

Senate Committee on Judiciary January 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.

Measures Heard SB 373, PH SB 393, PH SB 386, PH SB 387, PH SB 388, PH

SENATE COMMITTEE ON JUDICIARY

January 28, 1991Hearing Room C 1:00 p.m.Tapes 10 - 12

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair
Sen. Peter Brockman Sen. Jim Bunn Sen. Jeannette Hamby Sen. Bob
Shoemaker Sen. Dick Springer

STAFF PRESENT: Bill Taylor, Committee Counsel Kate Wrightson,
Committee Assistant

WITNESSES: Barbara S. Fishleder, Oregon State Bar
Professional Liability Fund Tom Bessonette, Oregon Mutual Insurance Jack
Munro, American Insurance Association John Powell, State Farm-North
Pacific Insurance John Kauffman, Oregon Association of County Clerks
Alan Brickley, Oregon Land Title Association Walter Gowell, Oregon State
Bar Paul Snider, Association of Oregon Counties D. Michael Wells, Family
Law Section, Oregon State Bar Laura Parrish, Family Law Section, Oregon
State Bar Brad Creveling, The Wyatt Company Sheryl Wilson, Public
Employees Retirement System Nancy Crandall, Deferred Compensation System

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TAPE 10, SIDE A

005 CHAIR COHEN: Calls meeting to order at 1:07 p.m.

SB 373 - REQUIRES FIRE INSURANCE TIME LIMITATION NOTIFICATION, PUBLIC
HEARING

009 SEN. SPRINGER: Describes purpose of intended bill. -Individuals who suffer loss, and have fire insurance, may fail to comply with provisions of existing law concerning time limitations on queries about sustained losses.

028 BILL TAYLOR, COMMITTEE COUNSEL: Introduces and reviews -2 and -3 amendments (Exhibits A and B).

042 BARBARA FISHLEDER, OREGON STATE BAR PROFESSIONAL LIABILITY FUND: Testifies in favor of SB 373. -Both public and attorneys suffer from problems with time limitations that differ from contract and tort statutes. -Public needs more than 30 days, as proposed in SB 373-3, to get legal help. 30 days is also too short for an attorney, who must contact insurance company. -Recommends original timing in SB 373 (60-90 day notice). -Certified mail provides documentation for public, but it might pose a problem for the insurance industry.

076 CHAIR COHEN: Requests review of proposed bill.

081 TAYLOR: Introduces and summarizes Oregon Business Magazine article by Jack Olson, dated 9/89 (Exhibit C). -Every fire insurance policy must carry provision that insured must file claim within one year from date of loss. -Situations exist where policyholders enter into negotiations with company over damages; if they don't settle in a year, they don't get anything. There is no remedy.

100 CHAIR COHEN: Bill requires notification, and that's sufficient to filing?

102 TAYLOR: Requires notification; if notification is not given, then the one year period holds.

105 SEN. SHOEMAKER: A sender of certified mail can request a return receipt or not. Was any thought given to whether a receipt should be requested or not?

109 FISHLEDER: A method for tracing receipt of the notification should exist; return-receipt requested certified mail would be the best way to do that.

112 SEN. SHOEMAKER: Would that be an appropriate amendment?

113 FISHLEDER: Yes.

120 TOM BESSONNETTE, OREGON MUTUAL INSURANCE: Testifies in opposition to SB 373. Opposes additional language of amendments, not concept. Has several problems with language: -If we deny a claim, and the insured agreed with denial, according to this bill we must give notice and reason for denial 90 days before the twelve months expire. Must comply with parameters of bill as drafted, which require notice be given not more than 90 days before the year expires, even if the insured agreed with the denial. Every time we handle a file, our costs increase. -We have a number of delayed notices, where damage is not noticed until later. If the claim is beyond time limitations of policy, policy is automatically extended; that doesn't work here. -We would need time to amend every policy we cover. There are 700 fire insurance companies which would need to amend policies, so an extended period is needed. -We have no problem with concept of bill, but with time limitations.

170 SEN. SHOEMAKER: When the insured agrees with you that no claim lies under the policy, is there documentation of that?

174 BESSONNETTE: No.

175 SEN. SHOEMAKER: Just a telephone conversation, where the insured and the agent concur?

177 BESSONETTE: If agent denies claim over the telephone, there may be just a pencil note. If the case is referred to the company, we have a claims file but no signed documentation.

