

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

January 28, 1997 Hearing Room 357

1:00 PM Tapes 12 - 13

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JOANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Informational Meeting on Article 1, Section 41, subsection 8, of the Oregon Constitution (Measure 17)

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.

Tape/#	Speaker	Comments
TAPE 12, A		
<u>INFORMATIONAL MEETING - MEASURE 17</u>		

005	Chair Minnis	Calls meeting to order at 1:08
023	Kevin Mannix	<p>Attorney, Salem</p> <ul style="list-style-type: none"> >author and petitioner of Measure 17 along with Judge Robert Thornton >passes in 1994 with 72% favor >is designed to be a Constitutional amendment >not a punishment measure >work, rehabilitation, drug rehabilitation, compensation
053		>worry that this would take jobs away from the public
		<ul style="list-style-type: none"> >made constitutional measure to avoid fooling around by special interests >the DOC made a good faith effort in its implementation >work activity includes up to half-time educational opportunity
		>Until Fall 1996, steady, deliberate progress had been made.
		<ul style="list-style-type: none"> >no citizen or official complaints >Some allocations had been made as to how compensation could be spent.
104		>no contact by federal officials to require changes to avoid federal law violation
		<ul style="list-style-type: none"> >two components to problem: compensation and compliance with federal requirements for prevailing wages >comments on subsection 8 - federal law escape clause (EXHIBIT A)
170		<ul style="list-style-type: none"> >providing incentives and rewards to work >Housing, health and living costs are broad categories. >must look to creative implementations
		<ul style="list-style-type: none"> >not well served by negative comments >challenges state to do something positive with inmates

214		<p>>The legislature can define what rehabilitation means as supplement to the measure.</p> <p>>per request of the Chair, submits informational materials on federal provisions pertaining to prison-made goods (EXHIBIT C)</p>
250	Chair Minnis	What's been lacking in implementation?
254	Mannix	Time needs to be allowed for implementation.
269	Rep. Sunseri	What do we need to do to get back on course?
273	Mannix	We need to look to legal interpretation of previous Attorney General.
281	Chair Minnis	Comments that the current language provides for this.
286	Rep. Prozanski	<p>In regards to subsection 8, I took to understand that as how much and not how it was going to be paid.</p> <p>>doesn't see latitude in Kulongoski opinion to set up 20% fund for discretionary purposes.</p>
301	Mannix	<p>We would have problem in federal law, 1761, subsection 2, if this wasn't defined.</p> <p>>We are only concerned with percentage and not the amount.</p> <p>>We don't care what is on the book, only how you act</p>
354	Chair Minnis	Asks for clarification of whether the language accurately interprets the definition of the prevailing wage law
367	Mannix	This is very different than other prevailing wage laws.
372	Rep. Prozanski	Is there more than the Kulongoski JD 82.45 opinion that is out there?

377	Mannix	My recollection was incorrect.
381	Rep. Prozanski	Asks if he is relying on 82.45 with attachments
384	Mannix	Responds that he is discussing the concepts in it
387	Chair Minnis	That is currently the only written attorney general opinion.
390	Mannix	Responds
396	Rep. Prozanski	Comments that he is thrown off by the comment that they should rely on opinion of previous attorney general
400	Mannix	No, there is one opinion from Ted Kulongoski and Hardy Myers gets to revisit it.
407	Rep. Bowman	Is this the only section of Measure 17 that you have a problem with?
411	Mannix	I'm only commenting on how government has reacted.
418	Rep. Bowman	Comments that there appears to be some debate on the performance of the Department of Corrections
434	Mannix	Responds that he is critical of the process and not the Department
TAPE 13, A		
012	Chair Minnis	Comments on concern of whether inmate has right of private action for perceived Constitutional right to a job
017	Mannix	There is no private right of action.
048	Hardy Myers	Attorney General
		>introduces Suzanne Townsend, General Counsel

		<p>Division, Department of Justice</p> <p>>comments on prison-made goods in light of Measure 17</p> <p>>Submits informational materials (EXHIBIT B)</p> <p>>refers to Ashers-Summers Act regarding prison-made goods</p>
090		>Measure 17 withdraws power of legislature to deal with prison industries program.
		>looks to subsection 8, exhausts total wages, does not provide 20%
		>problem overlooks "reimbursement"
		>measure must be used to reimburse costs of keeping inmate
		>hard to apply idea of reimbursement to living costs
140		<p>>ORS 421.436 = determination of amount uses</p> <p>>compensation may only be used for certain circumstances</p>
157	Rep. Sunseri	Can we amend 421.436 to include that provision?
160	Myers	It is the withdrawal of legislative power which creates the issue.
177	Rep. Sunseri	Doesn't the Constitution already provide that we are required to abide by federal law?
184	Myers	Comments that the courts will have to decide.
199	Rep. Shetterly	If we are going to address this legislatively, we could do this by adding a provision that allows us to take refuge in the federal law clause.
214	Rep. Bowman	What happens to the money inmates earn under the current system?
219	Suzanne Townsend	General Counsel Division, Department of Justice
		>As of 1995 a new rule was adopted, establishing an

		awards system. >individual inmates have programs to use discretionary money
246	Rep. Prozanski	Asks Attorney General as to what the legislature can or can not do in regards to changing or modifying language in the measure
257	Myers	Responds that any legislation they want can be enacted knowing that it would have to withstand a litigation challenge.
268	Rep. Prozanski	Expresses concern that current legislature, by reinterpreting the intent of the 1995 session as a result of constitutionality charges, is setting themselves up for a legal challenge.
293	Myers	Responds that there is concern about the ability to win that lawsuit.
318	Rep. Shetterly	Asks about section 2d of 1761 which contains percentages not found in Constitutional opinion
330	Myers	Responds that it could be a violation
340	Townsend	It is possible that it could be a problem. >There is no requirement use the moneys in a particular percentage within the 5 categories.
354	Rep. Shetterly	Comments that there appears to be a problem either way
363	Rep. Prozanski	Offers clarification of question
371	Townsend	Under federal law we are not allowed to deduct more than 80%.
		Comments that there is specificity in 421.36 except for

