

HOUSE COMMITTEE ON RULES, ELECTIONS, AND PUBLIC AFFAIRS

July 1, 1999 Hearing Room D

3:00 P.M. Tapes 128 - 130

MEMBERS PRESENT: Rep. Mark Simmons, Chair

Rep. Richard Devlin, Vice-Chair

Rep. Bruce Starr, Vice-Chair

Rep. Roger Beyer

Rep. Randall Edwards

Rep. Dan Gardner

Rep. Kevin Mannix

STAFF PRESENT: Cletus B. Moore, Jr., Administrator

Judith Callens, Policy Analyst

Janet Adkins, Policy Analyst

Pat Zwick, Policy Analyst

Brad Daniels, Administrative Support

MEASURES HEARD: HB 2938 Public Hearing and Work Session

HJR 86 Public Hearing

SB 99A Public Hearing and Work Session

SB 404A Work Session

SB 194 Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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TAPE/#	Speaker	Comments
TAPE 128, A		
004	Chair Simmons	Opens the meeting at 3:00 p.m. Opens the public hearing on HB 2938.
<u>HB 2938 PUBLIC HEARING</u>		
006	Steve Anderson	Anderson Perry Consulting Firm. Describes the 1939 statute, ORS 366.155 (h), establishing the Oregon Department of Transportationis (ODOT) role in providing free bridge design engineering to counties. Supports the repeal of the 1939 law because it is obsolete and discriminatory against cities, counties with road districts and the private sector. Notes the statuteis cost to the public (EXHIBIT A).
056	Anderson	Stresses that the law is an attraction to counties, urging them to use ODOT services when the same services are available from private firms. States that the statute pulls jobs away from rural areas by centering them in Salem.
073	Chair Simmons	Asks if his firm employs 70 people.
074	Anderson	Replies yes.
076	Chair Simmons	Asks about the funding process for county bridges.
078	Anderson	Replies that the funding breakdown is usually about 80% federal, 10% state and 10% local.
084	Chair Simmons	Asks how much of ODOTis design work is handled in-house and how much is contracted.
087	Anderson	Replies that ODOT does a good job of contracting their work out. Reports that approximately 60-70% of ODOTis work is done in house.
098	Chair Simmons	Asks how many engineering firms were located in rural areas when the law was passed.
099	Anderson	Replies that most firms in his area were survey firms.
102	Chair Simmons	Asks if the need has changed over time.
104	Anderson	Answers yes.

109	Laura Pryor	Judge, Gilliam County. Opposes HB 2938. States that she primarily represents the eight smallest counties in Oregon. Notes the percentage of Oregon cities that have under 1000 people. Expresses concern about the revenue available to these counties, noting the decrease in timber revenues and the impact of Measure 5. Indicates that ODOT's design contribution does make a difference in small jurisdictions.
146	Bill Penhollow	Association of Oregon Counties. Opposes HB 2938. Comments on the debate over highway funding and the budget shortfall on the county level. Discusses the challenges faced by Eastern Oregon counties in providing adequate roads. Cites a letter from Mike Hayward, a Wallowa County Commissioner, summarizing the budgetary problems faced by Eastern Oregon Counties.
200	Chair Simmons	Asks about the justification for using taxpayer dollars to do work that can be adequately performed by local private industries.
208	Pryor	Responds that bridge design is expensive and often does not provide counties with the leisure to choose between the public and private sector.
229	Chair Simmons	Acknowledges the costs involved, but questions why counties are exporting jobs to the state and hampering economic development in rural areas.
243	Pryor	Concedes that there is some justification to these points. Notes that Sherman, Wheeler and Gilliam counties do not have engineers within 100 miles.
245	Penhollow	Adds that some counties have chosen to use private consulting engineers at times, but using ODOT's services is often not a matter of choice, but of necessity.
258	Rep. Starr	Refers to the 11 amendments. Asks if they preclude the counties from asking for help in areas other than bridge design (EXHIBIT B).
265	Chair Simmons	Asks if these other services are used often.
269	Penhollow	Replies that ODOT may charge for their services in these areas; the bridge design area is the only free service.
278	Pryor	Relates an example of the role of ODOT in a particular project.
291	Chair Simmons	Asks if their opposition would persist if the bill was amended to provide counties under 9000 in population with the ODOT consulting.
299	Penhollow	Lists population figures for some Eastern Oregon counties, noting that the exclusion would create hardship for smaller counties with over 9000 people. States that they would not object to amendments that urged counties to give consideration to local businesses.