185 SEN. SHOEMAKER: Is every inquiry considered a claim?

186 BESSONETTE: We are fearful that it could be, but it's not necessarily so.

192 SEN. SHOEMAKER: I assume that "claim" is defined in most policies?

194 BESSONETTE: I'm not sure. "Loss" is defined, but maybe not "claim".

197 SEN. SHOEMAKER: How frequent is this problem: a claim where the insured concurs, and it would be a burden for the insurance company to comply?

202 BESSONETTE: I could check and see how many of these denials we had.

203 SEN. SHOEMAKER: Are denials where the insured concurs frequent or rare?

207 BESSONETTE: I would want to check with someone who does that now, rather than when I did it.

219 JACK MUNRO, AMERICAN INSURANCE CORPORATION: During testimony in the interim, the administrator of the Insurance Division could only remember one complaint of this nature. -There is also an Oregon Administrative Rule which concerns this issue; it requires notice under certain circumstances. -In response to Senator Shoemaker's question, questions about one element of coverage are more frequent than questions about whether a claim should be paid. -We don't know whether this bill is necessary; if it is, there are administrative problems with the measure.

These problems seem to be addressed by -3 amendments. -We have several administratively-related problems, and suggest these remedies: -Language in line 16 of bill, which requires notification of specific date when the suit or action must be filed, is a problem. Most adjusters aren't attorneys and therefore shouldn't be giving specific advice on rights. -For administrative convenience, we need a larger window than 30 days; we support the 120 day language in amendment. -Notification by certified mail is problematic. We mail many of these; at \$2 to \$2.50 each, our costs will rise. -Supports -3 amendments.

313 JOHN POWELL, STATE FARM INSURANCE COMPANY & NORTH PACIFIC INSURANCE COMPANY: Language at end of line 9 and beginning of line 10 is also troubling: "the claim has not been paid in full, this company shall". A claim might have been settled for less than the original claim. -[QUOTE] "An additional amendment that might be considered is on line 10 , after 'paid in full' add 'DENIED IN FULL OR SETTLED'". -If a claim was settled or denied, this makes it clear to insured that the claim has been dealt with.

338 CHAIR COHEN: Clarifies suggested amendment.

344 POWELL: Under current rules of Insurance Division, insurer does notify parties if no lawyer is involved. This is an OAR obligation.

355 SEN. BUNN: I'd like to figure out some of the differences in the way the claim process goes. Are written notice and claim not necessarily the same?

360 POWELL: Are you referring to the obligation that we're going to assume?

361 SEN. BUNN: Relates personal experience. -Since I didn't receive a claim form for 3 months, did I lose that time from my limitation?

371 POWELL: That probably isn't affected by this situation. Limitation begins at date of destructive event. By statute, you are required to file a proof of loss document.

387 SEN. BUNN: Would a personal note begin the process, or do I need insurance company form?

393 POWELL: Definition of when claim is filed doesn't affect this bill. "Date" here is date of fire, not date of claim. Your policy would tell you how to file a claim.

428 SEN. BUNN: This says that one must notify in writing to begin protection procedure. "In writing," then, doesn't mean a certain form. Just contacting the insurer starts your protection?

TAPE 11, SIDE A

004 SEN. SPRINGER: That's a good question. The public is not always very well informed in this matter. -Reviews and summarizes Olson article (Exhibit A). -Businesses may be at risk, as well as individuals, because they have business interruption insurance. If records are lost in fire, it takes time to perfect claim and provide sufficient proof. -People need to know about the 12-month time limit.

022 POWELL: If Senator Bunn's negotiation had continued without counsel, company would be obligated to notify you. If you had a lawyer, we would not be required to notify you because your lawyer would have this information.

033 SEN. BUNN: [QUOTE] "My understanding is that there is no specific form, but that if the benefit of doubt goes to the policy holder, that they have sent a written notice, and we're not looking for any form from the insurance company. Their obligation is to, in some form or another, and in writing, notify the company."

039 SEN. SHOEMAKER: What does a company do when they deny a claim?

041 POWELL: Specifically a fire claim?

043 SEN. SHOEMAKER: I'm speaking to the amendment which you suggested.

048 POWELL: I will have to refer to people who do this regularly, but they are under provisions of the Insurance Code; I am sure that written communication, outlining the reasons for denial, would be forthcoming and that the insured would be notified. I will research this for you.

