

HOUSE COMMITTEE ON JUDICIARY

July 6, 1993 Hearing Room 357 1:30 p.m. Tapes 86 - 87

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Ken Baker Rep. Kate Brown
Rep. Peter Courtney Rep. Jim Edmunson Rep. Tom Mason Rep. Veral Tarno
Rep. Bob Tiernan

MEMBERS EXCUSED: Rep. Tom Brian

STAFF PRESENT: Julie Nolta, Committee Clerk Holly Robinson,
Committee Counsel Carole Souvenir, Committee Counsel

MEASURES CONSIDERED: SB 295 - Relating to adoption SB 1002 -
Relating to commercial transactions SB 256 - Relating to attorneys SB
210 - Relating to retirement benefits SJR33 - Proposing amendment to
Oregon Constitution

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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 86, SIDE A

006 CHAIR PARKS: Calls the meeting to order at 1:35 p.m.

SB 1002 - WORK SESSION

025 MOTION: REP. EDMUNSON: Moves to RECONSIDER the vote by which SB
100 2 was passed to the floor.

VOTE: Hearing no objections the motion is ACCEPTED. Rep. Brian
and Rep. Mason are excused.

029 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains -A4 conflict
amendments to be adopted. 035 MOTION: REP. EDMUNSON: Moves to ADOPT
SB 1002-A4 AMENDMENTS.

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

039 MOTION: REP. EDMUNSON: Moves SB 1002 AS AMENDED TO THE FLOOR with
a DO PASS recommendation.

CHAIR TIERNAN: Who proposed the amendment?

HOLLY ROBINSON, COMMITTEE COUNSEL: Legislative Council drafted it to resolve conflicts with HB 2730.

045 VOTE: 7-0 MOTION PASSES AYE: Baker, Brown,
Courtney, Edmunson, Tarno, Tiernan, Parks NO: None EXCUSED:
Brian, Mason

Rep. Tiernan to carry the bill.

SB 256 - WORK SESSION

055 MOTION: REP. EDMUNSON: Moves to RECONSIDER the vote by which SB 256 was passed to the floor.

VOTE: Hearing no objections the motion is ACCEPTED. Rep. Brian and Rep. Mason are excused.

059 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains -A8 amendments. (EXHIBIT B)

074 MOTION: REP. EDMUNSON: Moves to ADOPT SB 256-A8 AMENDMENTS.

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

077 MOTION: REP. EDMUNSON: Moves SB 256 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES AYE: Baker, Brown, Courtney,
Edmunson, Tarno, Tiernan, Parks NO: None EXCUSED: Brian, Mason

Rep. Tiernan to carry the bill. 122 CHAIR PARKS: Calls recess at 1:45 p.m. Re-opens meeting at 2:50 p.m.

SJR33 - PUBLIC HEARING

(SJR33 proposes constitutional amendment to prohibit person convicted of felony during the term of office or during period of time from the date of election until the first day of term of office from serving in the Legislative Assembly.)

Witnesses: Sen. Gordon Smith, District 29 Sen. Catherine Webber, District 16 Nina Johnson, Secretary of State's Office

127 SEN. GORDON SMITH, DISTRICT 29: Testifies in favor of SJR33.

158 CHAIR TIERNAN: Asks how this bill differs from a bill voted out of the committee earlier?

SEN. SMITH: Explains differences in the bills.

168 CHAIR TIERNAN: Asks about a standing felony.

SEN. SMITH: Explains a standing felony.

178 REP. MASON: Asks about a conviction with a political taint.

SEN. SMITH: Historically some people have been prevented from running for public office because of a conviction. Need to be careful about what is considered a felony.

REP. MASON: Asks which is more important: the public's right to elect who they want or the preservation of the Legislature as an institution.

SEN. SMITH: Not an easy judgement to make. Gives his personal opinion.

227 SEN. CATHERINE WEBBER, DISTRICT 16: Testifies in favor of SJR 33. (EXHIBIT C)

243 REP. MASON: States many felonies are minor offenses.

256 REP. BAKER: Asks about appeal of conviction.

SEN. WEBBER: No. Applies to the conviction itself.

REP. BAKER: Would clarify it to say "upon conviction of felony regardless of appeal filed."

SEN. WEBBER: An appeal is a separate action.

REP. BAKER: Intent is conviction irregardless of the action after that point.

277 REP. MASON: Gives historical example. Shouldn't process of election be available to anyone?

SEN. WEBBER: Bill allows you to stand for election if convicted before election. If you are removed because of conviction during office, you can run again for the next term.

312 CHAIR TIERNAN: Asks if that would encourage plea bargaining.

REP. BAKER: What prevents the House and Senate from taking care of this by rule?

323 NINA JOHNSON, EXECUTIVE ASSISTANT, SECRETARY OF STATE: Testifies in favor of SJR33 on behalf of Phil Keisling.

CHAIR TIERNAN: Aren't there driving felonies? How would that work with legislative immunity?

REP. MASON: Doesn't apply to felonies or disturbing the peace.

