

Measures lIeard SB 716 lREFERRAL) SB 386 (VVRK) SB 572 (VVRK) SB 490
(I'UB & VVR~ SB 491 (PUB) SB 3 (PUB & VVRK) SB 8 (PUB & VVRK) SB 11 (PUB
& VVRK) SB 12 (PUB & VVRK) SB 13 (PUB & WRK) SB 17 (PUB & VVRK) SB 184
(PILB & VVR~ SB 259 (PUB & WRK)

SENATE COMMITTEE ON THE JUDICIARY

March 15,1991 Hearing Room C 1:10 p.m. Tapes 62 - 64
MEMBERS PRESENT:SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR
SEN. PETER BROCKMAN SEN. JIM BUNN SEN. JEANNETT E HAMBY SEN. BOB
SHOEMAKER SEN. DICK SPRINGER STAFF PRESENT: BILL TAYLOR, COMMITTEE
COUNSEL INGRID SWENSON, COMMITTEE COUNSEL MARK THORBURN, COMMITTEE
ASSISTANT WITNESSES: REPRESENTATIVE BILL DWYER CHARLES WILLIAMSON,
OREGON TRIAL LAWYERS ASSOCIATION THOMAS BISPHAM, DEPARTMENT OF
ENVIRONMENTAL QUALITY HOLLY DUNCAN, DEPARTMENT OF ENVIRONMENTAL QUALITY
STEVE SMITH, OREGON STATE TREASURY MICHAEL RYAN, OREGON STATE TREASURY
GARY BRUEBAKER, OREGON STATE TREASURY NORMA POITRAS, OREGON ASSOCIATION
OF DEFENSE COUNSEL EDWARD EINOWSKI, LAW FIRM OF STOEL RIVES LAURA
PARRISH, OREGON STATE BAR FAMILY LAW SECTION

Senate Judkiary Committee March 15, 1991 - Page 2

SHERYL WILSON, PUBLIC EMPLOYEE REIIREMENT SYSTEM

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.

TAPE 62, SIDE A

007 CHAIR COHEN: Calls committee to order. SB 716 008 CHAIR COHEN: The
Senate President has asked that this bill be referred back so that it
can be referred to another committee. 013 MOTION: The Chair moves to
send SB 716 back to the desk for possible rereferral. - Calls for
objections; hearing none, so ordered. 019 CHAIR COHEN: Discusses
agenda. GENERAL DISCUSSION ON BOND BILLS 040 STEVE SMITH, OREGON STATE
TREASURY: Bond bills before committee reflect more technical than
substantive changes in the law. - Wants committee to be aware of the
types of bonds used and what they represent. - SB 5570 (Exhibit A) is
the bonding bill that the State Treasurer and the Governor have
presented to the legislature that puts a cap on the amount of money the
Treasury can issue in debt.

058 CHARLES SMITH, OREGON STATE TREASURY: SB 5570 lists the types of
bonds that can be issued, and the maximum amount for each kind that can
be issued, over the next two years. - General obligation bonds are those
where the state is lending its full faith and credit and taxing power is
pledged to the repayment of the bonds. Have \$5.6 billion general
obligation bonds outstanding; 95% of those are self-supporting bonds. -
Revenue bonds are what's called "direct revenue bonds" where the issuing
authority has the responsibility to pay it from the revenues dedicated
to repayment. Cites examples. -

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- "Pass through" revenue bonds; it's the underlying borrower's

obligation to repay the bonds.

- Certificates of participation are obligations of the state.

- Private activity bond allocation relates to SB 11 and SB 12. These are bonds where the users of the proceeds are individuals, corporations, etc. The amount of these that can be sold is limited by the 1986 Tax Reform Act; for Oregon, it's \$150 million. 141 CHAIR COHEN: Private activity bonds are tax-free; that's why the federal government is involved. 153 SEN. BUNN: Do the bonds indicate anything that gives impression that the State of Oregon is backing it? 157 CHARLES SMITH: All of the bonds have "State of Oregon" on them, but those back by revenue are carefully delineated as such. 167 SEN. BUNN: Wants copies of bonds. 173 CHAIR COHEN: Wants facsimile of issuing documents.

