HOUSE JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357 8:30 am Tapes - 71

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Bryan Johnston, Vice-Chair Rep. Kate Brown Rep. Chuck Carpenter Rep. Lisa Naito Rep. Eileen Qutub Rep. Bob Tiernan

STAFF PRESENT: Milt Jones, Committee Counsel Sarah Watson, Committee Assistant

MEASURES HEARD: SB 79 - Public Hearing SB 362 - Public Hearing SB 373 - Public Hearing and Work Session SB 422 - Public Hearing and Work Session SB 424 - Public Hearing and Work Session

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.

TAPE , SIDE A

004 REP. BROWN: Calls the meeting to order at 8:32 am

PUBLIC HEARING ON SB 79

(SB 79 repeals retroactive application of statute providing that domestic relations property judgment ordering future payment of money does not expire until 10 years after date on which future payment is due.)

Witnesses: Frank Brawner, Oregon Bankers Association Kevin Hanway, Oregon Land Title Association Rob Lowe, Oregon Land Title Association Lawrence Gorin, Attorney John Ellis, Support Enforcement Division

016  $\,$  FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Testifies and submits written testimony in support of SB 79. (EXHIBIT A)

041 REP. NAITO: How will the reinstatement work?

044  $$\tt BRAWNER: No one, last session, believed that we were going to open up these judgments.$ 

054 KEVIN HANWAY, OREGON LAND TITLE ASSOCIATION: Testifies in support of SB

063 ROB LOWE, OREGON LAND TITLE ASSOCIATION: Testifies in support of SB 79.

Discusses claims of judgments that were revised under the bill from last session.

068 CHAIR PARKS: Do you do a claim analysis when a claim like that comes up?

070 LOWE: There is an analysis of any claims that comes in. Discusses that

they are interested whether or not there is a lien on property that will take priority over a buyer, or lender who's trustee we've insured. We have

denied claims on the basis that it is our legal opinion, collectively, that

the retroactively is unconstitutional.

078 CHAIR PARKS: I would like a copy of that. (inaudible statements)

083 REP. BROWN: Discusses that the committee dealt last session with the Hernandez case and how it related to SB 251.

086 LOWE: We have innocent purchasers of property who think that the property is free and clear, when it isn't. If the retroactively is legal, it will put us in the position of having to pay someone else's support obligation on behalf of the insured, which isn't appropriate.

091 REP. NAITO: Would there be cases where the new purchaser would now suddenly have a lien?

095 LOWE: If the retroactivity were upheld on appeal, it would be our obligation to pay under the title insurance policy if it was a valid lien with priority.

098 CHAIR PARKS: (inaudible)

099 LOWE: When we did the insurance, it wasn't of record. We have thousands of liens that have been replaced on properties which at the time of the transaction didn't exist because of the ten year rule.

102 MILT JONES, COMMITTEE COUNSEL: In the absence of title insurance, would

the new purchaser be obligated?

103 LOWE: Yes, that happens often, explains.

106 CHAIR PARKS: Some of these legal issues go over my head. I would feel more comfortable if we had the benefit of that opinion in writing.

111 LAWRENCE GORIN, ATTORNEY: Testifies and submits written testimony in opposition to SB 79. (EXHIBITS C, D) Gives alternative proposal.

138 REP. NAITO: Did the original law effect child support obligations as well as spousal support, or just spousal support?

141 GORIN: This bill had no effect on child support judgments. Discusses and explains SB 79 and how it would be put into effect. Discusses the ten year rule.

160 REP. NAITO: This is in the way of property division upon a divorce. You are proposing rather than to undo what we did last session, we let the third party off of the hook, so the lien wouldn't be effective but the judgment would be retroactive?

167 GORIN: The lien will have expired, so there isn't any lien, explains. The lien would not be effective on property that was owned by the judgment/debtor, prior to the effective date of 1995 act. Discusses Hernandez case and proceedings, EXHIBIT D.

196 CHAIR PARKS: Was there a written opinion of that case?

197 GORIN: Yes, I will get a copy to the committee. (submits EXHIBIT D)

205 REP. NAITO: What about someone who might have gone through bankruptcy and not discharged this, because they thought the lien had expired. It would not be listed in the bankruptcy, I think that is a problem.

211 CHAIR PARKS: Asks about an intentional non-listing in a bankruptcy because the person thought it was no longer enforceable and what would happen in that case?

217 REP. NAITO: Under the original bill, it would seem that the judgment would stay expired. Under your proposal, the judgment would continue, and the lien would not be enforceable. What about a judgment/debtor who had not listed this in a bankruptcy proceeding, believing that it was done with? Under your proposal, the judgment would be reinstated?

226 GORIN: I don't know. There has been a substantial revision in the bankruptcy laws as they pertain to property division judgments, explains.

236 BRAWNER: The new bankruptcy act will not change the effect of not listing something because you thought it had expired, explains. Never once

last session, did we ever talk about breathing new life into judgments that

had expired.

