

Senate Committee on Judiciary May 1, 1991 - Page

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 Public Hearing: SB 1203 SB 615 SB 757 Work Session: SB 493 SB 715 SB 930 SB 1124 SB 132

SENATE COMMITTEE ON JUDICIARY

May 1, 1991Hearing Room C 12:45 p.m.Tapes 139 - 141

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

VISITING MEMBER:Sen. Joan Dukes

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

WITNESSES: Frank Brawner, Oregon Bankers Association
Lee Nusich, VP Associate General Counsel at First Interstate Bank Eugene
Organ, Oregon Disabilities Commission Jamie Armstrong, Staff Person for
Senator Roberts Jose Mata, Legislative Asst., Senator Roberts Jack
Monroe, Assoc. of Oregon Food Industry Bob Oleson, Oregon State Bar Bill
Linden, State Court Administrator Joan Dukes, State Senator for District
1 Larry Craft, Fish & Wildlife Division Jim Irvine, Oregon State
Homebuilders Assoc. Gary Wicks, Administrator of the Building Codes
Agency Jane Cummins, League of Oregon Cities

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TAPE 139, SIDE A

004 CHAIR COHEN: Calls the meeting to order at 12:45.

PUBLIC HEARING ON SB 1203

029 LEE NUSICH, VICE PRESIDENT FIRST INTERSTATE BANK: Submits and reviews written testimony (EXHIBIT A).

091 SEN. SHOEMAKER: Is there a way to draw a line between routine cost and litigants using the bank's involvement as a way of serving its own ends as two phases of the interpleader?

105 NUSICH: - There is no practical way of drafting a bill that would deal with this specific issue. -The issue will take care of itself with minimal attorney fees.

135 BILL TAYLOR, COMMITTEE COUNSEL: Refers to letter dated April 22, 1991. (EXHIBIT B).

145 NUSICH: Discusses SB 1203.

164 TAYLOR: Refers to Gresham State Bank v. O & K Construction Company case of 231 Or 106 as it relates to interpleaders.

166 NUSICH: Yes.

168 SEN. SHOEMAKER: If you had a party who had a spurious claim to the fund, and if that party knew that the bank would file a motion and interpleader upon that party's filing a claim to the fund and the bank's fees in doing that would have to be paid from the fund which the party knows really belongs to the other side, and they are using this as leverage for some other reason against that other party, they could then bring that action knowing that the bank's legitimate work is going to diminish the fund. It seems to me that might spawn more of that kind of claim against those funds then is appropriate; explains concern.

190 NUSICH: The way that the innocent party is protected is that even though the attorney fees are paid out of the interplead funds, the claimant who is ultimately ordered to be entitled to the funds is entitled to recover a judgement against the frivolous claimant for the amount of attorney fees that have been paid out of the interplead funds.

200 SEN. SHOEMAKER: Does he have to go so far as to show abusive or malicious process?

201 NUSICH: No, under the current case law the rightful claimant party would be entitled to a judgement against the frivolous claiming party only upon the showing that he was entitled to the funds.

205 SEN. SHOEMAKER: It's that straightforward?

206 NUSICH: Yes. Under my reading of the Gresham State Bank case. I believe that's the bottom of page 128. That would be the Gresham State Bank v. O & K Construction (he reads from the case).

PUBLIC HEARING ON SB 615

223 INGRID SWENSON, COMMITTEE COUNSEL: Reviews and introduces Senate bill 615 .

243 EUGENE ORGAN, EXECUTIVE DIRECTOR OF THE OREGON DISABILITIES COMMISSION: Testifies in support of Senate bill 615.

280 SEN. HAMBY: What is the current law on or perhaps witness (inaudible) on the illegal use of (inaudible) disabled person driving a unit, a vehicle with a disabled placard?

288 SWENSON: It is a Class A traffic infraction and it does have a \$100 minimum penalty.

296 SEN. HAMBY: That issue is not addressed here.

297 SWENSON: It lowers the grade of the infraction. It does attempt to make the \$100 penalty an absolute minimum.

300 SEN. HAMBY: So they would be subject to the same even though there was a placard? They would be subject to towing provisions?

303 SWENSON: I believe the point of this bill is to actually require

parking lot owners to contract with towing companies so that towing companies would be permitted to sort of cruise the parking lot and pick up cars that have no properly displayed sticker.

