

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 27, 1991Hearing Room 357 9:00 a.m.Tapes 133 - 134

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 241 - PH SB 757 - PH/WS

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TAPE 133, SIDE A

004 CHAIR BAUM: Opens Subcommittee on Civil Law and Judicial Administration at 11:36 a.m.

Opens public hearing on SB 757.

Invites testimony from Rep. Jeff Gilmour.

PUBLIC HEARING SB 757 Witnesses:Rep. Jeff Gilmour Paul Lipscomb, Marion County District Court Judge Bill Linden,

012 REP. GILMOUR: Gives history of SB 757 which now includes amendments relating to judges.

Asks inclusion of a Governor's appointment of a Justice of the Peace in Linn County.

053 REP. MANNIX: We amended SB 404 to change residency requirements. Doesn't that take care of the problem?

057 REP. JOHNSON: Not sure it does because we amended SB 404 to require that all Justices of the Peace be attorneys.

058 REP. GILMOUR: Agrees.

060 CHAIR BAUM: SB 404 may be visiting the committee for the third time, so if you are concerned about that provision, that may be the vehicle you want to put it in.

072 REP. EDMUNSON: When we heard SB 404, we decided that rather than making a special exception for a particular community we decided to make the requirements for Justices of the Peace residency the same as those for District Judges. That would have had the effect of clearing up the problem in Linn County and elsewhere.

Would you object to us amending SB 757 in the same way regarding residency requirements?

083 REP. GILMOUR: Not having seen the amended bill, does not have objection.

Would oppose the current language in SB 404.

District Court Judge Paul Lipscomb from Marion County is here to make the case for the need if necessary.

089 PAUL LIPSCOMB, MARION COUNTY DISTRICT COURT JUDGE: Submits and paraphrases written testimony in support of SB 757 (EXHIBIT A).

Position is desperately needed, and is a responsible request in the wake of Measure 5.

Statistics included with (EXHIBIT A) are conservative. Marion County Circuit and District courts are the busiest in the state and need relief, especially with the closure of the Woodburn Court.

155 BILL LINDEN, STATE COURT ADMINISTRATOR: In addition to Marion County Judge issue, wants to identify and discuss the other issues in SB 757.

A Section of SB 757 would delay two judgeships in Multnomah County. The judgeships were created by the 1989 Legislature to be effective June 30, 1991. The county has not provided the necessary courtrooms and we don't have anywhere to put those judges at the present time. We need to delay the effective date of those judges to January 1, 1992. This will save \$200,000 of appropriations in Section 27. The judges were needed yesterday, but it doesn't make sense to have them before they have facilities.

Sections 3-21 deal with retirement issues now covered in HB 2241. HB 2241 also has a disappropriation, saving \$215,000.

Another amendment to SB 757 amendment is designed to address problem of what municipal and justice courts can do to increase the expense to the state General Fund.

205 REP. BRIAN: Are you saying that the most recent Tongue Report did not recommend the position, even though numbers seem to indicate need.

210 LINDEN: The Tongue Commission did not recommend the Marion County position. The Woodburn issue was not before them at the time they made their decision.

231 REP. BRIAN: Given that numbers appear to be strong, were there other reasons why the report didn't initially recommend an additional judge for Marion County?

239 LIPSCOMB: The Tongue Commission said they felt if the two courts were consolidated the volume could be handled.

The Commission also did not like individual calendaring system operating in Circuit Court.

256 REP. BRIAN: Mr. Linden, is it your office's official position to support an additional judge in Marion County?

264 LINDEN: Is fully supportive of the Washington judgeship. The problem with the Marion judgeship is that the Chief Justice agreed to support the Tongue Report, and only the Tongue Report.

The intervening factor of the Woodburn court closure makes it hard for me to argue against the Marion County position.

We want to get to the position where only the positions recommended by the Tongue Commission are considered.

276 CHAIR BAUMAN:: Closes public hearing on SB 757.

Opens work session on SB 757.

WORK SESSION - SB 757

286 SEN. JEANNETTE HAMBY: Desperately need additional judge in Washington County.

The Senate Judiciary Committee seriously considered the Tongue Report and the request from Marion County. However, we passed a bill through both Houses that spoke to how you count filings. The Senate Judiciary Committee chose to go with one judge for Washington because of variety of ways used for counting filings.

