

House Committee on Legislative Rules & Reapportionment June 5, 1991 -
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

HOUSE COMMITTEE ON LEGISLATIVE RULES AND REAPPORTIONMENT

June 5, 1991Hearing Room E 5:00 p.m.Tapes 49 & 50

MEMBERS PRESENT:Rep. Greg Walden, Chair Rep. Peter Courtney,
Vice-Chair Rep. Ray Baum Rep. Margaret Carter Rep. Ron Cease Rep.
Beverly Clarno Rep. Carl Hosticka Rep. Bill Markham Rep. Fred Parkinson

MEMBER EXCUSED: Rep. Tom Mason Rep. Randy Miller

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

MEASURES CONSIDERED:HB 3580 - WS SB 292 - PH/WS SB 295 - PH/WS SB 163 -
PH/WS

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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 49, SIDE A

004 CHAIR WALDEN: Calls the meeting to order at 5:08 p.m. and announces
that the first order of business is to reconsider the vote by which the
committee passed HB 3580.

HB 3580 - ESTABLISHES STRATEGIC FINANCIAL RESERVE FUND. - WORK SESSION

009 MOTION: REP. CARTER moves that the committee RECONSIDER THE VOTE by
which HB 3580 was passed.

016 VOTE: In a roll call vote, all members present vote AYE. REPS.
COURTNEY, MASON and MILLER are EXCUSED.

020 CHAIR WALDEN declares the motion ADOPTED.

021 MOTION: REP. BAUM moves that HB 3580 be sent to the Floor with a DO
PASS recommendation and that it be referred to the Committee on Ways and
Means.

032 VOTE: In a roll call vote, all members present vote AYE. REPS.
COURTNEY, MASON and MILLER are EXCUSED.

036 CHAIR WALDEN declares the motion ADOPTED.

038 CHAIR WALDEN opens a work session SB 292.

(Tape 49, Side A) SB 292 - REVISES PROCEDURES OF OREGON GOVERNMENT ETHICS COMMISSION. - WORK SESSION

Witnesses: Patrick Hearn, Oregon Government Ethics Commission Kathleen Beaufait, Legislative Counsel

The Senate Staff Measure Summary is hereby made a part of these minutes (EXHIBIT A).

060 CHAIR WALDEN: The committee has the SB 292-All amendments (EXHIBIT B). The changes are on pages 6 and 8. Page 6 is a rewrite on the issue of people representing other people for a fee before a government body. The intent is that you don't get paid to represent somebody before a body on which you serve. That means Rep. Baum could not get paid to represent somebody before a committee of the Legislative Assembly.

061 CHAIR WALDEN: Would this language allow a member of the Assembly, for a fee, to represent someone before an agency that is not the Legislature.

067 PATRICK HEARN, Executive Director, Oregon Government Ethics Commission: Yes, it would. It is not intended to prohibit that.

070 CHAIR WALDEN: As long as they didn't claim they were doing it in their capacity as a legislator.

MR. HEARN: That is correct, Mr. Chair.

070 CHAIR WALDEN: What would be your recommendation in terms of any kind of disclaimer that might be good for those who might be involved in this sort of activity. Should they issue a disclaimer, is it necessary, or just a good idea.

075 MR. HEARN: It is not required. It is probably a good idea. It certainly would not hurt. It is not in the law.

084 CHAIR WALDEN: The language has been changed to take care of the situation where somebody on a planning commission would be precluded by this language for charging a fee to represent somebody before the planning commission. The language was expanded so that planning commission member couldn't get paid to carry a case forward to the county commissioners, for example. That is because there is a linkage between the two bodies. Is that accurate?

090 MR. HEARN: That is my understanding.

093 REP. CARTER: This language is consistent with what was just passed for the lobbyists. I think it is good language.

093 CHAIR WALDEN: The issue arose, and this is more for legislative intent and for the purpose for those listening years from now, about the State Bar. I would assume it is not our intent that this would in any way prevent a lawyer from representing a lawyer before the State Bar where the Bar is a quasi-public body. Is that your understanding as well?

099 MR. HEARN: Yes it is. A lawyer, as a member of the State Bar, is not defined as a public official in Chapter 244.

096 REP. HOSTICKA: I wonder if the grammar is really meant to be. Is that the way it is supposed to read?

111 MR. HEARN: This was not my amendment. Shortly before the hearing began I brought that to the attention of the committee administrator.

