

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 212, PH SB 938, WS SB 941, WS SB 193, WS SB 947, PH

SENATE COMMITTEE ON JUDICIARY

April 8, 1991Hearing Room C 1:00 p.m.Tapes 96 - 98

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

MEMBER EXCUSED: Sen. Peter Brockman

STAFF PRESENT: Ingrid Swenson, Committee Counsel Kate Wrightson,  
Committee Assistant

WITNESSES: Jeff van Valkenburgh, Department of  
Justice Denis Dowd, Department of Corrections Glen Rader, Oregon State  
Police David Factor, Oregon Criminal Justice Council Judge James Ellis,  
Multnomah County Circuit Court Dale Penn, Oregon District Attorneys  
Association Kathryn Ashford, Oregon Criminal Justice Council

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TAPE 96, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:07 p.m.

SB 212, RELATING TO PAROLE, PUBLIC HEARING

015 JEFF VAN VALKENBURGH, DEPARTMENT OF JUSTICE: Submits and reviews proposed amendments (Exhibit A).

019 CHAIR COHEN: These amendments will delete the entire bill.

020 VAN VALKENBURGH: Yes. -Reviews history of bill.

048 DENIS DOWD, DEPARTMENT OF CORRECTIONS: Currently, inmates are released to the county where they were committed. -If an inmate is returned to Oregon from out of state, it is unclear where he or she should go.

070 CHAIR COHEN: There is some urgency in this matter.

071 DOWD: Yes.

077 SEN. HILL: Does the bill have an emergency clause?

078 VAN VALKENBURGH: No, but it needs one. -This bill does not affect authorization for release. It only concerns whether counties or the state will hold inmates.

SB 938, DIRECTS OREGON CRIMINAL JUSTICE COUNCIL TO MAKE RECOMMENDATIONS CONCERNING FINANCIAL OBLIGATIONS IMPOSED AS PART OF CRIMINAL CONVICTION, WORK SESSION

135 SWENSON: Reviews intended purpose of bill. -Submits fiscal impact statement (Exhibit B).

148 CHAIR COHEN: There are no amendments to the bill.

150 SWENSON: There is no subsequent referral.

151 SEN. HILL: Moves SB 938 to the floor with a "do pass" recommendation.

159 MOTION PASSES UNANIMOUSLY, WITH SENATORS BROCKMAN, HAMBY, AND SPRINGER EXCUSED.

SB 941, INCREASES MAXIMUM FINE FOR CONTINUING VIOLATION OF COUNTY ORDINANCE FROM \$1,000 TO \$10,000, WORK SESSION

162 SWENSON: Reviews intended purpose of bill. -Submits -1 amendments (Exhibit C).

179 SEN. HILL: Moves to adopt the -1 amendments to SB 941.

181 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATORS BROCKMAN, HAMBY, AND SPRINGER WERE EXCUSED.

182 CHAIR COHEN: We will wait for a vote until more members arrive, since Sen. Bunn has indicated that he will not support the bill.

SB 193, CREATES OFFENSE OF VIOLATION OF OPEN CONTAINER LAW ON SNOWMOBILE OR ALL-TERRAIN VEHICLE, WORK SESSION

197 SWENSON: Reviews intended purpose of bill, and intended purpose of amendments suggested by Sen. Springer. -Submits hand-engrossed version of bill (Exhibit D).

210 SEN. SHOEMAKER: Does the open container law, which applies to automobiles, apply to automobiles on land open to the public?

219 GLEN RADER, PATROL DIVISION, OREGON STATE POLICE: The open container statute refers to motor vehicles on public highways -All-terrain vehicles and snowmobiles don't operate on public highways. We need to add language about lands "open to the public" to cover them.

