

House Committee on Legislative Rules & Reapportionment May 16, 1991 -
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proceedings, please refer to the tapes.

HOUSE COMMITTEE ON LEGISLATIVE RULES AND REAPPORTIONMENT

May 16, 1991Hearing Room 454 5:00 p.m.Tapes 37 & 39

MEMBERS PRESENT:Rep. Greg Walden, Chair Rep. Peter Courtney,
Vice-Chair Rep. Ray Baum Rep. Beverly Clarno Rep. Bill Markham Rep.
Randy Miller Rep. Fred Parkinson

MEMBER EXCUSED: Rep. Margaret Carter Rep. Ron Cease Rep. Carl
Hosticka Rep. Tom Mason

STAFF PRESENT: Greg Leo, Committee Administrator Carol Wilder,
Committee Assistant

MEASURES CONSIDERED: SB 845 PH/WS SCR 9 PH/WS SCR 10 WS
SCR 11 WS SJR23 PH/WS Introduction of committee bills

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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 37, SIDE A

007 CHAIR WALDEN: Calls the meeting to order at 4:10 p.m.

SJR23 - PROCLAIMS 1991 BILL OF RIGHTS BICENTENNIAL AND NOVEMBER 1991
BILL OF RIGHTS MONTH, PUBLIC HEARING

015 REP. MARY ALICE FORD, HOUSE DISTRICT #8: The bill does two very
simple things and declares 1991 as proclaiming the Bill of Rights
Bicentennial in the state of Oregon. It also orders that the
Superintendent of Public Instruction be directed to require all schools

to develop one hour of instruction to the principles embodied in the Bill of Rights in all public schools during the month of November 1991.

1991 is the last year of five years of celebration of the Constitution. The last year of the Bicentennial is particularly important, for it is the 200-year celebration of the Bill of Rights. At the last hearing in the Senate, Attorney General Dave Frohnmayer presented the testimony and the article which you have in front of you (EXHIBIT A). Superintendent of Public Instruction Norma Paulus came to the Senate hearing and supported the resolution as did Oregon Supreme Court Justice Gillette. At the time he said, "What is the Bill of Rights and why do we have to pay it? Protection of individual rights is expensive." Another reason for the educational component, in 1987 the Hearst Corporation did a survey and found that 54% of people contacted did not know the Constitution created a federal government. 82% thought, "Of the people, by the people, and for the people" was in the Constitution, not in the Gettysburg Address. A majority did not know what the Bill of Rights is. Only 41% knew the Bill of Rights is the first ten amendments of the Constitution. 26% thought the Bill of Rights was in the Preamble to the Constitution and 20% thought it was any bill passed by Congress dealing with personal rights at all.

070 REP. MARKHAM: I hope you don't give this same test to the 90 members of the Legislature.

072 REP. FORD: We'll learn something on hearing this bill in the House. 49% believed the President can suspend the Constitution in times of war and national emergency. Referring to the article by Leonard Levy in the 1991 Winter CONSTITUTION magazine, "By giving these rights constitutional status, we declare that government cannot impair nor deny them, our rights to life, liberty, or property, to freedom of speech and press, to freedom of religious belief and assembly, to the equal protection of the law, and other fundamental rights do not and should not end on the outcome of any election. Moreover democracy means not just that the majority decides the course of national action, but that the minority, those who lose, retain the chance of becoming the majority. Democracy works successfully and peacefully because minority views can become majority views." These are the kinds of things that we hope will be taught in the school if you pass this resolution.

SJR23 - WORK SESSION

100 MOTION:Rep. Courtney moves SJR23 to the Floor with a Do Pass recommendation.

VOTE:In a roll call vote, all members present voted AYE. Reps. Carter, Cease, Hosticka and Mason were excused. Rep. Ford will carry.

INTRODUCTION OF COMMITTEE BILLS 127 LC 2438, relating to legislative rules and reapportionment.

VOTE:In a roll call vote, LC 2438 is approved with Vice Chair Courtney voting NAY. Reps. Carter, Cease, Hosticka, and Mason were excused.

