

OREGON LAW COMMISSION

Date March 10, 2015
3:00 p.m.

Oregon Civic Justice Center
Melvin Henderson-Rubio Hearing Room
Salem, OR

MEMBERS PRESENT:

Lane Shetterly, Chair
Prof. Bernie Vail, Vice Chair (on phone)
Chief Judge Rick Haselton
Judge Stephen Bushong
John DiLorenzo, Jr. (on phone)
Hardy Myers
Scott Shorr
Dean Curtis Bridgeman
Julie McFarlane
Mark Comstock
Justice Martha Walters (for Chief Justice Thomas Balmer)

MEMBERS EXCUSED:

Sen. Floyd Prozanski
Rep. Jennifer Williamson

STAFF PRESENT:

Jeffrey C. Dobbins, Executive Director
Philip Schradle, Interim Deputy Director
Caitlynn Dahlquist, Law Clerk
Brett Smith, Law Clerk
BeaLisa Sydlik, Legislative Counsel
Dexter Johnson, Legislative Counsel
Dan Gilbert, Legislative Counsel

GUESTS:

Robin Pope
Jane Edwards
Ansley Flores
Tina Spencer
Gail Schelle
Denise Fjordbeck
Kristine Kirk
Judge McKnight
Misha Issac
Susan Grabe

MEASURE/ISSUES HEARD:

Review and Approval of Minutes
Review and Approval of Legislative Concepts and Reports
Executive Director and Deputy Director's Report
Recognition of Wendy Johnson

Note: Due to unforeseen technology difficulties, there was a no recording of this meeting. These minutes reflect a summary of what staff members present noted and recalled.

Speaker	Comments
Shetterly	Confirmed the presence of a quorum. Called meeting to order of Oregon Law Commission March 10, 2015 and welcomed commissioners present and on the phone. Entertained a motion to approve the minutes from the February OLC meeting.
CJ Haselton	Asked to be listed as an excused member since he notified the Commission staff that he would not be able to attend.
Comstock	Moved to approve the minutes as amended.
Shetterly	Motion passes without objection. Since Commissioner McFarlane was not yet on the phone for the meeting, the agenda items were moved so that Adoption was the first item up for consideration.
DiLorenzo	Gave a brief overview of the efforts of the Adoption Work Group and where they will be going next as they continue to work on updating Oregon's adoption statutes.
Dahlquist	Detailed the two bills the Work Group would like the Commission to approve and recommend to the 2015 Legislative Assembly. HB 2365-2 is a general clean-up bill with a few clarifications that were needed from the passage of SB 623 (2013) and HB 1536 (2014). The main substantive portion of the bill lays out the procedure for readoptions. Oregon does not have a detailed procedure for parents to refer to when seeking a readoption so this bill will provide parents with that information. HB 2366-1 is also a clean-up bill. The Work Group wanted a separate bill to place all changes that might produce a fiscal report from the Legislative Fiscal Office and require a subsequent referral to the Ways and Means Committee so that the other changes that the Work Group proposes will not be delayed in the legislative process. The Reports do need some final editing and revisions that were provided to the Commission through an email from Jane Edwards.

Pope	Discussed in more detail the efforts of the Work Group, the provisions in the two bills, and where the Work Group will be headed next. Praised DiLorenzo for his work as Chair of the Adoption Work Group and thanked him for his service.
Shetterly	Any questions? Hearing none, entertained a motion to approve both bills and reports as amended.
Justice Walters	Moved to approve HB 2365-2 and HB 2366-1 and their accompanying reports as amended.
Shetterly	No objections. Motion carried. Although Commissioner McFarlane has not yet joined on the phone, Phil Schradle will present SB 405-2 proposed by the Juvenile Court Records Work Group.
Schradle	Details the reason for this bill and the changes that were made. States that SB 405 is intended to address three necessary modifications to the laws pertaining to juvenile court records. The laws relating to juvenile court records have been changed significantly in recent years, in part due to the advent of eCourt and electronic filing requirements, but the underlying confidential nature of juvenile court records appropriately has been retained. SB 405 proposes two minor changes to ORS 419A.255 to correct unintended consequences of the recent changes. First, SB 405 provides authority for the Oregon Youth Authority to disclose the same type of information about youth within their jurisdiction as the juvenile courts and county juvenile departments can disclose. This change will allow the OYA to acknowledge they are supervising an offender, to provide a mailing address for an offender in custody, and to assist an out-of-state offender respond to a subpoena for records. Second, SB 405 provides explicit support for juvenile courts to notify the relevant Child Support Program Administrator when a judgment terminating parental rights or terminating wardship has been entered. This change will help to ensure that child support obligations are not enforced beyond the appropriate date. Finally, SB 405 also proposes an extension of time for one-year to provide the courts and other interested parties the time necessary to develop proper criteria and guidelines for the courts to use in providing access to juvenile court records to other persons not specifically provided access by statute. This time extension is necessary because litigation that forestalled discussions about these issues only concluded in December 2014, and more time is needed to