326	Rep. Starr	Asks about the scope of partnership between ODOT and counties.
337	Doug Tindall	Maintenance Engineer, ODOT. Replies that ODOT bills their costs to the counties. States that HB 2938 does not limit ODOT's ability to engage in intergovernmental agreements.
355	Rep. Starr	Asks how much work is contracted out to private companies.
361	Tindall	Replies that ODOT has no way to give particular jobs to local firms under public contracting laws.
372	Rep. Devlin	Asks about evidence of transactions in the budgeting process.
380	Tindall	Replies that the charges have been shown as indirect costs in the bridge program.
392	Rep. Devlin	Asks for a broad estimate of the value of ODOT's assistance to counties.
396	Tindall	Replies that the bill would result in a \$200,000 benefit to ODOT.
401	Rep. Beyer	Asks about any reduction to ODOT's engineering staff.
406	Tindall	Replies that the bill would not result in a reduction to ODOT's staff.
412	Rep. Starr	Asks if the counties would have to engage in the same public contracting process as ODOT.
421	Tindall	Expresses uncertainty.
TAPE 129, A		
002	Penhollow	Replies that counties would use a "qualification base" selection process, which primarily considers qualifications over location.
009	Rep. Starr	Asks if it is not a competitive bid situation.
010	Chair Simmons	Replies that the counties get submissions from qualified engineering firms.
013	Penhollow	Describes the bidding process.
022	Chair Simmons	Closes the public hearing on HB 2938. Opens the work session on HB 2938.

HB 2938 WORK SESSION

024	Chair Simmons	Suggests maintaining the service to counties with populations under 9,000.
032	Rep. Devlin	Suggests that Legislative Counsel should draft the amendment. Mentions the arbitrary nature of the 9000 figure.
035	Chair Simmons	Notes that there are breaking points in the population of rural counties.
039	Rep. Gardner	Asks how many counties the amendment would affect.
042	Pryor	Replies that eight counties would be affected.
049	Chair Simmons	Closes the work session on HB 2938. Opens the public hearing on HJR 86.

HJR 86 PUBLIC HEARING

063	Judith Callens	Policy Analyst. Outlines the ñ1 amendments, noting the effects on attorney fees and the delayed effective date (EXHIBIT C).
100	Rep. Devlin	Asks about the substantive necessity of a constitutional amendment.
107	Dave Hendricks	Legislative Counsel. Replies that the bill can be done as a statutory change. States that the requirement on the legislature is the essential difference.
132	John DiLorenzo	Oregon Litigation Reform Coalition. Supports HJR 86. Discusses OLC's activities relating to litigation and tort reform in the 1995, 1997 and current legislative sessions. Explains the ñ1 amendments, stressing the award of attorney's fees to private parties. States that 125 statutes currently provide for one-way payment of fees to the government (EXHIBIT D).
188	DiLorenzo	Notes the decisions that may be faced by the 2001 legislature concerning statutory attorney fees. Reviews the philosophical underpinnings of the amendment, including distrust of government and the role of the judicial branch, the significant resources employed by the government and the discouraging effect on defendants, and the questionable selection of cases by the government. Reviews the history of SB 961A.
243	DiLorenzo	States that the Attorney General's office will likely be opposed to every version of HJR 86. Stresses the fairness of allowing private parties to collect attorney fees and that private parties should be encouraged to wage principled defenses.
292	Joe Gilliam	National Federation of Independent Business. Supports HJR 86. States that the resolution puts small business owners on equal ground with the government.

