

Measures Heard HB 2559 (PUB) SB 129 (VVRK) SB 133 (WRK) SB 179 (WRK) SB 93 (VVRK) SB 98 (WRK) SB 492 (WRK) SB 882 (PUB) SB 949 (PAW)

SENATE COMMITTEE ON THE JUDICIARY

March 29, 1991 Hearing Room C 1:10 p.m. Tapes 81- 82
MEMBERS PRESENT: SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR
SEN. PETER BROCKMAN SEN. JIM BIJNN SEN. JEANNEI TE HAMBY SEN. BOB
SHOEMAKER SEN. DICK SPRINGER STAFF PRESENT: INGRID SWENSON, COMMITTEE
COUNSEL MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: THE HONORABLE MIKE BURTON, STATE REPRESENTATIVE DENIS
DOWD, DEPARTMENT OF CORRECTIONS DAVE CAULLEY, DEPARTMENT OF CORRECTIONS
JOHN BORO, DEPARTMENT OF FORESTRY DENNIS OLMSTEAD, DEPARTMENT OF GEOLOGY
AND MINERAL INDUSTRIES

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 81, SIDE A . 003 CHAIR COHEN: Calls the meeting to order at 1:10 p.m. Discusses preliminary matters concerning bills to be heard in the future and upcoming hearings. Sat _te Judic~r~ Comm~c March 29, 1991 - Pa8e 2

HB 2559 054 REPRESENTATIVE MIKE BURTON: During the last legislative session, the legislature eliminated temporary leave. It was not intended to eliminate temporary leaves for people who are attending drug and alcohol programs and for attending mental health programs or treatment to develop transitional skills for independent living. This bill is intended to correct that. - The release would be under rules developed by the Department of Corrections.

- There was some concern on the House side about the effect on local communities; assume that the Department of Corrections would adopt rules to take this into consideration. - Bill will help brake cycle of repeat offenders. 102 CHAIR COHEN: Have an amendment that has been requested by Sen. Duff (Exhibit A); explains Sen. Duff's concern and discusses the amendment.

124 DENIS DOWD, DEPARTMENT OF CORRECTIONS: The Department supports the bill. Good part of work release programs is to provide some transition with long-term intent of reducing recidiviSMand that involves programs in the community. Such release is not possible under current statutes; alternatives are ineffective and expensive. Inmates eligible for the provisions of this bill are already eligible for work release and for release into community for worker education without supervision. The added risk would not be sign)ficant. Any costs associated would be borne by the inmates. - As to the Eastern Oregon Correctional institution, there is a written agreement between the Department of Corrections and the City of Pendleton that no inmate will be released into the community except in cases of extreme medical emergency.

- The Department would have no objection to Exhibit A; the Department already consults with community authorities about inmate involvement in programs in the community.

169 SEN. SHOEMAKER: Are the people released in this program generally housed in the institution at night?

172 DOWD: They're always housed at the institution at night. 173 SEN. SHOEMAKER: They always go back? 174 DOWD: Yes.

175 SEN. SHOEMAKER: So their bed is kept available for them?

176 DOWD: Yes. There is one inmate that is the exception.

180 CHAIR COHEN: In addition to the amendment, Sen. Duff wanted to add a sub f; sub

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f says to participate in a community service program. 200 DOWD: There's a lot of difference between a work release program and a community service program. It would have a significant impact. 208 CHAIR COHEN: Thanks witness. 210 SEN. SHOEMAKER: (Inaudible) 213 CHAIR COHEN: Don't want to do temporary release again. 215 SEN. SHOEMAKER: Should call it transitional release or something, but it isn't work release.

