

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

February 25, 1991

Hearing Room 357 1:00 p.m.

Tapes 32 - 33

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 MEMBER EXCUSED: Rep. Jim Edmunson Rep. Randy Miller
STAFF PRESENT: Greg Chaimov, Committee Counsel Jeff Steve, Committee
Assistant Holly Blanchard, Transcriber MEASURES HEARD: SB 399 -
Forfeiture/Land Sale, PH/WS SB 400 - Appurtenant Land, PH SB 426 -
Nonprofit Corp. Law, PH SB 455 - Gender Refs./Statutes, PH/WS

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 32, SIDE A

004 CHAIR BAUM: Calls the meeting to order at 1:05 p.m.

SB 400 - EASEMENT MAINTENANCE - PUBLIC HEARING

012 CHAIMOV: Summarizes SB 400 which clarifies some provisions of the easement maintenance law passed by the Legislative Assembly last session. Refers to EXHIBITS A and B. There is no fiscal impact to SB 400.

019 SENATOR EUGENE TIMMS, DISTRICT 30: Request an amendment to SB 400 which has to do with ways of necessity. Feels Vic Pike's situation is very unfair. 028VIC PIKE FROM GRANT COUNTY (EXHIBIT C): ORS 376.180, the "Way of Necessity" statute, has a subsection that lists reasons for not granting- a way of necessity. Reads ORS 376 .180 (8). I have a farm in Grant County which has been served by an access in use for over House Committee on Judiciaq Februar' 25, 1991- Page 2

50 years through an endorsed agreement signed in 1938. In 1984, an adjoining land owner challenged my use of this access and in ensuring litigation, the court ruled that the long standing agreement was null and void. I had no access to my property. Then filed a way of necessity proceeding with the Court of Appeals which ruled I did not have a way of necessity because a half mile down the river from the original access, there was an easement that went from a public road to the John Day River. Last year, I had to shut down my farming operation. We continue to live on the land by using a log at the end of the easement to cross the river and walk a half mile to my home. We've lost everything we've worked for.

053 REP. MANNIX: Is there no adjoining land owner who will negotiate with you to provide you with an easement? 055 PIKE: We have tried everything and have exhausted every possibility over the past seven years. Would like proposed amendments in EXHIBIT C to be included in SB 400.

080 CHAIR BAUM: Directs committee counsel to review the proposed amendments and report their findings at the next hearing on SB 400.

095 KRIS GORSUCH, CHAIRMAN, REAL ESTATE SECTION LEGISLATIVE COMMITTEE, OREGON STATE BAR: Last session a bill was passed having to do with easements-rights of way. There were some problems with the implementation of that bill. After speaking with attorneys and

interested parties, we tried to draft solutions to those problems. The changes are good and clarify things. Our group only works with law improvement and stays away from public policy and personal issues. The problem with attaching an amendment to this bill is that the bill has already gone through the Senate side. Not speaking pro or con on the issue but it's been in the courts for years and to attach a controversial personal issue to a bill for law improvement of a utilitarian purpose doesn't make good use of time. Understands that there's already a bill to address this issue so it doesn't need to be tagged onto this one. 129 REP. MANNIX: I am open to finding vehicles for legislation when some committee has refused to do something with it. Are you aware of any refusal to hold a hearing on this other bill? 133 GORSUCH: Not aware of any refusal. Basically, SB 400 is a very straight forward law improvement bill and would like it to be passed in its present form. 141 REP. BELL: Is your contention with any of the amendments or just that it's going to take a little more time and effort to get them into the present bill? 144 GORSUCH: We haven't been able to study the amendments or their affect. Spoke to Mr. Pike about that when he brought them to my office. His attorney asked us to review the concept of this litigation and we advised that it would probably have to wait until next session because we couldn't draft a bill that quickly. We have our bills drafted by June for the interim committee- the attorney came to us in September. Suggested they come back next session with a bill. Refers to a percentage in the proposed amendments that could be controversial. 167 REP. BELL: Is it worth the extra time and effort even if it's controversial to get a good bill when you consider the alternative is walking across a log carrying your groceries for two years?

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171 GORSUCH: Thinks the proper vehicle would be its own bill so pro and con of issues raised could be reviewed. This easement bill has nothing to do with ways of necessity. It's sort of a private condemnation action that's controversial. The section of the code that they're asking to amend now was actually amended a couple of sessions ago to make use of that private condemnation action tighter. It restricted it and narrowed it down substantially. The narrowing was the issue before the court in Mr. Pike's case. Thinks he should use the other vehicle to bring those issues before the public and the legislature and not on a bill that's already passed through Senate that's purely law improvement and not controversial. To tie up this bill with that issue would be a mistake. 198 REP. MANNIX: This bill relates to maintenance of easements as opposed to another bill that would change the way of necessity law. Not comfortable changing the way of necessity law without due public notice, lots of discussion, and testimony. Agree with Mr. Gorsuch's comments. 214 CHAIMOV: What are some of the other "relevant factors" that you would foresee a court using in an action involving an easement maintenance dispute?

