

SENATE COMMITTEE ON
JUDICIARY

July 23, 1993 Hearing Room C
1:00 p.m. Tapes 227 - 228
MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannetb Hamby
 Sen. Karsten Rasn lussen~
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber

STAFF PRESENT: Bill Taylor, Committee Counsel
 Karen Quigley, Committee Counsd
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Public Hearing on HB 2221, HB 2262, HB 2166
TAPE 227, SIDE A

003 CHAIR SPRINGER: Opens the hearing. (1:17 pm.)

PUBLIC HEARING ON HB 2221: Requires s ate agencies to refrain from
supplying personal identification information for commercial advertising
purposes if person supplying information so requests.

WITNESSES:

GEORGE BEARD, DEPARTMENT OF ADMINISTRATIVE SERVICES
DICK ROBERT, SMALL BUSINESSMAN, PORTLAND OREGON
1IM STREET, CITIZEN

010 GEORGE BEARD, DEPARTMENT OF ADMINISTRATIVE SERVICES: Testifies in
support of the bill.

· The purpose of HB 2221 is to give citizens a choice they don't have
today.

045 DICK ROBERT, SMALL BUSINESSMAN, PORTLAND ORWON: Submits and reviews
written testimony in opposition to the bill, EXHIBIT A).

· I'm concerned about the financial impact of implementing the measure as
stated.

109 JIM STREET: Concurs.

CHAIR SPRINGER: Did you present testimony on the House side?

ROBERT: No we didn't.
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CHAIR SPRINGER: Can you further explun what this bill means when it talks
of commercial advertising, and how it relates to other legislation
considered this session?

· Would non-profit charity be included in the definition?

125 BEARD: The bill doesn't prescribe how this shall be done, that will be
covered by administrative rule making.

· Clarifies what is included in the scope of the bill; non-profit
organizations would probably be excluded, but it would depend on how the
rule was written.

CHAIR SPRINGER: Who would write the rules?

BEARD: It would be our responsibility; there would be opportunity for
public comment in the shaping of that.

160 SEN. HAMBY: I have a letter in my file written by someone in strong

opposition, fearful of the expanse of this bill.

BEARD: Other agencies have reviewed this bill, the Secretary of State had some trepidation with the bill, but they were comfortable with the current form; none of the other agencies included in the letter had any problems with the bill.

SEN. HAMBY: As I search the A-engrossed bill and the definition of agency, it means "any branch, department or agency of this state and any public or private agency that collects or requires identification under contract with the state"; that is truly broad.

BEARD: DMV provided the model for the legislation; they have not indicated opposition.

· This doesn't change the public records law; it does ensure that, for those ~ of citizens that choose to have their personal information withheld, companies requesting information would only get it on those citizens that had indicated their willingness to have that information released.

CHAIR SPRINGER: Page two, Section two includes a requirement that this be fulfilled before July 1, 2001; why so specific?

BEARD: The concern was about the issue raised by Mr. ROBERT and Mr. STREET, as to if there would be an adverse fiscal impact.

· Remodelling would have to occur to conform to this bill; agencies are updating computer systems periodically.

265 BEARD: The Department of Revenue shared with me their concern about confidentiality of tax records and perception that this bill would create the impression that tax records would be released to the public.

· Those are exempted records today; you may want to consider putting language in stating
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"unless otherwise exempted", this would be the law that would apply to those records.

CHAIR SPRINGER: I will hold HB 2221 for further review.

PUBLIC HEARING ON HB 2262: Requires fine by agency of written delegation of rule-making authority with Secretary of State Wore filing of any rule adopted under delegated authority.

WITNESSES: PHIL KEISLING, SECRETARY OF STATE SANDRA BURT, EXECUTIVE BRANCH
ELIZABETH HARCHENKO, DEPARTMENT OF JUSTICE THOM NELSON, HOOD RIVER
GROWER-SHIPPER ASSOCIATION WILLIAM FUNK, CITIZEN JANE LESSOR, OREGON
STUDENT LOBBY JACK CHAPIN, MARION COUNTY F.B. BILL RICHARDSON, CHEIF JUDGE,
COURT OF APPEALS

301 SECRETARY OF STATE, PHIL KEISLING: Testifies in support of HB 2262;
submits

written testimony, (EXHIBIT B).

· HB 2262 addresses a number of issues dealing with how we go about making,

reviewing
and

publishing and compiling administrative rules.

· Out of a number of concerns came the appointment of a task force and the
product of that
effort is reflected in HB 2262.

· Reviews provisions of HB 2262.

407 KEISLING: We believe that the net effect of these changes make the
administrative rule process

more accessible to citizens affected by the rules; it makes sense from our
end and I'd be happy

to answer questions.

416 ROY TURNBOUGH, DIRECTOR, ARCHIVES DIVISION: There are some amendments that came from the House; one is in Section three on page two, lines thirty nine through forty two at the request of the Oregon Student Lobby.
· Another is in Section eight, subsection seven, page five, line forty five, continuing on page six; that is what Secretary Keisling referred to as a broadening of grounds for Legislative Counsel reporting on rules.