249  $\,$  JOHN ELLIS, SUPPORT ENFORCEMENT DIVISION: I was part of the team that discussed this topic last session. It was clear that we were not breathing

any new life into judgments.

## PUBLIC HEARING ON SB 362

264 MILT JONES, COMMITTEE COUNSEL: SB 362 provides immunity from civil actions to architects, certified inspectors, certified building evaluators and engineers who provide certain free services in relief effort within 60 days after declaration of state of emergency by Governor. (EXHIBIT E)

Witnesses:

Steven Kafoury, Architects Council of Oregon Clayton Vorse, Architects Council of Oregon Vicki Mclain, Building Codes Division Mike McCallum, Oregon Restaurant Association Jack Schwab, Northwest Medical Teams Doug Rawlins, Northwest Medical Teams

284 REP. JOHNSTON: I requested an amendment from Legislative Counsel that is not here. Discusses amendment.

307 STEPHEN KAFOURY, ARCHITECTS COUNCIL OF OREGON: Testifies in support of SB 362.

339 CLAYTON VORSE, ARCHITECTS COUNCIL OF OREGON: Testifies in support of SB

362.

369 CHAIR PARKS: What about the inspectors?

371 VORSE: There is a large industry in Oregon of inspectors that are certified. Their type of expertise is much more technical than an architects would be. They can inspect for structural damage and also damage to the heating or cooling system.

410 VICKI MCCLAIN, BUILDING CODES DIVISION: Testifies in reference to previous questions about inspectors. Discusses example of earthquake and requirements under ORS 455.

423 CHAIR PARKS: The inspectors wouldn't be doing it for free?

425 MCCLAIN: Our inspectors would be charging a fee. However, there are a number of people in the post-evaluator group that may be retired and would not be reimbursed. It is those people's liability that we are concerned about.

TAPE 71, SIDE A

007 MIKE MCCALLUM, OREGON RESTAURANT ASSOCIATION: Testifies and submits -2 amendments and written testimony in support of SB 362. (EXHIBITS F, G)

030  $\,$  JACK SCHWAB, NORTHWEST MEDICAL TEAMS: Testifies and submits written testimony in support of SB 362. (EXHIBIT H)

093 CHAIR PARKS: You have insurance on these people now?

DOUG RAWLINS, NORTHWEST MEDICAL TEAMS: Testifies in support of SB 362.

Currently, dentists and the few doctors we have, use their own malpractice insurance. Explains difficulties, problems, and need for the bill.

100 CHAIR PARKS: Do you have continuing legal education requirements for dentist and doctors? Doesn't a person have to do so many hours of continuing education to keep their license?

103 RAWLINS: I'm sure that is part of their certification.

105 CHAIR PARKS: Is that the same with doctors?

106 RAWLINS: We are talking about people that are recently retired that want to get involved but are reluctant because of the malpractice.

112 REP. BROWN: My concern is that poor people don't have the same standard

of care as someone else. Gives example of how a problem might come up. Why aren't lawyers included in this?

120 SCHWAB: The standard of care is a matter of personal pride. The people

that are accepted into our program are screened by us and board of Dental Examiners before they get involved. There has been very limited times when

we have had problems with the standard of care that has been provided in our program.

129 RAWLINS: In the four years that we have had this program, we have not had a problem. If the providers knew that they had a guarantee against frivolous lawsuits, they would be more willing to step forward and volunteer.

138 REP. BROWN: We aren't talking about frivolous cases. We are talking about the difference between negligence and gross negligence.

139 RAWLINS: Discusses an example that almost became a legal malpractice case for Northwest Medical Teams.

150 REP. BROWN: I understand your point, I'm also concerned about the other

people.

152 CHAIR PARKS: Discusses that these are both good amendments. If this is

good for Northwest Medical teams, then the concept is good for all medical voluntary health professionals. Rep. Johnston will prepare an amendment that covers all voluntary health professionals.

165 REP. BROWN: All health care providers will include naturopaths?

167 CHAIR PARKS: Yes.

169 REP. JOHNSTON: Discusses definition of health care provider as in ORS. 18.550. Points out that dental hygienists are not included in SB 362, but should be.

177 REP. NAITO: Are all of the other provisions the same about negligence?

184 REP. QUTUB: Does that include nonprofit organizations?

187 CHAIR PARKS: It doesn't make a distinction as to that. This applies to

the person that is a licensed health care professional, not just anyone.

189 REP. NAITO: They also can't receive any compensation.

191 MILT JONES, COMMITTEE COUNSEL: Both amendments would provide the limitation liability only when they are working under the hospices of a nonprofit organization, explains.

202 CHAIR PARKS: Discusses options for working the bill.

210 REP. QUTUB: Since there is no informed consent, there have been and could continue to be, negligence on the part of a medical practitioner in the performing of abortions, which concerns me.

217 REP. NAITO: I think this means a private nonprofit organization, but it

would cover anyone who volunteers.