	develop appropriate criteria for presentation to the legislature.
Shetterly	Asks whether there are any questions? Hearing none, entertained a motion to approve the bill and report.
Myers	Moved to approve SB 405-2 and the accompanying report.
Shetterly	No objections, motion carried. Next, Jeff will present the Staff Report for the Standing Modernization Work Group.
Dobbins	Presents Draft Staff Report and details why there is no final bill from the work group. Explains that draft report summarizes discussions within work group and why draft legislation was drafted as it was, but that because of underlying policy concerns, work group was unable to reach consensus on forwarding a report to the full commission with an affirmative recommendation to be forwarded to legislature.
Myers	Adds comment that he understands that there has been no circumstance in past Commission practice where the Commission has forwarded a legislative proposal that does not have the support of a Commission work group. Consequently, he believes there should be no further action by the Commission beyond accepting the work group report and that the work of the work group is also concluded.
Fjordbeck	Presents the Supplemental Report that was drafted by a portion of the Work Group members outlining why a those members concluded that any benefit to be gained by “solving” a problem that is unlikely to recur is outweighed by the policy and practical problems involved in crafting a solution. The Supplemental Report commended the efforts of the work group, but ultimately urged no further action by the Commission.
Issac	Discusses his view on this project noting that he originally thought there was a problem that needed resolution, but that as the discussion in the work group developed he came to the conclusion that the unique circumstances presented by the same-sex marriage litigation were so isolated that they did not

warrant the development of a rather convoluted process fraught with its own difficulties. He concluded that it was best to leave the statutes as they currently exist rather than crafting a solution for a non-existent problem.

Haselton

Asked whether in fact there never has been a circumstance where the Commission moved a legislative proposal that was not supported by a Commission work group.

Myers

Stated that he believed that was true.

Shetterly

Agreed that he could not recall any instance where the Commission had moved a proposal that was not supported by a Commission work group.

DiLorenzo

Moved to postpone this discussion to the next meeting because he felt he needed more time to analyze the circumstances presented.

Haselton

Asks whether such a motion is subject to discussion and debate.

Shetterly

States that he thinks it is not subject to discussion, but asks whether anyone present is familiar enough with Mason's procedures to know the answer.

Johnson

States there can be discussion on the postponement issue, but not on the merits of the underlying legislative proposal.

Shorr

Asks whether there would be any benefit to the work group if there was a postponement by the Commission?

Myers

States that he does not believe that any further discussions in the work group would be helpful.

Members

Further discussion regarding motion to postpone.

DiLorenzo

Explains that he wants to postpone this discussion because he feels he needs additional time to consider the implications of these issues in light of the fact that he believes the Attorney General should be defending all laws and not have the discretion to choose which laws to defend.

Shetterly

Requests Dahlquist to do a roll call vote on the question of whether to postpone the discussion of the acceptance of the work group materials and along with that the dissolution of the work group.

Dahlquist

Votes were as follows:

Vail – No

Justice Walters – Yes

Bridgeman – No

Judge Bushong – No

Comstock – No

DiLorenzo – Yes

CJ Haselton – No

Myers – No

Shorr – No

McFarlane - Abstains

Shetterly – Yes

Shetterly

Motion fails. Further discussion on the underlying report?

