

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

May 19, 1993 Hearing Room 357 1:00 p.m. Tapes 115 - 116

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson

MEMBERS EXCUSED: Rep. Tom Mason

STAFF PRESENT: Carole Souvenir, Committee Counsel Sarah May,
Committee Clerk

MEASURES CONSIDERED: SB 285 - Relating to limited liability
companies; declaring an emergency SB 220 -
Relating to attorney trust accounts HB 2030 - Relating to attorney fees
HB 2969 - Relating to marriage

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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 ---]

TAPE 115, SIDE A

006 CHAIR BRIAN: Calls the meeting to order at 1:20 p.m.

PUBLIC HEARING ON SB 220

Witnesses: Frank Brawner, Oregon Bankers Association Bob Boivin,
Board of Governors and Public Affairs Committee

010 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 220 authorizes Supreme
court to adopt trust account overdraft notification program for
attorneys.

017 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Testifies in support
of SB 220.

071 REP. BAKER: In SB 220, Section 6, does the statute allow a
financial institution to charge for trust accounts?

075 BRAWNER: There is no law that says a bank can or cannot, it
is an individual bank option. Some banks use compensating balance
analysis,

if have a large account, it won't be charged. Other banks may charge.

090 BOB BOIVIN, BOARD OF GOVERNORS AND PUBLIC AFFAIRS COMMITTEE:
Testifies and submits written testimony in support of SB 220. (EXHIBIT
A)

WORK SESSION ON SB 220

141 MOTION: REP. EDMUNSON: Moves SB 220 TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Edmunson, Brian NO: None
EXCUSED: Mason

PUBLIC HEARING ON HB 2030

(HB 2030 Establishes criteria for awarding attorney fees in tax cases.
EXHIBIT B)

Witnesses: Steve Little, Department of Revenue Elizabeth Harchenko,
Department of Justice

162 STEVE LITTLE, OREGON DEPARTMENT OF REVENUE: In support of HB 2030 and introduces Elizabeth Harchenko.

166 ELIZABETH HARCHENKO, DEPARTMENT OF JUSTICE: Testifies in support of HB 2030. Reviews bill with amendments.

224 CHAIR BRIAN: There would be an award of attorney fees only if the tax payer prevailed?

228 HARCHENKO: On pg. 1, lines 5-7 if the court grants a refund claimed by a tax payer, or denies part of an additional assessment of tax, then the attorney fees may be awarded.

236 CHAIR BRIAN: How does Section 5 of -1 amendments, in the second sentence, with consideration to travel time, relate to length of

relationship between client and attorney?

248 HARCHENKO: If the committee is going to add Section 5, this amendment seems to be a general provision that would apply to any attorney fee

award. The standard that the Department of Justice has proposed would direct the court to consider the standing of the attorney, in determining the award. Discusses how it would affect line 21, on pg. 1, and line 27 on pg. 2.

263 CHAIR BRIAN: If it were a complex matter which required skill, the language on pg. 2, line 8 of the -1, may conflict with line 21?

268 HARCHENKO: That is possible. Another issue may be that the court does not have a travel budget, so plaintiffs and counsel are encouraged to

come to Salem when possible. 277 REP. BAKER: On pg. 1, lines 19-21 and pg. 2, lines 25-28 does the typical language about the award of

attorneys fees leave it to the
discretion of the court?

283 HARCHENKO: Correct.

WORK SESSION ON HB 2030

289 MOTION: REP. BAKER: Moves to AMEND HB 2030-1 by deleting on
pg. 2, lines 3-11.

VOTE: Hearing no objections the amendments are ADOPTED. Rep.
Mason is excused.

304 MOTION: REP. BAKER: Moves to ADOPT HB 2030 -1 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Rep.
Mason is excused.

306 MOTION: REP. BAKER: Moves HB 2030 AS AMENDED TO FULL COMMITTEE
with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Edmunson, Brian NO: None
EXCUSED: Mason

WORK SESSION ON HB 2969

Witnesses: Rep. Chuck Norris, District 57 Dan Burk, Benton County

329 CAROLE SOUVENIR, COMMITTEE COUNSEL: Provides that county
clerk solemnizing marriage may charge fee. (EXHIBIT C)

341 REP. BAKER: The -1 amendment includes a municipal court judge
and a justice of the peace.

346 CAROLE SOUVENIR, COMMITTEE COUNSEL: The reference to ORS 244 is
under the ethics reference.

349 REP. BAKER: Make sure that any judicial officer who performs a
wedding would have to report it. The terminology in the -1 amendments
on line

4, and line 22 aren't the same.

361 CAROLE SOUVENIR, COMMITTEE COUNSEL: Under ORS 244.050,
judicial officers include justice of the peaces' and municipal judges.

369 REP. BAKER: There are exceptions to the ethics code?

370 CAROLE SOUVENIR, COMMITTEE COUNSEL: Yes, the definition of
"judicial officer" is under ORS 244.050, in the government ethics
chapter.

380 CHAIR BRIAN: A \$100 fee for a judicial officer of the state would include district and circuit courts? Didn't we say this had to be while they weren't otherwise working?

393 REP. BAKER: It is on pg. 1, line 25.

394 REP. EDMUNSON: Yes, it had to be outside the courthouse and other than normal working hours. We worked on \$100 was fair fee only fair if that

included costs.

415 CHAIR BRIAN: Concerned about a clerk or judge using a public building for private money.

432 REP. CHUCK NORRIS, DISTRICT 57: There are non-preacher people who can legally perform marriages in the state of Oregon, and can legally charge if outside of regular work hours. The county clerks can legally perform marriages but can't charge. They have to perform a free service and

depend on a tip. It is only fair for clerks to be able to charge the same as a judge.