176 CHARLES SMITH: Will provide bond samples to the committee.

180 CHAIR COHEN: Comments about bonds.

187 CHARLES SMITH: Section two of SB 5570 indicates how the state would allocate the private activity bonds. - Discusses the allocation to the Private Activity Bond Committee. 212 SEN. HILL: What are the interest rates for the various categories? 214 CHARLES SMITH: A 20 year general obligation bond is about 6.9%; 20 year housing revenue bond would be 7.15% - 7.25%; etc. 228 CHAIR COHEN: Who's on the Private Activity Bond Committee? 229 CHARLES SMITH: Identifies members. 236 SEN. SHOEMAKER: What is the exact function of the private activity bonds and how are they different from pass-through revenue bonds? 240 CHARLES SMITH: Explains function and requirements of the private activity bonds. 0 CHARLES SMITH: Explains function and requirements of the private activity bonds. 260 CHAIR COHEN: And the federal government has allocated \$150 million. 262 SEN. SHOEMAKER: So these are pass-through revenue bonds, but with limitations on Senate Judiciary Committee March 15, 1991- Page 4

them.

264 CHAIR COHEN: Right.

265 SEN. SPRINGER: Local governments also have bonds, don't they? Does the State Treasurer's office have any responsibility in that area?

273 CHARLES SMITH: Vast majority of the bonds sold by state and local government are not private activity bonds, but are governmental purpose bonds. Describes duties of Municipal Debt Advisory Commission and it's relationship to the State Treasury. Briefly describes other local activities of the State Treasury.

308 CHAIR COHEN: You also keep track of how much is issued through the local level through the Treasury?

314 CHARLES SMITH: That's correct. SB 15 helps us in that tracking mechanism. Discusses tracking practices.

329 SEN. SPRINGER: Is it appropriate to look at bundling bonds?

336 CHARLES SMITH: Small local issuers get bids for their bonds. This makes it difficult for bond pools to operate efficiently. Describes how bond pool works.

- The Economic Development Department does bundle revenue bonds.

- Bond banks do exist in Oregon for smaller, weaker credits.

377 CHAIR COHEN: Discusses history of bond banks.

SB 259

395 REPRESENTATIVE BILL DWYER: SB 259 is an effort to extend other substances to the oil spill act that were adopted in 1989. Likes the amendments that have already been inserted (Exhibits B and C) and urges passage of the bill.

426 CHAIR COHEN: Explains why bill is before this committee.

438 INGRID SWENSON, COMMITTEE COUNSEL: The procedure used in this bill is dealt with in SB 101.

- The bill does have a subsequent Ways and Means referral. . 443

MOTION: Sen. Hamby moves SB 259 to Ways and Means with a "do pass" recommendation.

461 VOTE: Motion passes unanimously.

SB 184

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469 CHAIR COHEN: Comments on history of the bill and witnesses.

TAPE 63, SIDE A

032 SWENSON: The bill increases the civil penalties that the Environmental Quality Commission may impose for extreme violations, for solid waste violations, and violation of battery disposal laws. It also requires person liable for a spill to immediately begin clean up and changes the provisions relating to advance notice of the penalty. Procedure for the imposition of civil penalties is dealt with in SB 101.

047 CHAIR COHEN: So this bill does not need technical changes?

050 SWENSON: That's correct. DEQ has some concerns about change in requirements of notice, but they can be dealt with in SB 101 without dealing with them in this bill. 056 SEN. SHOEMAKER: Is penalty of \$10,000 a day consistent with other penalty provisions in our laws that can be assessed? 062 THOMAS BISPHAM, DEPARTMENT OF ENVIRONMENTAL QUALITY: There are two maximum penalty levels mentioned in this bill. - 1) To move the maximum penalties for noise and solid waste to \$10,000. This would make noise and solid waste penalties consistent with air, water, and hazardous waste programs. - 2) To move the maximum penalties to \$100,000 for extreme insult to the environment. This would be unique in our rules/statutes; it's for the very rare and extreme situations.

