

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 17 (PUB) SB 505 (PUB) SB 493 (PUB) SB 572 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

March 6, 1991Hearing Room C 1:22 p.m.Tapes 52 - 53

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 INGRID SWENSON,
COMMITTEE COUNSEL MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: SENATOR JEANNETTE HAMBY RICHARD HOFLAND,
ACTING DEBT MANAGER, CITY OF PORTLAND WILLIAM E. LOVE FOR THE HOUSING,
EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY HOWARD RANKIN, OREGON
ASSOCIATION OF HOSPITALS MICHAEL T. RYAN, EXECUTIVE ASSISTANT TO THE
STATE TREASURER DONALD MCCLAVE, CITIZEN TOM STRINGFIELD, PORTLAND
MOUNTAIN RESCUE NEIL JAMES, CLACKAMAS COUNTY SHERIFF'S OFFICE SCOTT
RUSSELL, MOUNTAIN SIGNAL MEMORIAL FUND CHARLES WILLIAMSON, OREGON TRIAL
LAWYERS ASSOCIATION FRANK BRAWNER, OREGON BANKERS' ASSOCIATION STEPHANIE
SMYTHE, ASSISTANT ATTORNEY GENERAL, OREGON DEPARTMENT OF JUSTICE ROBERT
GEBHARDT, U.S. BANCORP DENNIS FIENE, DIRECTOR OF SECURITY, VISA
INTERNATIONAL BRIAN BOE, AMERICAN EXPRESS

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TAPE 52, SIDE A

003 CHAIR COHEN: Calls meeting to order at 1:22 p.m.

SB 505

015 SENATOR JEANNETTE HAMBY: Gives history of the current law limiting the liability of manufacturers, distributors, and suppliers of electronic signaling devices for wilderness travel and mountaineering. Two purposes of the sunset clause in original legislation:

- 1) Force the legislature to review how the devises and safeguards are actually working.

- 2) Force the legislature to see if a precedent had been set whether others would seek similar exemptions. Have not seen any requests for a similar exemption.

- SB 505 asks that the sunset clause be repealed so that the devices can be continued to be used.

047 DONALD MCCLAVE, CITIZEN: Describes conditions on Mt. Hood and explains why so many lose their life climbing it. The electronic signaling devices are not new; explains other uses. Devices are very expensive; not a consumer retail product. Describes how device works and it's advantages. Not many units needed. Units already purchased are available to hikers as a public service; use is optional to the climber. Liability insurance is very expensive. The devices have worked well. There's no reason why the sunset provision should not be repealed.

120 TOM STRINGFIELD, PORTLAND MOUNTAIN RESCUE: Discusses advantages of the Mountain/Mt. Hood Locator Units (MLU's).

- Primary use is for recreational climbers. (Exhibit A) They're available for rent for nominal fee. Would like to see more people use them; making effort to publicize their use.

- MLU's used by our rescue group and several others for own protection. (Exhibit A)

- Don't advocate using system to take undue risks, but it does provide extra protection.

181 SEN. HILL: How many of these units are there?

182 STRINGFIELD: About 100 transmitter units; six or seven receiver units. Indicates where the receiver units are located.

190 SEN. HILL: How many do you need for your purposes?

191 STRINGFIELD: There's enough available right now.

200 SEN. HILL: Exhibit B asks people to make contributions. Is that for the maintenance of the devices?

202 STRINGFIELD: Yes. The Mountain Signal Committee accepts contributions for that purpose.

207 SEN. SPRINGER: Understand that the utilization rate is not as great as hoped or expected. What do you think about requiring the use of the devices?

216 STRINGFIELD: Should not be required; would defeat the purpose of being in the outdoors. There are prudent things that good climbers should do and using the device is one of them.

230 SEN. SHOEMAKER: Have any information on searchers who've gotten in trouble without the device?

243 CHAIR COHEN: Other witnesses who'll testify later can answer that.

247 STRINGFIELD: Not aware of any instances where searchers have been seriously injured or killed in rescue situations, but know that searchers have been disoriented or in situations where they were ineffective because of lousy weather.

261 MCCLAVE: In the 1986 Mt. Hood incident, there were some very close

calls.

265 STRINGFIELD: Describes those close calls.

279 NEIL JAMES, CLACKAMAS COUNTY SHERIFF'S OFFICE: Has two exhibits (Exhibits C and D).

- Paraphrases Exhibit C.