053 SEN. SHOEMAKER: The previous witness testified that, as far as he knows, denial is done with an internal memorandum which resulted from a telephone conversation. If that is true, I'm not very comfortable with that.

058 MUNRO: Your question is what memorializes a denial?

059 SEN. SHOEMAKER: Yes. A claim is clearly more than an inquiry. If there was a denial of a claim, I would hope that it was a written document.

064 POWELL: I would have to look at case law to determine that.

SB 393 - COUNTY CLERKS RECORDING BILL, PUBLIC HEARING

075 JOHN KAUFFMAN, OREGON ASSOCIATION OF COUNTY CLERKS: Testifies in support of SB 393. Proposed bill would standardize document recording process. -Submits and summarizes written testimony and survey of county clerks (Exhibit D). -30 of 36 counties in compliance with proposed requirements now, and two more could easily adjust. Lake & Union counties only work four-day weeks: they would suffer most impact. -Section 7 provides a way to modify hours by declaration of fiscal emergency by resolution. -Contacted by member of Oregon Bankers Association, who indicated that bankers strongly support inclusion of Sections 6 and 7, and with those inclusions will likely support the bill. -Submits and summarizes letter from Stevens-Ness Publications (Exhibit E). -Additional amendments provided (Exhibit F). Also have more amendments, which we will discuss with Mr. Taylor.

155 CHAIR COHEN: -1 amendments were proposed by you?

157 KAUFFMAN: Yes.

162 ALAN BRICKLEY, OREGON LAND TITLE ASSOCIATION: Testifies in support of SB

393 . -Sections 6 and 7 will probably generate the only controversy about this bill. Both respond to deadline issues which must be met by public; it's a processing issue. -Our concern with the proposed hours open is this: loan commitments are issued at a certain rate, and must be recorded immediately so that rates don't go up. Not a particularly large concern now, though the ability to close transaction can be very important. -We need to have the courthouse open every day. -Bill does provide for fiscal emergency, and would permit finding based on all costs of keeping facility open, including peripheral costs: heating, security, etc. -Not suggesting that recording is a primary function, which should be open all the time, but it should be identified and available to the public.

208 WALTER GOWELL, OREGON STATE BAR: Testifies in favor of SB 393: confident that Executive Committee of Bar will approve of measure, but sections 6 & 7 are very important. -Clerk's office is a vital service, one of the oldest public offices. -Public records should be open and provide access to citizens for their use. -Proposed bill would standardize indexing in clerk's offices and make it more efficient. Indexes are crucial to the public and the professions that rely on the clerk's office and records. -Under the proposed bill, no document can fail to be recorded; however, we can charge a fee if illegible papers are submitted.

245 SEN. HILL: I can see reasons for this bill, but Measure 5 must have an impact: what if there is no money?

252 BRICKLEY: Section 7 notes that a fiscal emergency can be declared by the county.

262 SEN. HILL: What about section 6? The hours open can be modified, but what about days open?

266 BRICKLEY: It allows for the number of days to be modified as well.

271 SEN. HILL: What if return of documents within the proposed time is

impossible because there is not sufficient staff?

281 KAUFFMAN: The only county that wouldn't be able to comply right now is Washington County.

285 SEN. HILL: That's a big county with lots of activity. If they can't do this now, what will happen soon if their funds and staff are cut? I think it's a good bill, but I have problems with asking for something we can't afford.

294 KAUFFMAN: Some smaller counties can have a same-day turnaround by photocopying documents and returning the originals to the submitter. There are technological ways to improve speed of turnaround that don't require extra staff.

304 GOWELL: Yamhill county uses that process, and there is no turnaround time, and thus no extra cost. Some counties feel that photocopying does not allow for a clear microfilm copy, but that's not true.

320 SEN. HILL: I want to note that these allowances are made in Section 7, but not in Section 6.

329 KAUFFMAN: Section 7 provisions also apply to Section 6.

333 SEN. SHOEMAKER: What kinds of transactions result in a recorded document? Are they mostly deeds and other land-related documents that usually have an attorney involved? -There's a miscellaneous index that includes other things; what is in that file? -To what extent do you find documents that are recorded without attorney involvement? I think you should require attorneys to meet these guidelines, but I'm not sure that it should apply to a layperson who wouldn't know of these rules until he came to the courthouse.