387 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains difference between SJR 33, HB 3660 and HJR 70. (EXHIBIT D and E)

438 CAROLE SOUVENIR, COMMITTEE COUNSEL: Typographical error needs to be deleted.

SJR33 - WORK SESSION

460 REP. EDMUNSON: Favors this bill over HB 3660. Gives reasons.

REP. BAKER: Agreed with Rep. Mason's comments regarding political speech.

TAPE 87, SIDE A

057 CHAIR TIERNAN: Is there anything in the other bills that need to be in this one?

SB 210 - PUBLIC HEARING

Witnesses: Bob Andrews, Legislative Liaison, PERS Carl Myers, Oregon State Bar Clark Williams, Retirement Plans

082 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 210 permits a spouse in a divorce proceeding, annulment or separation to reach the benefits

provided under the Public Employees' Retirement System (PERS), other public employer retirement plan or deferred compensation plans of a public employer.

093 BOB ANDREWS, LEGISLATIVE LIAISON, PERS: Testifies in favor of SB 210 . 144 CHAIR TIERNAN: If a payee chose not to retire, could the spouse elect to receive the benefit at age 55?

ANDREWS: Explains when the alternate payee is eligible to draw benefits.

CHAIR TIERNAN: If one pulls out before the other has retired, isn't the payee's interest and potential for future income reduced?

175 ANDREWS: Doesn't have actuarial formula to answer. Describes ownership on the part of the alternate payee which no longer belongs to the

member.

CHAIR TIERNAN: Asks about the members' plan options.

ANDREWS: Amount of residual in the account will determine which benefit calculations may be available.

199 CARL MYERS, LEGISLATIVE CONSULTANT, OREGON STATE BAR: Testifies in favor of SB 210.

219 ANDREWS: Continues testimony.

237 REP. BAKER: Asks about alternate payee's options.

ANDREWS: Continues testimony. Reviews sections of the bill.

268 REP. BAKER: Why is there is any financial impact?

ANDREWS: Explains the \$932,379 fiscal impact in the 1993-95 biennium and the \$377,608 impact in the 1995-97 biennium.

REP. BAKER: Why is there a cost to set it up now?

ANDREWS: We do not function under federal Qualified Domestic Relation Order (QUADRO) requirements. Do not maintain separate accounts for alternate payees. Largest cost will be setting up data software for doing that.

REP. BAKER: What are costs over and above that?

ANDREWS: Calculations for separation, additional estimate activity and record keeping.

324 REP. BAKER: How much in trust funds do you administer?

ANDREWS: About \$15 billion. But we are on defined spending limitation.

337 CHAIR TIERNAN: Would these dollars come from employer contributions or general fund?

ANDREWS: Neither. There is no impact on the PERS trust or any employers. Impact comes from earnings of the trust, some of which could not be distributed. CHAIR TIERNAN: Everything in the trust comes from employer

contribution. Everything made on the interest would lower what the employer would have to pay ultimately.

ANDREWS: \$300,00 on an ongoing basis. There may be other offsets of savings. It impacts trust income from other sources.

365 REP. MASON: Clarifies cost of \$1.2 million.

ANDREWS: Restates fiscal impact for the next two bienniums.

REP. MASON: Doesn't see system as being broken and this seems like a large amount of money.

397 MYERS: Continues testimony.

TAPE 86, SIDE B

022 REP. BROWN: How does this impact the current or future spouse?

MYERS: Explains options that a judge could order.

045 CLARK WILLIAMS, RETIREMENT PLANS: Testifies in favor of SB 210.

087 MYERS: Amount in the non-member's account does not change because of age. Discusses purpose of the bill regarding a divorced couple.

096 CHAIR TIERNAN: Discusses payment from the PERS trust fund if the member dies.

WILLIAMS: Discusses payment if the alternate payee dies first.

107 REP. MASON: Disagrees.

132 REP. BROWN: Pension is considered a marital asset. Is not accessible to the court after a divorce settlement is final. Discusses current

PERS system regarding divorce and purpose of the bill.

REP. BAKER: Can do this on private and federal pensions. Is in favor of moving PERS into this system.

155 CHAIR TIERNAN: Who pays for the ongoing administration?

WILLIAMS: The bill allows PERS to charge the cost of the division against the account.

CHAIR TIERNAN: Who does that go to and how it is assessed?

WILLIAMS: PERS addresses that. Discusses the fact that nothing is done until the person reaches retirement.

178 CHAIR TIERNAN: Asks how many retired PERS members are in the state.

ANDREWS: 62,000.

CHAIR TIERNAN: If half were divorced next year, that number doubles?

ANDREWS: Yes.

CHAIR TIERNAN: Where does the ongoing administration come from?

187 WILLIAMS: Bill will not affect those currently retired. Explains who will be affected.

CHAIR TIERNAN: How many are in that class?

ANDREWS: Doesn't know.

198 MYERS: Discusses court fees involved in divorce proceedings which

could be avoided with the implementation of SB 210.

WILLIAMS: This procedure happens everyday in the private sector.

225 CHAIR TIERNAN: All the money comes from the taxpayers, wants to know exactly what this is going to cost.

ANDREWS: There would be no additional cost to employers.