234 CHAIR COHEN: We are not changing the open container statutes in any way?

239 RADER: That is correct; there is no change.

241 SEN. SHOEMAKER: Is this broader than the open container law?

242 CHAIR COHEN: It probably needs to be.

244 SEN. SHOEMAKER: I am uncomfortable about a change in the statute which would control behavior on private land.

246 CHAIR COHEN: The land would have to be open to the public.

248 RADER: The statute would not apply if the land was totally private. It applies only to those open to the public.

256 SEN. BUNN: I have the same concerns. The bill as drafted was broad enough.

259 CHAIR COHEN: We will hold a vote until Sen. Springer arrives, since these are his amendments.

SB 947, RELATING TO PLEA AGREEMENTS, PUBLIC HEARING

291 DAVID FACTOR, OREGON CRIMINAL JUSTICE COUNCIL: Submits written testimony (Exhibits E, F, G, H, & I).

SB 193, CREATES OFFENSE OF VIOLATION OF OPEN CONTAINER LAW ON SNOWMOBILE OR ALL-TERRAIN VEHICLE, WORK SESSION

303 SEN. SPRINGER: Moves to adopt amendments to SB 193, as shown in the hand-engrossed version of the bill dated 4/8/91.

306 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BROCKMAN WAS EXCUSED.

307 SEN. SPRINGER: Moves SB 193, as amended, to the floor with a "do pass" recommendation.

308 SEN. HILL: I intend to support the bill, but I think that you are creating a situation where people can carry unopened alcoholic beverages but must drink them completely as soon as they are opened, to avoid a charge under this bill.

341 MOTION CARRIES UNANIMOUSLY, WITH SENATOR BROCKMAN EXCUSED.

SB 941, INCREASES MAXIMUM FINE FOR CONTINUING VIOLATION OF COUNTY ORDINANCE FROM \$1,000 TO \$10,000, WORK SESSION

354 SEN. HILL: Moves SB 941 to the floor, as amended, with a "do pass" recommendation.

363 MOTION CARRIES, WITH SENATORS HAMBY, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING AYE, SENATOR BUNN VOTING NAY, AND SENATOR BROCKMAN EXCUSED.

SB 947, RELATING TO PLEA AGREEMENTS, PUBLIC HEARING

370 FACTOR: Reviews intended purpose of SB 947 and proposed amendments. -Reviews each section of bill. -Reviews written testimony.

TAPE 97, SIDE A

002 FACTOR: Continues to summarize written testimony.

008 SEN. HILL: Requests clarification of stipulation process.

010 FACTOR: Clarifies sentencing procedure.

026 SEN. HILL: What is the judge's role?

031 JUDGE JAMES ELLIS, MULTNOMAH COUNTY CIRCUIT COURT: The tradition has not been to negotiate a precise sentence. With sentencing guidelines, a judge's discretion is limited. -Explains how to negotiate a sentence within the grid. -Stipulation should be based on actual crime seriousness and criminal history, instead of the desired sentence.

068 SEN. HILL: How does departure fit in?

069 ELLIS: If the parties want a sentence inconsistent with the guidelines, they must convince the judge of their compelling reason. Most departures are based on party agreements.

076 SEN. SHOEMAKER: What is the effect on the plea bargaining system?

084 ELLIS: This is rarely used. Most people feel that the guidelines mean what they say.

093 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: We don't want a statute if we don't need it. -Discourages committee from adoption of bill. -Wants proof that bill is needed.

121 SEN. HILL: What do you lose if someone pleads, and is put in a certain block? -Are you primarily concerned with the statutory issue?

131 PENN: I don't know that a problem exists. -We attempt to use a crime that we can prove. -I don't want a new law just because of one or two aberrations.

143 ELLIS: Refers to page 91 of OCJC First Year Report as an indication of the possible extent of the problem. -169 cases were misclassified.

169 PENN: I don't know if those are stipulated sentences. -169 mistakes in 2300 reports is not a bad figure. How many were related to pure unfamiliarity with new guidelines? -You should ask OCJC to document the problem and show erroneous stipulations before passing the bill.

192 SEN. BUNN: The charge should be based on the highest crime. There are three potential standards: arrest, charge, and plea bargain. -What accurately reflects the seriousness of the crime?

202 ELLIS: The crime for which the person was convicted, not arrested or charged.

204 SEN. BUNN: That is based on the final bargain level.

206 ELLIS: We can't just pick a crime and negotiate.

212 SEN. BUNN: The sentence may not accurately reflect the crime committed.

215 ELLIS: It reflects the crime for which they were convicted.

230 SEN. SHOEMAKER: ORS 135.407, subsection 5, provides for stipulation

to optional probation or departure. -Does that say that stipulation to optional probation must also include compelling reasons?

251 ELLIS: Clarifies procedure for optional probation.

255 PENN: It is also unwise to adopt this bill because of the increased cost of indigent defense. -Cites example of drug "scheme or network" cases in Multnomah County.

