

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

June 11, 1991Hearing Room 357 1:00 p.m.Tape 55

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair Rep. Ray Baum Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Greg Chaimov, Committee Counsel Jim Dole, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD:SB 1203 - W.S. SB 1193 - W.S. SB 571 - W.S. SB 754 - W.S. SB 307 - W.S. HB 3265 - W.S. HB 3455 - W.S.

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TAPE 55, SIDE A

004 CHAIR RANDY MILLER: Opens House Committee on Judiciary at 1:15 p.m.

HB 3265 - WORK SESSION

008 CHAIMOV: Reviews provisions of HB 3265 which, with the -2 amendments, will now create an interim committee to study whether state agencies should use independent administrative hearings officers.

014 REP. CLARK: HB 3265 was brought by a small business group which was concerned that they were not getting fair hearings in some state agencies.

Several subcommittee members who have practiced in front of state agencies agreed that there is sometimes an appearance that things are not entirely fair.

020 MOTION: REP. BAUM: Moves adoption of HB 3265-2 amendments (EXHIBIT A).

VOTE: Without objection, amendments are adopted.

022 MOTION: REP. BAUM: Moves HB 3265, as amended, to the floor with a do pass recommendation. VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Clark, Edmunson, Johnson, Parks, Sunseri, Miller

NAYS: None EXCUSED: Reps. Bell, Brian, Mannix, Mason

028 CHAIR MILLER: Rep. Clark will carry the bill.

Closes work session on HB 3265.

Opens work session on SB 307.

SB 307 - WORK SESSION

031 CHAIMOV: Reviews provisions on SB 307 which would exempt counties with fewer than 500 ,000 people from using the civil service employment system.

040 REP. CLARK: Will not move SB 307-1 amendments because some people are not sure that the current statute is not being used.

048 MOTION: REP. CLARK: Move SB 307 to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Clark, Edmunson, Johnson, Parks, Sunseri, Miller NAY: None EXCUSED: Reps. Bell, Brian, Mannix, Mason

055 CHAIR MILLER: Rep. Brian will carry the bill on the floor.

Closes work session on SB 307.

Opens work session on SB 754.

SB 754 - WORK SESSION

057 CHAIMOV: Reviews provisions of SB 754 which expands the right to ways of necessity.

064 REP. SUNSERI: What right does the property owner whose land will be crossed have?

066 REP. BAUM: To have his costs paid to defend against the way of necessity or for the use of the easement.

073 REP. SUNSERI: Is this for ingress and egress only?

075 REP. BAUM: Yes.

077 REP. PARKS: Does the language that says it will cost less than eight percent of the assessed value of the parcel to be established address the benefitted or burdened parcel?

080 CHAIMOV: The language has now been changed to 20% in the SB 754-4 amendments to make it clearer that it is 20% of the benefitted parcel.

086 REP. JOHNSON: There is already a way of necessity statute. A person owning a landlocked piece of land can use that statute.

099 REP. SUNSERI: It is presently against the law to not provide access to a person's property.

115 CHAIMOV: Testimony that the subcommittee received was from a gentleman from the Burns area who had an easement that he could use at

one time, but when the river widened it required building a new bridge, the cost of which exceeded the value of the property he owned.

The bill was meant to address that kind of situation.

124 REP. SUNSERI: Reluctant to pass a law which would be policy for the entire state, based on one incident.

130 REP. BAUM: This is only going to apply in exceptional circumstances.

139 REP. SUNSERI: The potential for abuse is significant.

152 MOTION: REP. BAUM: Moves adoption of SB 754-A4 amendments (EXHIBIT B).

155 VOTE: Without objection, amendments are adopted.

155 MOTION: REP. BAUM: Moves SB 754, as amended, to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion fails. AYES: Reps. Baum, Bauman, Clark, Edmunson, Miller NAYS: Reps. Johnson, Parks, Sunseri EXCUSED: Reps. Bell, Brian, Mannix, Mason

170 REP. CLARK: Changes his vote to No and serves notice of possible reconsideration.

171 CHAIR MILLER: Closes work session on SB 754.

Opens work session on SB 571.

