

HOUSE COMMITTEE ON EDUCATION

February 4, 1993 Hearing Room E 1:30 p.m. Tapes 08 - 09

MEMBERS PRESENT: Rep. Carolyn Oakley, Chair Rep. Jim Whitty, Vice-Chair
Rep. John Meek Rep. Patti Milne Rep. John Schoon Rep. Larry Sowa Rep.
Sharon Wylie

STAFF PRESENT: Linda Sample Brown, Administrator Carolynn
Gillson, Assistant

MEASURES CONSIDERED: HJR 14 - Amends Oregon Constitution to allow
judges to teach in public institutions of higher education - PAW HB
2061 - Deletes obsolete or unnecessary references and dates in
education law - PAW

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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. [--- Unable To Translate Graphic
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TAPE 08, SIDE A

004 REP. CAROLYNN OAKLEY, chair: Calls meeting to order at 1:35 p.m.

PUBLIC HEARING ON HJR 14 Witnesses: Rep. Tom Mason David Shuman, U
of O Jim Mountain, Oregon State Bar Hans Linde, retired judge Judge Sid
Brockley, Clackamas County

008 REP. TOM MASON, District 11: This bill evolves out of the
Sawyer case involving a judge who was teaching at Southern Oregon
State College when someone objected because a college is part of the
executive branch and a judge is part of the judicial branch of
government. > This bill will allow judges to teach in state
institutions. > Teaching is not policy-making so there would not be
any conflict of interest.

040 DAVID SHUMAN, U of O Law School Professor: Article III of
the Oregon Constitution has a strict separation of powers provision and
no member of one branch of government can perform the functions of
another branch unless the Constitution explicitly says otherwise. > HJR
14 would change the Constitution for judges in the same way it was
changed for classroom teachers/legislators before. > The change would
allow an enrichment process for both judges and students.

067 REP. JOHN MEEK: Will this change the amount of time
professors teach at institutions? Wouldn't this be double-dipping?

SHUMAN: I don't think this will have any impact at all on
professor productivity. It would allow for the possibility of
judges receiving compensation for teaching.

090 REP. MEEK: Do we teach philanthropy to children in schools so
they know charity is a vital part of their character?

SHUMAN: If judges wanted to donate their services, they couldn't because the Constitution currently does not allow that. The option would be up to judges.

100 REP. PATTI MILNE: I don't see anything in the bill about full-time or part-time positions. Is it simply left wide open? Does the bill also allow judges to teach courses on a voluntary basis? I am concerned about one person receiving pay for two jobs.

REP. MASON: Most of the courses taught by judges would be evening courses. It would be beyond their usual duty during the day.

REP. MILNE: Where do we draw the line for judges getting into the teaching profession? Is the intent for judges to be guest speakers or is it your intent that judges get some additional pay?

150 REP. MASON: Judges are already teaching in the private institutions. This bill allows the state to take advantage of the talent.

160 REP. JIM WHITTY: There are courses where students would benefit if they were taught by a judge rather than a professor who had not been practicing law for sometime. Rare is the legislator who does not conduct business from their real life while serving at the Legislature. I have no problem with judges getting paid to teach.

198 JIM MOUNTAIN, Oregon State Bar: The Bar supports this proposal. > Explains how he benefited as a law student at Lewis and Clark from instruction at night by judges. > Ironic to deny this experience at the state institutions. > Most judges do it more for a honorarium or for free.

231 REP. SHARON WYLIE: Are there other professions that would benefit from this and is there any general language that would cover all situations and make it clear these are not full-time jobs with benefit packages?

REP. MASON: Keeping the language narrow is to the Legislature's advantage so there is more control.

241 REP. JOHN SCHOON: Previously, similar legislation included secondary education and this bill only applies to institutions of higher education. Did you do that deliberately?

REP. MASON: Last time I included high schools and the OEA objected. It is more applicable to higher education. Law schools will benefit the most.

271 REP. MEEK: How have we got along so far without this? How important is this issue?

SHUMAN: It is an improvement to the system.

294 HANS LINDE, retired Oregon Supreme Court Justice: The case that raised this issue concerns a judge in Medford who was teaching college students for one hour. The present separation of powers provision, Article III of the Oregon Constitution, which prevents people who have a position in one branch from doing something in another branch, prevents the Legislature from having any policy on this issue one way or the other. > What makes it necessary to amend the constitution, if

this bill should pass, is the fact that the executive branch is responsible for the course (grades papers and gives course credit). > There is already a special amendment allowing teachers to serve as legislators. > The Constitution has been interpreted to disqualify judges from teaching by virtue of the separation of power provision. > Without this amendment the other policy questions cannot even be addressed. > Amendment does not address any of the other policy issues that have been raised. It only gets rid of the obstacle.

392 REP. MEEK: Is there a separation between teaching and guest lecturing?

LINDE: In my view, yes. Lecturing as a guest is not performing an executive branch responsibility.

427 JUDGE SID BROCKLEY, Clackamas County Courts and adjunct professor at Willamette University: > Explains the logistics of being a judge who resides in Portland and teaching a class at the university in Salem on Wednesday nights and preparing for the next class on Sunday. > Teaching the class is a tremendous benefit to the students and to myself. > It does not make any sense for the state schools not to benefit from this when the private schools do. > Double dipping should not be a concern because the money earned pays for the expenses of teaching the class.

LINDE: Under the constitution as it stands, Judge Brockley could not even teach the class for free. The money is not the issue.

The committee received a letter from the State Judicial Department taking no position on the bill (EXHIBIT A).

TAPE 9, SIDE A

WORK SESSION ON HJR 14

039 MOTION: Rep. Whitty moves HJR 14 to the floor with a be adopted recommendation.

MOTION PASSED: In a roll call vote, the motion carries, with Rep. Meek voting NO. CARRIER: Rep. Mason

PUBLIC HEARING ON HB 2061 Witnesses: Kathleen Beaufait, Legislative Counsel

050 KATHLEEN BEAUFAIT, Legislative Counsel: Reviews language in two proposed amendments for the bill: HB 2061-1 (EXHIBIT B) and HB 2061-2 from OSB A (EXHIBIT C). > Explains there will be more amendments from the Department of Education.

WORK SESSION ON HB 2061

100 MOTION: Rep. Whitty moves to adopt the HB 2061-1 and HB 2062-2 amendments. MOTION ADOPTED: There are no objections.

108 CHAIR OAKLEY: Adjourns the meeting at 2:10 p.m.

Submitted by: Reveiwed by:

Carolynn Gillson Linda Sample Brown Assistant Administrator

EXHIBIT LOG:

A-Testimony on HJR 14 - State Judicial Department - 1 page B-Amendments
on HB 2061 - committee staff - 1 page C-Amendments to HB 2061 - OSB A -
1 pages