133 LC 4080, relating to legislative rules and reapportionment at the request of the State Treasurer. Establishing the Strategic Financial Reserve Fund, appropriates \$83 million to the fund, dedicates the fund to preservation of the fiscal integrity of the state, requires legislative approval to use the funds upon application of the State Treasurer, sunsets fund on July 1, 1995, and reverts the balance to the General Fund.

142 REP. MARKHAM: Where does this figure \$83 million come from?

143 CHAIR WALDEN: That is a percentage of the cost of the debt that is outstanding. There is formula associated with the Constitution that delineates that.

VOTE: Hearing no objection to the introduction of LC 4080, Chair Walden so moves.

150 LC 4078, relating to the state budget, declaring an emergency. Sponsored by the Legislative Rules and Reapportionment Committee at the request of the State Treasurer. Requires the Governor to submit the 1993-95 budget by December 31, 1991. Requires the Governor to review certain data. Directs Speaker and President to call emergency sessions of the Legislative Assembly if necessary. Declares an emergency effective upon passage.

155 REP. MARKHAM: What's the point of this one?

160 CHAIR WALDEN: All we're doing is introducing bills. Traditionally, it has been a courtesy in the committee by both parties to introduce bills when they've been approved by the Speaker without objection.

VOTE: Hearing no objection to the introduction of LC 4078, Chair Walden so moves.

170 LC 4077, relating to education service districts at the request of the State Treasurer. Abolishes education service districts on June 30, 1993. Requires the Superintendent of Public Instruction to recommend next convening of Legislative Assembly. Means of retaining and consolidating needed functions.

VOTE: Hearing no objection to the introduction of LC 4077, Chair Walden so moves.

190 CHAIR WALDEN: Turns the gavel over to Vice Chair Courtney for the purposes of taking public testimony.

HJR 16 - ALLOWS LEGISLATIVE ASSEMBLY TO REQUIRE SENATE CONFIRMATION OF GOVERNOR'S APPOINTEE TO FILL VACANCY IN THE OFFICE OF JUDGE OF ANY COURT, PUBLIC HEARING

200 REP. KEVIN MANNIX, HOUSE DISTRICT #32: I am here to speak to the -2 amendments to HJR 16. These are not my idea, but I was asked whether or not I would object to them being inserted in a bill which I had originally sponsored. I said I have no objection. It raises an interesting issue. When there's a vacancy in the office of judge, the

vacancy shall be filled by election as opposed to the current system where the vacancy is filled by the Governor. I previously appeared and testified in favor of the original HJR 16 which required Senate confirmation of the appointment that didn't go over. This appears to be another attempt to address the issue I have raised and which many people seem to want to avoid which is we've been lucky in the state of Oregon that we've not had a Governor yet who's decided to just put a bunch of cronies into judicial positions. We've been lucky on a bipartisan basis. I'm waiting for the day we have a Governor who decides to put his or her cronies into judicial positions knowing full well that they'll then have a 90% plus chance of winning any election that comes along as incumbents. We have no requirement that the Governor consider a limited list of nominees from anybody. We have no requirement that the Senate confirm these appointments. Instead we have a system where more than two-thirds of the current sitting judges were appointed by the Governor, became sitting judges and then ran, usually without opposition or with very weak opposition, and got elected. If we want to maintain the idea that judges are elected in Oregon, that is not the way to do business. There are a lot of other ways that judges are selected. We have got constitutionally one of the weakest systems right now in terms of protections so long as we say the Governor can fill any vacancy and make that person a judge for many years to come. This amended version of the bill gets at the problem another way. It says the Governor can't do it. What do you do about those vacancies pending an election? The Supreme Court can appoint pro tem judges. It doesn't have to be someone who wants to serve in a position permanently, who wants to seek election. It might be, but it doesn't have to be. So there is a way; we do this all the time to fill temporary vacancies short term. Any time there's a vacancy that comes up that's in effect a permanent vacancy, the system is the Governor listens to the state bar, the local bar, and appoints somebody who almost always is elected at the next election to the remainder of the term or to the full term.

