

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.

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

May 13, 1991Hearing Room 357 2:00 p.m.Tapes 101 - 102

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 Jim Dole,
Assistant Committee Counsel Kathy Neely, Committee Assistant Holly
Blanchard, Transcriber

MEASURES CONSIDERED: HB 3217 PH (Juror Fees) HB 3222 PH (Civil
Procedure) SB 403 PH (Small Claims Actions in District court)

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TAPE 101, SIDE A

003 REPRESENTATIVE BAUM, CHAIR: Calls the meeting to order at 2:00 p.m.

SB 403 - PUBLIC HEARING

015 BILL LINDEN, STATE COURT ADMINISTRATOR (EXHIBIT A): Testifies in support of SB 403. Reads written testimony. The bill as amended accommodates some concerns that financial institutions and collection agencies had with the affect of the bill on their practices. We think SB 403 will give more consistent application of filing fee practices in small claims courts and discourage claims splitting. The Collection Association, the Oregon Housing Council and members of the consumer credit industry support this bill.

042 CHAIR BAUM: Notes that the filing fee for claims applies to each claim--not to each filing.

LINDEN: If you have separate claims that can't be joined in one claim, you're going have to file them separately and pay the fee. Where you're able to join those claims in a single filing, you avoid having to pay multiple filing fees.

051 REP. MANNIX: Refers to lines 13-14 of the A-Engrossed version of SB 403 . This is talking about in that claim filed, meaning in that action?

LINDEN: That's correct.

060 CHAIR BAUM: If they don't, they waive it?

LINDEN: Not sure that they waive it but they create some difficulties.

069 CHAIR BAUM: That's usually the procedural problem.

SB 403 - WORK SESSION

070 MOTION, REP. MANNIX: Moves SB 403 A-Engrossed to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

AYE: Brian, Edmunson, Mannix, Miller, Bell, Baum NO: None EXCUSED: Clark, Johnson

Motion passes, Rep. Brian to carry.

HB 3222 - WORK SESSION

096 GREG CHAIMOV, COMMITTEE COUNSEL (EXHIBIT B1-B3): Summarizes HB 3222 and

discusses three proposed amendments (EXHIBIT B1-B3). Refers to the fiscal impact.

115 CHAIR BAUM: How far is the word "action" going to go?

127 REP. EDMUNSON: Discusses what ORCP 3 provides in relation to public body actions. Wasn't sure the Baum amendment was limited to tort claim notices.

152 CHAIR BAUM: No, it wouldn't be. Refers to ORCP Rule 3 provisions. Discusses the Baum amendment.

173 REP. EDMUNSON: Originally the bill dealt with actions. An action consistent to ORCP 3 means a complaint has been filed. The inclusion of any resolution of disputes where no action has been commenced goes beyond the scope of the Parks amendment. The bill is silent on those other instances.

179 CHAIR BAUM: Any objection to define "actions" defined in ORCP 3?

183 REP. EDMUNSON: No, but think the language, "does not include the provision of notice of claim under ORS 30.275" should be dropped on line 16, Baum Amendment (EXHIBIT B2).

186 CHAIR BAUM: ORCP 3 already does that?

187 REP. EDMUNSON: Yes, and a notice of claim does not mean that a complaint has been filed.

189 CHAIR BAUM: It's unnecessary language?

190 REP. EDMUNSON: Think it is. It's beyond the scope of this bill which just deals with actions.

193 CHAIR BAUM: Any objection to "action" being defined on lines 15-16 of the Baum Amendment (EXHIBIT B2) as the following: "Action" means a

legal proceeding that has been commenced as provided in ORCP 3."

There being no objection to the amendment, it is so adopted.

199 MOTION, REP. EDMUNSON: Moves to delete Section 2 from HB 3222 which would remove the criminal sanctions from the bill.

There being no objection, it is so ordered.

204 GREG CHAIMOV: Refers to the Edmunson Amendment (EXHIBIT B3). Suggests the new subsection (3) might be better placed as part of Section 1 so it is a modification of a public body's prohibition against entering into a confidential settlement agreement. The school districts made the following suggestions: In subsection (3), on line 14, insert "expedited" before the word "examination". On lines 15-16, remove "compelling" and "justify confidentiality and which".