116 REP. HOSTICKA: I would suggest (on page 6) in line 25, insert a semicolon instead of the comma and after "or" insert "if."

128 REP. BAUM: Mr. Hearn just addressed the issue about legislators in their real life representing clients before LCDC or OLCC and said it would not be a problem as long as the legislator stated on the record that he/she is acting in their private capacity and not as a legislator.

134 MR. HEARN: In answer to the Chair's question as to whether or not it might be a good idea for the legislator to make such a disclaimer, I said it wouldn't hurt. I suggest if members are ill at ease about this that the committee might want to amend the section to specifically state that it excludes legislators acting in their private capacities outside of legislative business, etc. to clearly indicate it is not intended to apply to that situation.

147 Issues discussed: >Legislation could apply to anybody, not just attorneys. >Addition of language on page 6 of the -All amendments, "or the governing body reports to or makes recommendations to another public body,..." was to satisfy some concerns of members.

183 REP. BAUM: Would we be asking for a conceptual amendment to allow legislators to act in their private capacity in front of other public bodies except the Legislature.

195 CHAIR WALDEN: That is what we are trying to clarify.

215 REP. PARKINSON: I suggest we strike the second part of the sentence.

227 CHAIR WALDEN: Could someone on a planning commission, for a fee, take something up to the county commission?

227 MR. HEARN: Yes, they could. Just like they could now represent a member of the planning commission.

238 REP. BAUM: We have a situation where I may be a member of the county commission and I can advocate for my client before the planning commission. That goes on now. Do we want to stop that practice? That is why the middle language is in there, but in the process we scoop ourselves up.

247 REP. PARKINSON: But you are not a member of that governing body.

247 REP. BAUM: We make recommendations to them.

250 CHAIR WALDEN: We are dealing with lines 25, 26 and 27.

254 REP. HOSTICKA: I don't understand that the Legislature reports to or makes recommendations to other public bodies; we make laws.

264 CHAIR WALDEN: Do we have a definition of "public body?"

267 MR. HEARN: Chapter 244 on ethics laws does not contain that definition. The closest to it is the definition of "public official."

281 CHAIR WALDEN: The issue is how to prevent somebody who serves on a public body from getting paid to represent somebody before that body. I think the first part of the language does that. The second part deals with the issue of when you go up or down in the chain. The question is what happens to legislators if they practice law or public relations and come in contact with a state agency. Does this language preclude them from that activity?

294 KATHLEEN BEAUFIT, Legislative Counsel: Yes, I think it could be interpreted that way. The provision I referred Mr. Leo to is a provision in the Constitution that prohibits any legislator who is practicing law from suing the state or a state agency, but admittedly, in administrative procedures a legislator may be appearing before an administrative procedure on behalf of a client.

306 REP. BAUM: I know that and so does Rep. Courtney. We have explored that and realized as long as we are not suing them for real money, we can get them for injunctions, defend criminals and be paid by the state, you can go in front of LUBA and ask for changes, or do anything you want as long as you are not affirmatively suing the state for personal injury type actions. We don't want ethical standards that says you can't go before a public body in your private capacity.

318 MR. HEARN: That was not the Ethic Commission's intent in proposing this language.

321 MS. BEAUFIT: The example given to me was the case of the planning commission member where the actual decision or ordinance would be adopted by the board of county commissioners. The idea was this individual who is a planning commission member neither represent anybody before the planning commission or before the county commission. I was not thinking of that. The definition of "governing body" as used in the public meeting law is generally not thought to apply to the Legislature, but using it without pinning it to that definition may lead you to that conclusion.

335 REP. PARKINSON: If the person is a member of the planning commission, he/she couldn't and under this he/she couldn't represent someone before the county commissioners. But without the second part of the sentence, if the person were a county commissioner he/she could represent somebody before the planning commission. It is a bit of a mess.

344 REP. BAUM: Why don't we conceptually adopt an amendment to allow legislators to be exempt except when they are in front of the Legislature. Legislators are prevented from being paid to advocate in front of the committees that serve this Legislature, but in front of other bodies, legislators that act only in their private capacities are exempt.

355 MS. BEAUFIT: Right now it would be the Legislature is an agency to which every state body makes recommendations or reports to. You want to get the Legislature out of that part of the circuit. I don't have a sentence to do that, but I know what you mean.