265 PAUL J. DEMUNIZ, ASSOCIATE JUDGE, COURT OF APPEALS: Testifies in opposition to proposed amendment. I was a beneficiary of the current system. I was appointed by Governor Goldschmidt in May 1990. I ran for election five months after that in the general election and was elected to the six-year term that I am currently serving. The comments that I have to offer are based on fifteen years of private practice of law. I've only been a judge for a year so I come to you with a perspective of a lawyer who practiced in the system for fifteen years.

290 REP. MILLER: Did you have serious opposition in your election?

292 DEMUNIZ: I had no opposition.

293 REP. MARKHAM: Will you ever run for re-election?

294 DEMUNIZ: No, I could not do that. A good majority of the judges currently sitting were the beneficiaries of this particular system. I practiced privately in Salem for fifteen years and although my practice was in Salem I had a statewide practice. I tried cases in nearly all the 35 counties in Oregon. I had the privilege of appearing before most of the sitting judges that are currently sitting in those counties and in front of all the appellate judges currently sitting. Having done that, my first reaction to what Rep. Mannix said is that there is no parade of horrors. This is a system that has been working quite adequately for a number of years. If it ain't broke, don't fix it. When I was appointed to the position on the Court of Appeals in May

1990, I had never met the Governor who appointed me. The first time I ever saw him was when I was interviewed by him. At the time that he appointed me, he appointed a person whose partner was the husband of the person who ran against him in the election for Governor. Clearly there was no partisan politics in that situation. I happen to think that Rep. Mannix is correct in that there are no particular rules that the bar goes by in recommending judges. They go by experience, and those standing committees have good people on them. The governors have all listened to those people.

We have two different systems at work. The appointment of local judges is subject to a preference poll done by the local bar. That's not the situation in the statewide offices such as mine. I think that those of us who experienced that process know that at least in the local situation the local bar is a very good barometer of those people who have the judicial temperament and confidence to be judges. I think the governors do not always follow who gets the most votes but they certainly look at who ranks in the higher categories in those positions. I think also that the bar committee that passed on those qualified to be in that position took a great deal of time and had a great deal of information before they passed on the recommendations that they made. I don't see anything inherently bad about this particular proposal. It seems to me that there are a number of hindrances or potential problems for the system to go wrong. One of them identified by Rep. Mannix was the situation where a vacancy occurs. Right now our judicial system, our court system is clogged to the hilt. We're busting at the seams. You need every available judge, prosecutor and lawyer available to make this system operate. The appointment process has been fairly expeditious. The ability to place those competent people in a position without a lengthy vacancy is one of the advantages of the present system. Those people who are willing to commit to do that seem to be able to hit the floor running. They are able to go in and assume a quality workload and be able to process the kind of case law that needs to be done. In this system it seems to me that you're going to be stuck with extensive vacancies and it's going to be extremely difficult to get the kind of quality long-term pro tem help that Rep. Mannix envisions. People are not going to be willing to commit to that kind of thing. People who have active and successful practices, those who are competent, need to pay attention to those. I think it would be very difficult to have that kind of system.

As I was looking at this, there's no indication, at least in any enabling legislation, how this would work. Would a person be elected to fill the unexpired term? I think that's unlikely he would find people to do that. If you're not running in the general election then if you'd have special elections that raises a question of how well the public knows its judicial candidates. I don't think this would help them know them any more. In fact, I would think it would make them know them less because of the necessity to speed up the elective process. As a practical approach, I had to run within five months of my employment. That's not a particularly long time. That seems to be a situation that happens frequently. If there is an election close in time you're more likely to draw a candidate. That's the time that it happens. Finally, under the system we have now everyone who's appointed under this system would have to run for election within two years anyway. I think the system is functioning very well and I don't think it's one that needs to be changed.

400 REP. CLARNO: Rep. Mannix, in the summary it says the governor is

appointed to fill the vacancy in the office of any judge of any court. Does Section 16 in the amendments include those judges in small counties in eastern Oregon who do not have a legal background but are considered judges of the court?