301 FACTOR: Presumptive probation would allow everything Mr. Penn is trying to accomplish, but would accurately reflect criminal history.

313 ELLIS: If there is a substantially compelling reason, there is a basis for departure.

316 PENN: "Substantially compelling" is not defined. -This bill materially impacts the small amount of discretion left in the system.

326 SEN. HILL: Before the guidelines, we were dishonest with the public because there was no connection between the crime and the sentence.

378 PENN: I agree. That is my difficulty with this. -I want OCJC to document this, and prove that it is needed. -The bill would give too much flexibility. The guidelines are supposed to be prescriptive.

411 FACTOR: Continues to review intended purpose of bill.

TAPE 96, SIDE B

002 FACTOR: Continues to review intended purpose of bill. -Proposes deletion of section 6. This issue is covered by SB 216. -Reviews history of gun minimum, which relates to first offenses.

037 CHAIR COHEN: Are we giving discretion within the sentencing guidelines?

040 FACTOR: The bill would differentiate between offenses covered by guidelines and those that are not.

050 CHAIR COHEN: We need to know the practical outcome.

053 ELLIS: The guidelines provide certain sentences for certain offenses. -We did not cover what would happen if a judge found certain circumstances to exist. -This bill fixes that.

067 FACTOR: Continues to review intended purpose of bill.

074 CHAIR COHEN: Requests witness to review section 9.

079 SEN. SHOEMAKER: Section 7 concerns departure factors, mitigating and otherwise. It makes a mockery of the guidelines.

093 ELLIS: The section refers to housing prisoners while pre-sentence investigations are underway.

126 SEN. SHOEMAKER: As I read the statute, I don't think the judge has that discretion.

133 ELLIS: I wouldn't defend the language, because I didn't draft it.

142 CHAIR COHEN: We can work on it, because we have clear intent.

150 PENN: We have problems with sections 1, 2, 5, and 10 -Sections 2 & 10 deal with consecutive sentencing. ORS 137.123 is the consecutive sentencing statute. The victims' rights ballot measure created ORS 137.122. That section is repealed by section 10 of the bill. -Consecutive sentencing works in Oregon, and it doesn't need to be changed. This bill adds new criteria and new language.

179 SEN. SHOEMAKER: What does ORS 137.122 provide?

183 PENN: Statutory standards for findings for consecutive sentences. -Each victim is a consecutive sentence. If there is a momentary stop in conduct, consecutive sentence. -The bill adds two new tests: term of incarceration not otherwise commensurate; and public not adequately protected. -We are opposed to section 5 because it also changes a vote of the public, which established sentencing for career repeat offenders of murder, assault, kidnapping, sodomy, rape, burglary, arson, robbery, and manslaughter. These crimes should be dealt with more strenuously.

218 CHAIR COHEN: How can you do that under the guidelines?

221 PENN: It is a matter of dispute. Marion County is the only county that uses this statute. -The law states that these prisoners will not be released. That has an impact on prison beds, but the latest projections are for little or no growth in prison population. -These are the most dangerous prisoners. We should have discretionary authority to increase sentence.

268 ELLIS: There may be a misunderstanding about consecutive sentence statutes. One was popular and one was legislative. -The proposed amendment doesn't add new language, but combines the two statutes.

280 CHAIR COHEN: Perhaps you should work together.

282 PENN: We want the initiative language to rule.

303 ELLIS: Sentencing guidelines should control sentences imposed. The initiative doesn't require additional sentences, but requires that the sentence imposed be the sentence served.

321 PENN: Circuit court judges in Marion County have analyzed the statutory scheme of ORS 137 .635. They think they would be able to set the guidelines sentence as a minimum, and then sentence above that. -It will eventually go to the Court of Appeals.

352 CHAIR COHEN: How many cases are affected?

353 PENN: Not many in our county: less than five under guidelines. -We ask for a pre-sentence report, and handle it as a departure. -I don't know the statewide numbers.

375 SEN. SHOEMAKER: What about legislative intent?

378 CHAIR COHEN: It was a popular initiative. It has no legislative history.

383 SEN. SHOEMAKER: Then it is not limited by guidelines.

385 CHAIR COHEN: The guidelines came after the initiative. There is

some debate about that.

402 SEN. HILL: If rates of incarceration are slowing dramatically, perhaps more space will be available for longer sentences. -Do sentencing guidelines allow for adjustments if more space becomes available?