		Underlines the cost of litigating with the government. Adds that the resolution will encourage government to choose their cases wisely.
329	Chair Simmons	Comments that the current system allows for coercion and intimidation by government attorneys. Asks if there are any reasons for allowing the one-way payment of fees to the government
348	DiLorenzo	Describes some reasons, including cost recovery. Reiterates that the citizen should be on equal footing with the government.
380	Rep. Mannix	Asks about the inclusion of governmental entities besides state agencies. Asks if the resolution should be limited to state agencies.
395	DiLorenzo	Replies that the resolution would only involve state statutes, which acts as a check on its scope. Stresses that public policy should encourage private citizens to wage principled defenses.
TAPE 128, B		
016	Rep. Mannix	Asks if some statutes allow citizens to obtain attorney fees without reciprocity.
021	DiLorenzo	Replies yes. Adds that HJR 86 does not affect this type of provision.
022	Rep. Mannix	Asks if every statute providing for attorney fees to a private party should also be changed.
024	DiLorenzo	Replies no. Adds that any private citizen is on unequal footing compared to the government, which precludes a total "loser pay" system.
036	Rep. Mannix	Notes the dramatic effect the resolution may have on agencies enforcement power. Asks if a few agencies should be chosen and a statutory, rather than constitutional, referral made.
056	DiLorenzo	Replies that he has two problems with this notion: 1) The private individual must take his/her resources into account; the state should have the same burden. 2) Practically, a statutory suggestion (SB 961A) has not enjoyed the same possibility for passage.
077	Rep. Mannix	Asks about a constitutional amendment authorizing judges to award attorney fees to the prevailing party.
084	DiLorenzo	Replies that Rep. Mannix's proposal would be equitable provided that there were standards. Adds that the government has also opposed suggestions to this effect.

088	Gilliam	States that a few people can outspend the government in a legal dispute.
094	Rep. Mannix	Asks about establishing an Attorney Fee Award Commission and the possibility of seeking redress in front of this body.
105	Gilliam	Replies that HJR 86 is attractive because it allows policies to be reevaluated concerning the use of taxpayer money.
128	Chair Simmons	Asks if Association of Oregon Counties (AOC) and the League of Oregon Cities (LOC) are dues-supported organizations.
132	Paul Snider	AOC. Replies yes.
133	Beth Duncan	LOC. Replies yes.
134	Chair Simmons	Asks if the dues come from member counties and cities. Asks if the dues are paid out of taxpayer funds.
136	Snider	Replies yes
137	Chair Simmons	Asks if they are here at taxpayer expense.
138	Snider	Replies yes. Comments that HJR 86 is a proposed constitutional amendment, affects 125 statutes, and would undo these statutes without reasonable reflection. Stresses that past legislatures made a policy choice to provide attorney fees only to public bodies. Opposes HJR 86.
165	Duncan	Stresses that the resolution is not a basic policy change, but essentially repeals 125 statutes. Underlines that not all governments have deep pockets to fight legal battles to exhaustive levels or to sue indiscriminately. States that many attorneys do work on a contingency fee basis. Opposes HJR 86.
214	Snider	Stresses that the bill also has future effects besides repealing past statutes.
220	Chair Simmons	Asks why the government should have such an unfair advantage in legal disputes.
228	Snider	Replies that government should not have an unfair advantage. Stresses the lack of evidence concerning the repeal of 125 statutes.
244	Chair Simmons	Asks about the individual being sued by the government and his/her perspective on attorney fees.

