

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 395 (WRK) SB 61 (WRK) SB 338 (WRK) SB 339 (WRK) SB 340 (WRK) SB 337 (PUB) SB 377 (PUB) SB 371 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

February 13, 1991Hearing Room C 1:15 p.m.Tape 28

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

MEMBER EXCUSED: Sen. Joyce Cohen

STAFF PRESENT: Ingrid Swenson, Committee Counsel Bill Taylor, Committee Counsel Mark Thorburn, Committee Assistant

WITNESSES: Vern Faatz, Chairman, Board of Parole and Post-Prison Supervision William Linden, State Court Administrator Charles Williamson, Oregon Trial Lawyers Association Keith Burns, Oregon Court Reporters Association

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TAPE 28, SIDE A

004 CHAIR HILL: Calls meeting to order at 1:15 p.m.

SB 377

007 KEITH BURNS, OREGON COURT REPORTERS ASSOCIATION: A lot of people are interested in this bill. Feels that, in a week or so, will be able to reconcile differences and hopefully there will not be a need for this bill. Asks committee to continue the matter.

014 CHAIR HILL: All parties concerned agree to this continuance?

016 BURNS: Yes.

019 CHAIR HILL: Sets bill over for a later date. Instructs Keith Burns and William Linden to stay in touch with committee counsel.

SB 371

029 VERN FAATZ, CHAIRMAN, BOARD OF PAROLE AND POST-PRISON SUPERVISION: The bill is to correct an oversight that occurred when the sentencing guidelines were drafted by the legislature. The intent of the bill is to provide that the process for the return to prison of violators of conditions of post-prison supervision be similar to the process for the revocation of parole. Paraphrases written testimony (Exhibit A).

054 INGRID SWENSON, COMMITTEE COUNSEL: Some amendments have been proposed (Exhibit B) that contain the additional sections; the bill refers only to ORS 144 .331, not to ORS 144.310 and 144.370. Asks that the work session scheduled for February 15th be rescheduled to a later date.

062 CHAIR HILL: O.K.

- So asking for same treatment for post-conviction?

063 FAATZ: Yes.

064 CHAIR HILL: Is there any difference at all?

065 FAATZ: No.

- Notes that Elyse Clawson of the Department of Corrections was going to be here to testify in favor of the bill; she's left her testimony (Exhibit C).

073 SEN. SPRINGER: What's the local jail impact?

077 FAATZ: There is a jail impact. We've worked hard to make that a relatively brief period of time. The turnaround time for a Morrissey hearing is now 15 days compared to the weeks or months it used to be.

083 SEN. SPRINGER: Recall the issue from an earlier presentation and wanted to make sure had in mind the correct procedure that you're following at this time.

087 SWENSON: People are being arrested and detained for post-prison supervision violations, so there will not be a dramatic change.

SB 395

093 BILL TAYLOR, COMMITTEE COUNSEL: The bill was filed at the request of the Joint Interim Judiciary Committee on behalf of the Judicial Department. It is basically a housekeeping measure; it deletes from Oregon statutory law the terms "judgment roll," "sentence order," and "judgment order," clarifies that court orders and decrees need not be signed in open court to be valid, and several other housekeeping matters. There are no amendments.

110 MOTION: The Chair moves SB 395 to the floor with a "do pass" recommendation.

112 SEN. SPRINGER: How do we deal with the effective date of this thing? Wants to avoid confusion that may result if bill has no effective date.

117 CHAIR HILL: Wasn't there suppose to be some research on that?

119 TAYLOR: Doesn't remember any such research to be done as it relates to this bill.

120 SEN. SPRINGER: Doesn't recall the issue being discussed in the

context of this bill.

- We sometimes pick a date as opposed to 90 days after the session, which nobody knows what that is.

128 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: We didn't think the bill needed an emergency clause. Have no objections to having a specific date; we anticipated that it would be 90 days after the session.

135 SEN. SPRINGER: How about January 1, 1992?

142 LINDEN: Would like to do it sooner.

143 SEN. SPRINGER: How about November 1st?

148 LINDEN: The bill clearly would not apply to orders that are executed prior to whatever effective date is chosen. Effective date should not be delayed more than it has to be.