220 GORSUCH: There are a number of factors referred to in the legislation such as size and weight of vehicle, frequency of use, possibly trailers. Things that would break down an easement; perhaps a vehicle that would damage an easement through severe use. 243 REP. JOHNSON: Refers to the A-Engrossed version of SB 400, Page 2, lines 6-9, and sees portion of bill as limiting the confusion about these maintenance agreements. Maybe Subsection (a), line 6, could be expanded to include Mr. Gorsuch's comments about the frequency and kind of use to narrow and further define its interpretation. 271 GORSUCH: We tried to stay as close to the original language of the statute as we could.

"Relevant factors" was the language given to us from last session. Tried to stay with that as best we could. 278 REP. JOHNSON: You don't have any other suggestions as to better language or other relevant factors?
280 GORSUCH: We used the most common problems we heard about and kept the term "relevant factors" in the event there were things we didn't look at or understand. 290 CHAIR BAUM: Will be the intent of the Chair to move this bill quickly but first wants to see where the other bill is at in the process and discuss the bills with Senator Timms.
308 REP. BELL: For clarification, any current easements concerning maintenance would have to be agreed upon before it would come into effect, correct? 313 GORSUCH: Yes, under existing easements.
314 REP. BELL: For new easements, it would be part of the new code?

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316 GORSUCH: Yes, the new code would control those.

SB 399 - APPOINTMENT OF RECEIVERS - PUBLIC HEARING 330 CHAIMOV: Summarizes SB 399 which authorizes appointment of receiver to care for property during a forfeiture proceeding of a land sale contract. This is distinguished from civil forfeiture which the committee will address later this week. 350 CHRIS GORSUCH, OREGON STATE BAR (EXHIBIT D): SB 399 allows for the appointment of a receiver in a nonjudicial foreclosure action. It is parallel for a remedy provided for trust deeds. This would be noncontroversial because the courts would be determining the issues of a receiver. The equities would be balanced by the court. 394 REP. CLARK: Never had a receiver appointed during advertisement and sale foreclosure. Would you go into circuit court with a separate proceeding for the sole purpose of having a receiver appointed?

TAPE 33, SIDE A 003 GORSUCH: That's correct. 004 REP. CLARK: And the grounds and the procedures are the same as if you were foreclosing judicially?

005 GORSUCH: The procedures for the appointment of a receiver would be a notice, opportunity to be heard, discussion of bonds, all the ORCP, right. SB 399 - WORK SESSION

011 MOIION, REP. CLARK: Moves SB 399 to the Full Committee with a "do pass" recommendation. 012 REP. MANNIX: Appreciate the work of this group. It's significant that they've tried to provide a balance in the bill by making an exception to single-family residences. Shows an appropriate balancing of factors and considerations. Thinks it's a good bill. 022 VOTE: 6-0 AYE: Brian, Clark, Johnson, Mannix, Bell, Baum NO: None EXCUSED: Edmunson, Miller

Motion passes. Representative Clark to carry. . , SB 426 - NONPROFIT CORPORATION ACT AMENMDNEIS - PUBLIC HEARING 030 CHAIMOV: Summarizes SB 426 which revises the Nonprofit Corporation Act passed by the House Committee on Judiciaq Febroary 2S, 1991- Page 5

Legislative Assembly last session. The main change in SB 426 is to allow nonprofit corporations to make loans to directors and officers of what's called a recruitment package (to get them to sign up to be directors or officers). Refers committee to EXHIBIT E which is a section-by-section analysis from the Business Law Section of the Oregon State Bar. Notes a housekeeping amendment to ORS 65.624 from the Oregon State Bar to consider.

045 CHAIR BAUM: Notes no one has signed up to testify in favor or

opposition of SB 426. 046 REP. CLARK: What is a recruitment package? 050
CHAIMOV: Understands it to be something to induce someone to become an
officer or a director of a nonprofit corporation that would be
acceptable to give a loan or guarantee a loansomething like that.
Currently, the law profits the making of a loan either to a prospective
or current director or officer. This wouldn't apply to current directors
or officers but would allow it for recutting someone in that capacity.
Limits include notices to members and the Attorney General. 058 REP.
CLARK: Wss involved in revising the Nonprofit Corporation Act bill last
session. Supports efforts of the Oregon State Bar to make the Nonprofit
Corporation Law more workable but not ready to vote for it unless
there's some advocacy testimony given. Thinks the proposal is strong
language and wants to hear from people supporting the bill. 071 REP.
JOHNSON: Joins in general concern about opening up nonprofit
corporations to transactions between a corporation and board members. It
just smells bad. 075 CHAIMOV: Understands that this particular
provision of this bill engendered some lively discussions on the Senate
side.

083 REP. BRIAN: Is it possible to have these summaries included with
the Senate bills?

086 CHAIR BAUM: Need to instruct staff that in the past, we've made a
habit of having Senate bill votes tallied both in the committee and on
the floor and on the staff summary--that would be nice to know.

