

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

June 24, 1991Hearing Room 357 1:00 p.m.Tapes 131 - 132

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: Jim Dole, Committee Counsel Jeff Steve,
Committee Assistant

MEASURES HEARD:SB 754 - WS SB 816 - WS SB 681 - WS SB 404 - WS SB 98 -
PH SB 394 - 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 131, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial Administration at 1:10 p.m.

SB 681 - WORK SESSION

013 HOLLY ROBINSON: SB 681 was before the subcommittee last week. At that time there was a motion to send it to the full committee so it would be appropriate for a motion for reconsideration because a problem with the amendment was detected.

The intent of SB 681 is to begin to get greater acceptance for general powers of attorney.

023 CHAIR BAUM: What was the original intent of AARP in proposing the legislation?

026 MARGARET BASHAM, AARP: Submits (EXHIBIT A) To alert senior citizens of the necessity of a power of attorney that they could use if they knew more about it. It is also important that they know they can record the power of attorney as they record a land deed.

033 ROBINSON: ORS 670 (2) has specific requirements about the revocation of powers of attorney that are done for conveyances. The way SB 681 now stands it is applied only for the purposes of conveyances and is part of Chapter 93. So you have two different ways of going about revoking a power of attorney for conveyances in the same statute and they are inconsistent.

Understands that the intent of the proponents of SB 681 was not to have the bill apply to conveyances.

That can be accomplished by deleting the reference to Chapter 93 and insert, after the phrase "power of attorney", "except powers of attorney executed for conveyances and powers of attorney for health care" and other powers of attorney that you do not want this to apply to.

049 REP. BRIAN: When we passed SB 681 out of committee we did it expressly for conveyances so that we do not have miscellaneous powers of attorney being recorded.

Seems that the conflict is aimed directly at what we specifically wanted to limit it to.

071 ROBINSON: That is why the bill is before you.

The conflict is what do you want this to apply to.

Does not think it was the intent of the proponents or the Senate to redo the way conveyances would be revoked. The intent was that if seniors executed a power of attorney for financial matters there would be an official place to file it and subsequently to revoke it and place notice of that revocation in a place other than a bank or safety deposit box.

Legislative Counsel put it in Chapter 93 because there are a few references in that Chapter that deal with other types of powers of attorney, but it is primarily conveyances.

If you want to create a mechanism that could be used, you could insert "except powers of attorney executed for conveyances and health care" and this would apply to everything else.

100 CHAIR BAUM: What has been happening to seniors that this bill would change and prevent?

105 BASHAM: The banking profession did not want to go to the court house to check if a power of attorney had been canceled. You can not get that information over the phone.

111 CHAIR BAUM: Is (2) at the request of the banks?

120 BASHAM: Yes.

145 CHAIR BAUM: Will have staff meet with Ms. Basham and the banks and try to resolve the problems.

SB 404 - WORK SESSION

156 REP. MILLER: Announces that SB 241 will not be heard today because it did not receive prior approval from the Speaker.

182 MOTION: REP. CLARK: Moves Brian Amendment which pulls out the compensation and replaces it with actual expenses.

192 SEN. MAE YIH: Presents and paraphrases (EXHIBIT B) proposing an amendment to SB 404 that would make the requirements for the office of Justice of the Peace consistent with those required of candidates for the office of District Court Judge.

Presents SB 404-A9 (EXHIBIT C).

Amendment could go into either SB 404 or SB 394.

250 RICHARD STACK, LINN COUNTY COMMISSIONER: Testifies in support of SB 394 -B.

330 CHAIR BAUM: We have to move SB 394. SB 404 has an uncertain future so you might not want to put your amendment into that bill.

335 SEN. YIH: Will have identical amendments prepared for SB 394 and SB 404 which will make requirements consistent for District Court judge and Justice of the Peace, except for the member of the Bar provision.

383 MOTION: REP. BRIAN: Moves conceptual amendment allowing up to a \$100 fee which can be stated up front, including expenses as defined, for judges.

396 REP. BRIAN: A judge told me that their expenses are usually minimal because they perform the ceremony within their county.

Including expenses in the \$100 would also cap any concerns about anything else being included or expenses being too lavish.

450 VOTE: Without objection, Chair Baum declares the amendment adopted.

480 MOTION: REP. CLARK: Moves SB 404, as amended, to the full Judiciary Committee.

TAPE 132, SIDE A

041 VOTE: On a roll call vote, motion passes. Reps. Mannix, Miller, and Bell are excused.

045 CHAIR BAUM: Closes work session on SB 404.

Opens public hearing on SB 394.