081 SEN. SHOEMAKER: But we don't have any precedent in our law for a civil penalty of that size. 082 BISPHAM: Not in the environmental field. 083 SEN. SHOEMAKER: Any other law? 084 BISPHAM: Don't know.

086 SEN. SHOEMAKER: Wants to make sure that this is still within the

civil penalty concept. 088 CHAIR COHEN: DEQ has extensive rules . . .
092 SEN. HAMBY: Sen. Shoemaker needs to know about the amendment
(Exhibits D and E) from negligence to gross negligence. 094 SEN.
SHOEMAKER: I understand that. - We're always increasing civil penalties
and doing things that used to be called criminal

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and calling them civil. 100 CHAIR COHEN: When the civil penalty is
finished, you're either at the state or federal APA level.

102 BISPHAM: The maximum that we can impose is \$10,000 a day.

- Would it be helpful if I summarized the administrative rule that
explains the matrix?

107 CHAIR COHEN: Yes.

108 BISPHAM: Exhibit F refers to the administrative rules and our civil
penalty matrix. Discusses how penalties are determined. Exhibit G is the
summary of our 1990 penalties; discusses those figures.

148 CHAIR COHEN: The Environmental Quality Commission has formally
adopted these rules?

150 BISPHAM: That's correct. If \$100,000 penalty approved, then we'd
have to go back to the Commission to establish a \$100,000 matrix.

156 CHAIR COHEN: What's the appeal from the Commission? Eventually
goes to court? 159 BISPHAM: That's correct.

160 CHAIR COHEN: Which court?

161 BISPHAM: The Court of Appeals. 162 SEN. SHOEMAKER: Which does
what?

165 BISPHAM: It reviews whether the evidence justifies the penalty and
whether the violation occurred. 168 HOLLY DUNCAN, DEPARTMENT OF
ENVIRONMENTAL QUALITY: That's never been done before; there's never been
an appeal.

172 MOTION: Sen. Hill moves SB 184 to Ways and Means with a "do pass"
recommendation.

179 SEN. BROCKMAN: Notices on Staff Measure Summary from the
Agriculture Committee that the subsequent referral to Ways and Means has
been removed.

183 SWENSON: It has been removed.

186 CHAIR COHEN: There is a letter from the Agriculture Committee to
have that removed; they took out some fiscal impact. So it will go to
the floor. Senate Judiciary Committee March 15, 1991 - Page 7

195 WITHDRAWAL OF MOTION AND NEW MOTION: Sen. Hill withdraws his motion
and changes moves SB 184 to the floor with a "do pass" recommendation.

199 SEN. BUNN: Going to vote against the bill; there's good reason to

having air, water, and hazardous violations at a separate level of penalties than the rest. 206 VOTE: Motion passes 6 to 1; Sen. Bunn voting no.

SB 3

218 STEVE SMITH: Introduces Gary Bruebaker. 227 GARY BRUEBAKER, OREGON STATE TREASURY: Paraphrases Exhibit L. 238 SEN. SHOEMAKER: What is the benefit to the state? 239 BRUEBAKER: The benefit is the lower administrative cost for the payment of a registered bond; the administrative cost of bearer bonds is much higher. 250 MOTION: Sen. Shoemaker moves SB 3 to the floor with a "do pass" recommendation. 255 VOTE: Motion passes unanimously.

SB 8

263 CHARLES SMITH: This is an effort to lower the expense to local governments for selling bonds. Changes the requirement that a notice of sale be published in a national periodical from a sale amount of \$3 million to a sale amount of \$10 million. 278 SEN. SHOEMAKER: Did you consider indexing the outer limit so that it would ride with inflation? 284 CHARLES SMITH: No. 289 CHAIR COHEN: Comments about bona lawyers. 296 MOTION: Sen. Brockman moves SB 8 to floor with a "do pass" recommendation. 298 VOTE: Motion passes unanimously.

