the expiration under the old system and the 25-year period, for that period of time that lien is subordinate to liens recorded prior to the effective date of the Act.

149 CHAIR SPRINGER: Why do we have an emergency clause?

150 ELLIS: So we could stop the expiration of child support judgements as soon as possible. Thousands of child support judgements are expiring

every month. This would make the 25-year extension applicable as soon as possible.

157 CHAIR SPRINGER: Voices concern about lack of notice.

161 ELLIS: The emergency clause is not a big deal.

167 FRANK BRAWNER: Testifies in support of the bill with the
-A7 amendments. Has questions about lines 11-12. Why do we need to say "the registerer of the circuit court?" It should read, "judgement is subordinate to any lien that was entered into before the effective date of this Act." Not all liens are registered with the circuit court; most are not.

181 SHOEMAKER: How about "any recorded lien?"

185 VANDERBILT: This bill cuts two ways; for child support liens, it could have the effect of shortening some of those periods, as well as extending them. Now the date runs from the date of the delinquency, rather than from the date of the decree.

204 ELLIS: That is correct, but in practice, people do not renew their child support judgements.

209 SHOEMAKER: On page 1, lines 10-11, there is a reference to "ORCP
70 does not apply to judgements renewed under this section..."

212 ELLIS: ORCP 70 states what a person has to do when you enter a judgement in the first instance. Some courts have required paperwork at the time of renewal, which makes the renewal tantamount to entering a new judgement. This language is no longer necessary, since the renewal language has been removed.

231 SHOEMAKER: Concurs.

236 BILL LINDEN: Notes one concern about the bill. If I understand correctly, you are extending the life of a child support judgement for 25 years and are going back in time to pick up judgements made prior to the date of the Act. There's no way we have to identify what judgements are child support judgements that were entered into prior to the

effective date of this act. Whether this creates big problems in terms of researching, I don't know.

275 ELLIS: This is a larger problem, and what we are doing here today doesn't change that.

293 CHAIR SPRINGER: Do the records make any reference to a docket number?

295 LINDEN: The judgement dockets are now automated, so they contain all the information necessary, such as the underlying case number. That isn't the case, historically.

MOTION: Sen. Shoemaker to amend the -A7 amendments by deleting the new language on page 1, lines 10-11, and change the wording on page, lines 11-12 so that it reads, "of the judgement is subordinate to any lien that was recorded before the effective date of this 1993 Act.

VOTE: Hearing no objections, the motion passes.

MOTION: Sen. Shoemaker moves the -A7 amendments, as amended.

VOTE: Hearing no objections, the motion passes.

MOTION: Sen. Shoemaker moves HB 2976 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 4 - 0. Sens. Smith and Rasmussen excused. Sen. Shoemaker will carry the bill on the Floor.

HB 2033: Provides that certain property held in safe deposit box which remains unclaimed for more than one year is presumed abandoned.

WITNESSES: MARCELLA EASLY, DIVISION OF STATE LANDS
FRANK BRAWNER, OREGON BANKERS ASSN.

342 MARCELLA EASLY: Testifies in support of the bill (EXHIBIT Z).

404 HAMBY: Did you ever receive testimony opposing the time the property is held from five years to two years?

406 EASLY: We are not reducing the five-year "dormancy" period. The safety deposit box contents are only being held one year.

429 HAMBY: What if a person does not check their safety deposit box because of a protracted illness?

431 EASLY: This concern was discussed on the House side, and the one
year
is the Division's effort to work with banking industry. If the account
is dormant (rent not paid) for a few months, the bankers have the
safety
deposit box opened and put the contents in storage for five years
before
turning it over to the Division. The Division holds the contents
another year before it is sold.

TAPE 212, SIDE B

025 CHAIR SPRINGER: Is there any change in current notice requirements
by
you or other financial institutions after the time period has lapsed?

027 EASLY: Presently, at the bank, when the rent is due they sent
out
the
notices and make phone calls before they open the box. In addition,
the
Division tries very hard to find the owners. We advertise in the
newspapers, we have a contract with a credit bureau for addresses, we
have reverse directories; we try several methods to find the owners.

041 FRANK BRAUNER: We support bill as it comes to you. Safe deposit
boxes
are expensive, and it is expensive to open them; we are motivated to
find the owner.