409 REP. MANNIX: That's a good question. In these provisions regarding judges you may want to specify any judge established by the Constitution or by state statute or specify we're talking Supreme Court, Court of Appeals, Circuit Court, or District Court judges. I don't think Justice Court judges were intended to be covered by this. We're only dealing with people who are usually appointed by the Governor, but Section 10 does say when the vacancy occurs in the office of any judge, and someone might argue that "any judge" reference might include people who were never appointed by the Governor in the first place such as justice court judges, traffic court judges. There may be some terminology elsewhere in the Constitution that defines that carefully enough. That's a legitimate question.

427 REP. CLARNO: In those small counties two people are considered judges - the justice court judge and the judge of Sherman County court.

429 REP. MANNIX: That would not be covered here in that sense. Right now the current law talks about the office of judge of any court where the Governor fills such a vacancy. I assume that this has been interpreted to mean the judge of any state court, district court, circuit court. I'm not familiar with the Governor filling justice court.

433 REP. CLARNO: She does fill justice court. There was a recall in Sherman County in Rep. Walden's district. It failed, but there was a recall of a justice. Lots of people were writing that I'd like to have the Governor appoint me.

442 REP. MARKHAM: Judge, were you in the Voter's Pamphlet? In a special election like this, does it require the Voter's Pamphlet to go out?

443 REP. MANNIX: It would be at the next regular election. There's some statutory provisions.

445 REP. MARKHAM: If this thing passed and if there was a vacancy it would be filled by these pro tem judges until the following election?

450 REP. MANNIX: That's right.

450 REP. PARKINSON: Rep. Mannix doesn't claim the -2 amendments?

451 CHAIR WALDEN: Rep. Lonnie Roberts does and he could not be here today.

TAPE 39, SIDE B (Tape 38 was defective and wasn't useable.)

004 DEMUNIZ: We had the very situation that you were describing occur in Marion County twice within the last three years where justices of the peace are statutory officers as opposed to constitutional officers and that means that when they are in those positions their first election is to the unexpired term and then they have to run if they want to remain in the position for the full six-year term. That created a great deal of confusion in Marion County where it was two positions and that's one

of the problems that I could foresee with this in determining what the terms are going to be, when that's supposed to happen, and it caused an extreme difficulty in Marion County.

SCR 9 - MEMORIAL: ROBERT KNIPE, PUBLIC HEARING

037 MIKE MEREDITH, PRESIDENT, OREGON TRUCKING ASSOCIATION: I got the honor of taking Bob Knipe's job when he retired. This is a humbling experience. Bob started as a lobbyist here in Oregon when I was two years old, so he had quite a head start on me. He knew quite a lot more than I did. When Bob retired he listed about 15 different rules that a good lobbyist should observe. At the time he did it, we were just in the process of buying our laser printer and so I put these into our computer and drafted a nice little brochure (EXHIBIT B). When Bob found out that I had put that into writing, he grabbed the original and tore it up and told me never to have this printed. If the lights start flickering here, we'll know that Bob is shining down on us. I don't think Bob would be very happy with me. He would probably not want to have any mention of a memorial such as this but I think it's a very fitting tribute to what I considered to be one of the finest lobbyists I've ever met. Someone that I have a great deal of respect for. I won't go over the 15 rules, but I hope you have an opportunity to read them. I think they should be distributed; I think they're fantastic little crypts from Bob Knipe who was a very honorable gentleman.

080 JACK MCLSAAC, LOBBYIST, POPE AND TALBOT: I first start lobbying in Salem in 1961, thirty years ago and Bob Knipe was one of the first people to offer me help in any way I needed it. Frankly, I feel that the entire Capitol Club should be up here to testify in his behalf. He was a fine man.

[Written testimony was also submitted by Dixie Hannon of Sen. Hannon's office in support of SCR 9 (EXHIBIT C).]

090 CHAIR WALDEN: Mr. Meredith, I want to commend you for bringing these to us. For most of them you could probably substitute the word "legislator" for "lobbyist". It would be good for us to remember as well.