330 JOSE MATA, LEGISLATIVE ASSIST., SENATOR ROBERTS: Reviews Senate bill 615 -A.

471 SEN. HAMBY: Would you expand the definition of a owner of a parking facility?

472 MATA: Refers to ORS 811.625 which references ORS 98.805 with respect to the definition of an owner of a parking facility.

TAPE 140, SIDE A

044 MATA: If a person were leasing a shopping center location from a development compnay than it would be the person who is in charge of that facility rather than the person who may have held legal title to it.

048 SEN. HAMBY: Does it include every grocery store?

049 MOTTA: Yes, any parking lot open to the public.

059 JACK MONROE, ASSOCIATION OF OREGON FOOD INDUSTRY: Testifies in opposition to Senate bill 615. - Discusses legal ramifications that may arise from passage of Senate bill 615 .

097 SEN. HILL: Then what is the solution?

102 MONROE: Law enforcement agencies cannot enforce the existing statutory provision.

118 SEN. HILL: Discusses the stresses that law enforcement agencies are under.

Discussion regarding the necessity of Senate bill 615.

PUBLIC HEARING ON SB 757

232 COHEN: Submits SB 757-3 amendments. (EXHIBIT C)

244 BOB OLSON, OREGON STATE BAR: Testifies in opposition to Senate bill 757. -I am in favor of collecting statistics but I don't think we should do this through legislation.

269 COHEN: What do the SB 757-3 amendments substitute?

272 TAYLOR: Clarifies SB 757-1 amendments passed by committee at previous meeting (EXHIBIT D).

291 BILL LINDEN, STATE COURT ADMINISTRATOR: Testifies in opposition to SB 757 and the amendments. Refers to written testimony. (EXHIBIT E)

359 COHEN: Discusses the issue of "clarifying" to bring equal burden.

380 LINDEN: Suggests that all interested parties meet and discuss this issue rather than imposing a statewide reporting system.

393 COHEN: Discusses need to narrow underlying issue.

413 SEN. HAMBY: I concur, but how does the Tongue commission ensure that they have accurate, valid data?

430 LINDEN: By identifying information needed to make it a better

process and gathering it.

463 SEN. HILL: I feel it's an intrusion to enforce time sheets on the judicial branch. -If it needs to be redefined lets do it.

TAPE 139, SIDE B

040 LINDEN: If the process is going to work the Judicial Department must support results and work of that committee.

064 SEN. JIM BUNN: Are we going to end up with something where you can look at the criteria and meet that without getting into reasons to undermine that?

071 LINDEN: It will take time. -Continues with discussion on the pros and cons of SB 757.

WORK SESSION ON SB 493

210 SWENSON: Submits and reviews SB 493-1 amendments. (EXHIBIT F)

263 SEN. BUNN: I question the justification of a C Felony designation. -Suggests the an A misdemeanor might be more appropriate.

WORK SESSION ON SB 715

341 SWENSON: Explains SB 715-A8 amendments. (EXHIBIT G).

MOTION: SENATOR HAMBY MOVES SB 715-A8 AMENDMENTS TO SB 715.

VOTE: MOTION ADOPTED.

MOTION: CHAIR COHEN MOVES SB 715-A8 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION WITH A LETTER TO THE SENATE PRESIDENT SAYING WE ASK THEY RESCIND THE WAYS AND MEANS REFERRAL AND ALLOW SENATOR YIH TO CARRY THIS BILL ON THE FLOOR.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, BUNN, HAMBY, HILL AND COHEN VOTING AYE WITH SENATORS SHOEMAKER AND SPRINGER EXCUSED.

WORK SESSION ON SB 930

400 SWENSON: Reviews and introduces Senate bill 930.

432 COHEN: And we have amendments to delete the gun portion, can you go through the amendments?

434 SWENSON: Submits and reviews SB 930. (EXHIBIT H) It is my understanding that the proponents of this bill would like to delete Section 4 which deals with loaded weapons. SB 930-1 amendments are those which were proposed by the State Police at the time of the last hearing.

454 JOAN DUKES, STATE SENATOR FOR DISTRICT 1: Testifies in favor of Senate bill 930 and responds to the issue of removal of Section 4.

TAPE 140, SIDE B

041 SEN. BUNN: In essence, this would be making it illegal to use a scope for spotting wildlife while pulled off the road sitting in a vehicle?

