

SENATE JUDICIARY
COMMITTEE

April 5, 1993 Hearing Room C
1:00 p.m. Tapes 85-87

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Gordon Smith
 Sen. Bob Shoemaker, Vice Chair
 Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Rasmussen

VISITING MEMBERS: Rep. Markham
 Rep. Girod
 Sen. Bryant

STAFF PRESENT: Karen Quigley, Committee Counsel
 Kate Wrightson, Committee Coordinator
 Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing on HJR 22, SB 390, SB 391, SB 889.

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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.

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TAPE 85, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:10 p.m.

PUBLIC HEARING

HJR 22: Proposes constitutional amendment to allow legislator to request review of administrative rule within 12 months after agency adopts, amends or repeals rule.

WITNESSES:

REPRESENTATIVE MARKHAM, DISTRICT 46
REPRESENTATIVE GIROD, DISTRICT 30
CINDY BECKER, EXECUTIVE DEPARTMENT
ELIZABETH HARCHENKO, DEPARTMENT OF JUSTICE
DON SCHELLENBERG, OREGON FARM BUREAU
JOANN HATHAWAY, BENTON COUNTY FARM BUREAU
JON STUBENVOLL, OSPIRG
BRUCE ANDERSON, OREGON HOME BUILDERS ASSOCIATION

008 REP. MARKHAM, DISTRICT 46: Testifies in support of HJR 22.
- Agencies in habit of holding public hearing and then running over
the public when it comes down to adopting a rule (example LCDC and
Water Resources).

072 REP. FRED GIROD, DISTRICT 30: Submits and reviews written testimony
in support of HJR 22.
- My sub-committee modified the original form of HJR 22 and feel
that its very workable in present form.
- Do you want the Legislative Council Committee to have the right
to say no on bad agency policy and have it stick?
- Only 13 negative votes on the House floor

097 SEN. WEBBER: Was there any discussion in the House about the
separation of powers issue in the Federal Constitution?

GIROD: The question wasn't the state constitution level with the
separation of powers. It has to be in the form of the constitutional
amendment.

104 SEN. WEBBER: I just want to know if it was discussed or not. There
may or may not be an issue there and wouldn't want to find out later that
there is a Federal Constitutional issue.

GIROD: I wasn't aware of it.

108 SEN. HAMBY: I was wondering about the definition of
Administrative Rule. Was there any legislative intent to cover all internal
directives as well?

GIROD: It will be implemented by Joint Legislative Council Committee.
- Council can decide if they want to hear internal procedures or
not.
- Administrative Rules reviewed, under the new engrossed HJR 22,
would be only those that a Legislator pulls.

125 MARKHAM: Senator Hamby, you are referring to things that don't go
to public hearing?

SEN. HAMBY: I think internal directives do.

135 MARKHAM: I think the big question is what do you do if there's a
bad piece of agency policy.

SEN. HAMBY: I understand your intent behind it.

139 CHAIR SPRINGER: I have a question relating to your definition of
rule
and state agency as to whether or not an Executive Order would be
affected?

GIROD: I would think that it would come under separation of powers,
but
I'm not a lawyer.

157 DON SCHELLENBERG, OREGON FARM BUREAU: Submits and reviews
written
testimony in support of HJR 22. (EXHIBIT D)

200 JOANNE HATHAWAY, BENTON COUNTY FARM BUREAU: Testifies in support of
HJR
22.
- Government is out of control
- This bill would help to restore the publics' belief in
government.

239 CINDY BECKER, EXECUTIVE DEPARTMENT: Testifies in opposition to HJR
22.

300 ELIZABETH HARCHENKO, DEPARTMENT OF JUSTICE: Submits and reviews
written
testimony in opposition to HJR 22. (EXHIBIT B)
- In response to Chair Springer's question, yes, Executive Orders
could come under review.
- The current power of the Legislature is to govern the rule making
process through the statutes.
- There is Judicial Review for people to challenge administrative
rules that they feel are unconstitutional or beyond scope of agency
authority.

359 SEN. G. SMITH: From your perspective, is there any thing we can do
that
would be less intrusive than this measure, which might put some
malleability into administrative rule making?

HARCHENKO: HB 2262, which has been introduced and sponsored by the
Secretary of State, attempts to improve the public input portions of
the
administrative rule making process.
- Agencies sometimes feel constrained by Federal mandates.

407 SEN. G. SMITH: Do you know the disposition on that bill Mr. Chair?
Is
that going to wait depending on the outcome of this bill?

CHAIR SPRINGER: I'm not even sure where that bill is.

409 HARCHENKO: It's still in the House Rules Committee.
- If there was good management information put out by each agency
then some informed decisions could be made towards said problems.