341 SEN. SPRINGER: Do you think we ought to require use of the device? Is it one in 20 who use the device?

349 STRINGFIELD: That's about right.

350 JAMES: Usage is low, but on the increase. We use the device ourselves, use it when training volunteers, and encourage climbers to use it. Would not require mandatory usage.

365 SEN. SPRINGER: How about for minors?

369 JAMES: It wouldn't be a bad idea.

374 SEN. SPRINGER: Proposes to bill's sponsors that they might consider that.

377 SEN. SHOEMAKER: Believes that most organized climbs use the units, but most climbs are not organized and to require the devices' use would be unworkable.

393 JAMES: There is one type of organized climb where the use of the device is required: our search teams are required to use them.

405 SCOTT RUSSELL, MOUNTAIN SIGNAL MEMORIAL FUND: Reads cover letter contained in Exhibit E. Refers to letters contained in Exhibit E.

- The Oregon State Police have established the specifications for the equipment and its distribution.

469 SEN. HILL: The contributions that you ask for (Exhibit B) are used for what purpose?

474 RUSSELL: Need to update the systems continuously. The contributions apply to maintenance. As more units are required, we will supply them, but now have more units than are being used.

489 SEN. BUNN: Can this unit be used underwater?

491 RUSSELL: Will work with some degree of accuracy underwater. It's waterproof.

TAPE 53, SIDE A

034 SEN. BUNN: I'm a member of a dive rescue team and there were times that I would have loved to have something like this.

036 RUSSELL: The device could be adapted, but would not advocate this particular system for divers.

045 SEN. HAMBY: Appreciate the suggestion of mandating for youth . . . organized hikes and climbs. Will check with proponents and, if they're supportive, will draft legislation.

055 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Paraphrases

Exhibit F.

SB 17

097 WILLIAM E. LOVE FOR THE HOUSING, EDUCATIONAL, AND CULTURAL FACILITIES AUTHORITY: Paraphrases Exhibit G.

139 CHAIR COHEN: What do you think of the proposed amendments (Exhibit H)?

148 MICHAEL RYAN, EXECUTIVE ASSISTANT TO THE STATE TREASURER: Explains history of amendments.

- The amendments would allow health related facilities in Oregon to approach HECFA, as they can currently approach municipalities, for the issuance of conduit financing of their facilities. It would be double permissive. It would allow HECFA to fashion that program on a state-wide basis.

185 SEN. SPRINGER: What is the problem now? What is the position of the current governor? Why not ask the state land board to do it?

191 LOVE: No one has talked with the governor. The legislature in 1989 made the decision that the Authority and the State Treasurer would issue the bonds; they did not talk about the land board doing it. We're doing it now. The governor's office doesn't know too much about it and just signs the certificate that prepares and starts the bond issue. All this bill does is to try to satisfy an IRS requirement.

215 CHAIR COHEN: So we're expanding this to health. Anything else?

217 RYAN: No.

223 SEN. HILL: Does the bill say that the State Treasurer must approve regardless of what the Governor does?

230 LOVE: Explains how the current system works.

- The Governor's role is only to approve the bond issues to satisfy the IRS. Designating the State Treasurer instead, who has to approve the bond issue already, is one less hurdle to satisfy the IRS.

261 CHAIR COHEN: The State Treasurer is in charge of general obligation bond authorization as well.

264 LOVE: This is conduit financing; the credit and obligation of the state is not involved.

269 CHAIR COHEN: These bonds provide an opportunity set up by federal statute to get some measure of tax exemption beyond our revenue bonds and state obligation bonds.

281 SEN. SPRINGER: Which committee heard this last session?

283 CHAIR COHEN: It came out of the Trade Committee.

- All bond statutes require the State Treasurer to be the sign up person in the official issue order.

291 SEN. SPRINGER: Is this an administrative duty or is there any exercise of discretion?

292 CHAIR COHEN: Thinks there is.

293 SEN. SPRINGER: If it's an exercise in discretion, I tend to lean towards the Chief Executive.

294 CHAIR COHEN: You're talking about redoing the whole thing and giving the Governor the authority to actually issue the bonds. If we want to change that, that is a perfectly legitimate debate that we can take on.

305 SEN. SPRINGER: Trying to figure if the State Treasurer is merely being a scrivener or is exercising a veto and whether that's appropriate; doesn't think that it is appropriate unless he finds some financial reason for not doing this. We've given that authority to the five appointed people; assume they serve at the pleasure of the Governor.