217 CHAIR COHEN: We'll check it out with the Corrections Department.

SB 129, 179, 93, and 98 230 INGRID SWENSON, COMMITTEE COUNSEL: For SB 129, 179, 93, and 98, the Committee had previously approved the bills with the proposed amendments. However, in conjunction with the civil penalty portion of those bills, Mr. Heynderickx recommended that language be included standardizing the procedure for both when the order becomes final and what kinds of service of the notice is acceptable. Reads the recommended language. He has incorporated those provisions into these four measures. SB 129 248 SWENSON: These are the only changes. Members have a hand engrossed version of the bill (Exhibit B) which includes the 129 A4 LC amendments (Exhibit C). 254 CHAIR COHEN: Comments on the bills and the amendments. - We have not changed anything else in the bill? 265 SWENSON: That's correct. - The bill has a subsequent referral to Ways and Means. 268 CHAIR COHEN: Calls for objections to the amendments; hearing none, so ordered; Sen. Bunn excused. 270 MOTION: Sen. Hamby moves SB 129 as amended to Ways and Means with a "do pass" recommendation. 274 VOTE: Motion passes unanimously; Sen. Bunn excused. SB 179

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282 SWENSON: The only changes made are the two mentioned in connection with SB 129. The committee has drafted 3 amendments (Exhibit D) and a hand engrossed version incorporating those amendments (Exhibit E:).

289 CHAIR COHEN: Calls for objections to the amendments; hearing none, so ordered. 293 SWENSON: The bill has a Ways and Means referral. 294 MOTION: Sen. Shoemaker moves SB 179 as amended with a "do pass."

recommendation to Ways and Means. 297 VOTE: Motion passes 6 to 1;
Sen. Bunn voting no. SB 93

305 SWENSON: The committee should have a hand engrossed version
(Exhibit F,, that include the LC A6 amendments (Exhibit G) as well as
amendments from the Oregon Department of Energy (E xhibit H).

- The committee had not adopted the Department of Energy amendments at
the last hearing, but did indicate its intent to adopt the dash 6
amendments.

317 CHAIR COHEN: The Department of Energy amendments are dash . . . 319
SWENSON: The Department of Energy amendments are not in LC form. -
Explains the Department of Energy amendments.

335 MOTION: Sen. Hill moves the adoption of the Department of Energy
amendments.

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

- Discusses the A6 amendments.

347 MOTION: Sen. Hill moves the adoption of the A6 amendments.

348 CHAIR COHEN: Calls for objections; hearing none, so ordered. - Do
the bill go to Ways and Means? 351 SWENSON: It does not.

357 MOTION: Sen. Springer moves SB 93 as amended to the floor with a
"do pass" recommendation.

361 VOTE: Motion passes unanimously.

SB 98 .

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369 SWENSON: There are A4 amendments (Exhibit I) which are incorporated
in a hand engrossed version of the bill (Exhibit n. - The amendment
includes the two changes made in connection with SB 129 and 179 ; in
addition, the proponent of the bill has included a reference to the
liability of corporate officers for civil penalties. 398 SEN. BROCKMAN:
Whose amendments are these? 399 CHAIR COHEN: The Department of Geology.
Summarizes the amendments.

- Is the agency supportive of the amendments?

412 MOTION: Sen. Springer moves the amendments to SB 98.

414 SEN. SHOEMAKER: It says that a civil penalty may be imposed against
the board of directors; does that mean the members of the board of
directors? 419 SWENSON: Mr. Heyndericbc indicates that this language is
typical even with respect to the desire to impose penalties against
individual directors. 424 SEN. SHOEMAKER: And so it does include the
individual members of the board as well as the board as an entity.

427 SWENSON: That's correct.

428 CHAIR COHEN: Calls for objections to Sen. Springer's amendment.
Hearing none, so ordered.

435 SWENSON: This goes to Ways and Means. 436 CHAIR COHEN: This may be
one of the ones the Springer committee requested having a rescission.

442 SWENSON: The committee report from Agriculture and Natural
Resources indicates a Ways and Means referral.

449 SEN. BROCKMAN: It has a \$10,000 price tag on it.

453 CHAIR COHEN: Calls Dennis Olmstead to testify.

460 SEN. SPRINGER: Where's your budget at?

465 DENNIS OLMSTEAD, DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES:
Our budget goes before Ways and Means on Monday. 469 SEN. SPRINGER:
The comments on the revenue impact don't say much.