353 KAUFFMAN: The preponderance of recorded documents relate to real property and come from an attorney or title company. -There are also documents recorded in the court lien record: various penalty orders from state agencies, etc. -Clackamas County has a miscellaneous file, though many other counties do not. We don't have problems with our miscellaneous documents: Rumanian adoption forms, etc.

390 SEN. SHOEMAKER: Is your miscellaneous record used frequently?

391 KAUFFMAN: Occasionally.

392 SEN. SHOEMAKER: Would it be less onerous if the bill were amended to delete miscellaneous records, if any, from requirements?

397 KAUFFMAN: I'd like to look at the documents in our miscellaneous record to see whether they pose a problem.

405 SEN. SHOEMAKER: Stevens-Ness will make forms which comply? I don't want to discourage the public from handling their own affairs, in some sorts of transaction.

414 GOWELL: In connection with do-it-yourself documents, we have made a provision which allows a cover sheet to be attached with the necessary information. Then we would just charge for one additional page.

TAPE 10, SIDE B

006 SEN. SHOEMAKER: That would address the problems which Section 3

speaks to, but not those of Section 2.

011 BRICKLEY: It would not preclude the recording of the document; it would just cost more.

014 KAUFFMAN: Size and weight are fairly standard. People usually use bond paper and standard typewriters.

020 SEN. SHOEMAKER: What about handwritten documents?

021 KAUFFMAN: Handwritten submissions are very rare.

024 GOWELL: Handwriting on a preprinted form would not be a problem.

029 SEN. SHOEMAKER: The bill says "must be printed in eight point type".

030 CHAIR COHEN: Printed may mean handprinted.

035 SEN. SHOEMAKER: It might be good to know how much impact this would have on filers of miscellaneous documents.

037 CHAIR COHEN: Remember that some counties don't accept miscellaneous records.

047 TAYLOR: Frank Brauner of the Oregon Bankers Association called today, and said that he wants to testify on behalf of the bill. He supports Sections 6 and 7.

056 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: We have concerns about Sections 6 and 7. -We want to identify status of turnaround time on returning documents submitted for recording. -In reference to Measure 5: if it doesn't impose significant cost on us, we'll endorse the bill, though we don't know what Measure 5 will do to us. -Originally, we thought section 7 would be appropriate if county could declare a general emergency. Sections 7, subsection 2, requires the emergency be tied to recording costs and compared to the amount of revenues received through recording functions. -We might get sued, if we can't keep open during these hours, over whether the monies received through recording cover the cost of the recording function. -In the last recession, several counties closed their courthouses on particular days of the week, to save money. Two counties are doing that now, and Deschutes County just reopened after having had long weekends. If we have to keep just the clerk's office open, and everything else is closed, then it's not a good idea. -[QUOTE] "We would have no objection to SB 393, if we simply deleted the second sentence of subsection 2, Section 7, so that a finding of a general declaration of emergency is sufficient to reduce those hours". -We don't want to tie the declaration of emergency to the question of whether the cost of the recording function is offset by the profits.

114 CHAIR COHEN: Confirms proposed amendment.

121 SEN. SHOEMAKER: I sympathize with your concerns. If all that's required is the finding of a fiscal emergency, then all counties could do that every year. It doesn't impose much of a standard. Is there something that's not onerous or subject to litigation, but requires a genuine emergency?

132 SNIDER: It's a possibility, making it more definite yet not subject to litigation. I'd prefer to discuss bankers' interests if their representative was here. I think there is some flexibility, if counties

don't have the designated hours, if some form of centralized notice were provided.