TAPE 86, SIDE A

006 SEN. WEBBER: The bill you're talking about will make some change
in
input, but it still won't require agency to have responsibility
pertaining to the guaranteeing of hearings. Are there any other states
guaranteeing that the public will be listened to?

HARCHENKO: There are a number of models used in different states. Most
have a model where agencies are required to do rule making on the
record.

- In Oregon it wasn't possible to establish a standard for when it
would be appropriate to require the use of an advisory board for
major rule making. Ended up with a recommendation in bill saying
that whenever appropriate agencies should use advisory committees.

031 SEN. WEBBER: Does the advisory committee do a written report?

HARCHENKO: I don't think there is written formal report other than a
record of the votes.

042 JON STUBENVOLL, OSPERG: Testifies in opposition to HJR 22.
- Citizens will have less ability to have impact on process if
passed
- It will just add another process (loop) for citizens to go
through.

064 BRUCE ANDERSON, OREGON HOME BUILDERS: Testifies in support of HJR 22.
- Poorly written rules and use of subjective and vague language

SB 390: Modifies procedures concerning manufactured dwelling and
floating
home space tenants objecting to substantial modification of rental
agreement.

SB 391: Modifies termination of tenancy of rental space for
manufactured
dwellings, residential vehicles and floating homes.

WITNESSES:

EMILY CEDARLEAF, MULTIFAMILY HOUSING COUNCIL
RON SCHMIDT, JANTZEN BEACH FLOATING HOMES ASSOCIATION
ARDYTH BADGER, OSTA
DARIN HONN, OREGON STATE BAR
DAVID NEBEL, OREGON LEGAL SERVICES

MANUFACTURED HOUSING COMMUNITIES OF OREGON
SALLY HARRINGTON
CHUCK CORRIGAN
JOHN BRENNEMAN

098 EMILY CEDARLEAF, MULTIFAMILY HOUSING COUNCIL: Submits and reviews written testimony and proposed amendments in support of SB 390 and SB 391.
(EXHIBIT G, M)

230 SEN. HAMBY: In reading Sunday's Oregonian there was a column by Margee

Poulet, which distressed me. Your thoughts on it.

CEDARLEAF: In a residential tenancy the landlord could do a For Cause notice. In a Mobile Home park the tenant owns the structure, not the landlord. Landlord could give notice to clean only the exterior.

248 SEN. HAMBY: It sounded as if the owner was between a rock and a hard place.

251 CEDARLEAF: The landlord does have rights. The average eviction in residential tenancy is 27 days.

263 CHAIR SPRINGER: These amendments are an effort to get everyone together and you suggest that everybody's happy with these amendments?

265 CEDARLEAF: Everyone is not entirely happy. There was give and take. There are people who have not signed on to this.

280 ARDYTH BADGER, OSTA: Submits and testifies in support of SB 390 and SB 391. (EXHIBIT J)
- Gives background on coming up with above mentioned amendments

313 CHAIR SPRINGER: So you've had a chance to participate in these latest rounds of meetings and you're satisfied with the results?

317 BADGER: Yes. They'll help a lot.

324 RON SCHMIDT, JANTZEN BEACH FLOATING HOMES: Submits and reviews written testimony in support of SB 390 and SB 391. (EXHIBIT K)

TAPE 85, SIDE B

003 SCHMIDT: Continues testimony on SB 391.

068 DAVID NEBEL, OREGON LEGAL SERVICES: Submits written testimony in support of SB 390 and SB 391. (EXHIBIT O, P)

070 CHAIR SPRINGER: Have you seen the latest set of amendments offered?

NEBEL: I've seen the SB 390-A2 amendments. I'm speaking to the bill as amended. I'll speak mainly to SB 391.

188 SEN. G. SMITH: If a landlord decides to go out of business he has
to give a years notice. Is that a year from the end of each lease or from any point in the life of a park?

NEBEL: It would be a years notice at any time.

198 DARIN HONN, OREGON STATE BAR: Submits and reviews written testimony
on SB 391. (EXHIBIT Q)
- Speaking towards Section 1

318 CHAIR SPRINGER: You may alsowant to look at the amendments.

HONN: I don't think changes with respect to term leases from month-to month tenancy are addressed at all.

329 SEN. G. SMITH: How did you deal with David's remark that if a
landlord wants to upgrade property how does he do that?

HONN: The landlord can regulate the sale of Mobil Homes within the park.
Each rental agreement includes the terms governing the tenant's right to sell the home on the space. And if the landlord isn't satisfied with a particular unit he can place conditions on the subsequent sale of the unit.

358 SEN. G. SMITH: I'm concerned with the tenants more than the landlords.
Some mobile home parks can turn into slums. There must be some mechanismfor upgrading.

HONN: The land lord can regulate the tenants use of the space through rules and regulations.