SB 11 306 CHARLES SMITH: This clarifies the power of the private activity bond committee to reallocate the value cap during the year. Explains use of the cap. 334 SEN. BROCKMAN: What does the phrase "round-up" in the Staff Measure Summary mean?

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349 BILL TAYLOR, COMMITTEE COUNSEL: That phrase is from the materials from the State Treasurer's office.

353 CHAIR COHEN: What does it mean?

354 CHARLES SMITH: It's a term we use to gather in the remaining unallocated volume cap to be available for reallocation.

360 SEN. HILL: Where's the 75 days?

362 SEN. HAMBY: It's by rule.

363 CHARLES SMITH: It's an administrative rule adopted by the Private Activity Bond Committee. 367 MOTION: Sen. Hamby moves SB 11 to the floor with a "do pass" recommendation. 369 VOTE: Motion passes unanimously. SB 12 377 CHARLES SMITH: The bill dissolves the Advisory Council on the Allocation of the State Private Activity Bonds. 394 MOTION: Sen. Hamby moves SB 12 to the floor with a "do pass" recommendation. 398 VOTE: Motion passes unanimously; Sen. Brockman excused. SB 13 408 CHARLES SMITH: The bill repeals a statute authorizing the state to sell bonds in coupon form. 418 MOTION: Sen. Shoemaker moves SB 13 to the floor with a "do pass" recommendation. 421 SEN. BUNN: Asks for clarification of the bill. 424 CHAIR COHEN: Explains bill. 426 VOTE: Sen. Bunn votes aye. 427 CHAIR

COHEN: Further comments on the bill.

428 VOTE: Rest of committee votes; motion passes unanimously.

SB 17

436 CHAIR COHEN: Comments on SB 17. There are amendments (Exhibit T).
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446 TAYLOR: These (Exhibit H) are the dash two amendments; last time, we had the dash one (Exhibit 1) and, as per the committee's consensus, the sentence beginning at line 16 at page five of Exhibit I concerning the ability of bonds floated in Oregon to be used outside the state was removed.

463 CHAIR COHEN: Asks Bill Taylor to explain the changes.

467 TAYLOR: Reads the language that was removed. With that change, cannot use bonds for projects outside of Oregon.

TAPE 62, SIDE B

030 CHAIR COHEN: So it still allows them to be used for working capital, etc., that is necessary or convenient for the provision of health care.

- Does line 15 of page five of Exhibit H represent new authority for the hospitals?

044 EDWARD EINOWSKI, LAW FIRM OF STOEL RIVES: No; the existing hospital authorities already have the ability to finance working capital.

050 CHAIR COHEN: So they are allowed to borrow and apply it to working capital.

053 EINOWSKI: The phrasing in the bill is a matter of clarification. These are private activity bonds, but they're exclusively 501(c)(3) tax exempt. Generally, private activity bonds cannot be used to finance working capital or interim cash flow borrowings, but that prohibition does not apply to 501(c)(3)'s. Explains what 501(c)(3)'s can do in this area. It's not often used, but where used, it's badly needed. More commonly used is the working capital provision. Cash flow are, a few times, 501(c)(3)'s.

068 CHAIR COHEN: So this applies only to the 501(c)(3)'s.

069 EINOWSKI: That's correct.

073 SEN. HILL: On the amendments on page five, on lines 13 and 14, what are "a particular facility or structures?" 078 EINOWSKI:

Historically, one needed to finance a fixed asset with this type of financing. We wanted to include blood mobiles, mobile x-ray machines, etc. 091 SEN. SHOEMAKER: Does the deletion of the language accomplish the prohibition of bonds for use of construction of out-of-state facilities? There's nothing that proscribes the use of the funds out-of-state. 097 CHAIR COHEN: Asks witness to speak to HECFA's authority; believes that it requires use within the state.

102 EINOWSKI: It is typical of these kind of acts to focus on facilities in Oregon. Also, as maker of general law, a governmental unit does not have extraterritorial powers.

Therefore, by not expressly providing for extraterritorial powers, you can only act within your jurisdictional boundaries.

