

HOUSE COMMITTEE ON RULES AND REORGANIZATION Subcommittee on Rules

March 8, 1993 Hearing Room E 1:30 p.m. Tapes 6 - 7

MEMBERS PRESENT: Rep. Fred Girod, Chair Rep. Lonnie Roberts Rep. Dave McTeague Rep. Cedric Hayden

VISITING MEMBER: Rep. Michael Payne

STAFF PRESENT: Adrienne Sexton, Committee Administrator Kenneth Brady, Committee Clerk

MEASURES CONSIDERED: HCR 3 - Proclaims month of March 1993 to be Oregon Women's History Month

HJR 22 - Requires legislative approval before administrative rules take effect

WITNESSES: Tracy Spillman, HCR3 Steve Lanning, HCR3 Kay Bower, HCR3 Dave Heynderickx, HJR 22

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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 6, SIDE A

002 REPRESENTATIVE FRED GIROD, SUBCOMMITTEE CHAIR: Convenes meeting at 1:35 p.m.

PUBLIC HEARING - HCR3

006 TRACY SPILLMAN, REPRESENTATIVE NANCY PETERSON'S OFFICE: Speaks in support of HCR3.

025 STEVE LANNING, OREGON AFL-CIO: Speaks in support of HCR3. -Submits written testimony (EXHIBIT A).

040 KAY BOWER, CHEMEKETA COMMUNITY COLLEGE: Speaks in support of HCR3.

077 GIROD: Closes hearing on HCR3. -Opens work session on HJR 22.

WORK SESSION - HJR 22

082 ADRIENNE SEXTON, COMMITTEE ADMINISTRATOR: Explains HJR 22 as it is now, with -5 amendments. -Amendments (EXHIBIT B).

121 REPRESENTATIVE LONNIE ROBERTS: Asks for clarification on page 1A, line 20J. -Does this mean the agency can run a rule for six

months before the legislative
look at it?

committee takes a

137 DAVE HEYNDERICKX, LEGISLATIVE COUNSEL: Explains the
difficulty in reviewing proposed rules. Rules must be reviewed as
adopted rules.

162 ROBERTS: Repeats question.

168 HEYNDERICKX: No. It could be suspended the first day.

171 ROBERTS: How are you going to address the general public? The
people who know whether rules are good or not.

187 HEYNDERICKX: There are no provisions in this bill for that.

191 ROBERTS: If the public isn't aware, then this is worthless.

196 SEXTON: Notes that HB 2262 would address this issue.

210 ROBERTS: I would like parts of HB 2262 to be included in HJR 22.
-Asks what HB 2262 specifically addresses.

232 SEXTON: Notes how HB 2262 affects temporary rules. -HB 2262
provides more adequate notice to the public. -HJR 22 provides the
reviewing process.

256 ROBERTS: Both are needed together.

260 HEYNDERICKX: HB 2262 primarily helps people get the notice
earlier.

291 REPRESENTATIVE DAVE MCTEAGUE: How often have you found rules that
were outside the agencies' scope of authority?

312 HEYNDERICKX: About 2 or 3 percent.

316 MCTEAGUE: What happens?

320 HEYNDERICKX: Usually, the agency caves in and changes it.

325 MCTEAGUE: When the public asks Legislative Counsel for a review
of a rule, what happens?

330 HEYNDERICKX: Usually, the people ask about rules that have already
been reviewed.

332 MCTEAGUE: Do you have to sign for a rule?

336 HEYNDERICKX: Describes the process.

367 MCTEAGUE: So, Legislative Counsel isn't there to approve or
disapprove?

372 HEYNDERICKX: Correct.

388 MCTEAGUE: If an agency enacts a rule that isn't in their power,
can't they be held accountable in
court?

393 HEYNDERICKX: People can always challenge a rule judicially.

404 MCTEAGUE: What is this proposed committee supposed to look for when they review rules?

412 HEYNDERICKX: We do it based on past court cases.

426 MCTEAGUE: Under the HJR 22 proposal, even rules that are within the power of an agency could be overturned. -Gives examples.