221 SCHWAB: Discusses amendment and that the bill would be limited to people who voluntarily provide services to a charitable corporation as defined in statute.

228 REP. JOHNSTON: Discusses that that point is included in the -4 amendment as proposed by him.

231 CHAIR PARKS: We will not vote on this until another day.

PUBLIC HEARING ON SB 373

253  $\,$  MILT JONES, COMMITTEE COUNSEL: SB 373 requires action for damages arising out of survey to be brought within two years after injury or damage

is discovered.

Witnesses:

Steven Kafoury, Architects Council of Oregon Tyler Parsons, Land Surveyor

256 STEPHEN KAFOURY, ARCHITECTS COUNCIL OF OREGON: Testifies in support of SB 373.

291 CHAIR PARKS: Why should we put a 90 day limitation on these rather than

leave it at the two years? That is semi-retroactive application of the law.

297 KAFOURY: I don't think that it makes any difference. If you would like

to change it, that is fine.

300~ REP. NAITO: Is this a reinstatement of a cause of action, or are we cutting it off before it would be over with?

308  $\,$  KAFOURY: The person would still have another 90 days to bring a lawsuit.

311 REP. NAITO: If they are cut of prematurely.

319 TYLER PARSONS, LAND SURVEYOR: Testifies and submits written testimony in support of SB 373. (EXHIBIT I)

WORK SESSION ON SB 373

352 REP. BROWN: Discusses conceptual amendment.

361 MOTION: REP. BROWN: moves to AMEND SB 373 by deleting "the last sentence of the bill" after "Act." on page 1, line 15 of the bill.

365 REP. NAITO: That might be a problem. Explains and discusses issues.

380 CHAIR PARKS: I don't like when we make these retroactive.

383 REP. NAITO: I would agree with changing 90 days to two years.

385 REP. BROWN: I accept that as a friendly amendment.

386 MOTION REP. BROWN: moves to AMEND SB 373 by changing "90 days" to "two years" on page 1, line 17 of the bill. VOTE: Hearing no objections that amendments are ADOPTED. Rep. Tiernan is excused 389 MOTION: REP. JOHNSTON: Moves SB 373 AS AMENDED be sent to the full committee with a DO PASS recommendation. REP. QUTUB: Was there anyone opposed to the bill? 390 392 CHAIR PARKS: No one even signed up to testify. 6-0 MOTION PASSES 397 VOTE: AYE: Brown, Carpenter, Johnston, Naito, Qutub, Parks NO: None EXCUSED: Tiernan PUBLIC HEARING ON SB 422 (SB 422 allows judgment creditor to recover interest at legal rate on certain costs incurred to enforce judgment.) Witness: Jim Markee, Oregon Collectors Association 411 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Testifies in support of SB 422 TAPE 70, SIDE B 007 REP. NAITO: This is saying that you will get interest on the things listed like court fees, etc.? 008 MARKEE: Correct. The statute is very specific about what this covers. WORK SESSION ON SB 422 022 MOTION: REP. BROWN: Moves SB 422 be sent to the full committee with a DO PASS recommendation. VOTE: 5-0 MOTION PASSES AYE: Brown, Johnston, Naito, Qutub, Parks NO: None EXCUSED: Carpenter, Tiernan PUBLIC HEARING ON SB 424 (SB 424 reduces time for filing claim of exemption from execution or garnishment from 90 days to 30 days.) Witness: Jim Markee, Oregon Collectors Association JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Testifies and submits 031 proposed amendments in support of SB 424. (EXHIBIT J) 061 REP. BROWN: Is the last paragraph a procedural change? MARKEE: Yes. 062 WORK SESSION ON SB 424 065 MOTION: REP. BROWN: Moves to ADOPT SB 424-1 amendments dated 05/05/95. VOTE · Hearing no objections the amendments are ADOPTED. Rep. Tiernan is excused. REP. BROWN: Moves SB 424 AS AMENDED be sent to the full 071 MOTION: committee with a DO PASS recommendation. 5-0 MOTION PASSES VOTE: AYE: Brown, Johnston, Naito, Qutub, Parks NO: None EXCUSED: Carpenter, Tiernan 081 CHAIR PARKS: Adjourns the hearing at 9:34 am. Submitted by, Reviewed by,

Sarah Watson Debra Johnson Committee Assistant Commit

Committee Coordinator

## EXHIBIT SUMMARY:

- Α.
- в.
- с. D.
- Testimony on SB 79 Frank Brawner 2 pages Proposed Amendments to SB 79 Lawrence Gorin 1 page Testimony on SB 79 Lawrence Gorin 34 pages Proposed Amendments to SB 362 Staff 3 pages Proposed Amendments to SB 362 Mike McCallum 1 page Testimony on SB 362 Mike McCallum 2 pages Testimony on SB 362 Jack Schwab 3 pages Testimony on SB 373 Tyler Parsons 1 page Proposed Amendments to SB 424 Jim Markee 1 page Ε.
- F.
- G. Н.
- I.