223 REP. EDMUNSON: Suggests the word "private" be changed to "privacy" before the word "interests" on line 15.

There being no objection, the amendments are so adopted.

246 REP. MANNIX: Reviews the impact of the adopted amendments.

256 GREG CHAIMOV: Proposes to remove part of lines 12 and 13 of the Edmunson Amendments and shift the remainder of the paragraph to line 5. The paragraph to be moved begins with the phrase, "Unless otherwise ordered sealed by the court . . .".

There being no objection to the amendment, it is so ordered.

279 REP. BRIAN: Confirms that the bill as amended would require access to any settlement or compromise agreements that have been filed with the court but the parties have not requested them or the court has declined to seal them. Those would be what is accessible that is currently not accessible?

287 CHAIR BAUM: Correct. The only instance they wouldn't be would be if the privacy interests would outweigh the public's right to know. Could argue that was too much to put out there.

291 REP. CLARK: Is there anything in case law interpreting other provisions of the open meetings law that would give courts guidance on where to come down on the balance?

303 GREG CHAIMOV: Not aware of any cases interpreting the other provisions of the public records law that have similar provisions. Will research the matter.

307 REP. EDMUNSON: Refers to New York Times v. Sullivan and Firestone v. Time Magazine U.S. Supreme Court decisions that defined the limits of public and private individuals. However, those guidelines are not directly applicable here.

321 REP. CLARK: The issue here is there's a presumption these will be open records reviewed by the court almost on a case-by-case basis. Concerned about not giving any guidance on when something outweighs the public's right to know.

332 REP. MANNIX: This raises a legitimate issue. Makes a conceptual

amendment to define "privacy interests" as interests which are defined in terms of: 1) the nature of the cause of action 2) whether or not the public has previously been provided with information by the plaintiff as to the cause of action 3) the nature of the individual plaintiff asserting the privacy interest, and 4) the extent of the cause of action to be the final remedy. Gives example.

382 REP. CLARK: Suggests the judge make some findings for accountability purposes on the part of the judge.

392 CHAIR BAUM: Need to be careful due to rules of confidentiality--may let some of the specifics out in the findings.

394 REP. MANNIX: Can't the judge seal the findings for potential review?

400 REP. BRIAN: There is nothing in Rep. Mannix's conceptual amendments concerning the victim; i.e. a sexual harassment case.

411 REP. EDMUNSON: Suggests on line 15 of the Edmunson Amendment to change the language to "specific written findings", remove the word "that" and insert the word "of", delete "there are" to read: "specific written findings by the court of privacy interests which outweigh the public's interest. On line 16, delete the words "resolution of the dispute" and insert "terms of the settlement." Then add the sentence, "If the court orders the settlement or compromise sealed, the findings shall remain confidential pending appeal."

445 CHAIR BAUM: Shouldn't they be sealed pending either appeal?

TAPE 102, SIDE A

022 REP. EDMUNSON: Yes. Or if a third party appeals that finding.

023 REP. MANNIX: Why not say the findings shall remain sealed until an order determining that the material need not be confidential has become final.

025 GREG CHAIMOV: Everything said is fine except for Rep. Mannix's suggestion.

026 REP. MANNIX: The findings shall remain sealed until an order determining that the settlement need not be confidential has become final.

030 REP. EDMUNSON: Interprets discussion to be if a judge rules that the settlement should be public and there's an appeal and the judge is sustained, and it is a public settlement, then the findings should become public as well. Discusses the concept of the public's right to know.

047 MOTION, REP. MANNIX: Moves those as conceptual amendments.

050 GREG CHAIMOV: Reads the newly amended Edmunson Amendments on lines 14-15. "After an expedited examination in camera of the proposed settlement or compromise and upon specific written findings by the court of privacy interests which outweigh the public's interest in the terms of the settlement the findings shall remain confidential until an order determining that the settlement or compromise shall not be confidential becomes final."