SCR 9 - WORK SESSION

097 MOTION:Rep. Courtney moves SCR 9 to the Floor with a Do Pass recommendation.

VOTE:In a roll call vote, the motion carries with all members present voting AYE. Reps. Carter, Cease, Hosticka, and Mason were excused. Reps. Miller and Markham will carry.

SB 845 - EXEMPTS LOBBYISTS WHO LOBBY FOR NO COMPENSATION FROM CERTAIN REGISTRATION REQUIREMENTS, PUBLIC HEARING

124 DENISE MCPHAIL, CAPITOL CLUB: Submits and summarizes written testimony in favor of SB 845 (EXHIBIT D).

157 REP. MARKHAM: I don't understand this loophole.

160 CHAIR WALDEN: As I understand it, if I'm a citizen and not a

legislator and I was registered as a lobbyist for the XYZ Company and you asked me about an issue unrelated to the two I signed up to lobby for, I would be in violation of the law unless I went and registered. If I were Denise McPhail, a paid lobbyist for Portland General Electric, and you and she started talking about a bill related to a subject other than that for which she signed up to lobby she'd be in violation of the law. This says that you two can talk as long as she doesn't go over the threshold of hours and dollars or she has to register like anybody else.

175 REP. MARKHAM: Can she talk for over sixteen hours and \$50 on any other subject by registering?

180 CHAIR WALDEN: Yes.

184 MCPHAIL: To be legal and bring this bill to you, I had to register as the Capitol Club as my employer even though I'm not compensated and don't intend to spend any money.

187 REP. PARKINSON: You're probably the only one here to testify on the bill?

187 MCPHAIL: Correct. There are eight other people who could register as Capitol Club lobbyists. If I need help, they promised they'll register and go out and lobby you.

190 REP. MILLER: In order to address any subject, how do you register as a lobbyist? You indicate what it is you're going to be advocating or not advocating?

195 MCPHAIL: To register as a lobbyist, for example with PGE, you put a range of issues. I put utility-related issues. That doesn't include my school board or the tree farm next to me or the neighbor's dog. I can't talk about any of those things because it's not a utility issue. For the Capitol Club I registered issues of interest to the lobby.

202 CHAIR MILLER: What would a citizen that wanted to come down here and not be restrained by any particular subject matter, how would they register?

207 MCPHAIL: They could register to represent themselves, I assume, with themselves as an employer. You have to show an employer when you register to lobby. You give them your name, who your employer is, and the issues that you intend to address. I suppose I could register as Denise McPhail employed by Denise McPhail and anything you want to talk about, but most people would not register to lobby that way.

215 REP. MILLER: I'm not sure I understand the employment relationship. I was thinking when I first read this, you may have a fellow like Mr. Lonsdale who could come over here and spend all session talking about anything that he wanted and just do it because he has the financial ability to be here and try to influence people on any particular subject. Can a person like that do that simply registering as a lobbyist and just talk about anything? Is that O.K.?

220 MCPHAIL: I would think so, yes.

226 REP. MARKHAM: Does your registration with PGE and all utilities include initiative and referendum?

230 MCPHAIL: Yes. Issues of concern to my utility.

230 REP. PARKINSON: In your opinion, a person registering as a lobbyist has to have a purpose? Didn't they say you need a legal activity? Any subject to be considered by the legislature.

235 MCPHAIL: I believe you could do that.

240 REP. MARKHAM: That would protect yourself if you did do that.

242 MCPHAIL: When you register as a lobbyist it's not simply one form. You are on their mailing list. You do quarterly forms that are in their system forever or until you de-register.

SB 845 - WORK SESSION

247 MOTION:Rep. Parkinson moves SB 845 to the Floor with a Do Pass recommendation.

VOTE:In a roll call vote, the motion carries with all members present voting AYE. Reps. Carter, Cease, Hosticka, and Mason were excused. Rep. Carter will carry.