253	Snider	Replies that he does not know about the 125 statutes, but does assume that there were some valid reasons for these policy decisions.
262	Chair Simmons	States that HJR 86 does not immediately repeal these statutes.
267	Rep. Devlin	Asks about their reaction to Rep. Mannix's suggestion about a "loser pay" system.
273	Snider	Replies that he does not oppose this proposal, but others who do have argued that it will raise the cost of litigation.
290	Rep. Beyer	Asks about the date when the 125 statutes were enacted.
299	Chair Simmons	Closes the public hearing on HJR 86. Opens the public hearing on SB 99A.
<u>SB 99A PUBLIC HEARING</u>		
330	Pat Zwick	Policy Analyst. Explains the original intent of the bill. Introduces the ñ4, -A5 and ñA6 amendments (EXHIBITS E ñ G).
335	Dave Hunnicutt	Oregonians in Action. Supports the ñA6 amendments. States that, under the bill, gatherings of less than 3000 people that last less than 120 hours within a three month period are health and safety, not land use decisions. Adds that the bill codifies existing case law. Notes that SB 99A specifies that gatherings exceeding the qualifications are land use decisions.
390	Rep. Starr	Asks if the bill has any opposition.
392	Hunnicutt	Replies no.
410	Rep. Edwards	Asks for a history of the case law in this area.
413	Hunnicutt	Describes a case involving a Jackson County ordinance that provided the origin for SB 99A.
TAPE 129, B		
006	Rep. Devlin	Asks if nothing in the bill would affect local governments' ability to require non-land use permits for mass gatherings.
010	Hunnicutt	Replies yes. Adds that governments' health and safety regulations would still apply.

017	Art Schlack	AOC. Supports the ñA6 amendments. Notes that the amendments will clarify the subject of a land-use decision.
029	Chair Simmons	Asks if he has any position on the ñ4 amendments.
030	Schlack	Replies no. Adds that the ñ4 amendments would delete the requirements for notarized signatures in road vacations within cities.
042	Chair Simmons	Closes the public hearing on SB 99A. Opens the work session on SB 99A.
<u>SB 99A WORK SESSION</u>		
044	Rep. Starr	MOTION: Moves to ADOPT SB 99-A6 amendments dated 07/01/99.
		VOTE: 4-0 EXCUSED: 3 - Beyer, Gardner, Mannix
Chair Simmons		Hearing no objection, declares the motion CARRIED.
046	Rep. Starr	MOTION: Moves to ADOPT SB 99-4 amendments dated 06/22/99.
		VOTE: 4-0 EXCUSED: 3 - Beyer, Gardner, Mannix
Chair Simmons		Hearing no objection, declares the motion CARRIED.
048	Rep. Starr	MOTION: Moves SB 99A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0 EXCUSED: 3 - Beyer, Gardner, Mannix

	Chair Simmons	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. STARR will lead discussion on the floor.</p>
073	Chair Simmons	Closes the work session on SB 99A. Opens the work session on SB 404A.
<u>SB 404A WORK SESSION</u>		
074	Cletus Moore	Committee Administrator. Explains the ñAMR5, -A6 and ñA8 amendments. States that, depending on the nature of the required study, the fiscal impact of the ñA8 amendments is unknown (EXHIBITS H - J).
102	Chair Simmons	Asks about the change from a Class B to a Class A misdemeanor.
103	Moore	Replies that it is not required, but placing the statute under the wildlife laws shifts the violation to a Class A misdemeanor.
108	Rep. Beyer	Asks about the location of the wildlife laws.
110	Moore	Replies that ORS 496.002 defines which ORS chapters are the wildlife laws; the amendment falls under one of these chapters.
118	Rep. Beyer	MOTION: Moves to ADOPT SB 404A-A8 amendments dated 07/01/99.
		<p>VOTE: 4-3</p> <p>AYE: 4 - Beyer, Mannix, Starr, Simmons</p> <p>NAY: 3 - Devlin, Edwards, Gardner</p>
	Chair Simmons	The motion CARRIES.
132	Rep. Beyer	MOTION: Moves SB 404A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
135	Rep. Gardner	Asks why the bill is being sent to Ways and Means if it has an indeterminate