311 MOTION: REP. MANNIX: Moves to change Washington County judge effective date to June 30, 1993.

VOTE: Without objection, amendment is adopted.

322 MOTION: REP. MANNIX: Moves conceptual amendment to change the residency requirements for justice court judges to parallel the residency requirements with district court judges.

VOTE: Without objection, amendment is adopted.

332 MOTION: REP. MANNIX: Moves to conceptually amend statute to include the following section: "Notwithstanding any other law, no county or city shall create a new justice or municipal court or modify or change an existing justice or municipal court in such a way that the state General Fund experiences a loss in revenue or an increase in expenditures".

345 REP. BRIAN: Objects to the amendment because it mandates in reverse.

367 REP. MANNIX: Made the motion as a courtesy to another member and

intend to vote against it.

380 LINDEN: The intent is to retain a status quo in terms of how the state, municipal, and county justice systems are working.

400 REP. MANNIX: That's an earth shattering change in the system. Might support the concept if we had time to hold extensive hearings and work out a comprehensive plan. Likes the idea of restricting how counties and cities either create or reduce their jurisdictions.

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

432 MOTION: REP. JOHNSON: Moves to delete Sections 3 through 21 of SB 757.

VOTE: Without objection, amendment is adopted.

486 MOTION: CHAIR BAUM: Staff will adjust the relating to and creating new provisions language on lines 2 through 7 to reflect the changes when we took out Sections 3 through 21.

TAPE 134, SIDE A

VOTE: Without objection, amendment is adopted.

040 REP. MANNIX: Is there anything about Section 23 and the date for the Multnomah County judges that needs change per agreements?

042 LINDEN: The date needs to be moved to January 1, 1992. In Section 27, the disappropriate amount needs to be changed to \$201,564.

044 MOTION: REP. MANNIX: Moves language stated by Mr. Linden.

065 REP. MILLER: Objects to motion.

068 LINDEN: Reason for moving that date up is to keep pressure on the Portland Board of Commissioners to provide facilities. If the judges can not be housed by January 1, 1992, doubts the Governor will immediately appoint them.

Ways and Means Committee will not release funds to pay for the new judges until judges are ready to work.

072 VOTE: CHAIR BAUM: Declares the amendment adopted.

083 MOTION: REP. MANNIX: Moves SB 757, as amended, to the full Judiciary Committee with a do pass recommendation.

086 VOTE: On a roll call vote, motion passes unanimously. All members are present.

095 CHAIR BAUM: Closes work session on SB 757.

Opens public hearing on SB 241.

PUBLIC HEARING SB 241 Witnesses: Fred Hansen, DEQ Dan Ten Eyck, Reynolds Metals Dave Barrows, Chem Waste Management Jim Craven, AEA Joe Gilliam, National Federation of Business Jean Cameron, Oregon Environmental

Council Quincy Sugarman, OSPiRG

105 ROBINSON: Summarizes provisions of SB 241 which increases the fees for disposal of hazardous wastes.

107 FRED HANSEN, DEQ: Briefs committee on issues of SB 241.

Summarizes (EXHIBIT B).

166 REP. BELL: Is there any advantage to Oregon accepting out of state waste?

171 HANSEN: Hazardous waste, in our view, is appropriately managed on a regional basis. Arlington Hazardous Waste Landfill should be available within the region. Low level nuclear waste goes to the Hanford facility in Washington. Washington is also looking at the possibility of licensing and permitting a hazardous waste incinerator. That balance within the region makes sense to us, but means that a lot of waste is coming from out of state.

181 REP. BELL: High California hazardous material rate sounds like policy statement against accepting other states' waste.

Why don't we have a higher rate for out of state waste?

188 HANSEN: There has been debate about raising Oregon's hazardous waste rate for out of state waste.

195 REP. BELL: Is there a balance with what we pay for our nuclear waste at Hanford and what they pay for their waste in Oregon?

200 HANSEN: There is not a specific offset but there have been numerous councils and activities among Oregon, Washington, Idaho, Alaska, and British Columbia to maintain regional relationship. Washington state pays for these same activities by imposing a surcharge on petroleum products.

