

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

April 7, 1993 Hearing Room 357 2:00 p.m. Tapes 67 - 68
MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim
Edmunson Rep. Tom Mason STAFF PRESENT: Carole Souvenir, Committee
Counsel Melanie Thompson, Committee Clerk MEASURES CONSIDERED: HB
2281- Evidence HB 3429 - Support orders; declares an emergency HB 3601-
Title to real property

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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 67, SIDE A

018 CHAIR BRIAN: Calls the meeting to order at 1:57 p.m.

HB 3429 PUBLIC HEARING Witnesses: Rep. Ray Baum, Dist. 58

006 REP. RAY BAUM, DIST. 58: Testifies in support of the bill.

HB 3429 - WORK SESSION

046 REP. MASON: Asks if the bill has any technical defects.

049 CAROLE SOUVENIR, COMMITTEE COUNSEL: Addresses ORS
692.180(L). Explains the statute.

067 MOTION: REP. MASON: Moves HB 3429 to the full committee with a DO
PASS recommendation. VOTE: 4-0 Motion passes AYE: Baker, Edmunson,
Mason, Brian NO: None House Committee on Judiciary Subcommittee on Civil Law
and Judicial Administration April 7, 1993 Page 2

HB 2281 - PUBLIC HEARING - Witnesses: Eugene Organ, Disabilities
Commission Lisa Dayton, Oregon Registry of Interpreters for the Deaf
083 EUGENE ORGAN, EXECUTIVE DIRECTOR, OREGON DISABILITIES COMMISSION:
Submits and reviews written testimony in support of HB 2281. (EXHIBIT A)
100 LISA DAYTON, OREGON REGISTRY OF INTERPRETERS FOR THE DEAF:
Testifies in support of HB 2281. 123 CHAIR BRIAN: Asks if the
witnesses have seen the -1 amendments. (EXHIBIT B) 125 ORGAN: Yes,
the amendments are acceptable. 133 REP. EDMUNSON: Asks how other
states handle the same problem. 135 ORGAN: Varies among states.

142 REP. EDMUNSON: Discusses the bill extends a policy already in
place.

145 ORGAN: Agrees, and states that Oregon is in the middle among other
states on this issue.

147 CHAIR BRIAN: Asks if the Commission attorney is David Powell.

149 ORGAN: He is Chair of the Commission. 151 CHAIR BRIAN:
Addresses written testimony submitted by David Powell. (EXHIBIT C)

155 REP. BAKER: Asks if anyone has been compelled by a court to provide
this kind of testimony.

157 ORGAN: Not in the state of Oregon. Not familiar with situations in

other states.

162 REP. BAKER: Gives personal example where an interpreter was used.

170 ORGAN: Addresses concern that Oregon law provides equality in all cases.

174 CAROLE SOUVENIR, COMMITTEE COUNSEL: Aware of one case, State of Oregon vs. Letterman, a 1980 case. Explains the case and the issue. Addresses the -1 amendments, explains the amendments would limit the privilege to those communications which are already privileged.

198 REP. EDMUNSON: Asks why the principle speech communication problem dropped from the 1 amendments.

204 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains it is a limitation on what a sign language person does.

210 REP. EDMUNSON: Clarifies his question. House Committee on Judiciary Subcommittee on Civil Law and Judicial Administration April 7, 1993 - Page 3

213 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains the change was to clarify the speech was actually for hearing rather than physically speaking. 215 REP. EDMUNSON: Should be edited to grant privileges to those who use interpreters to dispute, etc. 223 REP. BAKER: Asks if the committee could add lines 16-19 to the original HB 2281.

227 CAROLE SOUVENIR, COMMITTEE COUNSEL: Addresses a problem with doing that. Suggests using the -1 amendments and add the words "physically speaking".

238 REP. EDMUNSON: Asks if counsel has looked at Mr. Powell's point on case law constitutional provisions other than the evidence code.

241 CAROLE SOUVENIR, COMMITTEE COUNSEL: Not aware of any other privileges outside the evidence code that would apply. 249 REP. EDMUNSON: Asks about non-English speaking persons who use interpreters to convey - testimony.

263 DAYTON: Believes they would benefit from the same protection as well.

271 CHAIR BRIAN: Addresses the -1 amendments and possible change in language relating to non English speaking individuals. 279 ORGAN: Addresses the definition of a disabled person originally included non-English speaking persons, purposely left it out of the bill.

HB 2281 - WORK SESSION

308 MOTION: REP. EDMUNSON: Moves to AMEND the -1 amendments on line 8, by adding after the word "impairment" the words ", or cannot communicate in the proceedings because of a physical speaking impairment."

VOTE: Hearing no objection the amendments are adopted. All members are present.

322 MOTION: REP. EDMUNSON: Moves to include "if not otherwise included any other privileges that might exist in statutes other than the evidence code", and adds a privilege for translators of communications

that would otherwise be privileged but conveyed by nonEnglish speaking persons. Explains reasons for motion.

347 REP. BAKER: Asks if Rep. Edmunson is addressing ORS 40.295. Asks if counsel finds any other privileges in other statutes to have them ready in LC form when the bill goes to full committee. 350 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks if the committee would rather use conceptual language or any statutorily recognized privileges. Asks the committee wants her to find them.