SCR 10 - MEMORIAL FOR FORMER REP. WICKES SHAW BEAL, WORK SESSION

277 MOTION:Rep. Courtney moves SCR 10 to Floor with a Do Pass recommendation.

VOTE:In a roll call vote, the motion carries with all members present voting AYE. Reps. Carter, Cease, Hosticka, and Mason were excused. Rep. Dwyer will carry.

SCR 11 - CONGRATULATES CITIZENS OF BANDON ON OCCASION OF TOWN'S CENTENNIAL, WORK SESSION

307 REP. MILLER: I have a brother who lives there and some family connection. I would like to move to amend this bill. One of the things that I was shocked to notice when I read this was that there was no mention made of the impact of the timber industry on this community, which has been substantial for all of this century, whereas there is mention of cranberries which I agree are of the highest quality. Ocean Spray has a facility there. Bandon's famous cheese is back in operation. On line 13 of this the sentence, "Whereas Bandon's coast line", I would insert the words, "and beaches", and delete "and nearby forests", and then read on "have a worldwide reputation for their rugged beauty;" and then insert "Whereas Bandon's nearby forests have been a continuous resource for jobs and others should or need to remain available for harvest".

340 REP. MARKHAM: We don't speak to the forest industry like we do the cheese and cranberries.

340 MOTION:Rep. Miller moves that on line 13 it read, "Whereas Bandon's coastline and beaches have a worldwide reputation for their rugged beauty", and on line 15 we insert the words, "Whereas Bandon's nearby forests have been a continuous resource for jobs and should remain available for harvest; and" and pick up existing line 15.

352 REP. MILLER: On a personal note that is where my father and his two brothers and my grandfather and grandmother are buried.

355 REP. CLARNO: My Aunt Mary is involved in the centennial celebration. My mother lived in the city of Bandon when it burned down in 1934. I was born in Langlois which is a little south of Bandon.

367 (A motion to amend SCR 11 was previously made by Rep. Miller.)

VOTE:Hearing no objection, Chair Walden so moves.

MOTION:Rep. Miller moves SCR 11 as amended to the Floor with a Do Pass recommendation.

VOTE:In a roll call vote, all members present voted AYE. Reps. Carter, Cease, Hosticka, and Mason were excused. Reps. Miller and Clarno will carry the bill.

405 CHAIR WALDEN: We will reschedule HJR 16 later in the process. An update on redistricting, while the Senate committee approved the majority plan in the Senate two weeks ago the staff is still trying to get the amendments drawn technically correct for Legislative Counsel and there's been some problem there on the majority side.

TAPE 37, SIDE B

032 REP. MARKHAM: While we still have three lawyers, how do you three feel about HJR 16? I would like a feel for it. We laymen really aren't all that gung ho on it. What do you think is the right move?

037 REP. BAUM: I'm not very excited about it because the system doesn't seem to be broke.

040 REP. MILLER: You could probably delete the incumbent reference.

042 REP. BAUM: The governors to date have been pretty careful about who they pick. I haven't seen the governor ignoring the bar and doing his own thing, which is what Rep. Mannix alluded to. I realize that the governor has the choice to stack with certain people out of certain urban areas.

047 REP. MILLER: Rep. Courtney, did you know Judge Demuniz before his appointment?

049 REP. COURTNEY: Yes, I did.

051 REP. MILLER: Did his appointment surprise you?

052 REP. COURTNEY: I was surprised.

053 REP. MARKHAM: Was he a partner with Paulus?

054 REP. CLARNO: Yes, and was appointed by Neil and I thought that was interesting.

056 REP. BAUM: He was a defense attorney with my brother.

058 CHAIR WALDEN: Adjourns the meeting at 5:05 p.m.

Submitted by: Reviewed by:

Carol Wilder Greg Leo Assistant Administrator

EXHIBIT LOG:

A -Testimony on SJR23 - Attorney General Dave Frohnmayer - 9 pages.
B - "A Few Basic Rules of Lobbying" - Robert Knipe - 2 pages.
C - Testimony on SCR 9 - Dixie Hannon - 1 page. D -Testimony on
SB 845 - Denise McPhail -13 pages.