460 TURNBOUGH: On page four, section three, subsection thirteen, fine twenty five was added with the intent of establishing a "level playing field~, so that deadline extensions remain consistent.

KEISLING: We also proposed the copy write issue on the House side and they rejected it.

ed the copy write issue on the House side and they rejected it. CHAIR

SPRINGER: Members should have proposed amendments to HB 2262, (EXHIBIT E).

CHAIR SPRINGER: Members should have proposed amendments to HB 2262, (EXHIBIT E).

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KEISLING: I think we did a poor job of explaining these amendments; this allows us, if we think it appropriate, to contract with those third party outside people to work with us to get rules disseminated.

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044 CHAIR SPRINGER: Section six talks of the AG potentially being given additional review duties; was there concern about an increased fiscal impact on the AG's office?

· Section eight expands the duties of Legislative Counsel; have they had a chance to see - ?

TURNBOUGH: There was concern about Section six; Section eight, subsection seven, I don't recall the discussion.

KEISLING: This language lets any member of the Legislative Assembly make requests to Legislative Counsel and they are triggered with review under existing law.

082 WILLIAM FUNK, PROFESSOR OF LAW, LEWIS AND CLARK LAW

SCHOOL:

Submits written testimony, (EXHIBIT F & G).

CHAIR SPRINGER: Who is on the committee?

FUNK: I can get you the list of members, (EXHIBIT H).

· Discusses temporary rules.

183 SEN. WEBBER: What goes on with the federal rules?

FUNK: HB 2262 would make a procedural requirement that agencies respond in

writing that

is

required in the federal system; there is no requirement to justify what they've done in terms of the basis for their rules.

SEN. WEBBER: How much out of variance with the norm are we in Oregon?

FUNK: We aren't alone in keeping things from being considered by the courts in this regard;

only about nine states have specific reference to judicial review for rationality in some way, along

with the federal system.

SEN. RASMUSSEN: Essentially we would give the court review over what would now be

determined to be nonjusticiable issues because there wouldn't be an actual order of an agency

applying a rule to a given fact situation; you would allow them to review the rule in the abstract?

FUNK: In the abstract in the sense of the rule as it has been adopted.
357 SEN. RASMUSSEN: What is your definition of economic basis as contained
on line four,
page

two of the amendments?
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FUNK: You could scratch "economic basis". and leave "rational basis. or
"substantial support"; I understand Sen. Webber has thought about
'arbitrary capricious abuse of discretion or otherwise not in accordance
with law"; that is exactly the language of the federal EPA.
· Legislative Counsel, under existing law, reviews every rule adopted by
every agency; this bill would say there is an opportunity for people to ask
them to review specific rules that may already be in existence.
406 SANDRA BURT, DIRECTORS OFFICE, DEPARTMENT OF ADMINISTRATIVE SERVICES:
The Executive Branch does support HB 2262, however we do have some minor
amendments, (EXHIBIT I).
· Explains amendments.
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040 BURT: Continues explaining amendments, (see Exhibit1).
· These amendments have been worked through with the Secretary of State and
they don't oppose the amendments.

CHAIR SPRINGER: Have you reviewed they (-A7) amendments?
BURT: Yes we have; our position is not in support of that, (see Exhibit C).
060 ELIZABETH HARCHENKO, SPECIAL COUNSEL TO THE ATTORNEY GENERAL: I
participated in the task force that developed HB 2262; as a whole, the bill
will improve the process.
· It is important for agencies to truly listen to their constituency and
this requirement would encourage that.
· The Attorney General's Office is concerned with the effect on our work;
this would require an additional 1/8 to 1/4 FTE and that hasn't been
provided for in our budget.

121 HARCHENKO: This would be a dramatic change in the way that state agency
rules could be
reviewed by the courts; this would put the courts in the position of second
guessing policy
decisions being made by state agencies.

170 CHAIR SPRINGER: Are you aware of any structured program within the
Executive Department or the Department of Justice that focuses on agency
managers to educate, evaluate or coach them?
HARCHENKO: In connection with the Attorney General's administrative law
conference we have always had several sessions for agency managers and
administrators on the rule making process, the legal requirements and why
it is important and valuable.

215 THOM NELSON, MANAGER, HOOD RIVER GROWER/SHIPPER ASSOCIATION'

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HOOD RIVER OREGON: Testifies in support of the bill.
· We feel that some agencies aren't as responsive as others; there needs to
be uniformity and accountability as they develop administrative rules.
CHAIR SPRINGER: Which agencies aren't doing a good job?
NELSON: The Oregon Housing and Community Services Department.

238 CHAIR SPRINGER: What is it about their rule-making that is a problem?

NELSON: They propose rules out of session; they proposed rules that gave
preference to nongrower owned facilities.

