

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.

Measures Heard HB 2254 (Public) HB 2255 (Public) HB 2266 (Public) HB 2267 (Public)

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

January 17, 1991 Hearing Room 357 1:00 p.m. Tapes 1 - 3

MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix
Rep. Randy Miller

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely,
Committee Assistant

WITNESSES: Janet Newman, Div. of State Lands (HB 2254, 2255) Marcella Easley, Div. of State Lands (HB 2254) Steve Purchase, Div. of State Lands (HB 2255) Warren C. Deras, OSB Estate Section (HB 2266, 2267) Walter Crow, OSB Estate Section (HB 2266, 2267)

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.

TAPE 1, SIDE A

005 REPRESENTATIVE BAUM, CHAIR: Calls the meeting of the subcommittee to order at 1:00 p.m. and reviews the agenda.

015 COMMITTEE ASSISTANT: Calls roll at Chair Baum's request.

PUBLIC HEARING ON HB 2254

027 JANET NEWMAN, ACTING DIRECTOR OF THE DIVISION OF STATE LANDS: Offers testimony in favor of HB 2254, see Exhibit A.

060 REP. BELL: What form does the State have property in the other states that would not go back to the rightful individual owners?

063 JANET NEWMAN: All the states have laws requiring utility companies, banks, etc. to report unclaimed property and then the states attempts to find the owners and return it to them. The Division would enter into agreements with other states that property reported to the Division by institutions in Oregon would be returned to the states where the individual property owner was last known to reside. States other than Oregon hold a great deal of property for Oregon residents and will not send that property they are holding. If the law could be changed and reciprocity agreements were made then it would be turned over and the Division would find the owners.

078 REP. BELL: The Division is not trying to offset the other funds, just trying to get the property back, right?

079 JANET NEWMAN: Right.

080 REP. EDMUNSON: By repealing the 25 year holding period, basically the State will hold property indefinitely?

081 JANET NEWMAN: Correct

083 REP. EDMUNSON: Refers to the written testimony. Would there be some cost to the state and is it offset by the proceeds?

088 JANET NEWMAN: Yes. Right now the escheating occurs at \$70,000 to \$80,000 per year. The interest income goes into the common school fund. The individual who comes to get the property only gets the original amount.

093 REP. MILLER: Is reciprocity a guaranty written in this bill and is there any problem with a trusteeship over the funds benefiting the common school fund? Is there a case that you are putting those at risk without having a harder guaranty that reciprocity does follow?

103 JANET NEWMAN: Answers the two questions: 1. We have received assurance from other states that this is the only thing stopping them and with a change in the law, they would enter into reciprocity agreements. 2. The way it's structured, the property is put in a special trust account within the school account. The interest goes to the common school fund principle. After 25 years some of it would get moved into the common school funds under the change.

125 MARCELLA EASLY, UNCLAIMED AND ABANDONED PROPERTY SECTION: All other states and the Canadian province of Ontario have unclaimed property statutes.

126 JANET NEWMAN: The net result will be a benefit to the common school fund.

127 REP. MANNIX: The other states do not want after turning over the property to Oregon to have someone make a claim after 25 years and it is gone because Oregon escheated it over to the State.

135 JANET NEWMAN: Right.

137 REP. MANNIX: Is there a provision for eliminating minor accounts? States an example. Concerned about the amount of record keeping for trivial amounts with no interest being generated.

140 JANET NEWMAN: Current law starts with the threshold of \$50.

144 REP. MANNIX: In terms of stock certificates, does the Division keep them? What is the situation currently?

147 MARCELLA EASLY: Introduces herself. Presently there is a contract with a stock broker and certificates are turned over to them to put into street name. The Division does not manage the certificates. The Division holds the certificates for a period of time before selling. Most states do not exchange certificates but sale proceeds go to the owner.

159 REP. EDMUNSON: Is there any other property?

160 JANET NEWMAN: There are several categories of property set out in

the statute. Lists the categories. One other type is federal savings bonds and the Division does keep the bond.

177 REP. EDMUNSON: Not talking about chattels, artifacts, and historic property?

JANET NEWMAN: No.

178 MARCELLA EASLY: The only other type of property is contents of safe keeping depositories which is reduced to cash also. No tangible assets are involved.

183 REP. JOHNSON: There wasn't anything in the 1983 Uniform Act that required perpetuity that would have overridden the 25 year limit in the 1977 statute?

190 JANET NEWMAN: Correct.

193 REP. JOHNSON: 25 years seems reasonable. Reluctant to put Oregon in the situation of keeping records for literally 100s of years. Has there been any discussion with the other states regarding the 25 year limit?