314 LOVE: The people are appointed by the State Treasurer. The statute provides that the Authority approves a recommendation to the State Treasurer and then the Treasurer issues the bonds. In examining whether the bonds should be issued, the State Treasurer goes through an analysis to determine whether the recommendations are justified and meet the criteria.

- If there's anything administrative about the process, it's having someone sign a certificate to comply with the IRS provisions, which is what the Governor does, and doesn't know what they go through before the Governor signs.

345 SEN. SPRINGER: Comments on the complexity of the issue.

347 CHAIR COHEN: People need to understand it. We ought to look at it and make sure that is where the authority ought to be.

353 SEN. SPRINGER: Assumes that parallels every other bonding authority.

357 SEN. SHOEMAKER: Both the State Treasurer and the Governor must approve bond issues which the federal statute requires unless the state selects another official to have the final sign off. This bill takes the Governor out of the loop and leaves it solely to the State Treasurer and the commission appointed by the Treasurer to approve the bond issues.

373 LOVE: That's correct.

- The other alternative is to have the state's chief legal officer approve the bond issues. But since we have to market these bonds, we have the Governor sign.

395 SEN. SPRINGER: Who are the five individuals on the Authority?

397 LOVE: Names the individuals.

416 CHAIR COHEN: And you have been in operation how long?

417 LOVE: Started in January, 1990.

- HECFA would have no problem administering health care if it is included. Points out that the bonds must be used for constructing or improving something in Oregon, but in the health care, some funds may not have to be used in the state.

453 CHAIR COHEN: We'll ask the people coming here that the health

authority be changed.

458 SEN. SPRINGER: Agrees with the projects approved so far by HECFA.

461 CHAIR COHEN: Comments on background of those projects.

467 SEN. SPRINGER: Is favorably disposed to some of the things that HECFA has been doing.

TAPE 52, SIDE B

021 SEN. HILL: What are the qualifications to be an eligible project?

023 LOVE: Must be a 501(c)(3) nonprofit operation, cannot be used for operating funds, can't be used for major refinancing, and must be self funding.

056 RYAN: Assumes HECFA would probably move through the same basic process they did in organizing the application standards and criteria for the housing and educational side when they address the health side if the amendment passes.

063 CHAIR COHEN: Asks Howard Rankin and Richard Hofland why the City of Portland wants the amendment.

069 RICHARD HOFLAND, ACTING DEBT MANAGER, CITY OF PORTLAND: Amendments (Exhibit H) not drafted by Portland. Explains why Portland would like to see some expanded authority for health financing at the state level.

- Paraphrases Exhibit I.

124 SEN. SPRINGER: What hospital facilities have run up the \$140 million outstanding Portland debt?

127 HOFLAND: Most of the debt is now managed by Legacy Health Systems. Names the hospitals and the amounts (Exhibit J).

147 SEN. SPRINGER: Is Legacy nonprofit?

151 HOFLAND: They are nonprofit.

152 SEN. SPRINGER: Are any of these the same people who just sued the state because they weren't adequately reimbursed by Medicaid?

156 CHAIR COHEN: Comments about Emanuel Hospital.

157 SEN. SHOEMAKER: The claim was that Medicaid did not cover their costs and the decision was that they didn't.

161 SEN. SPRINGER: These folks are probably lined up in opposition to a bill trying to recoup some additional funds from hospital activities.

- You don't fund the university hospital?

165 HOFLAND: No, we do not.

166 SEN. SPRINGER: How much uncompensated care do these private nonprofit hospitals bear in relation to how much uncompensated care we're funding through the university hospital?

168 SEN. SHOEMAKER: Uncompensated care is between 20% and 25% at most hospitals.

172 SEN. SPRINGER: Comments on how he approaches what the hospitals ask "us" to do on their behalf.

179 SEN. SHOEMAKER: To the extent that making this bonding authority available to nonprofit hospitals would bring down the costs; it should bring it down to the benefit of those who need those services, including the government.

183 CHAIR COHEN: What we might want to do eventually is to get into a dialogue with the State Treasurer or HECFA in developing their standards to make sure cost containment is addressed.