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29, 1991 -Page ~

482 CHAIR COHEN: It's a pick up. Did we fix it so it doesn't go to them
anyway?

485 SEN. BROCKMAN: It goes to the Geology and Mineral Industries
account.

489 SEN. BUNN: There's no logical reason to go to Ways and Means.

493 MOTION: Sen. Springer moves that the commiKee recommend to the
Senate President that the referral be rescinded. Which subcommittee is
it?

TAPE 82, SIDE A

(000 through 066 is identical to 000 through 066 on Tape 81, Side A)

108 OLMSTEAD: I'm not sure.

109 SEN. SPRINGER: We can confer with the subcommittee chair and, if
they have a major problem, we can make a motion on the floor.

111 MOIIION: Sen. Springer moves SB 98 to the floor with a "do pass" as
amended and rescind the Ways and Means. 113 CHAIR COHEN: Restates
motion.

116 SEN. SHOEMAKER: We now provide that a civil penalty may be imposed
against the board and high managerial agents, but we don't seem to
clearly say what the limits of that penalty are.

126 CHAIR COHEN: Their developing by rule a matrix to cover any type of
situation. If you went after something else as a corporation, you're
still talking about \$15,000 per day.

132 SEN. SHOEMAKER: I'm talking about if you're going after the
individual. Nothing in the bill calls out the extend of that penalty.

136 CHAIR COHEN: We don't need to do that; they base their penalties on the degree of environmental degradation:

141 SEN. SHOEMAKER: So there's no question that this ties in with some other provision of law that sets the limits.

142 CHAIR COHEN: It's by rule.

144 OLMSTEAD: That's correct. We anticipate rule making if this bill passes.

148 SEN. SHOEMAKER: Are there limits to set authority by rule?

150 CHAIR COHEN: It's right here. Paraphrases and explains the penalty limitations in the bill beginning at line 5, page 1; the rest is proscribed by rule. Selute Judkhr, Commi~ee M`rch 29, 1991 - Page 7

- We have never distinguished between a penalty that goes to a corporation or to an individual unless you go into punitive damages.

166 SEN. SHOEMAKER: O.K.

167 SEN. BUNN: Supports the part removing the Ways and Means, but does not support the bill.

171 VOTE: Motion passes 4 to 3; Sens. Brockman, Bunn, and Hamby voting no.

SB 133

187 SWENSON: There's a hand engrossed version (Exhibit K) which includes the dash three amendments (Exhibit L). The committee has previously voted the bill out, but Sen. Shoemaker recognized there was considerable difficulty in distinguishing between the ,no-fault provisions and the other liability provisions. The dash four amendments (Exhibit M) have the most recent changes; they make division between the no-fault and the other liability.

209 CHAIR COHEN: So this is a reiteration of the original bill?

210 SWENSON: Yes, and its a revision of existing law.

- The Children Services Division and the Risk Management Division have both approved the amendments.

220 SEN. SHOEMAKER: I raised the problem; it does seem to do that.

- Are the definitions that appear in both sections common to both sections?

226 SWENSON: There are definitions that apply to both and definitions that apply individually.

228 SEN. SHOEMAKER: Just noticed that there seemed to be a lot of definitions.

- The reference to ORS 30.260 to 30.300; is that just a liability cap that the state enjoys? 233 SWENSON: That's correct.