		fiscal impact.
139	Rep. Devlin	States that the Democrats on the committee would have offered the ñAMR5 amendments had they been recognized by the Chair.
145	Rep. Starr	Reiterates his opposition to canned hunts. States that SB 404A relates to game preserves. Supports SB 404A.
150		VOTE: 4-3 AYE: 4 - Beyer, Mannix, Starr, Simmons NAY: 3 - Devlin, Edwards, Gardner
	Chair Simmons	The motion CARRIES.
155	Chair Simmons	Closes the work session on SB 404A. Opens the work session on SB 194.
<u>SB 194 WORK SESSION</u>		
167	Pat Zwick	Explains SB 194. Introduces and explains the ñ1 and ñ2 amendments (EXHIBITS K & L).
210	Rollie Wisbrock	Chief of Staff, Oregon State Treasury. States that the bill allows the Treasurer to charge local governments for actual costs for their participation in the local government investment pool. Stresses that participation in the pool is voluntary (EXHIBIT M).
229	Chair Simmons	Asks for a definition of constitutionally dedicated funds.
231	Wisbrock	Replies that the common school fund, gas tax and PERS are some examples.
233	Chair Simmons	Asks if these funds also include the budget allocated to the Treasurer's office.
234	Wisbrock	Replies no. Explains that the ñ1 amendments would put the Treasurer's office in violation with the funding constraints in the Constitution.
247	Rep. Starr	Asks for further explanation.
250	Wisbrock	Relates an example involving the common school fund and how a constitutional

		violation can occur.
261	Rep. Starr	Asks where in the bill the common school fund is used for this purpose.
265	Wisbrock	Replies that SB 194, by requiring the Treasurer to maintain the fund without fees from local governments, would represent the violation. States that retention of .25 basis points and the deletion of the .50 basis points restricts the ability of the Treasurer to charge the fees necessary to operate the fund.
282	Cynthia Burns	Assistant Attorney General. Discusses the manner in which the fund is dedicated.
294	Rep. Starr	Asks if the basis point limit is being maintained.
297	Wisbrock	Replies that, without the ability to charge local governments, they would have to shut down the fund.
305	Rep. Starr	Asks if the fund has been unconstitutional up to now because it has exceeded the .25 basis point limit
309	Wisbrock	Replies that, as soon as the .25 basis points is exceeded, the fund will begin violating the Constitution. States that SB 194 would avert this emergency.
319	Rep. Mannix	Asks about the need to increase the basis points from .25 to .50.
323	Wisbrock	Replies that they are at the point of exceeding the .25 basis points.
330	Rep. Mannix	Asks if basis points are an absolute or relative feature of the fund.
335	Wisbrock	Replies that basis points are specific numbers, a percentage of a percentage. Indicates that basis points are attributed to interest earnings.
346	Rep. Mannix	Relates that the problem occurs when increased expenses are not covered by the .25 basis point limit.
351	Wisbrock	Agrees with Rep. Mannix. Describes how SB 194 will avert the constitutional problems.
366	Rep. Mannix	Comments that the costs of more sophisticated investment activity have created concerns about exceeding the limit.
372	Wisbrock	Agrees with Rep. Mannix.

375	Chair Simmons	Asks if the Treasurer has been in violation of the constitutionally dedicated funds provision. Asks about the need to go to a .50 basis point cap.
393	Wisbrock	Responds that the .25 basis points will not cover the costs.
401	Darren Bond	Director, Finance Division. Discusses the need to increase the basis point cap. Explains how variations in the interest rate environment increase costs and affect the fund.
TAPE 130, A		
025	Rep. Mannix	Asks if the need for a higher basis point limit is related to a drive toward less efficiency due to large accounts pulling out of the fund.
034	Bond	Agrees with Rep. Mannix. States that transaction costs tend to rise in booming economic times.
044	Wisbrock	States that there also is an IRS issue concerning the single purpose use of funds.
049	Chair Simmons	Asks if revenue from PERS funds would be used to manage the investment fund.
050	Wisbrock	Replies that these funds would be considered PERS property. Explains how certain monies are associated with particular funds.
060	Chair Simmons	Cites page 1, line 11 of the bill. Asks if proceeds from particular accounts are kept separately in the miscellaneous receipts account.
068	Bond	Replies that the Treasurer tries to structure their charges to be commensurate with the particular funds.
072	Chair Simmons	Asks if the expenses are put in the miscellaneous receipts account.
073	Bond	Replies yes. Explains the basis point process and the goal of attempting to allocate costs to the appropriate customers. Stresses that the local government investment pool is a positive program and the bill is a rational attempt to continue it. Underlines that there is no opposition to the bill.
107	Chair Simmons	Asks if the costs of the fund are paid from an aggregated account.
108	Bond	Replies yes.
110	Rep. Beyer	Asks if the fund is currently unconstitutional.