051 REP. MANNIX: Might want to take out the double negative but otherwise that state's the concept.

055 CHAIR BAUM: Agrees.

060 REP. MANNIX: It's important to remember the constitutional requirement that the courts be open and that there be public justice. This is trying to provide for records access on the other side of the executive branches of government and provide a review procedure concerning confidentiality of records. Discusses resolution by the courts.

077 REP. BELL: Discusses confidentiality issue.

083 REP. EDMUNSON: The parties may not reach a deal and this inserts the judge as a third party to rule.

089 BELL: Raises issue of increased fiscal impact due to possibility of more cases brought to trial.

116 REP. EDMUNSON: Most of these kinds of lawsuits are extremely routine and nonconsequential.

121 CHAIR BAUM: This adds slightly more in court procedures.

135 REP. CLARK: This is simply asking for accountability on the balance.

There being no objection to the amendments, they are so adopted.

163 MOTION, REP. MANNIX: Moves HB 3222 as amended with the conceptual amendments to the Full Committee with a "do pass" recommendation.

VOTE: 7-1

AYE: Brian, Clark, Edmunson, Johnson, Mannix, Miller, Baum NO: Bell
EXCUSED: None

Motion passes, Rep. Parks to carry.

HB 3217 - WORK SESSION

177 GREG CHAIMOV: Summarizes HB 3217 which would increase jury fees and mileage reimbursement. The bill needs to be subsequently sent to the Ways and Means Committee.

191 CHAIR BAUM: Refers to proposed amendments offered by the Judicial Department (EXHIBIT D). What does the proposed amendment at the end of line 10 mean?

196 GREG CHAIMOV: Understands this would authorize the chief justice, for example, to reimburse a juror for day care expenses--not a normal incurred expense.

204 BILL LINDEN, STATE COURT ADMINISTRATOR (EXHIBIT D): Explains the proposed amendment would give the chief justice some flexibility to provide for reimbursements to jurors for expenses outside the ordinary. Gives examples. We would limit the application of this due to budgetary limitations.

225 CHAIR BAUM: Call this an indeterminate fiscal impact?

228 LINDEN: Have no idea what this might actually cost but we'll have to absorb that cost within our appropriation.

231 CHAIR BAUM: Do other states do this?

233 LINDEN: Most other states compensate jurors at reasonable rates compared to what Oregon does.

235 CHAIR BAUM: Is that because they already cover for what you're proposing?

237 LINDEN: Most states are providing a reasonable per diem and mileage reimbursement. The average per diem is \$25-\$30 as opposed to \$10 Oregon pays. Notes a \$5 increase in the per diem is \$1.8 million and a 5 cent increase in the mileage rate is about \$370,000.

249 CHAIR BAUM: How much would we save if that 12 to six-person juror bill happens to survive the process?

250 LINDEN: Understands that had a fiscal impact in the \$300,000 range.

253 CHAIR BAUM: Do the jurors get a fee for serving every day?

254 LINDEN: That's correct and it's based on our 1989-91 trial rate. The fiscal impact was based on civil cases where the six-person statute would apply.

265 REP. BRIAN: The application of the six-person jury is a small percentage of the overall juror activity.

277 LINDEN: That's correct. The fact that criminal cases aren't covered by the 12 to six-person requirement brought down the fiscal impact significantly. Recommends leaving the blank spaces blank and sending the bill to Ways and Means. At some point, the possible revenues can be added up to adjust these rates and fill them in at that point.

293 REP. BRIAN: Suggests some policy might be necessary to determine which application is most important; i.e. per diem, mileage, unusual incurred expenses.

304 LINDEN: Wouldn't object to that. The other possibility for increasing reimbursement is that currently it does allow a county to supplement the per diem and mileage but that has never occurred to my knowledge.

311 REP. BRIAN: Any direction from the court about which application might be most appropriate?

317 LINDEN: Would pick the mileage. Don't have enough money for a significant increase in per diem. But there may be enough to give a reasonable mileage reimbursement. Unusual incurred expenses wouldn't affect the jurors as a whole but only in individual cases.

325 REP. CLARK: That was the thrust of a discussion with Rep. Jones.

331 REP. BELL: Would prefer the money be put in a pool for

