

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

March 20, 1991 Hearing Room E 8:30 a.m. Tapes 71 - 72
MEMBERS PRESENT: Rep. Bill Markham, Chair Rep. Larry Sowa, Vice-Chair
Rep. Marie Bell Rep. Mary Alice Ford Rep. Tom Novick Rep. Carolyn Oakley
Rep. Lonnie Roberts MEMBER EXCUSED: None VISITING MEMBER: Rep. Sam
Dominy, District 44 STAFF PRESENT: Randall Jones, Committee
Administrator Carolyn Cobb, Committee Assistant MEASURES
CONSIDERED: HB 2884 - Adds Counties, Cities and Districts to
Persons Who May Sue For Compensatory Damages, PH, WS SB 187 - Revises
Election Laws, PH HB 2793 - Modif es Amount of Civil Penalty Secretary
of State May Impose For a Failure to file Statement, PH HB 2838 - Allows
Use of Post Office Box As Address For Certain Campaign finance Reports,
PH, WS HB 2840 - Requires Executive Department To Reimburse Units of
Local Government, 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 71, SIDE A

003 CHAIR MARKHAM: Calls meeting to order at 8:36 a.m.

HB 2840 - REQUIRES EXECUTIVE DEPARTMENT TO REIMBURSE UNITS OF LOCAL
GOVERNMENT FOR FULL COSTS OF PROGRAMS - WORK SESSION

007 CHAIR MARKHAM: Explains background of the bill. House Committee
on State and Federal Affairs March 20, 1991- Page 2

013 MOTION: REP. FORD moved HB 2840 to the floor without recommendation
as to passage, and that it subsequently be referred to the Committee on
Intergovernmental Affairs.

020 CHAIR MARKHAM: Hearing no objections, it is so ordered.

HB 2838 - ALLOWS USE OF POST OFFICE BOX AS ADDRESS FOR CERTAIN CAMPAIGN
FINANCE REPORTS - PUBLIC HEARING Witnesses: None

031 CHAIR MARKHAM: Explains background of the bill. Adds the post
office box as a legal address for Contributions and Expenditures
Reports.

HB 2838 - ALLOWS USE OF POST OFFICE BOX AS ADDRESS FOR CERTAIN CAMPAIGN
FINANCE REPORTS - WORK SESSION

062 MOTION: REP. FORD moved HB 2838 to the floor with a "do pass"
recommendation.

VOTE: In a roll call vote, the motion carried, with Rep. Bell, Rep.
Ford, Rep. Novick, Rep. Oakley, Rep. Roberts, Rep. Sowa, and Chair
Markham voting AYE.

HB 2793 - MODIFIES AMOUNT OF CIVIL PENALTY SECRETARY OF STATE MAY IMPOSE
FOR FAILURE TO FILE STATEMENT - PUBLIC HEARING Witnesses: Jack Graham,
Director, Elections Division Sue Proffitt, Elections Division Lonnie
Roberts, State Representative, District 21

096 LONNIE ROBERTS, STATE REPRESENTATIVE, DISTRICT 21: Explains why the measure was introduced. Explains the kind of problems that can arise with the filing of Contributions and Expenditures Reports. -Present penalties are excessive in cases of honest errors. -Asks for favorable consideration of HB 2793.

133 REP. NOVICK: Expresses concern about the affect on those in real violation of the law if fines accrue for only the first twenty days.

141 REP. ROBERTS: I am not sure how often that would happen, but I assume it is extremely rare.

148 REP. FORD: Is there a way of amending the bill that would say under proof of mitigating circumstances, they "shall" reduce the fine to a maximum of 20%?

159 REP. ROBERTS: I do not know what you mean by mitigating circumstances. A simple error is not mitigating circumstances.

177 REP. BELL: When I attended a campaign seminar put on by the Bar Association, a

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representative from the Elections Division lead us to believe they imposed fines based on the frequency of errors. I am a little cautious about writing in something which would limit it, so the person who constantly violates the law cannot have a substantial fine apply.

196 REP. ROBERTS: I think you are saying you would like to determine the intent of the individual.

202 REP. BELL: The problem is no matter how many times they offend, they always use the excuse, there was no intent involved, it was an accident.