SB 386 - REQUIRES RETIREMENT BENEFITS TO BE INCLUDED IN DIVORCE SETTLEMENTS, PUBLIC HEARING

157 D. MICHAEL WELLS, FAMILY LAW SECTION, OREGON STATE BAR: Reviews intended purpose of SB 386.

159 LAURA PARRISH, FAMILY LAW SECTION, OREGON STATE BAR: Testifies in favor of SB 386. -Bill concerned with issue of control. -Pensions are marital asset; court has authority to consider them in divorce proceedings. -Federal Retirement Equity Act (1984) gave courts authority to divide private pensions and award interest in a private pension to the non-employee spouse. -PERS says they are not subject to Retirement Equity Act, though there is a law that says courts have the right to divide PERS benefits. -Under PERS, there are about 14 different retirement options which member may elect once he or she decides to retire. What about elections if couple is divorced before retirement? Most court orders don't order the spouse to choose a particular option: the options vary considerably. In a divorce situation, who has control over the decision? -Under federal law, once division is made in a private pension, both spouses can choose options and draw pensions when the employee spouse retires. -In Oregon, employee spouse controls option choice. Pension may be divided now, but employee might not retire for a long time. -SB 386 says that if court divides a PERS plan, non-employee spouses may choose their own timing and options. They receive no greater benefits, but get the choice. We think this is good public policy, because it benefits both parties. -SB 386 applies to PERS, but is drafted to be generic and apply to other public pensions in Oregon. The intent is to bring public plans into conformance with private sector regulations. -We have talked with PERS; they may suggest amendments which we do not think will be a problem.

263 BRAD CREVELING, THE WYATT COMPANY: We're trying to bring public plans into same arena as private plans. Private plans have advantage in that a non-employee spouse can start benefits on the eligibility date of the employee spouse, even though the employee might not yet be retired.

272 CHAIR COHEN: So if I share my ex-huSB and's PERS account, then I could elect an option when he turns 55, even though he had not retired yet.

278 CREVELING: Yes.

282 SEN. HAMBY: This situation is currently true for private pension plans?

283 CREVELING: Yes.

285 CHAIR COHEN: How many additional accounts would be created for PERS?

290 CREVELING: It is not our intent to replicate beyond the first spouse.

292 CHAIR COHEN: What if there was a second spouse?

294 CREVELING: The second spouse of an employee would be covered as well; not, however, the subsequent spouses of the non-employee spouse.

303 PARRISH: The account needs to have significant value before it's

worthwhile for the parties to divide it. Frequently, we will offset value of the PERS plan with some other asset if the account is not very valuable. -SB 386 doesn't go back and pick up people divorced from PERS members if PERS wasn't allocated in the divorce. Cannot reopen court decision. -There are a number of court orders that have been drafted which make awards of PERS accounts.

319 CHAIR COHEN: We need to explicitly put information about reopenings and changes of circumstance in, if it's not in the bill already.

331 PARRISH: Section 8 provides that the amendments apply to all judgments, decrees and orders entered or modified after the effective date of this bill. There is a general rule of modification law: unless there is a statute specifically authorizing it, court can't modify property divisions in a decree. This is a property division.

339 CHAIR COHEN: We do have a number of these pending.

342 PARRISH: That is the intent of SB 386. However, in situations where orders or decrees that made a division were entered several years ago, those parties would be able to benefit under this law.

349 CHAIR COHEN: We are going back to change elections?

351 PARRISH: Only where the decree has already divided the PERS benefits. Section 5 of SB 386 addresses this.

372 SEN. SHOEMAKER: Section 6 addresses this as well.

376 PARRISH: Section 6 provides similarly for deferred compensation plans, which aren't the same thing.

385 SEN. SHOEMAKER: In a divorce, does the non-employee spouse get retirement plan rights that have not yet vested or accrued?

392 PARRISH: I've seen it happen. There are plans where the employee's interest may be partially vested.

397 SEN. SHOEMAKER: What about benefits not yet earned? Do the rights of the non-employee spouse ride with the plan into the future?

403 PARRISH: As a general rule, no.

406 SEN. SHOEMAKER: I can see splitting the plan at its value at the time of the divorce. Is the divorced spouse ever entitled to benefits which accrue in the future?

416 CREVELING: Yes, it can happen. If you divide projected benefit (calculated when member retires) prior to benefit commencement, accrual on the part of the non-employee spouse has stopped, although accrual of benefits may continue to the non-employee after the divorce.

430 SEN. SHOEMAKER: Can the alternate payee be entitled to a share of the pension that has not been yet earned?

435 CREVELING: Yes.

TAPE 11, SIDE B

002 CREVELING: Gives hypothetical situation. -Divorcing couple are both 45 years old. The divorce decree gives alternate payee half of pension benefits earned "to date", which would be a fraction. Fraction would be

service to age 45, divided by service to the time alternate payee's benefits commenced, which might be at age 50. -While there still would be accrual of benefits after the divorce, after age 45, that accrual would stop no later than the time he/she started benefits. _I don't see a situation like that as an impediment to SB 386. -This situation is true in private as well; we are trying to mirror the private pension regulations.

014 SEN. BUNN: Under SB 386, if you have two accounts based on one employee, what then happens? Can they be handled in two different manners or choose different options? Once that was done, the alternate payee could not impact the employee's options, could they?