418 ELLIS: The Board is obligated to propose adjustments that would optimize use of whatever space is available. -The Board is prevented from making adjustments without legislative review and approval.

TAPE 97, SIDE B

012 SEN. HILL: What is the amount of space that you assumed in section 9?

015 ELLIS: It is based on the original forecast. This section may result in more people spending more time in prison, so there is some bed impact.

022 SEN. HILL: These might catch everyone by surprise.

025 CHAIR COHEN: OCJC's projections were on track. I was not surprised by the Department of Corrections' recent statistics.

027 FACTOR: We only missed the target by about 200 beds.

033 SEN. HILL: My concern is that if there is a dramatic change in the interim, the space wouldn't be utilized until next session.

052 ELLIS: One of the problems with prompt response is that changes made in the high sentences don't show up for several years. There is little turnover. -Short-term sentences have impact if they are in grid cells above the dispositional line.

108 FACTOR: Reviews intended purpose of section 9. -Reviews written testimony.

TAPE 98, SIDE A

001 FACTOR: Continues to review section 9 and written testimony.

028 SEN. HILL: If the Legislature is in complete control of the sentencing guidelines, is there a problem with a fear of lower sentences? -How could the grid be enhanced if you had extra space?

040 KATHRYN ASHFORD, OREGON CRIMINAL JUSTICE COUNCIL: The statute does provide the OCJC Board with interim authority to modify rules.

044 SEN. HILL: You can modify in either direction?

045 ASHFORD: Yes.

046 SEN. HILL: Do you have full power?

049 ASHFORD: During the interim. The Legislature must approve or reject our actions during session.

051 CHAIR COHEN: We have to ratify, reject, or change what they have done during interim.

055 SEN. HILL: Do you have to report on what you did during the interim?

057 ELLIS: Yes. I stand corrected.

060 CHAIR COHEN: We will need to clarify bed space numbers at some point, which would be affected by enhancements to the guidelines.

079 SEN. HILL: There seems to be an indication that minorities take the brunt of departure sentences. -I am still concerned about this issue.

101 CHAIR COHEN: Adjourns hearing at 3:06 p.m.

Submitted by: Reviewed by:

Kate Wrightson Ingrid Swenson AssistantAdministrator

EXHIBIT LOG:

A - Amendments to SB 212 - Jeff van Valkenburgh - 1 page  
B - Fiscal impact statement for SB 938 - Staff - 1 page  
C - Amendments to SB 941 - Staff - 1 page D - Hand-engrossed  
version of SB 193 - Staff - 1 page E - Testimony for SB 947 -  
David Factor - 1 page F - Testimony for SB 947 - David Factor - 1  
page G - Testimony for SB 947 - David Factor - 48 pages  
H - Testimony for SB 947 - David Factor - 7 pages  
I - Testimony for SB 947 - David Factor - 98 pages



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Measures Heard SB 1119, PH SB 1053, PH SB 382, WS SB 681, WS SB 951, PH SB 722, PH

SENATE COMMITTEE ON JUDICIARY

April 8, 1991Hearing Room C 7:00 p.m.Tapes 99 - 102

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

MEMBER EXCUSED: Sen. Peter Brockman

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

WITNESSES: David Ris, Coos County Counsel Paul  
Snider, Association of Oregon Counties William Linden, State Court  
Administrator Tom Cooney, Oregon Medical Association Karen Creason,  
Oregon Association of Hospitals Frank Brawner, Oregon Bankers  
Association Craig Chisholm, Oregon Land Title Association Steve Kafoury,  
Architects & Engineers Legislative Counsel of Oregon Jim Marvin, Oregon  
Association of Defense Counsel Allen Costick, Oregon Council of  
Architects Charlie Williamson, Oregon Trial Lawyers Association David  
Rhoads, Citizen Linda del Nero, Citizen Marilyn Rhoads, Citizen Fred  
Dockey, Citizen Robert Sharber, Citizen Tamie Brindose, Citizen Larry  
Reese, Citizen

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TAPE 99, SIDE A

002 CHAIR COHEN: Calls hearing to order at 7:04 p.m.

SB 1119, ALLOWS WARRANT FOR ENFORCEMENT OF PERSONAL PROPERTY TAXES TO BE  
DOCKETED IN JUDGMENT DOCKET OF ANY COUNTY, PUBLIC HEARING

012 DAVID RIS, COOS COUNTY COUNSEL: Testifies in favor of SB 1119.  
-Submits and summarizes written testimony (Exhibit A).