418 REP. COURTNEY: Do you know if there are local ordinances that govern these kind of situations?

419 MS. BEAUFIT: Not that I am familiar with, but the fact it is cited so frequently as the example of the blatant violation seems to suggest some don't have an ordinance or they don't enforce it.

425 REP. PARKINSON: I think it is common for city councils to have a code of ethics. We could adopt the original language and leave the remainder to future legislatures.

TAPE 50, SIDE A

007 MR. HEARN: I cannot conceive that the Ethics Commission would want to initiate an action against a member of the Legislature representing a client before a state agency not related to legislative business. The commission would certainly be aware of the legislative intent of this bill.

009 REP. CEASE: Would that be true if the legislator were doing that during the session?

010 REP. BAUM: That happens all the time.

011 REP. PARKINSON: I don't think it would just be legislators either. There must be part-time county courts in this state. Those attorneys would fall into the same situation as a legislator. I think we should adopt the first part.

012 MOTION: REP. CARTER moves that the SB 292-A11 amendments be amended: on page 6, in line 25, after "member" insert a period and delete the rest of the line and lines 26 and 27 and in line 28, delete "before that body."

VOTE: CHAIR WALDEN, hearing no objection to the motion, declares the amendment ADOPTED. REPS. MASON and MILLER are EXCUSED.

222 REP. CEASE: What is the meaning of the last sentence in (10)?

024 REP. HEARN: If Mr. Brown is a member of the planning commission, his partner, Mr. Smith, may represent before that commission.

030 REP. BAUM: Am I correct? If you are an attorney legislator and have a case against the State of Oregon, my understanding is I cannot let one of my partners litigate that case without getting myself in trouble.

033 MS. BEAUFIT: I think that is because of the rules of the Oregon State Bar about the relationship of the partners.

034 REP. BAUM: It is also because it has been interpreted under the Constitutional provision that what is a conflict of one partner is also a conflict of the whole firm.

037 MS. BEAUFIT: They tie that back to the Canons of Practice, however.

037 REP. BAUM: This doesn't work for attorneys, just in case anybody thought it did.

052 CHAIR WALDEN: The other change is on page 8 in Section 9 relating to prevailing parties in contested case hearings shall be awarded reasonable attorney fees at the conclusion of the contested case or on appeal.

063 MOTION: REP. PARKINSON moves that the SB 292-All amendments, as amended, BE ADOPTED.

075 REP. CEASE: Did the Senate version provide that the membership be appointed by the Governor?

076 CHAIR WALDEN: We restored the current appointing process. The only difference we make is changing from majority and minority to Republican and Democratic.

080 REP. CEASE: Does that have any significance?

080 CHAIR WALDEN: It does in the switch of control in the House this time. The next appointment on the commission was to come from the minority office. As we switched, that appointment became the possession of the incoming minority instead of the out-going minority.

096 REP. HOSTICKA: As I recall, at one point we discussed the concept of having attorney fees only if it can be shown that the case was without merit, and the language of the Administrative Procedures Act. Did this committee vote not to put that language in this bill?

104 CHAIR WALDEN: These are amendments I have been working on. The committee has not voted on these amendments. We had some discussions relative to them and had some redrafts, but we have never voted on any of the amendments.

110 REP. HOSTICKA: I cannot support the amendment because of the attorney fees portion which is a one-sided thing and does not provide any qualification as in the APA.

123 VOTE: In a roll call vote, REPS. BAUM, CARTER, CEASE, CLARNO, MARKHAM, PARKINSON, COURTNEY and CHAIR WALDEN vote AYE. REP. HOSTICKA votes NO. REPS. MASON and MILLER are EXCUSED.

128 CHAIR WALDEN declares the motion ADOPTED.

129 MOTION: REP. CEASE moves that SB 292, as amended, be sent to the Floor with a DO PASS recommendation.

134 VOTE: In a roll call vote, REPS. BAUM, CARTER, CEASE, CLARNO, MARKHAM, PARKINSON, COURTNEY and CHAIR WALDEN vote AYE. REP. HOSTICKA votes NO. REPS. MASON and MILLER are EXCUSED.

137 CHAIR WALDEN declares the motion ADOPTED. REP. CEASE will lead discussion on the Floor.

140 CHAIR WALDEN opens a public hearing/work session on SB 295.

(Tape 50, Side A) SB 295 - REQUIRES OREGON GOVERNMENT ETHICS COMMISSION TO PUBLISH MANUAL ON ETHICS AND MAINTAIN MANUAL. PUBLIC HEARING/WORK

SESSION.