025 PARRISH: That is the intent of the bill.

026 CREVELING: PERS may operate so that there is no impact whatsoever on member's benefit, once the division has taken place.

032 SEN. BUNN: Except that if there is a 60%/40% division, then at retirement, whatever benefits would begin going to the employee--the employee would now receive only 60% of that. They have the same options they always had, just to a 60% level of what they would have had. The other account is managed independently by PERS for the alternate payee, with the same options the employee had. So really, the only impact is that PERS has to deal with separate accounts.

041 CREVELING: Yes. There is administrative impact.

042 SEN. HAMBY: Unless that alternate payee chooses to gain payments earlier, prior to the decision to quit work. Then it would mean a separate account almost entirely.

046 CREVELING: PERS will have a lot to say about administration of these accounts. You could keep one account intact until the first person commenced their payments, but then you would have to separate them.

051 SEN. HAMBY: Let's assume that my former huSB and, although I chose to continue this political life, chose to take his part of the benefits prior to my retirement. It would force PERS to pull an entirely separate employee file, wouldn't it?

055 CREVELING: I would think so.

057 SEN. BUNN: For all practical purposes, except where the former spouses chose to maintain identical conditions, you're still going to have two accounts, aren't you?

060 CHAIR COHEN: Let's wait and get PERS input on this.

063 TAYLOR: Assume that someone was married and started working for the State at age 25, and that at age 45, the huSB and and wife divorced. The huSB and continues to work for the State for another 20 years. Under SB 386, I would assume that the former spouse has right to interest accrued during the 20 years of their marriage?

070 PARRISH: Yes.

071 TAYLOR: Would that former spouse, under SB 386, have any rights to the pension that would accrue between the divorce and the beginning of benefits?

073 PARRISH: This bill is not intended to change the substantive law of what courts can consider marital assets. -It provides a mechanism by which, once the court has made a determination of entitlement, PERS can implement that with greater flexibility. -If you have a 20 year marriage, and PERS is the only asset of the marriage, it would likely be divided 50%/50% as of the date of the divorce. Each spouse then has their own account. -If the husband continued to work and add to his PERS account, then those earnings belong to him. -I have never seen a case where a court has awarded benefits that accrued post-divorce.

090 CHAIR COHEN: I would assume that you would use an assessment of future worth in a divorce settlement.

099 PARRISH: I didn't intend to say that they don't value that, but generally they look at entitlement based on contributions as of the divorce date. -If it's a defined benefit plan, they may use a projected payment, though the interest continues to accrue. -Additional contributions of principal are usually not considered part of the marital assets.

106 SEN. SHOEMAKER: I thought you said that it sometimes does.

108 CREVELING: The court doesn't intend earnings after a divorce to go to a prior spouse. -Courts often use a time fraction, where the effect is to give part of the additional accruals to a former spouse. -I have not seen courts purposely say that part of post-divorce benefit accrual shall go to the former spouse.

118 SEN. SHOEMAKER: The divorcing spouses split the plan at the time of the divorce, and each has a right to their half. If the alternate payee is also riding on the other half, and can make choices regarding it that affect the worker's rights, that doesn't seem fair.

126 CREVELING: We're not intending that.

128 PARRISH: This bill moves in the direction that you would like it to, based on your example. The way it is now set up creates a greater likelihood of that happening.

135 SHERYL WILSON, DIRECTOR, PUBLIC EMPLOYEES RETIREMENT SYSTEM: PERS not subject to 1984 Retirement Equity Act as it relates to the Qualified Domestic Relations Order (QUADROS). -work routinely with attorneys and clients in order to divide retirement assets. -Current procedure: we respond to court orders to provide either a portion of member account balance, or a portion of total retirement benefit. Either portion represents the ratio of the time that the marriage existed coincident with the employment under PERS, and the total time of employment under PERS. Payments are available to the alternate payee only when the PERS member either retires or leaves the PERS-covered job. -Concerns about SB 386: the following items have potential trust fund impact, and we would like to see the bill amended. -Current language suggests that alternate payee may ultimately receive more in benefits than PERS member. For example: court orders PERS payouts to divorced spouse. Member then leaves PERS employment and no longer contributes. PERS must pay divorced spouse full court-ordered benefits, even though funds are insufficient. Remedy: amend bill to state that alternate payee may not receive more than member in benefit payments. -Current language suggests that alternate payee may select a joint and survivor option at the time of election. This is not an option under similar programs like ours. If an alternate payee remarries more than once, and is allowed to elect a joint and survivor option, we would be obliged to pay benefits to these subsequent spouses, as well. -We are plan sponsors for retiree