209 REP. ROBERTS: If the individual holds office, the intent would not be there because it does not look good when you run for election. I really feel you should cap it out. If it runs 200 days, will you be charged 200%?

213 SUE PROFFITT, ELECTIONS DIVISION: SB 521, currently in another committee, addresses this problem somewhat. There is an amendment of that bill that requires when the notices are sent out, a first-class letter be sent to the candidate as well as the certified letter to the campaign treasurer. 220 REP. ROBERTS: When does the fine start accruing? 224 PROFFITT: When the audit letters are sent out, there is a ten day period for response. 230 REP. ROBERTS: You are talking about the regular Contributions and Expenditures Report, and I am talking about an amended report. 238 CHAIR MARKHAM: Is the time allow for the amended report different?

246 PROFFITT: Even an amended Contributions and Expenditures Report would have a certain timeframe requirement.

256 REP. OAKLEY: If you send him notification of an error on the report, when would the timeframe start for his response?

264 PROFFITT: When we send out the letter of deficiency, a ten day period for response starts.

268 REP. OAKLEY: Have you considered omitting the back page of the bill which places the 20% limit, and just changing the penalty to 1% instead of 5%?

275 REP. ROBERTS: That is exactly what I am trying to correct. They charged me 1% per day for 87 days. The in-kind contribution was \$250 and I paid an 87% fine.

306 VICE CHAIR SOWA: Is this the statute that caused a certain political action committee to be fined \$60,000?

316 PROFFITT: I was not in the office at that time and I would hesitate to say this is the statute that was applied.

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323 VICE CHAIR SOWA: I am concerned about trying to solve the problem and giving the public the impression that we are not going to allow those kinds of things to happen again when in that circumstance it may have been justified.

330 REP. ROBERTS: The problem with that is if you have more money they hit you harder. In the matter you cite one side got hit for \$80,000 and the other side, who was doing the same thing, for \$1,400. That is not fair.

341 REP. OAKLEY: Did you get an audit letter saying you did not have the in-kind contribution listed?

345 REP. ROBERTS: We knew it was there, but we did not realize there was a time line on filing the amended report.

355 REP. OAKLEY: You did not know there were ten days to get it in?

358 REP. ROBERTS: No, the ten days is when they inform you of an error or omission. The problem arose when we did not realize the amended report was also on a time-line.

370 REP. FORD: Would it help if there was separate notice of the time constraints in bold type?

377 REP. ROBERTS: I am sure it would. I want to make certain that we are strict enough people are not going to play games with the system, but not so overbearing that we are going to beat someone into the ground for an honest mistake.

395 REP. BELL: I think there is a difference too between a candidate that comes forward with a change and the person whose error is found by the Secretary of State's investigation.

403 REP. ROBERTS: They would have found out when the contributor filed.

405 REP. BELL: Maybe we need to be more specific, so you have more guidance.

TAPE 72, SIDE A

021 VICE CHAIR SOWA: As I understand his problem, it does not have anything to do with the Secretary of State sending notice saying he left something out. Apparently the statute says if you leave something out, you only have a few days to submit an amended report, otherwise you will be penalized.

030 CHAIR MARKHAM: But he has to answer that inquiry.

046 REP. OAKLEY: Does the Secretary of State's office do any training for campaign treasurers?

047 PROFFITT: I do not think currently that is the practice. With the automation program coming up which specifically addresses the Contributions and Expenditures reporting, there will be training on how to use the automated system.

053 REP. NOVICK: I have been to campaign schools where the Secretary of State's office has done

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workshops.

057 REP. BELL: I have suggested to the Bar Association that rather than have one statewide program, they have their county bar associations do it on a local basis.

072 CHAIR MARKHAM: Recesses meeting at 9:05 a.m.

-Resumes meeting at 9:08 a.m.

079 JACK GRAHAM, DIRECTOR, ELECTIONS DIVISION: The issue comes up fairly often where someone totally unintentionally, without any knowledge, has had an in-kind contribution made, has voluntarily come forward after the filing deadline. Under current statutory guidelines, the regular penalty provision, the 1%, 3%, 5% matrix applies. -Explains how the penalty matrix is applied.