089 REP. MANNIX: This bill is a piece of cake except for this one
section. Say that because the reasoning behind the other modifications
is understandable. Gives example of removal of an officer. Concerning
the proposal for recutting, where is the overwhelming public policy
calling for a change? 097 REP. CLARK: Personal experience serving on
nonprofit boards is that they're asking for a loan rather than the other
way around. 099 REP. MANNIX: Like the remainder of SB 426 and to work
it through, recommend excising that section and proceeding with the
bill.

103 CHAIR BAUM: Asks council to contact the bill supporters to invite
them for testimony and discussion.

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107 REP. BRIAN: Asks Representative Mannix to point out the bill's
section that refers to the Chair.

109 REP. MANNIX: Refers to Section 8, Subsection (1), Page 7, lines
13-14. Then refers to Subsection (2), lines 16-18, concerning removal of
an officer. Doesn't know if either amendment was necessary but it doesn't
hurt to clarify the law. 120 REP. BRIAN: Referring to Section 8,
noticed that the board of directors must take that action versus
something in the documents of origination shortstopping that and
allowing some other process or individual to remove officers.

131 CHAIMOV: Explains need for that provision by giving example of a
nonprofit corporation that may be affiliated with a religious
organization or entity where a corporation wishes to designate a
high-ranking individual with more authority than the board of directors.

142 REP. MANNIX: Notes there is testimony on this (EXHIBIT E).

SB 455 - REVISOR'S BILL - PUBLIC HEARING

160 CHAIMOV: Summarizes SB 455 which is the annual Revisor's Bill in
which Legislative Counsel corrects mistakes made in last session's

bills. Directs members to an explanatory letter from Legislative Counsel showing the changes (EXHIBIT F).

163 BARBARA POTTER, OFFICE OF LEGISLATIVE COUNSEL: Notes Kathleen Beaufait is the chief drafter of the Revisor's Bill.

172 REP. CLARK: Is it fair to assume that there are no substantive changes in law?

173 POTTER: That is Kathleen Beaufait's assertion, as well as mine. There are no substantive changes, only manifest clerical corrections.

182 REP. CLARK: Refers to Page 117, Section 199, lines 31-33. Concerned as to whether SB 455 has any substantive changes in it due to language changes in those lines, from "[have been met]" to "are substantially similar". 192 POTTER: Unable to answer that concern.

205 REP. JOHNSON: Describe how this list (of corrections) is acquired during a two-year period. 209 POTTER: Errors are brought to our attention by members of the public who write letters to drafters and Legislative Counsel's office. Also, our drafters, our attorneys, and our copy editors find these mistakes as we're working with and amending legislation. 218 CHAIMOV: There are instances of substantive changes, but only to correct the legislative intent. 228 REP. MANNIX: The comfort level on SB 455 is pretty high with considerations being given House Committee on Judiciary February 25, 1991 - Page 7

for legislative intent.

239 CHAIR BAUM: Refers to Section 1 of SB 455 which notes that nothing in the bill is intended to change the legislative intent.

242 REP. CLARK: See a few things happening throughout the bill and trust the work quality of Legislative Counsel. 247 REP. MANNIX: Notes that some changes would require a change in governmental units, for example. SB 455 - REVISOR'S BILL - WORK SESSION

268 MOTION, REP. BRIAN: Moves SB 455 to the Full Committee with a "do pass" recommendation. 272 REP. JOHNSON: Asks Committee Counsel if there were any descending votes on this in the Senate. 274 CHAIMOV: No, there were not. 279 VOTE: 6-0

AYE: Brian, Clark, Johnson, Mannix, Bell, Baum NO: 0 EXCUSED: Edmunson, Miller

Motion passes to Full Committee with a "do pass" recommendation. Representative Brian to carry.

280 CHAIR BAUM: Adjourns Committee on Civil Law and Judicial Administration at 2:05 p.m.

Transcribed by, Reviewed by, Blanchard David Harrell

EXHIBIT LOG:

A - Written testimony only by Jay D. Hull, presented by Greg Chaimov, Committee Counsel, SB 400, 2 pages B - Written testimony only by Real Estate and Land Section, Oregon State Bar, presented by Greg Chaimov, Committee Counsel, SB 400, 2 pages C - Written testimony, Vic Pike, SB 400, 4 pages D - Written testimony, Kris Gorsuch, Real Estate and Land Section, Oregon State Bar, SB 399, 2 pages House Committee on Judiciary February 25, 1991- Page 8 E - Written testimony only Jeff Wolfstone, presented by Greg Chaimov, Committee Counsel, SB 426, 5 pages F -

Proposed Amendments, Barbara Potter, Office of Legislative Counsel,
Reviser's Bill, SB 455, 2 pages

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all amendments made during this session. Only text enclosed in quotation
marks report the speaker's exact words. For complete content of the
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