203 JANET NEWMAN: I am not aware of any such discussions. They will not deal with Oregon currently. The perpetual record keeping has not been a big problem with other states.

212 REP. CLARK: The practical affect of the change is to give the State the property forever. There is not a lot of change in what is otherwise going on.

218 JANET NEWMAN: Correct. The reason for the escheated amount is after 25 years someone has either found it or not, and it comes back to the state.

204 REP. CLARK: Thinks it is a very good change.

229 REP. MANNIX: Thinks it is good idea.

231 REP. BELL: Are there percentages on what is claimed in the first 10 years and what is left?

234 JANET NEWMAN: Almost all activity takes place in the first 5 to 10 years.

237 MARCELLA EASLY: About 98% of the claims are processed the first five years, most in the first year. In 1988-89 receipts received were \$3.3 million and paid out \$668,000 in claims and escheated over \$75,000 to the common school fund.

251 REP. BELL: Of the total number of properties, how many are claimed?

256 MARCELLA EASLY: It is a pretty small number that are claimed totally.

263 JANET NEWMAN: Comments on attached brochure.

279 CHAIR BAUM: Closes public hearing on HB 2254.

WORK SESSION

283 REP. EDMUNSON: Moves HB 2254 to full committee with a do pass recommendation.

284 REP. MANNIX: Comments on the perpetuity of the bill.

291 CHAIR BAUM: Motion is to pass HB 2254 to full committee with a do pass recommendation.

293 COMMITTEE ASSISTANT: Roll call vote:

Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye
Rep. Johnson: Aye Rep. Mannix: Aye Rep. Miller: Aye Chair Baum: Aye

313 CHAIR BAUM: Requests that Rep. Mannix carries the bill to the full committee and possibly on to the floor. Begins the public hearing on HB 2255.

PUBLIC HEARING ON HB 2255

317 JANET NEWMAN: Offers testimony in favor of HB 2255. See Exhibit B.

358 REP. CLARK: Do you administer or convey property for the other agencies?

360 JANET NEWMAN: This is the only entity we have dealt with on a regular basis. By statute, the Division becomes involved when a deed comes to the State without specifying the agency to get title.

374 REP. CLARK: Other agencies do their own.

378 JANET NEWMAN: Correct. They have been able to get appropriate statutory authority.

381 REP. BRIAN: The proceeds of this bill will go to common school fund, is that the idea?

384 JANET NEWMAN: They never had. The property and proceeds are with the Department of Human Resources.

391 REP. BRIAN: Is that true with the other agencies? Do the proceeds go the agencies or to the common school funds?

393 JANET NEWMAN: Except for minerals, nine times out of 10, the proceeds go to the agency.

406 REP. BRIAN: What do the agencies do with the money?

414 JANET NEWMAN: I cannot speak in detail about Human Resource practices but ORS Chapter 416 gives them the specific authority to use property to secure claims for payments they have made in carrying out their welfare program. It is a cost recovery program.

TAPE 2, SIDE A

018 REP. CLARK: The figure probably goes into the budget and is their expectation of what they will recoup through the program.

021 JANET NEWMAN: I would guess that is correct, but do not know for a fact.

024 STEVE PURCHASE, DIVISION OF STATE LANDS: We would like to see the DHR take care of their property management.

028 CHAIR BAUM: Any questions or more witnesses?

030 WALT BRADFORD, MANAGER OF ESTATE ADMINISTRATION OF THE SENIOR AND DISABLED SERVICES DIVISION: The testimony given was accurate. We have claims with the estates of deceased welfare clients and then become creditors upon death. Repayment comes for general assistance. This bill does not change any of the arrangements or the way the money is distributed or repaid to budget or federal government. SDSO supports the bill.

048 CHAIR BAUM: Closes hearing on HB 2255.

WORK SESSION

050 REP. EDMUNSON: Moves that the amendment to HB 2255 as presented to us as LC 845, a "-1" amendment be approved.

058 CHAIR BAUM: So ordered.

054 REP. EDMUNSON: Moves HB 2255, as amended, to full committee with a do pass recommendation.

055 CHAIR BAUM: HB 2255 has been moved to the full committee, any discussion?

059 COMMITTEE ASSISTANT: Roll call vote:

Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye
Rep. Johnson: Aye Rep. Mannix: Aye Rep. Miller: Aye Chair Baum: Aye

PUBLIC HEARING ON HB 2266

063 CHAIR BAUM: Opens hearing on HB 2266 and assigns Rep. Johnson as carrier for HB 2255.

070 WARREN C. DERAS, OSB ESTATE PLANNING AND ADMINISTRATION SECTION: Introduces himself and discusses position on HB 2266 (see Exhibit C). Not permitted to testify on behalf of the bar because these proposals have not been approved by the executive board.