062 CHAIR SPRINGER: The bill appears to change the time property is
held
from five years to two years.

064 EASLY: The two-year period is for uncashed warrants for courts or
any
agency holding assets, and that was at the request of the courts. The
the
clock would not start running until the case was totally settled and
the
owner doesn't come forward. Things get lost in the property room after
a long period.

081 BRAUNER: Oregon's unclaimed property statute is a model for
the
country, and all way through it, if activity occurs, the clock starts
ticking again.

097 EASLY: Concludes by stating that the Division has worked hard on
the
bill and that it is a good bill.

HB 2309 - Abuse of residents in long term care facilities.

WITNESSES: PENNEY DAVIS, OREGON CITIZENS COALITION FOR BETTER NURSING HOME

CARE

105 PENNEY DAVIS: The bill represents a compromise, but solves many problems. Sen. Shoemaker earlier voiced concerns about the definition of "abuse" found in section 1, and the reason abuse is defined broadly is to gain access to the investigation system quickly.

123 SHOEMAKER: My concern is that if you define abuse as something that appears to be at variance with the explanation given, and following the investigation it is determined that the injury isn't at variance with the explanation, then you still have abuse.

132 DAVIS: Sections 7, 9, and 10 mandate that the Division write rules about when a finding of abuse will be substantiated and what will be the sanction. The bill contains criteria for when sanctions would be developed by the Division.

151 CHAIR SPRINGER: Is this like an APA contested case? To make a finding that "alleged incident" has occurred does the Division have to meet that burden with a preponderance of the evidence? What is the test?

156 DAVIS: This would be just like an APA test - all the procedural protections under the administrative act that would apply to any other situation would apply here if the Division makes any kind of sanction. The primary means of sanction is civil penalty for substantiated abuse or rule violation; it would be unusual to take other kind of action. The maximum civil penalty is \$500 unless death is the result, then the maximum civil penalty is \$1000.

174 CHAIR SPRINGER: There is a reference in section 1 referring to involuntary seclusion. Is this necessary for some residences?

181 DAVIS: The term "involuntary seclusion" comes from federal law; it is not intended to prevent nursing homes from having security measures to protect residents. It is intended to prevent a facility from secluding someone as a means of punishment.

188 CHAIR SPRINGER: The language at the bottom of page 1(e)
seems subjective.

194 DAVIS: There is some degree of subjectivity there, but the intent is
to be able to investigate a situation, quickly.

205 HAMBY: This language only applies to staff, not to other residents?

208 DAVIS: This pertains to the facility licensing law, and the
intent involves those things the facility is responsible for. There could be
situations where a residents was abusive toward another, and if the
facility fails to act, there might be responsibility there.

223 HAMBY: Existing law states that an agency must respond within two
hours of receipt of an oral complaint. Is this a problem?

230 DAVIS: One of the intents of the bill is to reduce the number
of situations where the local Area Agency on Aging or Senior & Disabled
Services office would need to respond within two hours. Currently,
those agencies have to respond within two hours to any complaint of
abuse. Under HB 2309 they will have to respond within two hours if
there is a significant threat to a resident.

243 WEBBER: There is nothing in the bill to interfere with criminal law?

245 DAVIS: That is not our intent; there is no immunity added by this
law.

250 SHOEMAKER: Since an abuse investigation is launched by an
abuse complaint, which is new to the statute, if there was any injury
appeared to be at variance with the explanation given, one could complain, then
the investigation would take place. In light of that, could the
phrase,
"including any injury which appears to be at variance with the
explanation given of the injury" be deleted?

269 GODWIN: We had considered adding the phrase, "for purposes
of initiating an investigation" prior to the definition of "abuse."
However, Legislative Counsel was concerned about the qualifier on the
definition. My only concern in accepting your proposal is the

investment of time that has already gone into this. We could work this out in rules.

288 DAVIS: My only concern is the delay in sending the bill back to
the House and what may happen there, and what intent might be construed to mean to delete this language from existing law.

HB 3233: Adds county service district authorized to provide enhanced law enforcement services to definition of "law enforcement unit."