208 REP. CLARK: Ask for information on law suit filed and the question of the E Board.

214 HANSEN: The lawsuit was filed against a special surcharge on solid waste, not hazardous waste that is being discussed here. The surcharge would have gone to a facility near the hazardous waste facility at Arlington, but not the same facility.

Issue was inappropriate delegation to the E Board.

Other constitutional issue being argued is the differential fee for in-state and out-of-state waste.

234 REP. JOHNSON: The fiscal analysis states that this money will fund 11 new permanent positions. Your hand out indicates those staff will provide small business technical assistance.

238 HANSEN: Yes.

249 REP. JOHNSON: Will this new program be coordinated with organizations representing small businesses to make sure it is most helpful and least intrusive to small businesses?

255 HANSEN: Yes. One of strong sponsors of the legislation represents small businesses. Component of the legislation is that at least 50% of the funds must go specifically to small business assistance programs.

268 REP. JOHNSON: Address enforcement actions.

271 HANSEN: That was an issue to us and the regulated community. Page 4, line 7 explicitly addresses that issue. This language is parallel to existing statutory language on toxic waste reduction. This is not intended to be a regulatory program, but a technical assistance program.

287 REP. BRIAN: Asks Mr. Hansen to address hold harmless provisions.

299 HANSEN: References language on page 3, lines 40-42, which addresses hold harmless provision for Oregon companies.

Large importers are Washington companies, and the issue of concern is not waste produced at Troutdale, but rather at the Longview facility, which is produced in substantially greater quantities. Those are the wastes that are being disposed of at Arlington, at their choice.

322 REP. BRIAN: Is their Oregon waste being sent to Arlington?

325 HANSEN: Yes.

327 REP. BRIAN: Is that being offset as with other Oregon companies?

329 HANSEN: Yes. In our most recent analysis they have sent waste to Arlington in a large enough amount, from the Troutdale facility, that they would not fully offset their generator fee.

333 REP. BRIAN: Concerned about treating all Oregon companies treated the same with respect to waste created and disposed of in Oregon.

Is it possible to have a company held harmless for its Oregon operation only?

341 HANSEN: One difficult issue is interstate commerce clause. Because this has been an equal \$10 surcharge for in and out of state waste, there have been no interstate commerce concerns. If that is changed, it raises constitutional concerns.

353 REP. BRIAN: Has confidence in system to identify and develop other offsets when needed.

359 CHAIR BAUM: Recesses public hearing on SB 241.

MOTION: CHAIR BAUM: Moves to suspend rules to bring back SB 757 for the purpose of considering conforming amendments.

VOTE: Without objection, Chair Baum declares motion passed.

WORK SESSION SB 757

362 ROBINSON: Clarification is needed to state that the judgeship that comes on line in Multnomah County will be made on the new date or as soon as practicable thereafter to allow the Governor and the County flexibility.

380 MOTION: REP. MANNIX: Moves adoption of language proposed by

Counsel.

382 VOTE: Without objection, amendment is adopted.

384 MOTION: REP. JOHNSON: Moves SB 757, as amended, to the full Judiciary Committee.

390 VOTE: On a roll call vote, motion carries. Reps. Edmunson and Miller are excused.

420 CHAIR BAUM: Closes work session on SB 757.

Reopens public hearing on SB 241.

Gives gavel to Rep. Clark.

TAPE 133, SIDE B

PUBLIC HEARING - SB 241

008 REP. BELL: If the "reasonable cause" part of the clause goes into effect, does that include any penalties, fines, or punitive measures?

013 HANSEN: This language was carefully crafted with all parties involved to provide for appropriate enforcement without discouraging people from coming forward with needed information.

021 REP. BELL: Can language be narrowed to leave out penalties above and beyond actual clean up costs?

025 HANSEN: Those who have damaged the environment should be subject to enforcement. To date, this language has not been used inappropriately.

034 REP. BELL: Could that be because culpable parties haven't come forward?

038 HANSEN: That is possible, but we have had a lot of people with problems seek our advice and that has not appeared to be a difficulty.

043 DAN TEN EYCK, REYNOLDS METALS COMPANY: Testifies in opposition to SB 241 reading written testimony (EXHIBIT C).

065 REP. MANNIX: To put this in context, what was gross production for Reynolds Aluminum in Washington and Oregon last year, financially?