400 QUIGLEY: How did these fixed term leases become popular? How long of a
duration are they? Is there the option of getting another space easily?
Are there plenty of spaces in the state where someone can choose to go?

HONN: You should direct those questions to Mr. Wilder.
- Nebel said park owners may be able to put restrictions on sales.

Most courts, I feel, aren't going to allow restriction on selling.

TAPE 86, SIDE B

003 JOHN BRENNEMAN, MANUFACTURED HOUSING COMMUNITIES OF OREGON :
Testifies

in opposition to SB 390 and SB 391.

006 CHAIR SPRINGER: Maybe they can address the Park Owners Organization.

009 SALLY HARRINGTON, COMMONWEALTH PROPERTY MANAGEMENT: Testifies
in

opposition to SB 390 and SB 391.

- We have 65% of park owners as members of our association.

015 CHAIR SPRINGER: What percentage of total units within those parks?

017 HARRINGTON: It's 65% of the parks.

- Two years ago there were two separate park associations

- Then they came together to form MHCO. We represent over 650 of

1,300 parks in Oregon.

032 SEN. SHOEMAKER: You represent 65% of the park owners and
Multi-Family

Housing Council represents what?

042 HARRINGTON: They represent apartments and I'm not sure how many
parks

they represent.

046 CHUCK CORRIGAN, MANUFACTURED HOUSING COMMUNITIES: Submits and
reviews

written testimony on SB 390 and SB 391. (EXHIBIT R, S)

- There is another association that represents some parks, but MHCO

represents the vast majority.

199 HARRINGTON: Ten percent of parks are on fixed term leases, which
leaves

90% on month-to-month tenancies and the majority are new parks.

Landlords use the fixed term lease for a marketing tool on the new
parks.

211 BRENNEMAN: The tenants must be given some consideration on the value
of

the lease. Seniors will want to know what the terms will be.

fewer
- If you choose to accept the changes in SB 391, there will be

park owners offering leases.

most
- They will offer month-to-month, which is not to the benefit of

tenants.

unamended
- Willing to negotiate, but take position of opposition to

bill.

277 CHAIR SPRINGER: Proposes further negotiation.

286 BRENNEMAN: There is a willingness to sit down at the bargaining table.

- There have been several issues where we are willing to make changes.

312 SEN. SHOEMAKER: You said the amendments to SB 391 were made without your knowledge?

BRENNEMAN: No, I am speaking about SB 390. We didn't see the SB 390 amendments until the final was done.

SB 889: Limits tenant counterclaims against landlord.

WITNESSES:

SENATOR BRYANT, DISTRICT 27
DAVID NEBEL, OREGON LEGAL SERVICES
EMILY CEDARLEAF, MULTIFAMILY HOUSING COUNCIL

350 SENATOR BRYANT: Submits and reviews written testimony in support of SB 889.
(EXHIBIT T)

TAPE 87, SIDE A

003 BRYANT: Continues testimony.

030 DAVID NEBEL, OREGON LEGAL SERVICES: Submits and reviews written testimony in opposition of SB 889. (EXHIBIT U)

058 EMILY CEDARLEAF, MULTIFAMILY HOUSING COUNCIL: Testifies in support of SB 889.

- This would help facilitate the problem of requiring that the landlord, in order to assert this provision, would have to put it into a written rental agreement.

071 CHAIR SPRINGER: Adjourns meeting at 3:05 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Karen Quigley
Administrator

EXHIBIT LOG

A - Testimony on HJR 22-Rep. Girod-1 page
B - Testimony on HJR 22-Elizabeth Harchenko-2 pages

C - Testimony on HJR 22-Lee Erickson-1 page *

D - Testimony on HJR 22- Don Schellenberg-2 pages

E - Testimony on HJR 22-Staff-2 pages

F - Proposed amendments to SB 390-Staff-6 pages

G - Testimony on SB 390-Emily Cedarleaf-13 pages

H - Testimony on SB 390-W.R. Norte-1 page *

I - Testimony on SB 390-Bill Dwyer-2 pages *

J - Testimony on SB 390-Ardyth Badger-2 pages

K - Testimony on SB 390 and SB 391-Ron Schmidt-4 pages

L - Proposed amendments to SB 391-Staff-4 pages

M - Testimony on SB 391-Emily Cedarleaf-8 pages

N - Testimony on SB 391-Bill Dwyer-2 pages *

O - Testimony on SB 390-David Nebel-4 pages

P - Testimony on SB 391-Daved Nebel-5 pages

Q - Testimony on SB 391-Darin Honn-3 pages

R - Testimony on SB 390-Chuck Corrigan-4 pages

S - Testimony on SB 391-Chuck Corrigan-9 pages

T - Testimony on SB 889-Neil Bryant-3 pages

U - Testimony on SB 889-David Nebel-3 pages

* Submitted written testimony ONLY.