163 REP. MANNIX: Asks whether or not the amendments are going to put this bill back the way the section proposed it or are there other changes?

167 WARREN DERAS: We are adopting some of the basic format changes taken by Legislative Counsel and trying to reconcile our provisions with them.

171 REP. MANNIX: Comments on terms of art such as "claims".

172 WARREN DERAS: Claims clearly should not have been used.

171 REP. MANNIX: Is there any division of opinion about these issues?

178 WARREN DERAS: No, they were unanimous. The second item proposed with regard to contract to a will case, is to modify that statute of frauds to require a contract to make a will dispute be based on a

writing. The Court of Appeals found a way around the statute of frauds in will contracting cases by allowing, in Hocks v. Hocks, an individual to bring a case as fraud. See written testimony, page 2. See also the amendment on page 1 relaxing the statute of frauds. On page 2 beginning on line 40, makes the proceedings under the new contract to make a will statute the exclusive remedy for claims based upon a promise of the decedent.

231 REP. MANNIX: Shouldn't the words be "name and mailing address", is there any reason for that terminology located on page 2 of the bill? Subsection 7, lines 3 and 4.

245 WARREN DERAS: That language is picked up from paragraphs 4, 5, and 6 above, the existing language in the probate code.

258 REP. MANNIX: Do you understand it to be just the mailing address?

250 WARREN DERAS: Not aware of any special or unusual meaning.

262 REP. MILLER: The exclusive remedy provision means the fraud route will not be available if this is adopted.

266 WARREN DERAS: That was the intent. It depends on whether you interpret the clause as procedural or substantive. My intent was that it be substantive.

277 REP. MILLER: Could you provide an example on how this will work when implemented.

280 WARREN DERAS: Discusses the amendment on page 1 and gives examples of the purpose. Must establish a prima facie case without their own testimony.

319 REP. MILLER: Please provide some examples.

328 WARREN DERAS: Witnesses would have first hand knowledge. The second item requires the case be proven by clear and convincing evidence with their own testimony. The standard is higher than ordinary burden of proof in a civil action.

386 REP. MILLER: How much application in the real world will this bill have?

390 WALTER CROW: There will be some effect in the legal community. Gives some examples based on his experience.

430 REP. MILLER: In the situation where you dispose of certain specific requests and then you deal with the personal affects, would you expect some recollection on specific items? Is there a proof problem?

447 WARREN DERAS: That is a promise not a contract situation. For a contract to make a will to stick, it needs some consideration.

451 WALTER CROW: There needs to be reliance. Responds to the fact situation.

459 REP. MILLER: Do you find this language in other jurisdictions?

TAPE 1 SIDE B

030 WARREN DERAS: We did not search other jurisdictions. The changes

are of language directly from the Uniform Probate Code.

035 WALTER CROW: In 1969 Oregon adopted pieces of the Uniform code. ORS 12.270, the will section, is verbatim from the Uniform Probate Code.

In the survey we found throughout the US about 50% of the states had adopted the UPC or something stricter.

051 REP. BRIAN: Wonders how many times this will clear up or negate the fraud claim versus the problems or claims it will cause.

058 WARREN DERAS: Discusses meritorious claims and the Hawks case.

084 REP. EDMUNSON: Back to Section 3, paragraph 5 regarding the exclusive remedy. Understands the intent to preclude claims fraud but questions whether there are situations where a claim of fraud would be appropriate and secondly in those cases, would there be damages available that would not be available in a contract claim in the form of punitive damages?

093 WALTER DERAS: Under Oregon law, the estate is not liable for punitive damages even if the decedent was.

095 REP. EDMUNSON: Those punitive die with the decedent?

096 WARREN DERAS: The right to punitive damages against a decedent die at his death.

097 REP. EDMUNSON: Are there any damages that would be available in claims of fraud that would not be available in claim for contract?

100 WALTER DERAS: No.

107 REP. EDMUNSON: Would like to have that question answered in a little more depth.

113 WARREN DERAS: The law is clear with regard to punitive damages.

116 CHAIR BAUM: Intent of the chair is to have this discussion go on a little longer.

118 WARREN DERAS: That would be appropriate.

121 REP. BRIAN: Would the contract form supersede a written will or come in conflict with it?

124 WARREN DERAS: Yes. A will can easily violate a contract to make a will. If it did and the contract was properly proved, the contract would take precedence.