068 TEN EYCK: 130,000 tons in Oregon and 200,000 tons in Washington. The price of aluminum is currently 58 cents per pound.

077 REP. MANNIX: So that's about \$20 million in Washington and \$13 million in Oregon.

078 TEN EYCK: Continues reading from (EXHIBIT C).

101 REP. BRIAN: If going to do anything along lines you're proposing, we would tend to discuss offsets for Oregon-produced waste.

111 TEN EYCK: The aluminum industry is regional. 40 percent of the national aluminum production is in the Northwest. The classes of companies affected by these changes are the aluminum companies. The major clean up efforts are unpredictable in quantity and will be subject

to this increase.

We think with our proposed cap, DEQ should still be able to realize their budget to do their small business assistance.

Reviews statistics in (EXHIBIT C).

142 REP. BELL: Do you ever get technical advice from DEQ?

145 TEN EYCK: Have been handling hazardous materials associated with production for 50 years, so very little DEQ assistance needed.

155 REP. BELL: How often does DEQ inspect your facilities?

158 TEN EYCK: They come unannounced on an irregular basis.

HB 2175 alone will mean \$100,000 annual fee increases. Fees are contributing to spiralling increase in production costs in face of flat world prices.

173 REP. BELL: Do you feel DEQ is asking for too much, given what they need to do, the issue they are dealing with, and the vigilance required?

175 TEN EYCK: Yes. We feel we should contribute to hazardous waste clean up effort, but if fees are too high, it leads to a disincentive to clean up.

180 REP. MANNIX: But if tipping fees increase, they serve as incentive to reduce that which has to be tipped and seek alternative recycling.

190 TEN EYCK: A hazardous waste commodity can only go to a hazardous waste site.

206 REP. MANNIX: Suggests possibility of tax credit as incentive for reducing waste.

220 DAVE BARROWS, CHEM WASTE MANAGEMENT: Have been party to hazardous materials fee discussions for 10 years. Supports bill. Proposed increase is in line with prices for disposal in Washington and Idaho. This is a regional issue. Oregon is part of regional compact that designates Oregon and Idaho for management of hazardous materials.

266 REP. MANNIX: Suggests consideration of incentive to hazardous materials producers to reduce waste volume.

279 BARROWS: Chem Waste Management is strong advocate of waste reduction.

284 JIM CRAVEN, AMERICAN ELECTRONICS ASSOCIATION: Existing pollution control tax credit program extends through 1995. Doesn't apply to waste reduction but for capital expenditures for equipment whose purpose is to reduce pollution.

297 JOE GILLIAM, NATIONAL FEDERATION OF BUSINESS: Testifies in support of SB 241. Disposal cost and procedure is real for small business. Currently no assistance to educate small business about how to identify and dispose of hazardous materials. DEQ has shown cooperation and willingness to include small business in the planning of the assistance program to ensure dollars are spent efficiently.

324 BARROWS: In year-long negotiations with DEQ, have made it clear that couldn't sign off on this bill if our customers did not. AOI endorses this bill.

334 CRAVEN: Echoes support and notes that electronics companies have been reducing waste. Also notes that most electronic companies are small businesses. The technical assistance provision in this bill won't help the Tektronix, and Intels of the world, but it will help two-thirds of the industry composed of small businesses who need the help.

AOI, AEA, and DEQ run quarterly workshops on hazardous materials which are well attended. DEQ's funding contribution to that program is included in this bill.

365 REP. MANNIX: Could DEQ help people put together cooperatives for combining waste reduction programs as part of their technical assistance program?

385 JEAN CAMERON, OREGON ENVIRONMENTAL COUNCIL: SB 241 is a good idea for the environment by helping small businesses that don't have the technical corporate regulatory staff needed.

411 QUINCY SUGARMAN, OSPIRG: Testifies in support of SB 241.

Echoes Ms. Cameron's statement that there should be no volume discount for hazardous materials.

455 CHAIR CLARK: Adjourns Committee at 1:03 p.m.

Transcribed by,

Pat Zwick

EXHIBIT LOG A:SB 757 Testimony - Paul Lipscomb - 3 pages B:SB 241 Testimony - Fred Hansen - 3 pages C:SB 241 Testimony - Dan Ten Eyck - 6 pages