TAPE 7, SIDE A

033 MCTEAGUE: What would be the status of a rule that is cancelled by the proposed committee under HJR 22?

044 HEYNDERICKX: This wouldn't affect a law passed by the legislative assembly.

053 MCTEAGUE: Notes page 2 of amendments to HJR 22. -Could agencies try the rule over again a little differently?

066 HEYNDERICKX: They could try again.

067 MCTEAGUE: Until they find one that works?

068 HEYNDERICKX: Correct.

070 MCTEAGUE: This proposed committee could reject a rule for any reason?

072 HEYNDERICKX: Correct. -If there's no review, then there needs to be a standard of "scope and intent."

088 MCTEAGUE: Notes problems that could lead to "mischief" with HJR 22.

118 ROBERTS: I don't think the intent of HJR 22 has anything to do with legislation. Only with administrative rules.

130 GIROD: Opportunities for mischief? What about the trigger we've proposed?

136 MCTEAGUE: It could be done anyway.

143 GIROD: What could be changed here for you?

147 MCTEAGUE: Suggests language to make the standard for reviewing the same as as that used by Legislative Counsel. Rules must be within scope and intent of enabling legislation.

162 SEXTON: Notes page 1, line 20F-20H.

174 MCTEAGUE: The standard should be written into the Constitution with the creation of this committee.

179 GIROD: What if the rule has a devastating effect but still falls within the scope?

181 MCTEAGUE: Call a special session.

190 GIROD: Calls recess at 2:20 p.m. -Reconvenes meeting at 2:31 p.m.

197 ROBERTS: Asks about -5 amendments, 1A, line 20K . . . doesn't that mean that the rule's already in effect?

212 HEYNDERICKX: It deals with adopted rules, not with proposed rules.

228 ROBERTS: Do agencies have to wait for six months after Legislative Counsel okays a rule?

240 HEYNDERICKX: No. HJR 22 will not affect that either.

255 ROBERTS: If it's a bad rule, and it takes six months to address it, then maybe it would be outdated by that time.

271 HEYNDERICKX: It wouldn't take six months.

278 ROBERTS: If constituents asked me to challenge a rule, how would I do that?

286 HEYNDERICKX: Under HJR 22, you could ask the committee to review it.

303 MCTEAGUE: Point of order: have -5 amendments been adopted?

315 GIROD: No.

317 MCTEAGUE: I have a problem creating a legislative body which can repeal rules adopted by the entire body. -Suggests amendment, line 20N, 1A . . . "if it is found to be outside of the enabling legislation . . ." 368 MOTION: REP. ROBERTS moves -5 amendments.

374 MOTION: REP. MCTEAGUE moves his amendment to -5 amendments.

381 REPRESENTATIVE CEDRIC HAYDEN: We'd have to go back to Legislative Counsel again, just to find out if it's within the scope and intent.

423 VOTE: In a ROLL CALL VOTE: AYE: Rep. Hayden, Roberts. NAY: Rep. McTeague, Watt, Chair Girod.

428 GIROD: Motion for amendment to the amendments fails.

435 VOTE: In a ROLL CALL VOTE: AYE: Rep. Hayden, Roberts, Chair Girod. NAY: Rep. McTeague, Watt.

436 GIROD: Calls a recess. -Calls to order at 2:52 p.m.

444 GIROD: Motion to amend HJR 22 with -5 amendments passes.

450 MOTION: REP. ROBERTS moves that HJR 22, as amended, be sent to the full committee with a DO PASS recommendation.

460 VOTE: In a ROLL CALL VOTE: AYE: Rep. Hayden, Roberts, Watt, Chair Girod. NAY: Rep. McTeague.

466 GIROD: HJR 22 passes. -Adjourns meeting at 2:55 p.m.

Submitted by

Reviewed by

Kenneth Brady

Administrator

Adrienne Sexton Clerk

EXHIBIT LOG:

A - Testimony on HCR3 - Steve Lanning - 2 pages B - Amendments to
HJR 22 - Staff - 3 pages