SB 394 - PUBLIC HEARING

052 HOLLY ROBINSON: Summarizes provisions of SB 394 which was introduced at the request of the Judicial Department.

063 BILL LINDEN, STATE COURT ADMINISTRATOR: Presents and paraphrases written testimony in support of SB 394 (EXHIBIT D).

085 CHAIR BAUM: Why is a housekeeping bill coming to us this late in the session?

088 LINDEN: It was sent to Ways and Means Committee before our budget hearings began and was held there until after the budget hearings were concluded along with other bills we sponsored.

090 CHAIR BAUM: How do you feel about the proposed amendment to change the criteria to become a Justice of the Peace?

092 LINDEN: Suggested to Sen. Yih that she put that amendment into SB 404.

Do not have a position on Sen. Yih's amendment because the Justice Courts are not part of our state court system.

143 CHAIR BAUM: Recesses work session on SB 394.

Opens work session on SB 816.

SB 816 - WORK SESSION

154 CHAIMOV: Summarizes provisions of SB 816. Reviews provisions of SB 816 -A7 amendments (EXHIBIT E).

169 SCOTT GIRARD, PUC TELECOMMUNICATIONS DIVISION: Testifies in support of SB 816 and the 816-A7 amendments. Is not aware of any opposition to the bill.

181 MOTION: REP. CLARK: Moves adoption of the SB 816-A7 amendment (EXHIBIT E).

VOTE: Without objection, amendments are adopted.

190 MOTION: REP. CLARK: Moves SB 816 as amended to the full Judiciary Committee.

VOTE: On a roll call vote, motion passes. Reps. Brian, Mannix, and Bell are excused.

197 CHAIR BAUM: Rep. Clark will carry the bill.

Opens public hearing on SB 98.

SB 98 - PUBLIC HEARING Witnesses: Dennis Olmstead, Dept. of Geology David McClain, C.E. Exploration Co. Lanny Fisk, Norwestco Jean Cameron, Oregon Environmental Council Tom Barrows, Northwest Mining Association Richard Angstrom

230 DENNIS OLMSTEAD, DEPARTMENT OF GEOLOGY: The relationship between SB 98 and HB 2244 is that SB 98 is a civil penalty bill dealing with mining, oil and gas, and geothermal drilling. HB 2244 deals with chemical process mining and the Senate Agriculture Committee wanted there to be a civil penalty for that type of mining so took language similar to that in SB 98 and put it in HB 2244 applying only to chemical process mining.

Presents and paraphrases written testimony (EXHIBIT F).

Suggests an amendment to SB 98 in paragraph 8 on pages 2, 3, and 4 to specify how the Department will use the civil penalty money.

297 DAVID McCLAIN, C. E. EXPLORATION CO.: Testifies in favor of SB 98. Feels penalty for geothermal problem is too high.

345 LANNY FISK, NORWESTCO: Testifies in favor of SB 98 which he feels

is reasonable and necessary.

399 JEAN CAMERON, OREGON ENVIRONMENTAL COUNCIL: Presents and summarizes written testimony in support of SB 98 (EXHIBIT G).

TAPE 131, SIDE B

024 TOM BARROWS, NORTHWEST MINING ASSOCIATION: Supports the notion of Department of Geology having civil penalty. Agrees with Mr. McClain that \$50,000 a day penalty is too high. Would support a \$25,000 cap.

HB 2244 has a \$50,000 penalty. That seems to be the type of operation that might need a higher cap because of the higher potential for problems.

034 REP. EDMUNSON: Are you still for the bill even though it has higher fines than you would prefer?

040 BARROWS: Still support allowing civil penalty authority. Not happy with the amount of the fine.

Would agree that \$50,000 penalties should be reserved for the most serious violations.

055 RICHARD ANGSTROM: Opposes SB 98 because aggregate is in the bill and we do not think it is warranted. Testified in opposition to the bill in the Senate and will continue full opposition in the House. Have not seen amendments so unable to comment on them.

070 REP. EDMUNSON: Closes public hearing on SB 98.

Recesses subcommittee until 2:15 p.m.

076 CHAIR BAUM: Reconvenes subcommittee and work session on SB 394.

SB 394 - WORK SESSION

080 CHAIR BAUM: Sen. Yih needs to realize that if we amend the bill to include her amendments there might be a potential for a minority report that may do violence to the justice court system.

092 SEN. YIH: Submits SB 394-B8 amendment (EXHIBIT H).

The amendment previously considered in Ways and Means is different from this one.

I asked Ways and Means to reduce the six months requirement to 30 days and they felt it was special legislation and did not want to do it. SB 394-B8 which would make the residency requirement consistent is legitimate because it makes the lower court consistent with a stricter court's requirement.

116 MOTION: REP. MANNIX: Moves SB 394 to the full Judiciary Committee with a do pass recommendation.

VOTE: On a roll call vote, motion passes. Rep. Brian is excused.