234 SEN. SHOEMAKER: Since we have a \$5000 liability cap under section three, is there any real reason to make that reference? 236 CHAIR COHEN: Yes. So you know that if you go to court to get additional, its going to be deducted. 244 MOTION: Sen. Shoemaker moves the dash four amendments. 247 CHAIR COHEN: This encompasses everything? - These minuted contain materiab which paraphrarc and/or "nunar~e rlatemeda made dur~ thia aeuloa. Ody text enobsod in qu~ation mar~ report a rpeakerta exact worda. For complete conten" of thc procee ingr, pleare refer to the taper. 249 SWENSON: The original bill does need to be adopted. 250 CHAIR COHEN: This is the extent of the amendments? 252 SWENSON: That's correct. 253 CHAIR COHEN: States that this is the extent of the amendments. - Calls for objections; hearing none, so ordered. 257 MOTION: Sen. Shoemaker moves SB 131 as amended to the floor with a "do pass" recommendation. 260 VOTE: Motion passes unanimously; Sen. Springer excused. SB 492 268 CHAIR COHEN: Summarizes problems the committee was having with the bill. 279 SWENSON: There are dash three amendments (Exhibit N) and a hand engrossed version (Exhibit O) including those amendments. Those incorporate the amendments the committee previously approved. They also include a deletion of the word "fictitious;" explains why. Both the Attorney General's office and with Mr. Brawner approve the deletion. 312 MOTION: Sen. Shoemaker moves the dash three amendments. 313 CHAIR COHEN: Thanks Ingrid Swenson for her help on this bill. - Calls for objections; hearing none, so ordered. 323 MOTION: Sen. Shoemaker moves SB 492 to the floor with a "do pass" recommendation. 329 SWENSON: At the last hearing on this measure, the committee approved a letter to the President indicating the Attorney General's request that there be a Ways and Means referral. 335 CHAIR COHEN: We'll send it "do pass" to the floor with the letter. 343 VOTE: Motion passes unanimously; Sen. Springer excused. SB 882 372 DENIS DOWD, DEPARTMENT OF CORRECTIONS: The Department supports the bill. (Exhibit P) Under the statute, the Department may fix the compensation rate for work up to \$3 a day. Until now, a day has been defined as a full 24 hour day. In most cases, provided that inmates work no more than 8 hours a day, 5 days a week. Senate Judk; - Committee March 29,1991- Page 9

However, in some projects, inmates have worked as much as 16 hours a day. This bill will allow us to appropriately compensate those amendments who work extremely long work days.

403 CHAIR COHEN: Do we have fiscal? 404 SWENSON: No. The fiscal office indicated that it would not be ready by this afternoon.

407 CHAIR COHEN: How much is this going to cost? 410 DOWD: Don't expect much additional cost. 420 JOHN BORO, DEPARTMENT OF FORESTRY: The Department supports the bill. (Exhibit Q3 Have had some fire suppression crews working for 10 hour days in 4 days, rather than five 8 hour days, and being paid only for 4 work days. In fire situations, standard shift is 12 hours. This bill would provide for compensation for the additional labor.

- The financial impact will be minor. 453 SEN. SHOEMAKER: What compensation do you provide for a worker who works less than 8 hours a day? And does that ever happen? 457 DOWD: We pay by the day.

463 SEN. SHOEMAKER: What if he works six hours?

464 BORO: Would pay the daily rate because there is no definition of what a day is except for the 24 hour day right now.

467 SEN. SHOEMAKER: If this becomes law, what will you do?

468 BORO: We would pay them their directed daily rate, based on an eight hour day, and prorate the additional hours worked. Presumes that the opposite would also be true.

475 SEN. SHOEMAKER: So if they work six, they'd get less than three dollars for that day? 477 BORO: Yes.

479 DOWD: That's correct. Most inmates get less than three dollars a day anyway, but, yes, they would be paid by the hour.

490 SWENSON: The bill really doesn't provide for less than eight hours a day, so you're still stuck with the one day definition for hours fewer than eight. TAPE 81, SIDE B . Theac nunuter contain materiala which par phraec andlor eununatlze rtatemadr made turing thie e~on Only text enclosed in quotation marh report a speaker'r exact worda. For con~plete contentr of the procee inga, please refer to the tapea.

, 1991 - Page 10

028 SEN. SHOEMAKER: It's ambiguous.

030 CHAIR COHEN: Where are you going to make the-cutoff? If you work a half a day?

031 SEN. SHOEMAKER: I don't care, but we've created a problem when we define a day as eight hours on a calendar day and say that they will be paid not to exceed three dollars a day. 038 CHAIR COHEN: By rule, you can define what a day is? 040 DOWD: We did define a day as a full 24 hour day under the current statute. Our intent was to appropriately compensate inmates who worked more than an eight hour day. There was little consideration to what would happen to inmates who work less than an eight hour day. 049 SEN. SHOEMAKER: Would it make any sense to put this into so much per hour? 051 DOWD: It would make sense to do so, but would be a difficult program to administer. 053 SEN. HAMBY: Suggests language for prorating compensation.