195 SEN. SPRINGER: We're still taking about an occupancy rate of 60% or 70% in our hospitals.

200 SEN. HILL: The amendments go to many things beyond hospitals. What's the criteria for these other things?

209 CHAIR COHEN: We need to hear from Howard Rankin.

217 SEN. SPRINGER: Hope Mr. Rankin can say whether we're going to be financing with these bonds any more M or I projects.

219 HOWARD RANKIN, OREGON ASSOCIATION OF HOSPITALS: We did not draft this legislation. We acquiesce to the draft and the proposed amendments. Association's concern is that this legislation not supersede or preempt the hospital authorities that were created under the 1973 Act. Concerned that this legislation might be a move in the direction of a single state-wide authority authorized to issue tax exempt financing for health care. Believes that this is not the intent of the amendments.

255 CHAIR COHEN: Assumes the amendments would be prospective in all cases.

256 RANKIN: Yes.

257 CHAIR COHEN: And the \$140 million in existing bonds would still be under Portland's existing authority?

262 HOFLAND: Yes.

263 SEN. SHOEMAKER: Curious about the long sentence that appears in lines 16 through 23 on page 25 of the proposed amendments. They appear to allow the bonding

authorities to extend to the construction of facilities outside the state. Please explain that.

271 RANKIN: There are circumstances where they do operate large health care institutions outside of Oregon. Language there to permit that type of an institution to participate in the financing of health care facilities in Oregon.

288 SEN. SHOEMAKER: It seems to pertain to possible funding of facilities located outside of Oregon.

291 RANKIN: It does read that way; has question about the authority to finance hospital facilities outside of Oregon.

295 CHAIR COHEN: Assume the hospital authorities today are limited to funding projects within Oregon.

301 RANKIN: That's correct. But state-wide. Cites example.

309 CHAIR COHEN: So this is a departure; we need to check the drafting.

311 SEN. SPRINGER: Portland wants to dump \$140 million of debt into this thing?

317 HOFLAND: No.

318 SEN. SPRINGER: You don't want to refinance any of it?

319 HOFLAND: Some of it under consideration to be refinanced, but that will be through the Portland Hospital Facility Authority.

322 SEN. SPRINGER: Then why are you here?

323 HOFLAND: Because we don't want to be required to do any more; want to be able to tell the hospitals to come to the state.

325 SEN. SPRINGER: Concerned that housing and education is going to get squeezed out when competing with hospitals.

336 RYAN: It's our intention to include in the overall bonded debt issue a line item in addition to the item that has been included for HECFA so they would not conflict with one another.

346 CHAIR COHEN: The federal government does not have a cap on this as it does on several other industrial development bonds, so there is not a limit on this state on conduit bonds. Whoever is feasible can step up into the line as long as they meet some . . .

352 SEN. SPRINGER: That's helpful.

355 RYAN: If this was to move forward, this would provide to the legislature a management tool that does not now exist.

365 SEN. HILL: Is the language about out-of-state from the Treasurer's office?

368 RYAN: I went to the Bond Counsel to HECFA and my instructions to him was to provide a broad definition of a health related facility for consideration.

386 CHAIR COHEN: This committee is not likely to begin funding for hospital authorities across the country. Want facilities bonded through conduit to be in Oregon. We'll see what we can come up with in additional amendments.

411 TAYLOR: Explains what the general purpose of the amendment was.

422 CHAIR COHEN: Comments about bond lawyers.

BILL INTRODUCTIONS

444 CHAIR COHEN: LC 2701 from the Work Group on Runaway and Homeless Youth and LC 3898 from Sen. Brenneman at the request of Leonard C. Chase. Calls for objections; Sen. Bunn objects to both bills; introduction so ordered.

TAPE 53, SIDE B

SB 493

024 FRANK BRAUNER, OREGON BANKER'S ASSOCIATION: This bill pending in half of the other states and has passed in about 15 states.

031 ROBERT GEBHARDT, U.S. BANCORP: Paraphrases Exhibit K.

084 DENNIS FIENE, DIRECTOR OF SECURITY, VISA INTERNATIONAL: Telemarketing fraud is growing very rapidly. Describes how telemarketing fraud works. Every merchant is a potential victim. VISA active in trying to educate merchants and consumers, but efforts have driven the fraudulent telemarketers into such states as Oregon. Losses in country due to telemarketing fraud is in excess of \$1 billion. Urges passage of the bill.

124 SEN. SHOEMAKER: The crime is committed by both the telemarketer and the

cooperating merchant?