054 SEN. DUKES: We could make it a moving vehicle.

082 SEN. BUNN: I think if we added the word moving on page 2 of the bill before the word motor, so its clearly a moving motor vehicle.

101 LARRY CRAFT, FISH AND WILDLIFE DIVISION: Testifies in favor of Senate bill 930. - It is difficult to enforce moving. - Key is the life cartridge in the chamber.

Discussion regarding wording of Senate bill 930 amendments.

162 COHEN: Are we satisfied that we have made these amendments and by that we are adding the word "moving vehicle" and we are deleting "through any window of the and at" and saying "from the motor vehicle". We still have loaded in.

166 SEN. BUNN: I think it makes it better but the police officer or game officer is going to have to deal with what is pointing because then you've got individuals in the back who hold the weapon and they're not pointing it out a window, but I think that's a case that you can make, and we've got to give you that opportunity if you want to deal with the problem.

171 SEN. BROCKMAN: I must be missing something here. Isn't it already against the law to even have a loaded gun in a vehicle?

175 CRAFT: No it is not. It is perfectly legal in the State of Oregon and it's legal to have a round chambered in the chamber and the safety off. As long as it's not concealed, that's correct, unless you have a permit or if you are hunting or angling, then you can do that.

182 COHEN: Before we take all other sorts of concerns and so this does apply to the hunting chapter.

184 CRAFT: I would like to make just one brief comment to what Senator Bunn said about the word "loaded". I don't want to put this bill in danger because there seems to be a definite need for it. We could delete the word "loaded" and it would help enforcement, but again that's the committee's prerogative.

189 COHEN: I'm happy to take it out, it's the judgement here.

191 SEN. BROCKMAN: If it's not loaded, I don't care if anybody uses it to scope it around, but it could give the impression that it is being aimed at something.

195 SEN. BUNN: I think to make the bill workable we need to take loaded out. If the House chose to put it back in so be it.

199 COHEN: Okay, "loaded" is out.

201 SWENSON: We need an exemption for the police officers. In the testimony that was submitted by the State Police dated April 12 on the second page of that testimony are the proposed amendments. Looking at the bottom of the page, its sub 2 and actually they had listed 4 potential exemptions, one of which relates to police officers and government employees, also referred to possibly permitting the owner of the land and who is lawfully occupying the land to be exempt from this provision. It would also exempt people on publically own land when the person has an agreement for the use of that body or property and when the person has a license to carry a concealed weapon.

234 COHEN: So we would want to adopt all of the State Police amendments and sub. 2 then, I think.

236 SEN. BUNN: Except the concealed weapon.

256 SEN. BUNN: The way your amendments are drafted, they allow the owner, do they allow the owner or the owner's guest?

260 CRAFT: Most of our other bills that it addresses, one of them is our casting a light bill, well, both casting a light, they allow the owner or his lawful agent. I don't see that word here, but that could be the rancher and his hired hand, or someone who he has given permission to eradicate the varmint on the property.

266 COHEN: The words here says "on land owned or lawfully occupied by that person". Would that take care of that or is it just different language? Do we want to change that, is what I'm trying to see.

269 CRAFT: I think that would cover it. You may want to add "or his agent" at the end of that.

273 SEN. BUNN: Is an employee an occupant? I would think that we would need to say....

275 COHEN: So let's add the agent piece in there, wherever it happens to go by legislative counsel. Are we in agreement they're going to add "or agent" to sub A somewhere wherever the LC fits it in or however they work on that?

279 SEN. HILL: I would just leave it to Legislative Counsel.

287 COHEN: Okay, so we'll make sure that we ask the question do we need to add "or agent", that that is taken care of with Legislative Counsel. Anything further on this particular side? Do we have objections to us moving ahead to adoptions of this sub. 2 amendment adding to Section 4 of the bill from testimony that has been submitted by the State Police on April 12? I hear none so ordered on that piece. Okay. Then, Ingrid, we do have the dash one. Could you tell us what that is.

301 SWENSON: Yes, basically this incorporates the State Police, the other recommendations that they made in that same testimony on April 12.

306 COHEN: With a little bit of Legislative Counsel change.

306 SWENSON: That's correct.

307 COHEN: So it says "to the seizing agency" rather than....

309 SWENSON: That's correct because the bill does not provide to whom the restitution would be paid and this would result in the payment of the restitution for seizure and storage of the animal directly to the seizing agency.