128 REP. BRIAN: It would not matter which came first?

129 WARREN DERAS: The timing would not matter.

130 REP. MANNIX: Following up on Rep. Edmunson's concerns, punitive damages would only be applied to someone truly punishable for what they did. What if someone is alive and an action is brought against them?

134 WARREN DERAS: The character of a contract to make a will case is that you do not suffer damages until the person dies.

139 CHAIR BAUM: Explains a contract to make a will.

147 WALTER CROW: Rep. Mannix's observation is a good question.

157 REP. MANNIX: Is it specific performance or some sort of equitable performance?

WARREN DERAS: In a declaratory judgment.

160 CHAIR BAUM: The intent of the chair is to explore this further and have it back before the committee again. Closes hearing on HB 2266.

PUBLIC HEARING ON HB 2267

167 CHAIR BAUM: Opens the hearing on HB 2267.

169 WARREN DERAS: Explains reason for being here instead of chairman of the committee.

174 REP. MILLER: Asks if he could speak in layman's terms.

190 WARREN DERAS: Offers testimony on HB 2267 and supports it fully. (See Exhibit D)

220 REP. MANNIX: Refers to an old case regarding the box method.

229 WARREN DERAS: Explains this procedure and the list method. This proposal will allow a memorandum of personal property to be used if there is a provision in the will saying it and the document is signed and dated by the testatrix. The memorandum can be changed at any time. The risk would be forgery.

260 REP. MANNIX: If someone was intending to forge, they could date it before the date of the will.

264 WARREN DERAS: Under current law it would have to be done within the will, with witnesses.

270 REP. JOHNSON: Comments on Rep. Mannix's question. Discusses his approach to this issue currently. Can grant the personal representative power to distribute personal property as sees fit.

319 WARREN DERAS: The remedy would be to put a value cap on this.

337 CHAIR BAUM: Describes scenario that exists currently.

341 WARREN DERAS: Calls the bill a consumer protection against attorneys.

357 REP. BRIAN: Would it help to add requirement of a witness?

363 WARREN DERAS: Makes it the same as a will and discusses the problem of witnesses.

387 GREG CHAIMOV: One technical question. ORS 12.275 provides a will may be altered only as provided in following sections. ORS 12.285 states a will may be altered by another will. Does HB 2267 need to refer to these sections by saying "notwithstanding those sections" there can be a written statement or list?

395 WARREN DERAS: The will is not altered by incorporating the list by reference.

401 REP. MANNIX: If we were going to amend this with a limitation on the value, where would it be put?

TAPE 2, SIDE B

010 WARREN DERAS: At the end of Subsection 1 of Section 2.

011 REP. MANNIX: Recites section where amendment could be put.

013 WARREN DERAS: Have not really thought about such a proposal before.

014 REP. MILLER: Where does this problem rank re: injustices to society?

022 WARREN DERAS: Low. Offers explanation of this answer.

031 REP. MILLER: Is part of problem associated with high expense of attorneys rather than difficulty of arranging the estate?

033 WARREN DERAS: It's a realty.

025 REP. MILLER: In order to avoid the problem we are going to relax restrictions. Discusses cost and other options.

054 REP. MANNIX: We are actually 1) recognizing the consumer's desire for an option, and 2) providing a modifiable will.

068 REP. MILLER: Should it be that flexible?

076 WARREN DERAS: Comments on cases regarding wills. The mechanism presently available to resolve this problem is the issue.

091 REP. BELL: Comments favorably on the flexibility issue.

109 REP. CLARK: Thinks it is a very good bill.

113 CHAIR BAUM: Closes public hearing on 2267.

WORK SESSION ON HB 2267

115 REP. MANNIX: Moves to amend line 7 to delete the word "and" and insert a comma. On line 8, after the word "business" insert a comma, and the following phrase: "and any item with the fair market value of over \$10,000 at the time the item is listed". If something is that valuable they should redo the will but if it is a lesser value, then give the flexibility.

136 REP. CLARK: Does Warren Deras have any problem with the amendment?

145 WARREN DERAS: It is a reasonable way to handle the problem. It would be easier to have one valuation, at the time of death

152 REP. MANNIX: Changes amendment to take out that portion. To say "and any item with a fair market value of over \$10,000".

157 CHAIR BAUM: Any objections to the amendment?

REP. MANNIX: Direction from Mr. Deras.

WARREN DERAS: A period after "\$10,000".