153 MOTION: Sen. Springer moves to make November 1, 1991 the operative date of the bill.

155 CHAIR HILL: Calls for objections; hearing none, so ordered.

160 MOTION: The Chair moves SB 395 with a "do pass" recommendation.

164 VOTE: Motion passes unanimously; Sen. Cohen excused.

SB 61

173 TAYLOR: The bill is from the Department of Human Resources; it changes ORS 41.675 by changing "professional standards review organization" to "professional review organization" to make Oregon terminology consistent with federal terminology. There are no amendments.

183 MOTION: Sen. Shoemaker moves SB 61 to the floor with a "do pass" recommendation.

186 VOTE: Motion passes unanimously; Sen. Cohen excused.

SB 338

196 TAYLOR: The bill is at the request of the Law Improvement Committee; it provides that any contract requiring the award of attorney fees shall be considered to authorize attorney fees at both trial and appeal. There are no amendments, but the committee did express a desire to combine this bill with two others; if that is the case, then recommends that it be done to SB 339.

SB 339

214 TAYLOR: The bill is also at the request of the Law Improvement Committee; it requires both parties to a contract which provides for prevailing party attorney fees to be entitled to attorney fees in any lawsuit, including rescission.

226 MOTION: Sen. Hamby moves that SB 338 and SB 339 be combined into one bill.

231 CHAIR HILL: Calls for objections; hearing none, it's so ordered.

234 MOTION: Sen. Hamby moves that SB 339 combined with SB 338 to the floor with a "do pass" recommendation.

239 SEN. SHOEMAKER: Should we consider moving SB 340 as it also relates to attorney fees into the combined bill?

243 TAYLOR: Had anticipated that all three bills would be combined into one (Exhibit D). However, an attorney in Portland has just expressed concern about SB 340 as it might retroactively affect a case that he has before the Oregon Supreme Court; the attorney requests that the bill be put over for a week so he can discuss the matter with me and possibly testify.

258 SEN. SPRINGER: That's correct; 30 different law firms have asked the Supreme Court whether a tort can arise from a contract action when the conduct is tortious and there is a concern that we may inadvertently affect whatever process is under way. Would like to explore with the committee counsel ways so that we don't have that impact on that case.

273 SEN. SHOEMAKER: That seems reasonable.

279 VOTE: Motion passes unanimously; Sen.s Brockman and Cohen excused.

SB 337

302 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: OTLA does not have an official position on the bill. Looked good the first time we looked at it, but one of our members has suggested that we reconsider.

- People put estate plans together in a lot of different ways.
- The bill assumes that whomever is the residuary beneficiary in a will is entitled to the wrongful death proceeds and that may not be the children or family of the testator.
- Under present law, it would be divided between the spouse and children of the decedent.
- The bill may result in weird situations.
- Perhaps it would be better to have the court apportion it between the people entitled to share between those who'd inherit if the decedent died without a will and the residuary beneficiaries under the will rather than saying one or the other.
- Would be glad to come back next week with a firm position on the bill.

344 CHAIR HILL: Have you spoken with the proponents of the bill?

345 WILLIAMSON: No.

346 CHAIR HILL: Directs Charles Williamson to do so and get back to the committee.

#### BILL INTRODUCTIONS

355 TAYLOR: LC 2941 at the request of the Oregon Bankers Association which changes references from "line of credit mortgage" to "line of credit instrument."

- LC 2940 at the request of attorney Tilman Hasche to exempt certain letters of credit from the scope of state law.

365 CHAIR HILL: Calls for objections to the introduction of those bills as committee bills; hearing none, so ordered.

- Adjourns meeting at 1:40 p.m.

Submitted by:

Reviewed by:

Mark Thorburn  
Committee Counsel

Bill Taylor Committee Assistant

EXHIBIT LOG:

A - Testimony on SB 371 - Vern Faatz - 2 pages  
B - Amendments to SB 371 - Vern Faatz - 3 pages  
C - Testimony on SB 371 from Elsyse Clawson - Vern Faatz - 1 page  
D - Amendments to SB 339 - Committee Staff - 1 page