315 SEN. BUNN: Is the animal forfeited to the seizing agency?

318 CRAFT: Explains process involved in seizing an animal.

341 SEN. DUKES: The purpose behind this is to give some sort of dis-incentive to hunt illegally.

MOTION: SENATOR HILL MOVES SB 930 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, BUNN, HAMBY, HILL AND COHEN VOTING AYE WITH SENATORS SHOEMAKER AND SPRINGER EXCUSED.

WORK SESSION ON SB 493

388 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: I understand that the questions that were raised deal with surrounding states, and let me tell you that most states in the country are adopting similar legislation in Washington. My understanding is Washington, Idaho and California have all adopted legislation like this.

397 COHEN: I think the need for the legislation is not a question, the question is how high of penalty do you need to have with this?

400 BRAWNER: US Bank had one instance of \$275,000 loss in a week's time. First Interstate has suffered \$500,000. It is a felony in California, it is a felony in Washington. We are frightened that if we do not act with a similar penalty, that the telemarketers who can operate from any state in the country will abuse Oregon businesses and financial institutions.

411 COHEN: We're talking about telemarketers and not just people who fraudulently use somebody else's credit card on a one-to-one basis?

413 BRAWNER: This is done, here is an ad: business owners, my company needs Mastercard, Visa, and American Express processing. Will pay \$1,000 a week guaranteed commission. They take an innocent business and after they've through some guise, some fraudulent procedure on the phone, receive the credit card of a person in order to identify them for some gift that they have won, they get the credit card and then they process all of those vouchers through some innocent small business particularly. Through that institution's bank, unsuspecting all the way through and the business receives the money. This is done wholesale and it's done from some distant location frequently. And the vouchers, it's illegal now to do this. The penalty is not severe enough to slow these people down. This is not the illegal use of a single credit card. This is done in volume.

438 SEN. BUNN: One of the things that seem to be to question the C felony. It seems that a property crime that is a C felony under sentencing guidelines would have virtually no (inaudible word(s)) with an A misdemeanor. You are more likely to have some time of incarceration the size the concern about calling everything that we're dealing with a felony. But just dealing with the time might (inaudible word) have as much time or more time incarceration under an A misdemeanor in a county jail setting than in the state system.

453 BRAWNER: Our effort is to make Oregon a severe enough penalty so that we are not the island that is selected by the telemarketers who are located in Miami.

463 SEN. BUNN: So basically you want an Oregon penalty that's a felony so somebody from Miami is looking around and says, well Oregon's a felony, go on to the next one.

466 BRAWNER: Oregon is no longer a green package for us, we'll go someplace else. There are legitimate businesses that are being built because of this sham, and it is happening all over the country, and that's why I think that you will find before the end of this year, and certainly by next year every state will have enacted some legislation very similar to this. Now the dash one amendments we've reviewed we will support. And obviously if it's the committee's wish that it become a misdemeanor, that's better than leaving it open.

482 SEN. BUNN: Frank, you need to tell us what it is you're looking for.

491 BRAWNER: We are hopeful that if this bill passes as it is, with the dash one amendments, and we can educate our merchants that it is a felony--don't answer these ads. -Refers to an advertisement out of a Better Business Bureau brochure.

TAPE 141, SIDE A

035 BRAWNER: To warn people that this is occurring. I guess we would like to scare people away more than we'd like to penalize some of Oregon's innocent merchants.

042 SEN. HILL: Since the guidelines do take into account criminal history as well. So if they have been convicted of something else, which I think might be a possibility for people who have entered into these things, even though the crime itself is a C felony, their criminal history would be taken into account.

051 SWENSON: Could I just remind the members that the two groups reached by this bill are the businesses who permit their account to be used as well as the telemarketers who use those businesses, so there really is two categories of offenders.

055 BRAWNER: That is absolutely correct.

MOTION: CHAIR COHEN MOVES SB 493-1 AMENDMENTS TO SB 493.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES SB 493 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, BUNN, HAMBY, VICE- CHAIR HILL AND CHAIR COHEN VOTING AYE WITH SENATORS SHOEMAKER AND SPRINGER EXCUSED.

WORK SESSION ON SB 1124

063 COHEN: Reviews SB 1124-1 amendments. (EXHIBIT I).

MOTION: SENATOR BUNN MOVES SB 1124-1 AMENDMENTS TO SB 1124.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES SB 1124 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, BUNN, HAMBY, HILL AND COHEN VOTING AYE AND SENATORS SHOEMAKER AND SPRINGER EXCUSED.