Witness:Patrick Hearn, Oregon Government Ethics Commission

The Senate Staff Measure Summary, Legislative Fiscal Analysis and Budget Report are hereby made a part of these minutes (EXHIBIT C).

142 CHAIR WALDEN: SB 295 requires the Oregon Government Ethics Commission to publish a manual on ethics and maintain that manual, appropriates funds to the initial editorial publication and distribution costs. I think it will give us some good information in an up-to-date manner on what we need to do to comply with the law.

140 MR. HEARN: The bill has not been amended since it was introduced and has passed all committees and the Floor of the Senate by unanimous votes. I think it is a tremendous opportunity to provide a tool for public officials at all levels of government. The commission is anxious to get started on the project.

156 MOTION: REP. COURTNEY moves that SB 295 be sent to the Floor with a DO PASS recommendation.

161 VOTE: In a roll call vote, all members present vote AYE. REPS. MARKHAM, MASON, MILLER and PARKINSON are EXCUSED.

166 CHAIR WALDEN declares the motion ADOPTED. REP. COURTNEY will lead discussion on the Floor.

CHAIR WALDEN opens a discussion on expenditures for spouses under the Oregon Government Ethics Laws.

Witness:Patrick Hearn, Oregon Government Ethics Commission

185 MR. HEARN: The committee administrator requested me to provide the committee with a brief explanation of the significance of the meaning of a recent Court of Appeals decision, Keller, et al vs. Oregon Government Ethics Commission (EXHIBIT D). It was a judicial review of an action taken by the OGEK in 1987 involving public officials going on office-related business trips and having the costs for food, travel and lodging for their spouses paid for by a source which had a legislative or administrative interest.

The commission subsequently ruled that to do so violated the \$100 limitation on the receipt of gifts from a person with a legislative or administrative interest. They fined the public officials \$1,000 each and ordered them to forfeit to the State General Fund twice the amount of financial gain which was about \$1,300 for each spouse; there was a \$2,700 forfeiture.

It means if you, as members of the Legislature, go on an event that is related to your capacity as a legislator (let's assume it is paid for by a PAC, lobbyist, corporate entity) and there is clearly a legislative or administrative interest, you need to pay for your spouse's cost out of pocket.

A prepared statement submitted by Mr. Hearn is hereby made a part of these minutes (EXHIBIT E).

227 CHAIR WALDEN: Is this discrimination against married people?

228 MR. HEARN: It is for a "member of the household."

229 CHAIR WALDEN: How is that defined, or has it been?

229 MR. HEARN: It needs to be defined. It is not spoken to.

244 CHAIR WALDEN: Is it illegal for organizations to offer such opportunities.

246 MR. HEARN: I have probably spoken to that 15 times in the last eight hours as a result of some actions taken by the commission yesterday. The section that prohibits the public official or candidate from soliciting or receiving the gift says they cannot receive it or solicit from "...any single source who could reasonably be known to have a legislative or administrative interest..." (ORS 244.040(2)). Subsection (7) is the flip side of that one and the wording is "No person shall offer during any calendar year any gifts in an aggregate value in excess of \$100 to any public official..." In the one you can't receive it from a specified source and in the other it is "no person." The result of that is causing us to request an Attorney General opinion relative to a case the commission took action on yesterday.

It is clear that a person can't offer to a public official--that is spelled out. We are unclear on whether it is implicit in that subsection that "person," for the legislative intent herein, would also refer to a source--an entity, a business, a corporation, a PAC or whatever.

275 :CHAIR WALDEN: Hasn't there been a recent court case over the issue of the definition of "person?" It seems there was an issue where we use "person" in the statutes to mean an entity other than just a human and whether we can or can't do that any more.

283 REP. CEASE: I think corporations, for example, have been included under the term "person."

287 REP. HOSTICKA: If group A invites a legislator to attend a convention and give a speech, can they not say "bring your spouse at our expense." If the spouse attends, does the legislator have to pay the spouse's expenses? Is that what this says?

295 CHAIR WALDEN: Yes.

296 REP. HOSTICKA: How do you share the expense if you share a room?

317 CHAIR WALDEN: It brings up some awkward situations because groups expect the spouse to go along.

330 MR. HEARN: Breakfast probably is not a problem. The administrative rules that interpret the gift limitation say it can be \$45 on a single occasion.