health insurance. As an account in the PERS trust, we provide a subsidy for our members over 65 who are buying Medicare policies from us. Alternate payee should not be part of this. -In both private and public sectors, plan sponsors like to develop criteria for court orders, to ensure that all elements necessary to administer an issue of this sort are included. We need language that would give credibility to our right to request and have certain information. -Operational impact is significant: \$302,000 for first biennium, dropping to \$156,000 in second biennium. The difference is generated by start-up costs to make the second tier of accounts. -Not a defined contribution plan, but a defined benefit plan. Thus, must create two separate accounts to handle SB 386's demands. -We'll do what you tell us to do, but it will take effort.

260 SEN. BUNN: Would it be difficult to determine costs of splitting two accounts? At the time the split occurred, could you bill administrative costs against the accounts and get a neutral impact?

264 WILSON: We can certainly attempt to do that.

265 SEN. BUNN: Those who have the benefit of splitting it should be the ones bearing the cost of doing it.

270 WILSON: There would still be some implicit administrative costs, though your suggestion would make a significant difference in total cost.

279 SEN. SHOEMAKER: What do you see as the possible effect on an account if the alternate payee had claim to the account as it continued on into the future?

286 WILSON: Yes. There are any number of variations on a central theme, depending on the assets of the couple. That can affect distribution in their totality; PERS is just a piece of the game. -The longer the marriage, the more significant part PERS is of their assets.

319 CHAIR COHEN: Thank you; it's nice to have PERS share their concerns.

330 NANCY CRANDALL, DEFERRED COMPENSATION PROGRAM: Concerns about Sections 3 and 4, which refer to deferred compensation. -We operate under both state and federal laws. -We need amendments so that we can comply with both sets of regulations. -Attorney general's opinion (1985) allows Deferred Compensation System to separate accounts. -Under SB 386, nonparticipant may gain access to the funds now, if they so desired. Our current practice allows the nonparticipant to set funds aside; they may access funds no sooner than the participant's eligibility date. -If we were required to pay out the funds now, at the time of a divorce, SB 386 may affect tax status of our programs: all of these funds would then be taxable. -We want to have our counsel look at this, since we want to stay in compliance with all regulations which affect us.

370 CHAIR COHEN: We will look forward to whatever protective amendments you consider necessary to protect your program.

379 SEN. HILL: Are deferred compensation plans for public employees different? Does the same distinction between public and private plans exist as it does in retirement plans?

385 CRANDALL: Public employers have a 457 program; private employers have a 401 (k) or similar programs. They do come under different regulations and have different access to funds. In the state's program,

funds are property of the state or other employer (county, etc.); in a private program, employee has more control.

SB 387 - ALLOWS DECREE OF ANNULMENT, DISSOLUTION, SEPARATION BY DEFAULT, PUBLIC HEARING

416 WELLS: SB 387 is a technical proposal which allows for a common practice. -SB 387 specifically authorizes entry of decrees or judgments in divorces, separations, and annulments after formal appearance. -Current statute does not provide for this, although almost every county allows it; we want specific authorization.

TAPE 12, SIDE A

SB 388 - RELATING TO RATE OF INTEREST ON JUDGMENTS DUE AND OWING, PUBLIC HEARING

002 WELLS: SB 388 raises interest rates on child support judgments to 4% greater than interest rate on other judgments. -We want to make child support a priority. -SB 388 addresses only interest rate increase; does not address issues such as allocation of payments.

025 CHAIR COHEN: Adjourns at 3:00 p.m.

Submitted by: Reviewed by:

Kate Wrightson Bill Taylor Assistant Counsel

EXHIBIT LOG:

A - Amendments to SB 373 - Staff - 1 page B - Amendments to SB 373
- Staff - 1 page C - "The Insurance Firetrap, Oregon Business
Magazine 9/89, SB 373 - Staff - 2 pages D - Testimony on SB 393 -
John Kauffman, Oregon Association of County Clerks - 5 pages
E - Testimony on SB 393 - John Kauffman, Oregon Association of
County Clerks - 1 page F- Amendments to SB 393 - Staff - 1 page