130 CHAIR BAUM: Asks that the rules be suspended to reconsider SB 404.

Without objection, Chair Baum opens work session on SB 404.

SB 404 - WORK SESSION

134 MOTION: REP. MANNIX: Moves conceptual amendment to SB 404 relating to the residency requirements for Justice Court judges in terms of their eligibility for office to make the residency requirements for Justice Court judges consistent with those for District Court judges in their districts.

155 REP. EDMUNSON: Objects.

163 REP. BELL: Willing to vote Aye on the amendment to send the bill to the full committee but will look closely at the bill before the full committee hears it.

167 VOTE: On a roll call vote, motion passes. Rep. Edmunson votes No. Reps. Brian and Miller are excused.

164 MOTION: REP. EDMUNSON: Moves to amend SB 404 to require a Justice of the Peace to be a member in good standing of the Oregon State Bar.

178 REP. EDMUNSON: Thinks the HarriSB urg Justice Court is a kangaroo court. It is nothing but a speed trap for motorists on I-5 and I have a long standing opposition to Justice Courts having lived and worked in the HarriSB urg area. Does not think the state needs Justice Courts.

200 MOTION: REP. MANNIX: Moves to have the requirement be effective July 1, 1993.

200 REP. EDMUNSON: Accepts Rep. Mannix' amendment as a friendly amendment.

210 MOTION: REP. MANNIX: Further amends his motion to say that any Justice Court Justice who was sitting as of January 1, 1992 will be grandfathered in and the provision will only apply as those terms expire or the positions are vacated.

222 REP. BELL: Objects.

215 VOTE: On a roll call vote, motion fails. Reps. Clark, Edmunson, and Mannix vote Aye. Reps. Johnson, Bell, and Baum vote No. Reps. Brian and Miller are excused.

218 MOTION: REP. MANNIX: Moves SB 404 as amended to the full Judiciary Committee with a do pass recommendation.

227 VOTE: On a roll call vote, motion passes. Rep. Edmunson votes No. Reps. Brian and Miller are excused.

240 CHAIR BAUM: Rep. Brian will carry the bill.

Closes work session on SB 404.

Opens work session on SB 754.

SB 754 - WORK SESSION

246 REP. JOHNSON: Reviews bill's history. Proposes that two more tests be added: >The way of necessity across your neighHB or must be

substantially across an existing roadway >Imposing the way of necessity will not cause unreasonable damage to ecologically significant wetlands, timber stands, or similar environmentally sensitive areas

Hopes that this sufficiently tightens the bill so that the concerns voiced by various members of the House will be met.

269 REP. MANNIX: Addresses the two main concerns I had.

275 MOTION: REP. JOHNSON: Moves his conceptual amendments.

281 VOTE: Without objection, amendment is adopted.

295 REP. EDMUNSON: The addition of the word "lessee" is not addressed in the amendment.

284 REP. JOHNSON: Understands that is a concern to some people. The lessee we are talking about is the moving party, not the party across whose land the way would be.

288 REP. EDMUNSON: Did not have an opportunity on the floor to discuss this. Can we insert language to specify that.

307 REP. JOHNSON: How would you feel about "nonresidential lessee"?

310 REP. MANNIX: Is there any need for the lessee to be the moving party?

311 REP. JOHNSON: Is concerned about commercial or industrial lessees with substantial lease terms.

344 REP. MANNIX: Suggests allowing the lessee do this with a sunset clause on the lessee provision.

354 REP. EDMUNSON: More interested in saying a lessee for a term of years.

403 MOTION: REP. MANNIX: Moves a conceptual amendment that the lessee be restricted to a lessee for a term of at least a year as a moving party.

420 VOTE: Without objection, amendment is adopted.

422 MOTION: REP. MANNIX: Moves SB 754 as conceptually amended to full Judiciary Committee with a do pass recommendation.

416 VOTE: On a roll call vote, motion passes. Reps. Brian and Miller are excused.

443 CHAIR BAUM: Adjourns Subcommittee on Civil Law at 2:50 p.m.

Transcribed by,

Pat Zwick

EXHIBITS LOG: A:SB 681 Testimony - Margaret Basham - 3 pages B:SB 404 Testimony - Sen. Yih - 2 pages C:SB 404-A9 Amendments - Sen. Yih - 1

page D:SB 394 Testimony - Bill Linden - 8 pages E:SB 816-A7 Amendments -
Staff - 1 page F:SB 98 Testimony - Dennis Olmstead - 7 pages G:SB 98
Testimony - Jean Cameron - 6 pages H:SB 394-B8 Amendments - Sen. Yih - 2
pages