Members

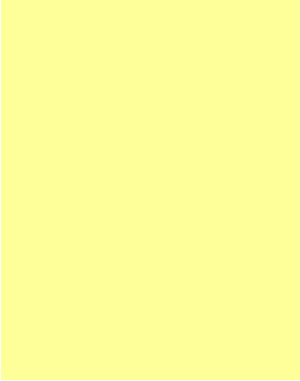
Further discussion.

Bushong

Emphasizes his experience with professionalism of Attorney General office and staff, and impression that any reasonably defensible law will be actively defended by the Department of Justice.

Myers	Moves to accept the materials presented from the Standing Moderization Work Group.
Shetterly	Discussion?
CJ Haselton Shorr	Asks for clarification that a yes vote would not move anything forward, just accept the work that was done.
Shetterly	Confirms Shorr's clarification. No objections. Motion carried.
DiLorenzo	Explains his vote stating that he voted with the prevailing side so he would be in a position to ask for reconsideration at the next meeting. Gave notice of possible reconsideration.
Shetterly	Notes vote explanation and directs moving on to next item in agenda.
Schradle	Provides updated Staff report on Collateral Consequences bill. Explains there are two sets of amendments (-1 and -2). The amendments were not drafted at the time of the last Commission meeting and consequently have not yet been presented to the Commission. The amendments vary from the LC draft bill that the Commission had before it previously in that they contain legislative findings that clear up possible relating clause issues noted by Legislative Counsel. The -1 and -2 amendments differ from each other only in that the -1 amendments provide that the AG will appoint two members to the Collateral Consequences Commission, including a representative DA, while the -2 amendments provide simply that the AG will appoint two members to the Collateral Consequences Commission. The express requirement for the AG to appoint a representative DA to the commission comports with the work group's assumption and understanding that the AG would in fact appoint a DA representative.
Shetterly	Asks whether there is any discussion.
Walters	Moves to approve both the -1 and -2 amendments to the bill.

Shetterly	No objections. Motion carried.
DiLorenzo	Notes that he is still a “no” on the overall bill.
Schradle	Notes that there should be a Program Committee scheduled soon to consider a couple of project proposals that have been received.
Dobbins	Provides a Budget Update.
Shetterly	Speaks to the budget. Notes that he presented testimony on behalf of the Commission in opposition to SB 462 which is a bill proposed by the bankers association again this session seeking to move from broader Alternative B to more restrictive Alternative A for providing debtors’ names in perfecting financing statements. Commissioner Shetterly’s testimony is in accord with previous determinations made by the Commission to attempt to retain the broader provision which provides better protection for unsophisticated persons involved in filing financing statements. Commission Chair Shetterly then recognized Wendy Johnson who served as the Deputy Director and General Counsel for the Commission from September 2001 – January 2015. Chair Shetterly thanked Wendy for her exemplary service during her tenure with the Commission, noting that the Commission grew substantially in stature and reputation due to her efforts. Executive Director Dobbins also commended Wendy on her great contributions to the Commission. And both Chair Shetterly and Executive Director Dobbins noted their personal loss in having their long-time colleague depart. Wendy was presented with a plaque stating: “The Oregon Law Commission recognizes with appreciation Wendy Johnson for her dedicated leadership and service as Deputy Director and General Counsel of the Oregon Law Commission September 2001 – January 2015”. Chair Shetterly then noted that the Commission’s Legislative Reception would occur in the Civic Justice Center after the conclusion of the Commission meeting and adjourned the meeting.



Motion to Adjourn approved.

Submitted By,

Reviewed By,

Caitlynn Dahlquist
Law Clerk

Philip Schradle
Jeffrey Dobbins
Lane Shetterly

EXHIBIT SUMMARY

OLC Meeting Agenda March 10, 2015

Minutes for February 18, 2015 Commission Meeting

SB 405-2

Juvenile Court Records Work Group Report for SB 405-2

HB 2365-2

Adoption Work Group Report for HB 2365-2

HB 2366-1

Adoption Work Group Report for HB 2366-1

Suggested Revisions from Jane Edwards to Adoption Reports

Standing Modernization Staff Report

Standing Modernization Supplemental Report

Staff Suggested Motions for the Oregon Law Commission Meeting on March 10, 2015