111 CHAIR COHEN: Asks Sen. Brockman if he has any questions.

113 SEN. BROCKMAN: On page two, beginning on line 28, might we not be opening ourselves up to programs that have been proposed to be deleted from the general budget seek bonding? 135 MICHAEL RYAN, OREGON STATE TREASURY: We're talking about bricks and motor type of approach rather than ongoing working capital to finance a continuing program, service, or function. We are also talking about 501 (c) (3) institutions who'd be in the position to repay their debt.

148 SEN. BROCKMAN: Doesn't want to leave the Treasury vulnerable to the interpretation that might use these passages to float a bond issue that would be impossible to pay off to cover budgetary cuts. 159 EINOWSKI: The mainstream reading of the act would be that the act only allows the authority to issue bonds. No state agency to my knowledge has the statutory authority to borrow money from the Authority.

174 SEN. BROCKMAN: He's saying none to his knowledge; might be interesting to find out if there is one.

178 CHAIR COHEN: We do have hospital authority law that allows them to do it now with substantially the same language. As we are proposing to amend SB 17, that does not prohibit those 501(c) (3)'s from going out and issuing through the current hospital authority that exists today; they don't have to come to HECFA with SB 17, but could side step the issue already.

198 STEVE SMITH: There's a very stringent income test that needs to be met before this money is loaned and the bonds issued. Would like to have the housing agencies have more of a focus and make sure there are no bad deals done.

210 MOTION: Sen. Hill moves the 17-2 amendments with the proviso that our counsel look into that concern.

214 CHAIR COHEN: Calls for objections; hearing none, so ordered.

221 SEN. HAMBY: Not comfortable with response about extraterritorial jurisdiction. Cites example of a shared MRI with a neigHB oring state on a border town. Would there not be a litmus test?

234 STEVE SMITH: Yes.

235 CHAIR COHEN: Happy to explore the out-of-state issue.

237 SEN. HAMBY: If Steve Smith feels there's a controlling factor within the Department, then I'm comfortable. 238 STEVE SMITH: It was never the intent of SB 17 to loan money out-of-state and have any buildings built out-of-state with an Oregon bond. Rules will be written to insure this will be done in Oregon. 243 SEN. HAMBY: I'm

comfortable. 245 MOTION: Sen. Hill moves SB 17 as amended to the floor with a "do pass" recommendation. 249 CHAIR COHEN: We have assurances from the State Treasurer that rules will be written to insure that bonds are not to be used outside the state. 261 VOTE: Motion passes 6 to 1; Sen. Springer votes no. SB 572 284 TAYLOR: This bill allows a secured party to amend the financing statement associated with securing a loan or obligation without the signature of the debtor when the only change is in the name or address of the secured party. There are no proposed amendments. 300 MOTION: Sen. Hamby moves SB 572 to the floor with a "do pass" recommendation. 303 VOTE: Motion passes unanimously.

SB 386 309 TAYLOR: There are a hand engrossed version (Exhibit J) and amendments (Exhibit K). 317 CHAIR COHEN: Comments on complexity of the bill. 325 TAYLOR: The hand engrossed version and amendments have already been passed out. 327 SEN. SHOEMAKER: Do we have any LC amendments? 328 TAYLOR: No; they're not in LC form. They're hand engrossed plus . . . 329 CHAIR COHEN: What are we looking for? 330 TAYLOR: Senate Bill 386 hand engrossed version from the proponents with no date on it. 337 LAURA PARRISH, OREGON STATE BAR FAMILY LAW SECTION: The amendments suggested in Exhibit K are included in the hand engrossed version of the

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bill (Exhibit J). They've been worked out with the Public Employees Retirement System and the State Deferred Compensation System.

- Intent of bill is to apply to retirement plans that are available to state employees and employees of local government the same rules that apply to the division of private plans under federal law when a divorce occurs.

- The Public Employees Retirement System has taken the position that certani restrictions have to be complied with; the amendments give the courts greater flexibility in dealing with the division of benefits in those circumstances.

- Many of the amendments just clarify the original intent of the bill.

- Discusses the amendments.