126 GEBHARDT: That's correct.

127 SEN. SHOEMAKER: So the mom and pop operation who gets tricked into working with a telemarketer is committing a crime in so doing?

129 GEBHARDT: That's correct.

130 SEN. SHOEMAKER: Do the banks plan some public education so the little guys don't find themselves the unknowingly committing a crime?

133 GEBHARDT: Hope they will become aware of it through the usual publicity process than occurs after a bill like this.

- The Better Business Bureau has already issued an advisory.

138 BRAUNER: We will be engaged in an education program.

142 SEN. SPRINGER: It's the merchant who's also trying to cut a deal on this; are there no other sanctions available against that merchant under law, criminal or civil?

147 GEBHARDT: Defers to Stephanie Smythe.

149 SEN. SPRINGER: If I understand the charge back system, it's the merchants' bank that's on the hook for the merchants' fraudulent activity?

152 GEBHARDT: Yes. There are VISA and MasterCard regulations. There is also a provision in the Fair Credit Billing Act, which causes the merchants' bank to suffer the loss.

163 STEPHANIE SMYTHE, ASSISTANT ATTORNEY GENERAL, OREGON DEPARTMENT OF JUSTICE: Paraphrases Exhibit L.

223 BRIAN BOE, AMERICAN EXPRESS: American Express supports the bill.

229 SEN. HILL: Has this bill been effective?

232 BRAUNER: We're told that they're effective. Concerned about Oregon being the only state on the West Coast without the bill.

240 BOE: Describes Nevada's experience.

251 BRAUNER: The passage of the bill does not remove the responsibility

of the banks to educate their merchants or their customers nor of the Oregon Bankers' Association to continue telling people to be careful about their credit card number.

264 SEN. BUNN: If you have a company come in and do the telemarketing effort on a contract basis, but use the parties' VISA account to run through, that wouldn't run contrary to this, would it?

273 BRAWNER: If a company hires a telemarketing firm and have a legitimate relationship with a bank through VISA or MasterCard, that would not run afoul of this bill. That's legitimate. Telemarketing, in certain circumstances, is legitimately done and is appropriate.

SB 572

280 BRAWNER: Paraphrases Exhibit M.

306 SEN. SPRINGER: A debtor may incorrectly think they're doing business with a company that has a local office. Is this something that we should be concerned about?

320 BRAWNER: Thinks the Senator is referring to residential mortgages. First, today's regulators will require a bank to have a loan on the books ready for sale in the event it is needed to be sold. Also, Congress requires 60 days notice of the sale of the loan, the transfer of service, or the transfer of the loan itself to the consumer.

- This bill is not meant to include that. It includes institutions within our borders where the name is changed.

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

Submitted by

Reviewed by

Mark Thorburn
Committee Counsel

Bill Taylor Committee Assistant

EXHIBIT LOG:

A - Testimony on SB 505 w/ Attachments - Tom Stringfield - 5 pages
B - Brochure on the Mt. Hood Locator Unit Re: SB 505 - Scott
Russell - 1 page 2 sides folded C - Testimony on SB 505 - Neil
James - 2 pages D - Testimony on SB 505 from Clackamas County
Sheriff - Neil James - 2 pages E- Testimony on SB 505 w/
Attachments - Scott Russell - 7 pages F - Testimony on SB 505 -
Charles Williamson - 3 pages G - Testimony on SB 17 - William Love
- 2 pages H - Proposed Amendments to SB 17 - State Treasurer's
Office - 9 pages I - Testimony on SB 17 - Richard Hofland - 2
pages J - Outstanding Portland Hospital Revenue Bond Figures -
Richard Hofland - 1 page K - Testimony on SB 493 - Robert Gebhardt
- 3 pages L - Testimony on SB 493 w/ Flyer - Stephanie Smythe - 2
pages plus flyer M - Testimony on SB 572 - Frank Brawner - 2 pages

Exhibits Submitted on Behalf of Witnesses Not Present at Hearing:

N - Testimony on SB 505 - Bill Brooks - 1 page O - Testimony
on SB 505 - Mark Parker - 1 page P - Testimony on SB 505 - Bill

Ridings - 1 page Q - Testimony on SB 505 - Kent Romney - 1 page
R - Testimony on SB 505 - Kathy Lee and Larry Cahill - 1 page
S - Testimony on SB 505 - Kathy Lee - 1 page T - Testimony
on SB 505 - J.C. Scheetz - 1 page