079 SEN. BUNN: What about a situation when the mobile home is not worth  
the taxes assessed?

083 RIS: We have to dispose of it.

085 SEN. BUNN: Doesn't that put the owner in a strange position? Shouldn't it be an option to give the mobile home to the county in lieu of tax owed?

090 RIS: It's not an efficient way to collect taxes.

095 SEN. BUNN: What if the taxes on the property are clearly higher than the value of the property?

097 RIS: A taxpayer has the right to challenge an assessment.

100 SEN. BUNN: Might there be some consideration for the homeowner who has reached the point where he would prefer to give up the property to pay back taxes? -If you have reached a point where the taxes are higher than the value of assessed property, there is some problem with equity.

114 RIS: These are more fundamental questions about taxes than this bill addresses.

117 SEN. BUNN: We are expanding the ability to seize assets.

126 TAYLOR: ORS 205.125 allows warrant to be recorded and have the effects of a judgment. -Would you explain why this isn't adequate for garnishments?

131 RIS: The problem is in ORS 29. An attorney may issue a writ if it is docketed in a court of the state. Everything in ORS 29 is designed for a court. When one deals out of the county clerk lien record, there is a problem.

149 CHAIR COHEN: We could explicitly put you into ORS 205.125.

151 TAYLOR: If we added language about circuit courts, would that allow you to use garnishment statutes?

155 RIS: I would still want to file something in circuit court. -It's possible, but more complex.

170 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: It seems appropriate that people who owe taxes should have to pay taxes.

186 SEN. BUNN: Explains personal experience with property taxes.

213 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: Submits and summarizes written testimony (Exhibit B). -This bill gives tax collectors another enforcement tool. Current garnishment statutes talk about judgments of the courts; maybe we should give tax collectors the ability to use that enforcement tool. -We could authorize an attorney to issue a garnishment warrant; could require an attorney to modify garnishment forms, based on personal property tax; and could provide a mechanism for the appropriate documents to be entered in tax records, if person provides appropriate garnishment records. -It is appropriate to keep courts out of process until necessary. Although this is a good idea, this is the wrong way to go about it.

284 CHAIR COHEN: I think you have legitimate concerns.

SB 1053, DECLARES STATE POLICY WITH REGARD TO PROFESSIONAL REVIEW OF

MEDICAL STAFF BY HEALTH CARE FACILITIES, PUBLIC HEARING

305 SEN. SHOEMAKER: Reviews intended purpose and history of bill.

375 TOM COONEY, OREGON MEDICAL ASSOCIATION: Testifies in support of SB 1053. This bill will encourage physicians to participate in peer review. -On lines 37 and 38 of page 2, I propose adding the language "courts shall consider the matter de novo upon the record, but upon petition of any party the courts shall consider all additional relevant evidence;" then state that "the scope of review shall be to determine (1) whether there was substantial compliance with the procedural provisions of the medical staff bylaws, and (2) whether sanctions imposed are reasonable, under the circumstances."

TAPE 100, SIDE A

030 KAREN CREASON, OREGON ASSOCIATION OF HOSPITALS: Testifies in opposition

to SB 1053. -Submits and reviews written testimony (Exhibit C). -The proposed solution does not address the problem. -Peer review statutes are interwoven with licensing laws. -ORS 441.055 requires hospitals to ensure that physicians are organized to do peer review.

SB 382, SPECIFIES USE OF LINE OF CREDIT INSTRUMENTS FOR RESIDENTIAL OR COMMERCIAL PURPOSES, WORK SESSION

307 TAYLOR: Reviews intended purpose of bill. -Submits -4 amendments (Exhibit D).

347 SEN. HILL: Moves to adopt the -4 amendments to SB 382.

352 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BROCKMAN WAS EXCUSED.

355 SEN. BUNN: Moves SB 382, as amended, to the floor with a "do pass" recommendation.

364 MOTION CARRIES UNANIMOUSLY. SENATOR BROCKMAN WAS EXCUSED.

BILL INTRODUCTION

366 CHAIR COHEN: Moves for introduction of LC 3978 as a committee bill, at the request of the Oregon Bankers Association.