057 CHAIR COHEN: The Corrections Department needs to figure out whether they need to prorate every hour. Envisions challenges to computing compensation. 063 SEN. HILL: States the hourly rate if paid \$3 a day.

066 DOWD: The average is not \$3a day, but around \$1 a day. We pay up to \$3 a day. 069 SEN. BROCKMAN: What do you have to do to earn the \$3?

070 DOWD: Have to work a long time and do a good job or get on community services or a fire crew. 072 BORO: Most of the fire crews get the \$3.

074 SEN. BROCKMAN: This isn't subject to withholding, you know.

075 SEN. SHOEMAKER: Yes it is; it's withheld until your released. 077 CHAIR COHEN: Invites Corrections Department to make whatever changes they want in the bill.

083 SEN. HILL: How important are the inmates to the fire fighting effort?

085 BORO: They're significant. Explains training and their use. They're good crews. SB 882 and 949

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29, 1991 - rae 11

095 CHAIR COHEN: Both SB 882 and SB 949 are from the Audit Committee
that audited the Department of Corrections.

SB 949

101 DAVE CAULLEY, DEPARTMENT OF CORRECTIONS: Paraphrases Exhibit R.

137 CHAIR COHEN: Calls for questions.

138 SEN. HAMBY: It should pass.

139 CHAIR COHEN: The bill not scheduled for work session today, but the
committee rules allow us to move into a work session. Suggests that the
committee do so.

145 MOTION: Sen. Shoemaker moves that the committee go into work
session.

146 CHAIR COHEN: Hearing no objections, so ordered.

148 MOTION: Sen. Hamby moves SB 949 to the floor with a "do pass"
recommendation.

150 VOTE: Motion passes unanimously.

SB 882 157 CHAIR COHEN: We don't have a fiscal impact, but we can go
back on SB 882 .

159 SWENSON: Would like you to have a fiscal impact. The practices that
the Department has been following and the auditor asked them to get
legislative changes to make those policies.

162 CHAIR COHEN: Does the committee want any further discussion on the
day issue?

163 SEN. SHOEMAKER: Don't want to make a big issue out of it. Thinks
the bill may require pro ration downward.

167 CHAIR COHEN: We'll wait on it and take it up again.

- Adjourns meeting at 2:15 p.m.

Submitted by

Reviewed by

Mark Thorburn
Committee Counsel

IngridSwenson Committee Assistant

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EXHIBIT LOG:

A - Amendments to HB 2559 - Senator Duff- 1 page B - Hand Engrossed Version of SB 129 - Committee Staff - 3 pages C - Amendments to SB 129 - Committee Staff- 1 page D - Amendments to SB 179 - Committee Staff- 1 page E - Hand Engrossed Version of SB 179 - Committee Staff- 2 pages F - Hand Engrossed Version of SB 93 - Committee Staff - 11 pages G - Amendments to SB 93 - Committee Staff- 1 page H - Amendments to SB 93 - Department of Energy - 1 page I - Amendments to SB 98 - Committee Staff- 3 pages J - Hand Engrossed Version of SB 98 - CommiKee Staff - 9 pages K - Hand Engrossed Version of SB 133 - Committee Staff - 2 pages L - Amendments to SB 133 (dash three) - Committee Staff- 2 pages M - Amendments to SB 133 (dash four) - Committee Staff- 4 pages N - Amendments to SB 492 - Committee Staff- 2 pages O - Hand Engrossed Version of SB 492 - Committee Staff - 3 pages P - Testimony on SB 882 - Denis Dowd - 1 page Q - Letter re: SB 882 - John Boro - 1 page R - Testimony on SB 949 - Dave Caulley - 2 pages