TAPE 63, SIDE B 025 PARRISH: There are some types of retirement benefits that are available to members of the system that we never intended to be available to alternate payees. List examples. The bill exempts these from the alternate payee.

- Explains why sections three, four, and six are deleted from the bill.

- Plan to study the issue of the tax impact under 457 and come back at the next legislative session to address the issue of deferred compensation.

- Have incorporated amendments that will apply to divorce decrees that are already in place.

076 SEN. BUNN: Under the status quo, a member can sabotage an

alternate's interest?

078 PARRISH: That's correct.

079 SEN. BUNN: Under SB 386, we create two parallel miniature accounts?

080 PARRISH: In essence, that's correct.

081 SEN. BUNN: And with those accounts, once the alternate and the member have their account, is the member's account limited as far as future actions or current options by the alternate or are both independent?

087 PARRISH: The intent of the legislation is to segregate the accounts with each alternate and the member having the right to make their own selections, options, and timing of receipt.

090 SEN. BUNN: So all we're dealing with is the ability to create those and we're not concerned about the percentages and we're not letting either party to impact the other party's share?

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093 PARRISH: That's correct.

096 MOTION: Sen. Bunn moves the amendments contained in Exhibits J and K.

101 CHAIR COHEN: Calls the representatives of Public Employees Retirement System to testify.

107 SHERYL WILSON, PUBLIC EMPLOYEES RETIREMENT SYSTEM: We like the amendments.

114 CHAIR COHEN: Comments of appreciation for PERS' willingness take on the process that they'll undertake under the bill.

- Calls for objections to the amendments; hearing none, so ordered.

122 MOTION: Sen. Bunn moves SB 386 as amended to floor with a "do pass" recommendation.

125 VOTE: Motion passes unanimously.

SB 490

135 TAYLOR: We have dash two amendments (Exhibit M).

140 CHAIR COHEN: What are the amendments?

146 TAYLOR: Reads the amendments.

161 CHAIR COHEN: Have a note regarding further amendments for underinsured and uninsured. Is that what this does?

162 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: The first

half of the amendments were before the committee last time. Lines 6 through 10 exempt underinsured and uninsured motorists arbitrations from the bill as well.

170 NORMA POITRAS, OREGON ASSOCIATION OF DEFENSE COUNSEL: Has position paper on the bill (Exhibit N). Agrees with all of the amendments; most of objections to the bill are corrected by the amendments.

- The main reason for the bill not to pass is that the current statute is adequate; the only thing the new bill leaves as a change is the appraisal provisions and some language changes.

- Has problem with having a different definition of "prevailing party" under the statute than the definition used in other statutes.

- The bill says that attorney fees applied in arbitrations except for a, b, and c, which covers pretty much everything. Better to have the attorney fees, if allowed, to be a part Senate Judiciary (ommhhMarch 15, 1991 Page 14

of the separate provisions and let the battle occur deciding whether the PIP statute should be revised. - Bill will chill the incentive to voluntarily arbitrate.

226 CHAIR COHEN: If you did an arbitration, what would prevent you from deciding how the fees are split, regardless of this law?

228 POITRAS: The different types of arbitration are governed by the statutes. If it's a voluntary arbitration, then it's up to the parties. Cites example.

236 CHAIR COHEN: If you went to arbitration and decided to resolve who's to pay what fees, then this wouldn't necessarily intervene?

242 POITRAS: That's the way it is now and this bill wouldn't change that.

246 SEN. SHOEMAKER: Are you saying that the arbitration provisions in an insurance contract do allow the arbitrator to set fees and asses them against either party?

250 POITRAS: No.

251 SEN. SHOEMAKER: That's what the question was.

253 POITRAS: The arbitrator cannot award attorney fees in PIP disputes because they're not allowed . . .

257 CHAIR COHEN: PIP is not covered in this bill; talk about things that are left on the table.

260 POITRAS: To be entitled to attorney fees, there has to be a statutory provision allowing its award, but the arbitrators can do preKy much whatever they want. The only way to reverse an arbitration award is to claim fraud or extreme misconduct on the part of the arbitrator, so if an arbitrator awards attorney fees, even if it is in error of law, its not an appealable award.