377 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

SB 681, SPECIFIES THAT POWER OF ATTORNEY MAY BE RECORDED IN COUNTY CLERK'S OFFICE, WORK SESSION

383 TAYLOR: Submits -1 amendments and hand-engrossed version of bill (Exhibits E & F).

392 CHAIR COHEN: This bill was requested by AARP.

406 TAYLOR: Reviews intended purpose of bill.

TAPE 99, SIDE B

001 TAYLOR: Continues to review bill and proposed amendments.

022 SEN. SHOEMAKER: The final sentence of this amendment troubles me; the recording of revocation doesn't affect validity if the person didn't know. That could be a bad faith transaction with an innocent third party.

029 TAYLOR: Yes.

032 CHAIR COHEN: What happens now, without the power of attorney being recorded? It's the same thing, isn't it?

037 TAYLOR: It is still binding on the principal. The person who relies on this most is the most culpable person.

045 SEN. SHOEMAKER: What is the present law regarding the binding effect of power?

047 TAYLOR: It is probably under the laws of agency. -The Clackamas County clerk will accept these for real estate matters.

062 SEN. HAMBY: Is there some other way to close the loop?

068 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: This is truly a problem. The amendments are a step forward. -We support the bill with amendments.

075 CRAIG CHISHOLM, OREGON LAND TITLE ASSOCIATION: I speak only to the issue of real property. We want to see powers of attorney recorded.

083 BRAUNER: In terms of non-real property transactions, we use powers of attorney frequently in deposit situations. They are infrequently filed or recorded, but they probably should be recorded.

095 CHAIR COHEN: How can you get a power of attorney revoked?

097 CHISHOLM: It could be revoked if it became a bad power of attorney. Anything that would cause us not to insure would be enough for revocation.

104 BRAUNER: Our counsel has reviewed the amendments, and they think it's better amended than not.

108 SEN. BUNN: Under the amendments, as long as the bank is in good faith, it is protected: the senior citizen is not. -Could we add "and the attorney in fact" to language concerning actual knowledge? That would protect the citizen.

118 BRAUNER: Powers of attorney are brought in absentia, because the person cannot come to the bank.

128 CHAIR COHEN: It says "may be recorded". That isn't absolute.

145 SEN. BUNN: Moves to adopt the -1 amendments to SB 681.

147 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BROCKMAN WAS EXCUSED.

148 SEN. BUNN: Moves SB 681, as amended, to the floor with a "do pass" recommendation.

154 MOTION CARRIES UNANIMOUSLY, WITH SENATOR BROCKMAN EXCUSED.

SB 951, PROVIDES THAT DISTRICT COURT JUDGMENT BECOMES LIEN ON ALL REAL PROPERTY OF DEBTOR IN COUNTY WHERE JUDGMENT DOCKETED, PUBLIC HEARING

161 SAMPLE BROWN, LEGISLATIVE ASSISTANT TO SEN. RON GRENSKY: Reviews intended purpose of bill. -Submits and reviews written testimony (Exhibit G & H).

255 LINDEN: Testifies in opposition to SB 951. -Submits and summarizes written testimony (Exhibit I).

346 SEN. SHOEMAKER: It doesn't seem fair that a person who receives a district court judgment, without the aid of counsel, be at peril when collecting that judgment. -Would it be possible to require procedure which would inform the new judgment creditor of the right to record it as a lien in the circuit court, and to provide that as a service?

367 LINDEN: If a district court judgment creditor has difficulty collecting, I wouldn't want a clerk providing legal advice.

395 CHISHOLM: It is important to see that title and lending can proceed with minimum difficulty.

TAPE 100, SIDE B

SB 722, RELATING TO THE LIABILITY OF ARCHITECTS, PUBLIC HEARING

030 STEPHEN KAFOURY, ARCHITECTS & ENGINEERS LEGISLATIVE COUNSEL OF OREGON: Testifies in favor of SB 722. -Reviews intended purpose of bill.

056 JIM MARVIN, OREGON ASSOCIATION OF DEFENSE COUNSEL: Also representing Consulting Engineers Council of Oregon and the Oregon Council of Architects. Testifies in favor of bill. -Current statute has no statute of limitations, but does have statute of ultimate repose.