098 CHAIR MARKHAM: Are we talking about the dollar amount brought to your attention?

102 GRAHAM: The statute provides authority to apply that to the greater of contributions or expenditures in total, not just the item. We have scaled that back by applying the penalty only to the amount of the error, even though our authority goes to the full amount. We have by rule adopted a matrix so that in this particular situation we applied the 1 % times the amount of the contribution reported after the fact.

108 REP. BELL: Your interpretation of the law as written is if you

thought a person was a willful repeat offender, you would assess the penalty of 5% of the total?

112 GRAHAM: The way the penalty matrix is set up, on what we call a new transaction, we would never apply the penalty percentage to the full amount, but our authority would allow the full amount. Personally I think we still have an unreasonable situation. We have set a limit of \$250, but that seems to me to be too much.

134 REP. BELL: If you put a limit on the amount of the fine, does that not wipe out the flexibility of your matrix?

138 GRAHAM: At some point it could. It would not take very many days even at 1 % to reach \$25, but if you were on the third offense, at 5% you get there even more quickly.

147 REP. BELL: What about making the limit for first time offenders only?

153 REP. NOVICK: My problem with putting a 20% limit in is that some are going to know after 20 days there is no encouragement for them to correct the problem.

160 VICE CHAIR SOWA: Their rules basically put a cap on the total amount of that particular item, but the law gives them the authority to move that fine on up until it is equal to whatever you took in total contributions.

170 CHAIR MARKHAM: You set by administrative rule only the amount of the error? ,

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172 GRAHAM: Yes, that is correct.

175 REP. ROBERTS: When you say first time, do you mean first time ever?

180 GRAHAM: It does not relate back to prior election cycles.

185 CHAIR MARKHAM: What happens if someone does not pay?

188 GRAHAM: The options available to the Secretary of State are a lien filed with the county clerk, the second option is to place a claim with the Department of Revenue which would apply to any state income tax refund due the individual. 207 GRAHAM: The other side of the issue is that if we do not have penalties, we could have someone willfully not reporting before election day. Then you come in voluntarily after the election to amend without penalty. I am concerned about that kind of a loophole, although no one has ever done that. I would like to find some middle ground that gives us a strong, but fair penalty to apply, without creating a loophole or being overly harsh. 232 VICE CHAIR SOWA: The situation that happened a number of years ago where a political committee got a big fine, was that under this statute? 238 GRAHAM: Yes, it was. Some of those violations came under this section.

243 REP. OAKLEY: With the complexities of the Contributions and Expenditures Report, does the Secretary of State office ever put on a

school? 259 GRAHAM: We have offered a program in the past.

302 CHAIR MARKEIAM: Recesses the meeting at 9:30 a.m. -Resumes the meeting at 9:37 a.m.

HB 2884 - ADDS COUNTIES, CITIES AND DISTRICTS TO PERSONS WHO MAY SUE FOR COMPENSATORY DAMAGES - PUBLIC HEARING Witnesses: Sam Dominy, State Representative, District 44 Jack Graham, Director, Elections Division

308 SAM DOMINY, STATE REPRESENTATIVE, DISTRICT 44: Describes the problem that occurred in the City of Sutherland, which gave rise to the bill. -Under current law, the only people who can find remedy for a lie is a political action committee. -On line 18 we added to the definition of who may bring an action under the law.

371 REP. ROBERTS: If false statements are made, but the measure still passes, there is no grounds for suit, they may sue only if the measure fails? 376 REP. DOMINY: That is correct.

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380 REP. NOVICK: If they did sue, the damages caused by the material misstatement may be the lose of the tax base. Could the judge award them an amount that would equal the property tax base?

389 REP. DOMINY: The only damages they could collect would be expenses such as the cost of the ballots or attorney fees for challenging it.

404 JACK GRAHAM, DIRECTOR, ELECTIONS DIVISION: I think what we are trying to get at is to provide for an action that would be a deterrent to misleading statements.

TAPE 71, SIDE B

010 REP. FORD: How do you prove that a measure was not approved because of a false statement?

024 REP. DOMINY: That is what the court would be deciding. A court is the only one that can decide what is a false statement.

030 REP. FORD: What if the court decides the false statement was made, but was not the cause of the defeat of the measure?

035 REP. DOMINY: Those issues as to whether a false statement was made, and what the penalty would be, are left to the court to decide.