271 SEN. SHOEMAKER: That doesn't really answer the question; most arbitrators normally try to follow the dictates of the contract under

which they're operating and does not expect many arbitrators to award attorney fees when the contract does not provide for them.

- Do they do it and does the contract allow them to do it?

280 POITRAS: The contract doesn't make any reference to an award of attorney fees; most contracts state that the arbitration will be pursuant to the state law on arbitration.

285 SEN. SHOEMAKER: And the state law on arbitration does not specifically allow for fees?

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287 POITRAS: It does not. The safeguard for the insured is that, in a dispute, the insurer pays for all the costs of the arbitration, so the insured can arbitrate without incurring any costs. The only thing not provided for is the insured's attorney fees. 302 SEN. SHOEMAKER: What about a law permitting an arbitrator to assess fees if persuaded that one side unduly delayed the proceedings, etc. 309 POITRAS: There are other avenues, such as sanctions, for that type of consideration. 313 SEN. SHOEMAKER: That requires a separate lawsuit? . 314 POITRAS: No. 316 SEN. SHOEMAKER: In arbitration? 317 POITRAS: Yes. 322 SEN. SHOEMAKER: So under the existing law, either side could request attorney fees if the other side was frivolous in causing the proceeding to be necessary? 327 POITRAS: Haven't researched that specific issue. Thinks it's the same as any type of action where's there has been a frivolous claim or defense asserted. 332 SEN. SHOEMAKER: That's worth learning. - It's better to have a provision allowing the arbitrator to assess attorney fees rather than a dictate that he shall do it. 337 POITRAS: If there was an attorney fee provision, it should be discretionary. But does not recommend a discretionary attorney fee provision in this statute because there are no avenues for appeal of arbitration awards. 347 SEN. SHOEMAKER: But that would be better than the bill . . . 348 POITRAS: Definitely, but there are more appropriate avenues for sanctions. Cites examples. Also, the insurance carriers already bear the risk of being wrong. 381 SEN. SHOEMAKER: Why do they bear the burden? 382 POITRAS: Except for \$10, they pay all of the arbitration fees. 387 SEN. SHOEMAKER: And that's true for an appraisal as well? 388 POITRAS: Doesn't know. 393 SEN. SHOEMAKER: In a court case, entitled to attorney fees only if settlement was not made in six months, but in proposal to have this extend to arbitration and appraisal, there is no six month period of attempted settlement. Is it normal to try to settle before you

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go to arbitration? 406 POITRAS: Yes. Both the statute and the bill include six month settlement language. 413 SEN. SHOEMAKER: Don't think so. As I read the bill, the six month limitation applies only to actions. 428 WILLIAMSON: It should be in both places. 429 SEN. SHOEMAKER: So that's a drafting . . .

430 WILLIAMSON: Yes. 431 POITRAS: Concerned about potential bias if allowing fees for experts and appraisers are paid when they win. Will increase disputes on appraisals.

456 CHAIR COHEN: Asks Charles Williamson to respond.

TAPE 64, SIDE A 011 WILLIAMSON: The references to the \$100 and three arbitrators are all references from the statute which have just been excluded from this bill. - As to valuation of property, there are no similar provisions for those sorts of arbitrations. - We're just trying to bring the present law and bring it up to date.

- If you have to sue the insurance company for what they owe you, then you should get what they owe you, not minus your attorney fees and appraisers costs. Insurance companies make their contracts so they can't be sued, so you have to go to arbitration. The insureds are not getting what the law intended.

- Not aware of any arbitrators awarding attorney fees or costs for frivolous claims or defenses. Don't understand the other objections that were put forth. - There is a great disparity in the bargaining power between the individual insured and an insurance company.