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357 REP. BAKER: The exceptions are very narrowly drawn, don't want to expand them beyond the short list.

359 REP. EDMUNSON: Explains that he is not aware of any others than the evidence code.

364 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains that under ORS 40.295 there is a catchall already in place. 371 REP. EDMUNSON: ORS 40.295 is a catchall, withdraws part of the motion relating to privileges and other statutes, keeps part of the motion adding a privilege for translators of communications that would otherwise be privileged but conveyed by non-English speaking persons. 390 VOTE: Hearing no objections the amendment is adopted. All members present. 391 MOTION: REP. EDMUNSON: Moves to ADOPT the HB 22§1 as amended to the full committee with a DO PASS recommendation. VOTE: 3-0 Motion Passes AYE: Baker, Edmunson, Brian NO: None EXCUSED: Mason

HB 3601 - PUBLIC HEARING Witnesses: Paul Snider, Association of Oregon Counties Edmund Duyck, Property Owner Bill Perry, Oregon Farm Bureau Mark Shipman, Attorney

416 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Does not have a position on HB 3601. Believes it is already possible to bring counties in as party defendants in suits to quiet title.

446 REP. EDMUNSON: It may or not be the case as it stands now.

454 REP. BAKER: Witnesses statements are diametricly opposed to what the effect of the bill would be.

468 BILL PERRY, OREGON FARM BUREAU: Testifies in support of HB 3601.

TAPE 68, SIDE A

036 EDMUND DUYCK, PROPERTY OWNER: Testifies in support of HB 3601. Gives personal example.

077 CHAIR BRIAN: Asks who Mr. Duyck was suing jointly with the county.

078 DUYCK: Suing the county by himself.

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079 CHAIR BRIAN: Asks if the county joined him in the suit for a long period of time.

080 DUYCK: For two years.

081 CHAIR BRIAN: Asks if the county was a named co-plaintiff with Mr. Duyck.

082 DUYCK: The county was the named defendant and agreed to be sued.

090 PERRY: Addresses aerial photo displaying disputed piece of property. (EXHIBIT D)

095 REP. BAKER: Asks if the dispute is over the road rather than the acreage.

096 DUYCK: Yes, the dispute is over the road.

098 REP. BAKER: Asks if Mr. Duyck had title insurance when the property was bought.

DUYCK: Yes.

REP. BAKER: Asks why Mr. Duyck doesn't sue the title company.

100 DUYCK: Explains why he did not sue the title company.

112 REP. MASON: Addresses a remedy dealing with a civilian property owner called the way of necessity.

127 REP. BAKER: Agrees with Rep. Mason and has used the same statute.

129 DUYCK: Explains he is providing access at a cost to the user. The county has denied him from doing so now.

157 MARK SHIPMAN, WALLACE LIEN ATTORNEY: Testifies in support of HB 3601 and submits case history of Edmund Duyck vs. Tillamook County. (EXHIBIT E) 251 CHAIR BRIAN: Asks about ORS 33.10 and 33.20 where it mentions state, municipalities, it mentions counties in a limited way, asks if the committee took this step why wouldn't they include cities, and other units of government. 267 SHIPMAN: Explains that in a sense that is what is happening just not specific. Points out pages 4 through 9 of EXHIBIT E. 293 CHAIR BRIAN: Asks if the committee had a policy decision of adding the county, should cities and other units of government be added as well. 302 SHIPMAN: Points out in Line 14 of HB 3601, the language is broadened. 321 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks if it only includes counties in Section 2. ~ .

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327 SHIPMAN: May be an oversight in drafting and could be corrected.

329 CHAIR BRIAN: Addresses Section 2, Lines 23 through 28 changes in the language. 333 REP. EDMUNSON: Asks Mr. Shipman to clarify a point of the brief regarding easements.

365 SHIPMAN: Explains that an easement is just one example, it is different in Mr. Duyck's case.

377 REP. EDMUNSON: Addresses page 7 of EXHIBIT E. Asks if the issue of a meandering river is really the issue in this case.

391 SHIPMAN: Explains it becomes one of the issues but is separate from the intent of HB 360 1.

404 REP. EDMUNSON: Asks if any authority the county has in property, flows from the state, asks if Mr. Shipman is aware of any argument that the county has an independent right.

429 SHIPMAN: Not sure.

440 REP. EDMUNSON: Explains the counties may argue they have some sovereignty.

460 PERRY: Discusses the title company aerial photo and the suggestion made by the title company to Mr. Duyck to get an easement for his road.

TAPE 67, SIDE B

034 SNIDER: Believes the bill is a procedural bill and does not effect substantive rights. The Association of Oregon Counties does not have a position on it.

044 CHAIR BRIAN adjourns the meeting at 2:58 pm.

Submitted by: Reviewed by: Melanie Thompson Anne May Committee
Clerk Committee Coordinator

EXHIBIT LOG:

A - Testimony on HB 2281 - Eugene Organ - 1 page B - -1 Amendments to HB 2281 - Legislative Counsel - 1 page C - Testimony on HB 2281 -1 Amendments - David Powell 5 pages D - Aerial photo on HB 3601 - Edmund Duyck - 2 pages E - Brief on case relating to HB 3601 - Mark Shipman - 22 pages

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