CHAIR TIERNAN: Where would the money come from?

ANDREWS: From the earnings.

CHAIR TIERNAN: If the money wasn't spent, the earnings would go back into benefits.

248 ANDREWS: Explains three-way distribution of the money.

WILLIAMS: Summarizes testimony.

267 CHAIR TIERNAN: How are the PERS divorces settled?

MYERS: Explains how PERS accounts are a major impediment to settling divorces. SB 210 expedites settlements and judges are in favor of it.

298 REP. BAKER: It is expensive to get this type of a divorce done.

SJR33 - WORK SESSION

317 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains incorporation of provisions of HJR 70 into the bill. 340 MOTION: REP. EDMUNSON: Moves to ADOPT SJR33 CONCEPTUAL AMENDMENTS as stated by Counsel.

VOTE: Hearing no objections the amendments are ADOPTED. Representatives Brian, Mason and Parks are excused.

352 MOTION: REP. EDMUNSON: Moves SJR33 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Courtney, Edmunson, Tarno, Tiernan NO: None EXCUSED: Brian, Mason, Parks

SB 295 - WORK SESSION

391 REP. EDMUNSON: Interested in how this bill will deal with Oregon based adoption agencies.

REP. BAKER: Discusses issues concerning this bill with adoption and CSD, etc.

416 PEGGY RABIN: Discusses Parental Kidnapping Prevention Act (PKPA) and the full faith and credit section.

443 REP. EDMUNSON: Asks about a child with no home state.

RABIN: Explains basis of jurisdiction under the PKPA.

REP. EDMUNSON: Refers to the Holt Agency who arranges for adoptions in Asian countries for families in Oregon. Asks where jurisdiction is.

467 RABIN: Holt has not identified any problem with the bill. They are licensed in Oregon but doesn't know about other states.

TAPE 87, SIDE B

024 REP. BAKER: Discusses other states' policy of consent and open adoption which causes people to file Oregon adoptions.

047 REP. EDMUNSON: Asks if someone from Holt can comment on the bill.

051 JENNIFER BALL, HOLT AGENCY: Holt is licensed in other states. This situation rarely concerns or affects Holt.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Refers to p. 5 of the A-9 amendments. (EXHIBIT F) Lines 29 and 30 would make the current statute concerning penalties for violation of Section 3 to also apply to Section 4 which would be the new advertising section. REP. BAKER: So it would be a Class C felony?

CAROLE SOUVENIR, COMMITTEE COUNSEL: Yes.

REP. BAKER: Thought it was a Class C misdemeanor.

077 REP. BROWN: What is it currently?

CAROLE SOUVENIR, COMMITTEE COUNSEL: Cites new subsection 4 on p. 5.

085 REP. BAKER: Discusses felonies for "selling" babies, or illegal adoptions. Should advertising also be a felony? Would recommend that it be a Class A misdemeanor.

MOTION: REP. BAKER: Moves to AMEND SB 295-A9 AMENDMENTS by changing the Class C felony to a Class A misdemeanor in Section 4, on p. 5, line 29.

VOTE: Hearing no objections the amendments are ADOPTED. Representatives Brian, Courtney and Parks are excused.

102 REP. BAKER: Need to discuss prohibition on advertising as a policy statement. Discusses advertising for finding or delivering babies.

Can't get to that issue with out of state attorneys or agencies.

120 REP. MASON: What is the alternative? Will the adoptions occur? Discusses policies and qualifications of adoption agencies.

REP. BAKER: Discusses an example of an out of state adoption and the

chances of abuse.

CHAIR TIERNAN: Someone from out of state couldn't advertise for adoptions in The Oregonian?

161 REP. MASON: But we are giving these agencies a monopoly to do it.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses language on p. 5, line 17 where we are deleting "by another person."

181 REP. BROWN: Concerned about making it a crime to advertise in that it might discourage people from adoption. How would we prosecute

Californians?

CHAIR TIERNAN: Has no problem taking out advertising language. What is the danger? What is the amendment meant to get at?

198 REP. EDMUNSON: Points out problems in the bill with the free speech issue. Not comfortable with Section 3.

216 MOTION: REP. BAKER: Moves to AMEND SB 295 by deleting lines 21-27 on line 5 and restore original language on line 29.

VOTE: Hearing no objections the amendments are ADOPTED. Representatives Brian, Courtney and Parks are excused.

238 MOTION: REP. BAKER: Moves to ADOPT SB 295-A9 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. Representatives Brian, Courtney and Parks are excused.

241 MOTION: REP. BAKER: Moves SB 295 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES AYE: Baker, Brown, Edmunson, Mason, Tarno, Tiernan NO: None EXCUSED: Brian, Courtney, Parks

252 CHAIR TIERNAN: Adjourns the meeting at 3:23 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to SB 1002 - 1 page B - Proposed amendments to SB 256 - 1 page C - Testimony on SJR33 - Sen. Catherine Webber - 1 page D - Bill relating to SJR33 - Committee Counsel - 2 pages E - Bill relating to SJR33 - Committee Counsel - 1 page F - Proposed amendments to SB 295 - 12 pages