345 CHAIR WALDEN notes the absence of a quorum and as a subcommittee opens a public hearing on SB 163.

(Tape 50, Side A) SB 163 - AUTHORIZES SECRETARY OF STATE, OR IF UNAVAILABLE, STATE TREASURER TO EXERCISE GOVERNOR'S POWER TO PROCLAIM EMERGENCY IF GOVERNOR IS UNABLE TO DO SO. - PUBLIC HEARING

Witness: Myra Lee, Oregon Emergency Management Division

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT F).

350 CHAIR WALDEN: I have received a memo from the Executive Department requesting that we act on SB 163 (EXHIBIT G).

356 MYRA LEE, Administrator, Oregon Emergency Management Division, Executive

Department: We requested this bill last session. We brought it up again because in the last two Governor's terms there were a number of times when it was difficult to reach the Governor in a timely manner to get an emergency or disaster declaration. It becomes very important when we need to access military resources. They cannot be taken off federal status and put on state status without the declaration by the Governor.

It was recently modeled after a State Fire Marshal's act. During the first hearings on the bill, it was decided to go with the Constitutional succession with the Secretary of State and the Treasurer. We don't care which way it goes. We just need another person if we are unable to get in touch with the Governor. It does provide for the Director of the Executive Department to determine whether or not the governor is unreachable and whether to contact the Secretary of State.

402 REP. HOSTICKA: The bill I have has a section that deals with matters about cities requesting through the counties. Is that existing practice or an additional feature of this bill?

406 MS. LEE: That was a request by local government to clarify that particular requirement in the system. The Federal Emergency Management Agency basically works on a county system. In Oregon statutes, counties are the jurisdictions that are required to have the emergency management program. Cities may have a program, but are not required to have one. FEMA wants to be assured that local resources have been exhausted before federal resources are requested. It is a clarification and is general practice.

TAPE 49, SIDE B

034 REP. HOSTICKA: I don't have a problem with that section as I do with a practice of having subject matters in bills that aren't referenced in the summaries. Are things like the declaration of a drought emergency which suspends certain operations of the water laws covered by this? Or is this a kind of emergency in which there is a sudden catastrophe, natural or human-caused, that needs to be dealt with in a very short period of time.

042 MS. LEE: It covers all emergency conditions. Drought is one of those listed in the statute. It is very unlikely that a drought would be a situation when we couldn't wait to get in touch with the Governor. We are talking about situations where there is a forest fire or flood or severe wind conditions--something that requires immediate action.

057 REP. CARTER: It just makes sense to have some constitutional line that would give our emergency response people the next action.

071 REP. CEASE: With the communications channels we have today, why is

this a problem?

072 MS. LEE: It is a problem because even throughout the state of Oregon there are dead spots for both cellular and regular communications. We can't tell how long the Governor might be in one of those areas. Another situation would occur on a 15-hour flight from here to Japan or some place else.

094 REP. CEASE: This seems to be talking only about requests from the counties in reference to a declaration of an emergency. Aren't there other kinds of emergencies which wouldn't deal specifically with counties?

097 MS. LEE: There are other requests. Most emergencies happen at the local level and local resources are involved. The original statute indicated it was the policy and intent that local government should control the situations. We are careful to keep the local governments involved.

112 CHAIR WALDEN, noting the return of Rep. Baum and the presence of a quorum, closes the public hearing and opens the work session on SB 163.

112 MOTION: REP. CEASE moves that SB 163 be sent to the Floor with a DO PASS recommendation.

113 VOTE: In a roll call vote, all members present vote AYE. REPS. CLARNO,

MARKHAM, MASON, MILLER and PARKINSON are EXCUSED.

118 CHAIR WALDEN declares the motion ADOPTED. REP. COURTNEY will lead discussion on the Floor.

122 CHAIR WALDEN declares the meeting adjourned at 6:10 p.m.

Transcribed and submitted by:

Annetta Mullins Assistant

EXHIBIT SUMMARY

A -SB 292, Senate Staff Measure Summary, staff B -SB 292, SB 292-A11 amendments, Rep. Walden C -SB 295, Senate Staff Measure Summary, Legislative Fiscal Analysis and Budget Report, staff D -Ethics (subject), Keller, et al vs. Oregon Government Ethics Commission brief, Patrick Hearn E _Ethics (subject), prepared statement, Patrick Hearn F -SB 163, Preliminary Staff Measure Summary, staff G -SB 163, memo from Executive Department, Rep. Walden