SB 571 - WORK SESSION

173 DOLE: Reviews provisions of SB 571 which modifies ORS 18.420. Revisions to the statute make it clear that the judgment debtor has the burden of proof in these cases. The bill is in response to a 1988 Polk County court decision which left the status of the statute ambiguous.

179 MOTION: REP. BAUM: Moves SB 571 to the floor with a do pass recommendation.

190 VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Bell, Clark, Edmunson, Johnson, Parks, Sunseri, Miller NAY: None EXCUSED: Reps. Brian, Mannix, Mason

200 CHAIR MILLER: Rep. Bell will carry the bill on the floor.

Closes work session on SB 571.

Opens work session on SB 1193.

SB 1193 - WORK SESSION

204 DOLE: Reviews provisions of SB 1193 which provides that a person who provides escrow and similar services shall not be liable for violations of the securities laws unless the person participates or materially aids in the sale and the purchaser proves that the person knew about the basis of the liability, or that person's failure to know was the result of recklessness or gross negligence.

209 MOTION: REP. EDMUNSON: Moves SB 1193 to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Bell, Clark, Edmunson, Johnson, Parks, Miller NAY: None EXCUSED: Reps. Brian, Mannix, Mason, Sunseri

225 CHAIR MILLER: Rep. Johnson will carry the bill on the floor.

Closes work session on SB 1193.

Opens work session on SB 1203.

SB 1203 - WORK SESSION

230 DOLE: Reviews provisions of SB 1203 which codifies the rule that a party instituting an interpleader action shall be awarded attorney fees out of the funds or property interpled.

235 REP. PARKS: Opposes bill. States reasons.

262 REP. BAUM: Reviews information received.

275 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: We were told by the Council on Court Procedures that the issue was a policy decision and should be addressed by the legislature.

States banks' role and abuses encountered.

Understands that bill says the court would determine whether or not there were to be attorney fees.

325 REP. PARKS: The bill says that the interpleader will be entitled to the award of reasonable attorney fees and that is not a discretionary judgment.

330 BRAUNER: That is only when a court has become involved in the interpleader proceedings.

343 REP. BELL: What is the alternative?

346 REP. PARKS: To insert a standard so that attorney fees are not automatic.

359 MOTION: REP. EDMUNSON: Moves SB 1203 to the floor with a do pass recommendation.

371 VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Bell, Clark, Edmunson, Johnson, Miller NAY: Rep. Parks EXCUSED: Reps. Brian, Mannix, Mason, Sunseri

390 CHAIR MILLER: Rep. Johnson will carry the bill on the floor.

Closes work session on SB 1203.

Opens work session on HB 3455.

HB 3455 - WORK SESSION

380 DOLE: Reviews provisions of HB 3455 which provides that facsimile reproductions are within the definition of duplicate under Oregon's best evidence rule. HB 3455-1 amendment (EXHIBIT C) provides that the facsimile reproductions must be made on non-thermal paper.

386 MOTION: REP. BELL: Moves adoption of HB 3455-1 amendments.

391 VOTE: Without objection, amendments are adopted.

393 MOTION: REP. BELL: Moves HB 3455, as amended, to the floor with a do pass recommendation.

405 VOTE: On a roll call vote, motion passes. AYES: Reps. Baum, Bauman, Bell, Clark, Edmunson, Johnson, Parks, Miller NAYS: None EXCUSED: Reps. Brian, Mannix, Mason, Sunseri

420 CHAIR MILLER: Rep. Clark will carry the bill on the floor.

Closes work session on HB 3455.

Adjourns meeting at 1:43 p.m.

Transcribed,

Pat Zwick

EXHIBITS LOG: A:HB 3265-2 Amendment - Staff - 1 page B:SB 754-A4 Amendment - Staff - 5 pages C:HB 3455-1 Amendment - Staff - 1 page