

Conference Committee on HB 2805 June 28, 1991 - Page

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.

CONFERENCE COMMITTEE ON HB 2805

June 28, 1991Hearing Room E 9:30 a.m.Tape 1

SENATE MEMBERS PRESENT: Sen. J Bunn Sen. J Hill Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. R Johnson, Chair Rep. Brian Rep. Parks

STAFF PRESENT: Holly Robinson, Committee Counsel Julia Cooley, Committee Assistant

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TAPE 1, SIDE A

001 CHAIR JOHNSON: Opens Conference Committee on HB 2805 at 9:30 a.m.

013 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains differences between House and Senate versions of HB 2805.

The part that remains in the House bill fixes the formula by which defendants can be charged to repay indigent defense costs.

Section 1 allowed the state to recoup costs in contempt proceedings and the second part of the House Engrossed bill allowed the state to recoup attorney fees in post-conviction relief cases.

If the conference committee chooses to deal with recoupment of costs in contempt proceedings, it would have to be written in a different way because of passage of SB 376 .

036 SENATOR SHOEMAKER: What would the bill do as it now stands and what would it do if we go back to the House version?

043 ROBINSON: The House bill would allow the state to recoup costs if they were available, in contempt proceedings and in post-conviction relief proceedings.

The Senate version only changes the formula by which a defendant can be

asked to repay costs.

Separate statutory procedures are needed to recoup in contempt proceedings and recoup in post-conviction relief proceedings.

049 CHAIR JOHNSON: The House and Senate agree on the indigent attorney fee provision.

The question for the committee is whether the House should concur in the Senate deletion of the recoupment of contempt costs and recoupment of post-conviction relief costs.

059 REP. BRIAN: Could the post-conviction relief portion of the bill be put back in the bill as is, but the contempt portion of the bill has more difficulties?

065 ROBINSON: Post-conviction part could go back in. If the committee chose to do the contempt proceedings, they would have to do it differently than it is in the bill because the statute being amended in the bill is being repealed in SB 376.

068 SEN. SHOEMAKER: Recommends skipping that part.

073 SEN. BUNN: Reads memo from State Court Administrator in which he agreed with the changes because recoupment would not be very fruitful.

080 REP. BRIAN: Agrees with statement, but feels that is also true for about 90% of our attempts to recover trial costs when people are sitting in prison. But feels that if the discretion is there, some people have assets.

077 CHAIR JOHNSON: Reads Section 2 (9).

We are trying to recognize reality, but still give the court the power to order repayment if assets are available.

080 BILL LINDEN: In post-conviction cases, the great majority of those people are not, at the time of the hearing, able to pay costs, but the court does need to make a finding of ability to pay and even if the person does not have the present ability to pay, they can have the ability in the future.

It will not be a dramatic amount of money, but the issue is that this is a group of defendants receiving free counsel who are not required, if they are ever able, to pay back some of the costs.

100 SEN. SHOEMAKER: What kinds of post conviction relief is being sought here and is this going to put a chilling effect on people seeking post-conviction relief if they know they have a large debt hanging out there if they are unsuccessful? Will it make their rehabilitation more difficult?

112 LINDEN: Does not believe it will have a chilling effect. Many post-conviction relief claims deal with effective assistance of counsel at the trial court level. They can also deal with other issues. A huge amount of time is not spent. The average cost per case is approximately \$1,000. The largest financial burden defendants will have will arise out of their trial and conviction.

120 ROSS SHEPARD, OCDLA: Believes there will be a less than 5% recovery

rate and recovery will cost more than will be recouped.

124 REP. PARKS: It does not take any time for the judge to set a cost.

130 CHAIR JOHNSON: Refers to language in HB 2805-A Section 2(10) that states modification is possible so does not think that words crafted will be an irrevocable burden.

We are just giving judges a tool where money can be recouped.

145 LINDEN: Our over all recovery rate is about 7% net and is above the national average.

158 REP. BRIAN: Is that 7% of the costs identified and levied or 7% of your costs being recovered?

160 LINDEN: Our revenues from recoupment approximate 7% of what we spend on indigent defense.

Our total indigent defense fund is approximately \$71 million for the coming biennium.

We are at about a \$4 million recovery.

168 REP. BRIAN: To get that 7% recovery, what percent of those receiving indigent defense are pursued?

170 LINDEN: There are all pursued in the sense they have the obligation imposed upon them. We generally do not undertake collection efforts against criminal defendants.

The new provision will be imposed in a few post-conviction cases where there is an ability to pay.

180 SHEPARD: In most criminal cases there are efforts to recover these monies because it is a condition of probation. That would not be the case with post-conviction people.

182 SEN. SHOEMAKER: If a prisoner seeking post-conviction relief has the resources is he entitled to the indigent defense?

185 LINDEN: No, the prisoner would have to retain his own counsel.

We are talking about indigent prisoners. The amount we pay counsel appointed to represent defendants in these cases and what it would cost them to go out in the market place and retain counsel is much less.

205 SEN. SHOEMAKER: Senate is not interested in moving on this. It will probably cost more than it is worth and I believe it puts a chilling effect on legitimate pursuit of rights.

210 REP. JOHNSON: Should Section 1 be repealed or should we concur that it should not be addressed because SB 376 addresses it?

214 LINDEN: Recommends that the committee forget about the contempt issue contained in the bill because SB 376 passed both chambers and repealed this language.

220 CHAIR JOHNSON: We are left with the House decision of whether or not to concur in the Senate's deletion of Section 2.

223 LINDEN: It is very important for us to have the language about how we set guidelines for order and recoupment because we have variances around the state. We need one way to do it that is fair and equitable.

228 SHEPARD: Agrees with Mr. Linden.

230 REP. BRIAN: Of the \$71 million we spend on indigent defense, how much is in the post- conviction relief area?

235 LINDEN: About \$1 million.

249 MOTION: REP. PARKS: Moves that the House concur in the Senate amendments dated June 21 and repass the B-Engrossed version of HB 2805.

255 VOTE: Motion passes unanimously. All members are present.

258 CHAIR JOHNSON: Senator Shoemaker and Representative Brian will carry the bill in their respective chambers.

Adjourns meeting.

Transcribed by,

Pat Zwick