WORK SESSION ON SB 132

095 SWENSON: Submits and reviews SB 132-A5 and SB 132-A3 amendments. (EXHIBIT J & K).

119 JIM IRVINE, OREGON STATE HOME BUILDERS ASSOCIATION: Testifies in support

of Senate bill 132.

138 GARY WICKS, ADMINISTRATOR OF THE BUILDING CODES AGENCY: Submits and reviews written testimony. (EXHIBIT L).

154 JANE CUMMINS, LEAGUE OF OREGON CITIES: As the bill was originally drafted, the League did oppose the language, but after working with BCA and building officials, there were included at (inaudible word(s)) some drastic changes and we no longer object to the bill. As to the further amendments before this committee, we would support the wording as we have seen it.

161 COHEN: This is a difficult bill for the chair to try to put all the interested parties through. It's problematic to give those powers, I think, and we worry about. We should probably worry about it more then we do because we now have lots of agencies with subpoena power and in the old days when we first started we were so nervous about that kind of activity that we didn't even give it to our own Attorney General, so the heads of agencies now have broad investigation powers and broad subpoena power. Our own Attorney General doesn't have that, so for the record that's what my concern is, in that we started out very gingerly some ten years ago about using subpoena power and the real in depth investigative powers of the state in ways that we were concerned about and I don't like this bill. I may reserve the opportunity to vote no on the floor. I think it has come from another committee and I'm not particularly interested in stopping it from my own personal purposes here.

207 WICKS: There is a number of agencies that already have a fairly broad subpoena powers, including the state fire marshall, which has the same kind of responsibilities that we do for public safety, insurance & finance, environmental quality, a number of the boards, I think the Hearing Aid Board and the kind of authority they have reads at least in some cases like this to issue....

215 COHEN: I want to stop you to say that that doesn't mean it's right, and that doesn't mean that the Hearing Aid Board in the past the legislative committee that approved that authority would justify because some other committee somewhere has done it doesn't make it good nor right nor necessary.

220 WICKS: That's not my purpose. What I'm trying to do is to suggest that the subpoena powers that we're asking for here are substantially more restricted than those already granted to other agencies, whether right or wrong, the authority they have is to issue subpoenas to compel the attendance of witnesses and productions of books, paper, records, or other information necessary to carrying out the law of the law of the board is charged with administering and both of our subpoena powers with the amendments or even prior to the amendments are significantly restricted, especially the one dealing with municipalities because under Section 2 of the bill and sub 2 of the bill, our authority to issue or use subpoena power is subjected to a whole number of provisions that are listed under sub section 2 in that bill and so that kind of restriction is already there, and when you add to it the amendments that we've agreed to with the counsel that we don't have any problem with I think we've taken a significant step back from the broad authority that's granted in the agencies. I also want to point out that we are very concerned about how this authority is used and our idea would be to set up in rule protocols for how we would use the subpoena power that is authorized under Senate bill 132 if it passes.

MOTION: SENATOR HILL MOVES SB 132-A5 AND SB 132-A3 AMENDMENTS TO SB 132 -A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES SB 132 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, HAMBY, HILL AND COHEN

VOTING AYE AND SENATOR BUNN VOTING NAY WITH SENATORS SHOEMAKER AND SPRINGER EXCUSED.

CHAIR COHEN: Adjourns hearing at 2:55 p.m.

Submitted by,

Reviewed by,

Mark Thorburn
Assistant

Ingrid Swenson
Counsel

EXHIBIT LOG: A - Lee Nusich, SB 1203, 4 pgs. B - Staff, SB 1203, 1 pg. C - Staff, SB 757-3 amendments, 1 pg. D - Staff, SB 757-1 amendments, 1 pg. E - Bob Linden, SB 757, 2 pgs. F - Staff, SB 493-1 amendments, 1 pg. G - Staff, SB 615-A8 amendments, 1 pg. H - Staff, SB 930-1 amendments, 1 pg. I - Staff, SB 2411-1 amendments, 1 pg. J - Staff, SB 132-A5 amendments, 1 pg. K - Staff, SB 132-A3 amendments, 2 pgs. L - Gary Wicks, SB 132, 5 pgs.