· What is in this bill would correct and help enforce; putting this bill in

law will put more pressure on the agencies to do a better job; the (-A7) amendments would help.

330 SEN. WEBBER: Did you follow up on your situation; was it resolved?
NELSON: I worked with Rep. Walden, who finally said that I would have to get an attorney.

347 JANE LESSOR, OREGON STUDENT LOBBY: Submit' and reviews written testimony with concerns about the bill, (EXHIBIT K).
· I question why any hearing notice shouldn't always tell a person how they can get a rule; suggests language.
· We support the bill.

415 CHAIR SPRINGER: I'm not sure if rule making is intended to be exactly like malcing law; do you think it should follow the same process as the legislature and should the legislature be subject to review?

LESSOR: We have a standard that applies to you; we can elect you or not elect you.
· This is intended to make them a little more responsive.

451 JACK CHAPIN, OREGON FARM BUREAU: I support the bill, in a rough way, because it brings credibility back, it allows for more public involvement and it insists that there is compliance with the law.
TAPE 228, SIDE B
040 CHAPIN: Explaios issue; anything you can do to make it so the agencies would have to go by the intent of the legislature, the laws and common sense.
117 BILL RICHARDSON, CHIEF JUDGE, COURT OF APPEALS: Comments generally on the

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(-A7) amendments and states concerns about the impact on the courts.
· This would increase the work load for us.

SEN. HAMBY: Do you have objections to the A-Engrossed version from House?
RICHARDSON: I don't know the courts position on that version.
SEN. WEBBER: What would you do to address the problem; how would you go about it?
RICHARDSON: This needs more study with definitions and further clarifications of who is responsible, etc.

CHAIR SPRINGER: Discusses the committee schedule for the next week.
PUBLIC HEARING ON HB 2166: Permits financial institutions to give officers and agents of office of State Treasurer access to private financial records related to state investments.

WITNESSES:

RANDALL EDWARDS, EXECUIIVE ASSISTANT, OREGON STATE TREASURY BOB MllIR, DEPARTMENT OF JUSTICE, (DOJ)

CHAIR SPRINGER: There are the (-A2) amendment~ that I requested the drafting of, (EXHIBIT L).

282 RANDALL EDWARDS, EXECUTIVE ASSISTANT, OREGON STATE TREASURY: Testifies in support of the bill.

306 BOB MUIR, DEPARTMENT OF JUSTICE, (DOJ) Testifies in support of HB 2166.

· The (-2) amendments also contain a provision that creates a little ambiguity, but it could be easily remedied, in lines eight and nine.
· The intent here was to cover these loans; the ambiguity could be cured by changin the "and" at the beginning of line nine to "or".

352 CHAIR SPRINGER: Did the Treasurer's Office, or you, have any written comments?

MUIR: No.

356 SEN. RASMUSSEN: Do you need this Legislation to enable you to get confidential information?

MUIR: Yes; current statute provides a direct prohibition, yet for purposes of the State Treasurer investing in mortgage loans, and performing due diligence, we have to look at financial records.

SEN. RASMUSSEN: You are currently not able to get information, because it is confidential?

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MUIR: Correct, not lawfully.

SEN. RASMUSSEN: You are seeking the information for your own benefit?

MUIR: The state is, yes.

382 QUIGLEY: Isn't it true that the client could provide information on their own; the prohibition is on the financial institution?

MUIR: Correct; we are talking about a lot of loans.

SEN. RASMUSSEN: You could get information from my bank, about my loan, without my knowledge?

MUIR: Yes; the information would remain confidential.

SEN. RASMUSSEN: To protect the customer, once we've violated it by giving the information to you?

MUIR: That is right; the State Treasurer or managers involved can't engage in investment in this area, subject to current standards of due diligence, without reviewing these loans.

473 CHAIR SPRINGER: Comments on the bill and intended focus of the bill.
· We are adjourned. (3:00 p.m.)

Transcribed by, Reviewed by,
Kimberly B Bill Taylor
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - HB 2221: Written testimony submitted by Robert, pp 2 ~

B-HB 2262: Written testimony submitted by Keisling, pp 1-

C-HB 2262: (-An proposed amendments submitted by staff, pp 2 ~

D -HB 2262: Written testimony submitted by the Fish and Wildlife Department, pp 1 -

E-HB 2262: Proposed amendments submitted by staff, pp 1-

F - HB 2262: Written testimony submitted by Funk, pp 11 -

G -HB 2262: Written testimony submitted by Funk, pp 3~

H-HB 2262: Membership list of OAR Advisory Committee submitted by Funk, pp 1

I-HB 2262: Proposed amendments submitted by Burt, pp 1 -

J-HB 2262: Written testimony submitted by Gustafson, pp 1-

K - HB 2262: Written testimony submitted by the Oregon Student Lobby, pp 1

L-HB 2166: (-A2) amendments submitted by staff, pp 1_