TAPE 116, SIDE A

015 CHAIR BRIAN: In the original statute we required that it be outside of normal working hours, and outside of courthouse. This bill deletes the

requirement that it take place outside of the courthouse, should that be reinstated?

022 NORRIS: If we can let the clerks do it on the same basis as the judges, that is fine.

032 DAN BURK, BENTON COUNTY: Testifies in support of HB 2969.

048 REP. BAKER: Also especially in eastern Oregon judges have to ride a circuit between 4 or 5 counties and may only be in town one day every

two or three weeks?

051 BURK: Correct, and the travel time for clerks could be several hours away. By putting this back in, it would exclude us from being able to

perform weddings at the courthouse and charge for them.

093 CHAIR BRIAN: There is an uneasiness of charging if using own time.

WORK SESSION ON HB 2969

104 REP. EDMUNSON: Would like to amend -1 amendments by deleting

line 1. The current law is \$100 gross payment, cost of travel and lodging are

all included. Support reporting to ethics commission because that will allow us to determine what the costs are. If it becomes a \$50 fee,

delete "including actual cost", so that \$50 would be net. 126 CHAIR PARKS: This would be a good way to approach the problem. But don't want to provide a huge fee for a public official performing a duty for a citizen if there are no actual expenses.

137 CHAIR BRIAN: On line 32, specifies a travel rate which might be flexible.

141 REP. EDMUNSON: Withdraws motion to move -1 amendments.

142 MOTION: REP. EDMUNSON: Moves to AMEND HB 2969 by deleting "\$100", on line 23 of pg. 1, and the rest of sentence on line 24. Then insert "\$50 plus actual cost".

149 CAROLE SOUVENIR, COMMITTEE COUNSEL: Plus actual cost?

150 REP. EDMUNSON: Yes. "\$50 plus actual cost".

156 CAROLE SOUVENIR, COMMITTEE COUNSEL: Then leave in Section 5, on line 29?

159 REP. EDMUNSON: Yes.

160 CHAIR BRIAN: Reads new lines 23-24.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

167 MOTION: REP. EDMUNSON: Moves to AMEND HB 2969 by restoring line 25.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

174 MOTION: REP. EDMUNSON: Moves to AMEND HB 2969 by including lines 2-9 of -1 amendments.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

176 CHAIR BRIAN: On line 25, as restored, should we add "clerk"?

182 MOTION: REP. EDMUNSON: Moves to AMEND HB 2969 by on line 25 of restored language, deleting "the courthouse", and inserting before "judge", "county clerk or".

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

195 REP. EDMUNSON: On -1 amendments referring to reporting to ethics committee, does that reference include expenses?

201 CAROLE SOUVENIR, COMMITTEE COUNSEL: No...

204 REP. BAKER: I'd feel better, with personal payments than cost, because would it apply if they wanted to get married in Hawaii, and take clerk

along?

208 CAROLE SOUVENIR, COMMITTEE COUNSEL: Looking at line 23 of original bill, because now this would say a personal payment not to exceed \$50

plus actual cost. Before the personal payment included the cost, so I think we should include it.

211 MOTION: REP. EDMUNSON: Moves to AMEND HB 2969 by adding "and cost" on line 6 of -1 amendment following "payments".

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Mason is excused.

215 MOTION: REP. EDMUNSON: Moves HB 2969 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Baker, Edmunson, Brian, Chair Parks
NO: None EXCUSED: Mason

PUBLIC HEARING ON SB 285

(SB 285 Establishes procedures, regulations and fees for formation and operation of limited liability companies. EXHIBIT D)

Witnesses: Bob Oleson, Oregon State Bar Don Douglas, Oregon State Bar David Culpepper, Oregon State Bar

234 BOB OLESON, OREGON STATE BAR: Testifies and submits written testimony in support of SB 285. (EXHIBIT E)

252 DON DOUGLAS, OREGON STATE BAR: Testifies and submits written testimony in support of SB 285. (EXHIBITS F,G,H,I)

284 REP. BAKER: Is a limited liability company a security?

287 DOUGLAS: It depends on the degree of management. If they are passive then it might be a security.

290 DAVE CULPEPPER, OREGON STATE BAR: The statute doesn't specifically address it, but that would be the analysis. The definition of what a

security is an investment that depends on the management of others.

Testifies and submits written testimony in support of SB 285. (EXHIBITS J,K,L)

299 DOUGLAS: The limited liability company gives the flexibility for members to participate as much or as little as they wish. As opposed to a limited partnership.

304 REP. BAKER: Any there any efforts being made to make this a uniform law across the country?

305 DOUGLAS: There are some efforts being taken. Gives examples.

WORK SESSION ON SB 285

332 MOTION: REP. EDMUNSON: Moves SB 285 TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Edmunson, Brian NO: None
EXCUSED: Mason

344 CHAIR BRIAN: Adjourns the meeting at 2:18 p.m.

Submitted by: Reviewed by:

Sarah May
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 220 - Bob Boivin - 2 pages B - Proposed Amendments to HB 2030 - Committee Counsel - 2 pages C - Proposed Amendments to HB 2969 - Rep. Parks - 1 page D - Testimony on SB 285 - Committee Counsel - 3 pages E - Testimony on SB 285 - Bob Oleson - 1 page F - Testimony on SB 285 - Don Douglas - 4 pages G - Testimony on SB 285 - Don Douglas - 1 page H - Testimony on SB 285 - Don Douglas - 30 pages I - Testimony on SB 285 - Don Douglas - 1 page J - Testimony on SB 285 - David Culpepper - 1 page K - Testimony on SB 285 - David Culpepper - 4 pages L - Testimony on SB 285 - David Culpepper - 5 pages M - Testimony on SB 285 - Software Association - 2 pages N - Testimony on SB 285 - Department of Justice - 2 pages