113	Bond	Replies that Treasury believes, in a worst case scenario, the balance of the fund would drop and would require about .41 basis points.
119	Rep. Beyer	Requests numerical evidence of the necessity of the bill.
130	Wisbrock	Replies that he cannot prophesy the future, but there may be a time when more than .25 basis points will be needed.
137	Rep. Beyer	Clarifies that he wants to see numbers to justify changing the basis point limit.
145	Rep. Devlin	Asks if any other dedicated funds are involved.
148	Burns	Replies that a number of funds would be included in this definition.
156	Rep. Devlin	Asks if the potential costs of the fund management are reflected in the Treasurer's budget.
168	Wisbrock	Replies that the increase in basis points will supply the same amount of revenue and maintain revenue neutrality.
181	Rep. Edwards	Asks about the IRS single purpose provision.
189	Wisbrock	Replies that if revenues from the PERS fund, for example, are used for any other purpose, Treasury will lose its tax-exempt status. Underlines that the 11 amendments will violate that principle.
208	Burns	Explains that the money in the trust fund can only be used to benefit the beneficiaries of the fund.
221	Rep. Edwards	Asks for a characterization of the scope of financial catastrophe that would result from a loss of tax exempt status.
223	Wisbrock	Underscores that billions of dollars would be at risk.
232	Rep. Mannix	States that the simple way to avert this catastrophe would be a request for General Fund money from the Emergency Board. Asks about the deletion of page 1, subsection 2.
249	Bond	Replies that it is the user fee aspect of the bill.
259	Rep. Mannix	Inquires if a low activity fund will prefer a user fee.

264	Bond	Replies yes.
268	Wisbrock	Stresses the seriousness of the bill and the problems that the ñ1 amendments would create.
276	Rep. Mannix	Asks if the Treasureris budget contemplates the passage of the bill.
280	Wisbrock	Replies yes.
285	Steve Vincent	Avista Utilities. Supports the ñ2 amendments. Expresses concern about reaction to the public and industry if the Office of Energy remains in its current location.
310	Mike Graney	Office of Energy. States that there is no revenue or fiscal impact to the ñ2 amendments. Does not object to the ñ2 amendments.
323	Rep. Edwards	Asks why this bill was not brought to Ways and Means.
326	Graney	Expresses uncertainty. Refers to the lack of fiscal or revenue impact and Section 10 of the bill.
339	Vincent	Notes that the co-chair of Ways and Means also requested the issue be addressed in a substantive committee.
344	Rep. Starr	Closes the work session on SB 194. Adjourns the meeting at 6:00 p.m.

Submitted By, Reviewed By,

Brad Daniels, Cletus B. Moore, Jr.,
Administrative Support Administrator

Reviewed By, Reviewed By,

Janet Adkins Judith Callens
Policy Analyst Policy Analyst

Reviewed By,

Pat Zwick

Policy Analyst

EXHIBIT SUMMARY

A ñHB 2938, written testimony, Stephen Anderson, 6 pp.

B ñHB 2938, -1 amendments, staff, 3 pp.

C ñHJR 86, -1 amendments, staff, 2 pp.

D ñHJR 86, written testimony, John DiLorenzo, 5 pp.

E ñSB 99, -4 amendments, staff, 2 pp.

F ñSB 99A, -A5 amendments, staff, 1 p.

G ñSB 99A, -A6 amendments, staff, 1 p.

H ñSB 404A, -A6 amendments, staff, 2 pp.

I ñSB 404A, -A8 amendments, staff, 2 pp.

J ñSB 404A, -AMR5 amendments, staff, 2 pp.

K ñSB 194, -1 amendments, staff, 1 p.

L ñSB 194, -2 amendments, staff, 3 pp.

M ñSB 194, written testimony, Rollie Wisbrock, 1 p.