REP. MANNIX: Okay, "and any item with a fair market value of over \$10,000."

CHAIR BAUM: Comments from counsel. Under the amendment, the valuation would occur at the date of death.

REP. JOHNSON: Thinks \$10,000 is to much. Comments on valuation question. Thinks \$10,000 for the total amount of value on the list would be a good ceiling.

181 CHAIR BAUM: Is the value cumulative or a single item?

206 REP. MANNIX: A single item. Willing to change the figure to \$5,000.

REP. MILLER: Tends to subscribe to the higher figure and states that view on the bill was changed after Rep. Bell's comments on flexibility.

CHAIR BAUM: The higher the figure is, the more likely there will be people trying to influence the list.

REP. EDMUNSON: Provides discussion regarding the monetary figure.

236 CHAIR BAUM: Discusses amendment which Rep. Mannix has changed to include the figure of \$5,000.

REP. MANNIX: Will agree to modify amendment to \$5,000.

CHAIR BAUM: Discusses the intent of Rep. Bell's comments.

REP. MANNIX: States for record the intent is for items over \$5,000 not to be considered for the list.

REP. BELL: Asks for clarification regarding items in the will.

CHAIR BAUM: Answers Rep. Bell's concern.

276 REP. MILLER: Questions on Rep. Bell's concerns.

279 WARREN DERAS: Advises client that nothing of extreme value goes on the list because of Oregon laws. Most major value items go into the clause in the will.

292 REP. MILLER: Questions on residuary clause.

297 WARREN DERAS: The fact it goes into the residue does not mean it will be sold. Discusses experience with probate.

323 REP. BELL: Responds to comments of Warren Deras.

330 CHAIR BAUM: Brings committee back to considering the amendment that would state on line 8: "and any item with fair market value of over \$5,000 at the time of death."

REP. CLARK: Any problems with the proposed amendment Mr. Deras?

345 WARREN DERAS: No, thinks that it should be an aggregate value if concerned about abuse.

362 CHAIR BAUM: That would take care of any amount of valuable items being put on the list.

369 REP. EDMUNSON: If there was an aggregate value, what would be the effect of exceeding the aggregate value, would it invalidate the list?

370 WARREN DERAS: Yes.

REP. EDMUNSON: Discusses Rep. Mannix's example with regard to aggregate value.

REP. MANNIX: Wants to stick with individual value.

WARREN DERAS: No other way to do it if going to go with the aggregate.

384 CHAIR BAUM: Calls for the vote on the amendment, so amended.

REP. MANNIX: Moves that the bill go to full committee with a do pass recommendation as amended.

CHAIR BAUM: Calls for discussion on motion.

395 REP. JOHNSON: Refers to Rep. Bell's comments on flexibility and formality of wills. Does not think it is a good change in the law.

TAPE 3, SIDE A

037 REP. MANNIX: Discusses historical reasons for wills and modern references for wills.

058 REP. BELL: Responds to Rep. Johnson's comments.

069 REP. JOHNSON: Responds to Rep. Bell's comments.

078 REP. BELL: Responds to Rep. Johnson's comments.

086 REP. JOHNSON: Discusses views in response to Rep. Bell's comments.

088 REP. MILLER: Calls for the question.

089 CHAIR BAUM: Prefers to have a bill go out with some semblance of a majority. Would like to discuss this further. The motion is to pass the bill to the full committee with a do pass recommendation as amended.

100 REP. MANNIX: Asks the witness questions regarding the OSB Section.

107 WARREN DERAS: Refers to articles in materials presented.

114 REP. MANNIX: Is there any disagreement in the Section about this proposal?

115 WARREN DERAS: Does not recall any opposition.

REP. MANNIX: Your group represents the people who make money through wills.

WARREN DERAS: There is nothing in the bill that helps lawyers.

126 REP. BRIAN: Discusses position on bill.

141 REP. MANNIX: Discusses position on the bill and position of the committee.

155 REP. MILLER: Comments on vote count.

171 REP. BELL: Comments on Rep. Brian's comments.

179 REP. MANNIX: Withdraws motion to pass the bill on to the full committee.

181 CHAIR BAUM: Closes work session.

189 WARREN DERAS: Comments and suggests reading the materials handed out.

203 CHAIR BAUM: Adjourns the hearing at 3:10 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2254 - Janet Newman/Marcella Easley - 6 pages
B - Testimony on HB 2255 - Janet Newman/Steve Purchase - 4 pages
C - Testimony on HB 2266 - Warren Deras - 4 pages D - Testimony
on HB 2267 - Warren Deras - 10 pages