042 REP. FORD: What if the court decides it was not a false statement, who pays the court costs?

048 REP. DOMINY: I would assume that anytime you sue and lose, you pay the court costs.

057 GRAHAM: The current statutory language says the prevailing party can recover court costs.

064 CHAIR MARKHAM: We are just giving the cities, counties and districts the same rights that we as politicians have.

067 VICE CHAIR SOWA: If anyone files a false statement, win or lose I can take them to court.

072 GRAHAM: Yes you can under current law and you would be able to under these amendments.

075 VICE CHAIR SOWA: This bill restricts the city or county to going to court only if they lose? This in no way affects the ability of a candidate to go to court whether they win or lose?

079 GRAHAM: I see no impact whatsoever on current authority affecting candidates or political committees.

083 REP. BELL: I can see a situation where an individual knowing they were going to lose, could publish something to get at an official. I do not know that we want to leave that in there, since some people do the most vicious things when they know they are going to lose.

095 REP. DOMINY: The intent was not to make it really easy for the cities. The city and county would have no reason to sue someone if they won the election. If the City of Sutherland could

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have gone to court before having to submit the measure at another election, they could have saved some money.

101 CHAIR MARKHAM: The City Manager of Sutherland intended to be here, but he was told the hearing was not going to be heard this morning.

130 REP. DOMINY: All it takes is for someone to put out a flyer two days before the election with false information, there is no chance for recourse.

146 REP. BELL: My concern in your example is, if the flyer really contained inflammatory lies about an official, that official ought to have the opportunity to sue.

154 REP. DOMINY: I think in the case of an individual, he could sue anyone for slander.

158 GRAHAM: My opinion would be that as a public figure you are not in a position to have quite the same standards applied as a private citizen has, but you do have an opportunity to at least bring a suit.

166 REP. DOMINY: I would have no problem with eliminating the second part of the measure, then win or lose, you could bring an action.

170 REP. NOVICK: A court would be reluctant to award damages if you cannot show the defendant had a material effect on the outcome of the election.

184 REP. BELL: If you took it to a civil court on a personal slander basis, you probably would have more chance of winning because it would not be dependent on whether that statement changed the election outcome.

188 REP. NOVICK: You would be in a tough position to show you were damaged by these false and misleading statements because you won.

192 REP. DOMINY: I think Rep. Novick is right. If they won the election, I am not sure what damages are left.

HB 2884 - ADDS COUNTIES. CITIES AND DISTRICTS TO PERSONS WHO MAY SUE FOR COMPENSATORY DAMAGES - WORK SESSION

223 MOTION: REP. NOVICK moved HB 2884 to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried, with Rep. Bell, Rep. Ford, Rep. Novick, Rep. Sowa, and Chair Markham voting AYE. Rep. Oakley and Rep. Roberts were excused.

SB 187 - REVISES ELECTION LAWS - PUBLIC HEARING Witnesses: Al Davidson, Oregon Association of County Clerks Sue Proffitt, Elections Division

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Dick Sohrt, State Printer

235 RANDALL JONES, COMMITTEE ADMINISTRATOR: Submits dash three LC amendments dated 3/19/91 (EXHIBIT A) and dash four LC amendments dated 3/19/91 (EXHIBIT B) to SB 187.

254 SUE PROFFITT, ELECTIONS DIVISION: This is an basic omnibus bill, but because the new Secretary of State wanted to make some changes, and the county clerks wanted to have some more input, we have these additional changes.

266 AL DAVIDSON, OREGON ASSOCIATION OF COUNTY CLERKS: The Secretary of State was concerned that there were a number of things that were done in practice that were not clarified in state law. He expressed an interest that the law reflect the actual practice.

276 PROFFITT: Submits written testimony on the proposed amendments (EXHIBIT C) beginning with Section 26.

283 REP. ROBERTS: Has the senate looked at these amendments?

293 DAVIDSON: The senate acted so rapidly, they passed it out before Secretary Keisling could present his amendments.

298 PROFFITT: Reviews Section 25.

304 DICK SOHRT, STATE PRINTER: Submits and summarizes written testimony (EXHIBIT D).

333 CHAIR MARKHAM: What do you mean on the last line of the second paragraph, "and the candidates themselves"?

336 SOHRT: Much of this material is developed on word processing equipment, computers, desktop publishing software and is available in a

disk form.