382	Rep. Sunseri	80/20 concern >Can we provide statutorily for this 80/20 split?
395	Myers	The issue could be tested by a taxpayer lawsuit contending an unlawful expenditure of public funds. >Participation in the federal program is voluntary.
		>Our state laws can not obstruct federal law.
TAPE 12, B		
018	Rep. Courtney	This law was created by the initiative process. How many ORS are on the books from last election of ballot which deal with this program?
032	Myers	I don't know other than the DOC chapter which I handed out.
037	Rep. Courtney	These were enacted and passed by last session. How many administrative rules exist to implement this ballot measure?
043	Townsend	Prison Industries Board has adopted some rules, but the only rule-making has done with award system.
049	Rep. Courtney	Can we assume that all ORS' and rules have been scrutinized? >I need to know the magnitude of your remarks of goods in interstate service or all goods.
060	Myers	Asks for clarification of question.
062	Rep. Courtney	Clarifies his question in terms of commerce. How many of these goods and services are now in harm's way?
075	Myers	Responds that he is unable to quantify in terms of the specific components >Under FSLA, the reach is fairly broad.
		>given federal court's ruling, the only recourse is to

		scrutinize alternative means for interstate commerce
		>refers to Ashurst-Sumner Acts
136	Rep. Courtney	Asks for clarification of interstate services as pertaining to Interstate highways
142	Myers	On its face, the act is restricted to commodities.
152	Chair Minnis	Asks for clarification on Measure 17 withdrawing legislative power.
163	Rep. Shetterly	Would you construe Section 1761, subsection C, sub 2 as a minimum or prevailing wage law?
169	Myers	The answer is no one can answer that question for sure. >There is concern about having an act with a prevailing wage statute. >Courts may find it sufficient to admit adherence.
207	David Cook	Director, Oregon Department of Corrections >Measure 17 has dramatically changed how we operate. >Costs of transportation are great >Most existing institutions are not designed to accommodate this.
		>less than adequate industrial space
260		>submits written testimony, (EXHIBIT D)
		>We may be doing a better job, but we don't meet the mandate.
		>mentions letter from US Department of Justice
300		>comments that they are under litigation
		>Another option is to continue to do business as usual.
335	Chair Minnis	Asks why they are not complying with the federal law and from where the lawsuit comes from
		There are threats to those who comply to pay those wages

343	Cook	when they're not under the law.
353	Chair Minnis	Asks for clarification on why the program is being jeopardized
360	Cook	Comments that they are attempting to ensure its success
365	Chair Minnis	Do you often get counsel from the Department of Justice?
369	Cook	Responds that they do receive frequent counsel
371	Chair Minnis	Why did you seek a written attorney general's opinion?
375	Cook	It has been difficult to comply with Measure 17. >asked for opinion to clear up confusion
402	Chair Minnis	My interpretation is contrary to the Attorney General of Oregon. >It appears that it could have been interpreted differently.
TAPE 13, B		
011	Cook	We have not attempted to impede its implementation.
014	Chair Minnis	We will ask for some overview at some point with respect to management.
019	Cook	Comments on the implementation of the program
040	Benjamin de Haan	Deputy Director, Oregon Department of Corrections >clarifies circumstances leading to request for attorney general opinion >at the time we were engaged in an audit by the Secretary of State >consultation written April 1995, cited these legal issues as major obstacles

073	Chair Minnis	Has the DOC officially responded to the audit?
074	de Haan	Yes
076	Rep. Shetterly	Refers to a letter to Rep. Prozanski from US Department of Justice from Mr. Albrecht discussing options
085	de Haan	We engaged in a dialogue with the federal government. >attempting to organize our institutions to comply with Measure 5 >conversation was aimed at how to modify the award system
096	Rep. Shetterly	Did you explore a legislative fix?
103	de Haan	No. Expresses that they looked at what they could do programatically.
120	Sam Cochran	Deputy State Auditor
		>introduces Marlene Hartinger, Staff Auditor, Oregon Audits Division
		>8-96 did an audit of DOC, was part of a 13-state review
		>Submits and reads written testimony, (EXHIBIT E)
147		Continues testimony
191		Continues testimony
243		Continues testimony
295		Continues testimony
354		Continues testimony
381	Rep. Prozanski	Asks for clarification of timing of last audit
384	Cochran	Audit was conducted under criteria of Measure 17 in the pre-legal issue environment

400	Chair Minnis	Has the agency complied with these requests?
415	Cochran	The Department indicated they are working on standardization. >comments they will be doing a follow-up
433	Chair Minnis	Comments that he would like the DOC respond to the audit next time t
		Adjourns meeting at 2:56 PM

Submitted By, Reviewed By,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Measure 17, Section 41 of the Constitution of Oregon, Kevin Mannix, 2 pp.

B - Measure 17, Informational materials on laws relating to measure, Hardy Myers, 6 pp.

C - Measure 17, Chapter 85 of U.S. Crimes and Criminal Procedure, Kevin Mannix, 4 pp.

D - Measure 17, written testimony, David Cook, 4 pp.

E - Measure 17, written testimony on Inmate Work Programs, Sam Cochran, 5 pp.