138 CHAIR COHEN: I have problems with the language "should have known".

144 MARVIN: In this state, buildings typically fail within two weather seasons. -Continues testimony.

182 SEN. BUNN: What if a flaw appears after the time expires, even though maintenance was done? Even if it wasn't the owner's fault, is there not even a right to argue?

186 MARVIN: I would argue that it becomes a maintenance problem.

188 SEN. BUNN: What if maintenance was done?

190 KAFOURY: 90% of flaws appear during construction. Seven years after construction, I would say that the problem is not one of design. A design problem would have manifested itself by then.

204 SEN. BUNN: It's impossible for a design flaw to manifest after six years? That's hard to believe.

215 SEN. HILL: Are there any other two year statutes of limitations?

217 MARVIN: Yes. Personal injury cases.

235 KAFOURY: We need to distinguish between statute of limitations and statute of ultimate repose.

290 SEN. HILL: Is there any state with a similar limit?

293 MARVIN: The average is a six year statute of ultimate repose, and 30 months statute of limitations. California provides for only one year from notice of damages.

312 SEN. BUNN: I'm more troubled with two years than with six.

334 CHAIR COHEN: This applies to contractors and construction, not just architects.

336 TAYLOR: Line 8 of the bill lists the persons to whom the bill applies.

346 SEN. SHOEMAKER: If you had to choose the statute of limitations or the statute of ultimate repose, which would be more important?

348 MARVIN: The two year statute of limitations. There is no question about that.

375 KAFOURY: Continues testimony.

383 ALLEN COSTICK, OREGON COUNCIL OF ARCHITECTS: Liability insurance is the

single largest item we pay each year: \$30,000. It is a tremendous burden, especially for retirees.

418 SEN. HILL: Don't your insurance requirements reflect the nature of what you do?

TAPE 101, SIDE A

014 SEN. SHOEMAKER: I'm not sure why you need twenty years of protection. How does that protect any more than four years?

017 MARVIN: The statute of ultimate repose dates from the time of substantial completion. This is a very lengthy procedure.

036 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Submits and summarizes written testimony (Exhibits J & K). Testifies in opposition to bill. -Our main concern is line 14. Subsection 2 is also a problem. It is probably a malpractice trap for lawyers.

097 DAVID RHOADS, CITIZEN: I am a homeowner in the Somerset Hills area of Eugene. We are victims of builder malpractice. -Submits and reviews written testimony (Exhibit L).

175 SEN. HILL: How much did your house cost?

177 RHOADS: If there were no damage, the current value would be \$85-125,000.

192 LINDA DEL NERO, CITIZEN: Reviews submitted testimony.

251 MARILYN RHOADS, CITIZEN: Reviews submitted testimony.

300 FRED DOCKEY, CITIZEN: Reviews submitted testimony.

358 ROBERT SHARBER, CITIZEN: Reviews submitted testimony.

403 TAMIE BRINDUSE, CITIZEN: Reviews submitted testimony.

TAPE 102, SIDE A

031 LARRY REESE, CITIZEN: Reviews submitted testimony.

071 SEN. SHOEMAKER: Are you opposed to the entire bill, or just parts of it?

076 REESE: Sometimes the two year statute of limitations is not practical.

080 SEN. SHOEMAKER: Did you see a lawyer?

081 REESE: Yes.

087 RHOADS: Some of the problems with our homes did not appear until both statutes had expired. Other problems appeared minimal at first, but became major problems later. We did not have enough time to file claims within the statutes at that point.

108 CHAIR COHEN: Adjourns hearing at 9:32 p.m.

Submitted by: Reviewed by:

Kate Wrightson Bill Taylor Assistant Counsel

EXHIBIT LOG:

A	-	Testimony on SB 1119 - David Ris - 2 pages	B	-	Testimony on SB 1119 - William Linden - 7 pages
Karen Creason	-	10 pages	D	-	Amendments to SB 382 - Staff - 5 pages
E	-	Amendments to SB 681 - Staff - 1 page	F	-	Hand-engrossed version of SB 681 - Staff - 1 page
G	-	Testimony on SB 951 - Sample Brown - 1 page	H	-	Testimony on SB 951 - Sample Brown - 1 page
I	-	Testimony on SB 951 - William Linden - 3 pages	J	-	Testimony on SB 722 - Charlie Williamson - 3 pages
K	-	Testimony on SB 722 - Charlie Williamson - 1 page	L	-	Testimony on SB 722 - David Rhoads - 17 pages