345 CHAIR MARKHAM: Would it be an absolute requirement they must do that?

347 PROFFITT: No, it will be available because it cuts down on the time required to prepare the voters' pamphlet.

354 CHAIR MARKHAM: Can a candidate sitting down there in Ashland who has the computer capability, put together his voters' pamphlet material and transmit it by modem?

358 SOHRT: That is correct.

364 CHAIR MARKHAM: The last paragraph does not tie down any days, you just want to have the latitude to work it out?

367 SOHRT: That is correct.

387 PROFFITT: Resumes written testimony at Section 27.

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TAPE 72, SIDE B

018 REP. ROBERTS: In Section 28 you are talking about a candidate who dies before the election?

021 PROFFITT: If it is brought to the attention of the county clerk that a candidate on his ballot has died, he must notify the Secretary of State of that fact, we must then turn around and direct him to take the name off the ballot under present law. 029 DAVIDSON: Now we have to wait for the Secretary of State to confirm the candidate we told him is dead, is indeed dead. 032 REP. BELL: Do we need to put after Filing Officer "in the appropriate jurisdiction"? 036 PROFFITT: On page 11 of the amendments, the definition of Filing Officer is spelled out.

046 REP. FORD: Is it of no importance that it even be reported by the Filing Officer to the Secretary of State? 049 DAVIDSON: I do not think there is any reason to do that. The Secretary of State's office has no reason to care if a candidate in a local election, died.

055 REP. FORD: What if they appear in the voters' pamphlet?

056 DAVIDSON: That is an interesting point. It may be that we should require some kind of notification. Perhaps the Secretary of State could do that by rule or the bill could be amended to require that.

060 CHAIR MARKHAM: Doesn't the information to go in the voters' pamphlet go to the Secretary of State from you? 061 DAVIDSON: For those few local offices who are eligible to be in the state voters' pamphlet, the information goes directly from the candidate to the Secretary of State's office. 064 REP. NOVICK: Under this if someone is on the METRO ballot, they would still have to go through the Secretary of State's office? 066 PROFFITT: That is correct.

070 REP. FORD: I hate to add more amendments to this, but I would not want to see a candidate removed at the local level and the information not get to the Secretary of State's office. 078 VICE CHAIR SOWA:

While we are adding amendments, we ought to clarify who is the Filing Officer for the Metropolitan Service District. 083 DAVIDSON: I

believe that in the act creating the Metropolitan Service District, it specifies the Filing Office is the Secretary of State. 085 VICE CHAIR SOWA: On page 11, line 10 Metropolitan Service District should be added.

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099 PROFFITT: On page 11, line 6, you might want to add language to the effect "the Filing Officer, other than the Secretary of State, shall notify the Secretary of State of any action taken under this section".

118 REP. FORD: Even though some of the other local candidates will not be in the voters' pamphlet, the Secretary of State should still have the notification.

126 PROFFITT: On page 11, line 12, delete the period and insert "Metropolitan Service District" . Resumes written testimony at Section 29. 153 REP. FORD: It was not until 1979 that local districts, counties and cities had to comply with the single issue per measure requirement. 168PROFFITT: There is a provision in this that it can be appealed to the Circuit Court. 176 DAVIDSON: The reason that we suggested here that the appeal be to the Circuit Court is that it would be the first and the final appeal. What we have provided is an opportunity for a publication that determination has been made that this either does or does not meet constitutional requirements. As to appealing to the Secretary of State, the problem is that is an administrative review and that is appealable to the Circuit Court. 191 REP. ROBERTS: If someone challenges a ballot title on a statewide measure, I thought that went to the Supreme Court. 194 DAVIDSON: It does on a statewide measure. 210CHAIR MARKHAM: Appoints a sub-committee composed of Rep. Roberts as chair, Rep. Novick and Rep. Ford as members, to work with the witnesses on the amendments. Submitted by: Reviewed by: Carolyn Cobb Randall Jones Assistant Administrator

EXHIBIT LOG:

A - Amendments to SB 187-A - Randall Jones - 2 pages B - Amendments to SB 187-A - Randall Jones - 2 pages C - Testimony on SB 187-A - Sue Proffitt - 3 pages D - Testimony on SB 187-A - Dick Sohrt - 1 page

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