WITNESSES: BILL CROSS, OREGON CHIEFS OF POLICE
GREG BROWN, DESCHUTES COUNTY SHERIFF'S OFFICE

329 BILL CROSS: The Chiefs of Police have expressed a concern about HB
323 3 regarding how to treat nonmunicipal police officers for training purposes and PERS. Private security guards, DA investigators, reserve officers are already competing for these training slots. Concerned about what this might lead to.

373 CHAIR SPRINGER: Have you met with the proponents of the bill to discuss your concerns?

375 BILL CROSS: The Chiefs of Police have met with the Black Butte chief earlier this spring, and the new chief in SunRiver talked to the Chief of Police yesterday. Amendments may be offered to restrict this to unincorporated areas.

441 CHAIR SPRINGER: Apparently the Black Butte problem was solved in another bill, and I would like to see if the solution is consistent.

TAPE 213, SIDE A

005 CHAIR SPRINGER: Voices confusion over what is private and what is not, in terms of access and whether or not there should be a distinction, and whether this works against general law enforcement, to encourage these private law enforcement agencies.

021 GREG BROWN: The SunRiver police force works full time, under the county sheriff; this distinguishes them from private security guards. That's a big difference. They already pay into the BPST fund. Steve Bennett from BPST was unable to stay, but does support it. He did not believe

the Chiefs of Police concern was valid because there is a distinction between private security guards.

047 HAMBY: What is the proportion of security officer/sheriffs to the SunRiver population?

048 BROWN: We have .64 deputies per 1,000 population. SunRiver has a total of eight officers. So on some days, you probably have one officer for less than 1,000 people, but on a busy weekend they would probably be the same.

052 WEBBER: Clarifies that the BPST Board has not taken a position, just Steve Bennett.

057 SPRINGER: This will be rescheduled for work session.

MOTION: Sen. Springer requests that the rules be suspended to allow Sen. Rasmussen to cast his "aye" vote on HB 2976 and 3578.

VOTE: Hearing no objections the motion passes.

MOTION: Sen. Springer requests that the rules be suspended to allow Sen. Webber to cast her "aye" vote on HB 2246, HB 2247, HB 3148, HB 3578, and HB 2976.

VOTE: Hearing no objections the motion passes.

078 CHAIR SPRINGER adjourns the meeting.

Submitted by
Reviewed by,

Kirk Bailey
Assistant
Counsel

Karen Quigley

EXHIBIT SUMMARY

- A - proposed amendments, HB 2247, Bob Rocklin, 1 pg.
- B - proposed amendments, HB 3148, Staff, 1 pg.
- C - testimony, HB 2309, Rep. Shields, 2 pgs.
- D - testimony, HB 3223, Peter Wanless, 7 pgs.
- E - testimony, HB 3223, Greg Brown, 4 pgs.
- F - testimony, HB 2309, Sally Goodwin, 3 pgs.

G - testimony, HB 2479, Colleen & Steve Doell, 10 pgs.
H - proposed amendments, HB 2479, Ross Shepard, 1 pg.
I - proposed amendments, HB 2479, Sen. Hamby, 2 pgs.
J - proposed amendments, HB 2759, Staff, 3 pgs.
K - proposed amendments, HB 2759, Sen. Hamby, 2 pgs.
L - testimony, HB 2759, Dave Fidanque, 2 pgs.
M - testimony, HB 3578, Chuck StalsB erg, 7 pgs.
N - testimony, HB 3578, Chuck StalsB erg, 1 pg.
O - testimony, HB 3578, Ruth Bascom, 1 pg.
P - testimony, HB 3578, Bill Cross, 1 pg.
Q - testimony, HB 3578, Eugene Organ, 1 pg.
R - proposed amendments, HB 2984, Staff, 3 pgs.
S - testimony, HB 2984, Cedarleaf, 3 pgs.
T - testimony, HB 2984, Van Landingham, 2 pgs.
U - testimony, HB 2984, Susan Schneider, 1 pg.
V - testimony, HB 2984, Sharon Fleming-Barrett, 7 pgs.
W - testimony, HB 2984, Phil Yates, 34 pgs.
X - proposed amendments, HB 2976, Ellis, 2 pgs.
Y - proposed amendments, HB 2976, Avera, 2 pgs.
Z - testimony, HB 2033, Marcella Easley, 4 pgs.
AA - testimony, HB 3233, Rep. Clarno, 4 pgs.
BB - testimony, HB 2309, Phyllis Rand, 2 pgs.