043 POITRAS: There is a disincentive to settlement for both parties if there is only one side paying the price of . . .

047 CHAIR COHEN: Comments on members of committee who'll soon be leaving. 050 POITRAS: It's cheaper for both sides to settle. If there's a bona fide dispute, then there shouldn't be a penalty for being wrong for either party. The insurance carriers are already paying the majority of the costs of arbitration. Recommend that the amendment

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not pass; the current law is adequate.

059 SEN. SPRINGER: Is the dash two amendment clean or have been further amended?

060 WILLIAMSON: It's clean.

061 MOTION: Sen. Springer moves the dash two amendment.

063 CHAIR COHEN: Calls for objections; hearing none, so ordered.

065 MOTION: Sen. Springer moves SB 490 to the floor with a "do pass" recommendation.

067 SEN. SHOEMAKER: Probably often true that an insurance company unnecessarily forces a case to arbitration or litigation. In those cases, it is appropriate to award attorney fees. But there are also occasions when the insurance has good reason to force the case into arbitration, appraisal, or litigation, or when there is a bona fide dispute about coverage or the amount of coverage. Better to give arbitrator the authority to award attorney fees on motion of either party if he finds that one party really abused its position.

- Wants to amend the bill in that respect.

091 CHAIR COHEN: The sponsors of the bill say that they don't see that as a friendly amendment.

096 SEN. SHOEMAKER: I'm sure that would be the response regarding change in the litigation. Won't press for that, but as to arbitration and appraisal, asks for Charles Williamson's response.

100 WILUAMSON: The amendments are clean, but should have another one to include the six month provision for arbitration.

105 SEN. SPRINGER: That was my intent.

107 WILLIAMSON: If intent is to adopt the bill and to authorize the arbitrator to award attorney fees and costs because someone has taken a frivolous position in the arbitration, we won't have any objections.

117 CHAIR COHEN: Is that . . .

118 SEN. SHOEMAKER: I think so. That would mean, for the insured to recover attorney fees, there would have to be a finding that it was frivolous on the part of the insurer to force the arbitration.

122 WILLIAMSON: What I intended is for the bill to pass the way it is so if the insured collected more than they were offered, and six months have gone by, they'd get their attorney fees, but if the insured was found to have taken a frivolous position, then they could have attorney fees assessed against them. . . . These minutes contain rmateriale which paraphrase ant/or ulenmarisc etaterncr" made during this ee~on. Only text enclosed in quotation marh report a speaker's exact words. For complete contents of the proceedi IgB, please refer to the lopes. Senate Judiciary CommXtee March 15, 1991 - Page 18

134 SEN. SHOEMAKER: That goes half way to what I was working toward. Award of attorney fees to the insured also ought to depend on some finding that forcing the arbitration was frivolous.

140 CHAIR COHEN: Asks Bill Taylor to get the amendments LC'd. We'll bring the bill back.

SB 491 151 CHAIR COHEN: It's set over.

- Adjourns meeting at 3:10 p.m.

Submitted by:

Reviewed by:

Mark Thorburn
Committee Counsel

Bill Taylor Committee Assistant

EXHIB11 LOG:

A - Copy of SB 5570 RE: SB 3, 8, 11-13 - Steve Smith - 3 pages B - Amendments to SB 259 - Committee Staff - 1 page C - SB 259 (A-Engrossed) - Committee Staff - 1 page D - Amendments to SB 184 - Committee Staff - 2 pages E - SB 184 (A-Engrossed) - Committee Staff - 4 pages F - Testimony on SB 184 - Tom Bispham - 4 pages G - Oregon Dept. of Environmental Quality Enforcement Activities - Tom Bispham - 9 pages H -

Amendments to SB 17 (17-2) - Committee Staff - 8 pages I - Amendments to SB 17 (17-1) - Committee Staff - 9 pages J - SB 386 (Hand Engrossed) - Laura Parrish - 7 pages K - Amendments to SB 386 - Laura Parrish - 3 pages L - Testimony on SB 3 - Gary Bruebaker - 1 page M - Amendments to SB 490 - Committee Staff - 1 page N - Position Paper on SB 490 - Norma Poitras - 2 pages

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report the speaker's exact words. For complete contents of the proceedings, please refer to the tapes.