

Conference Committee on June 28, 1991 - Page

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.

CONFERENCE COMMITTEE ON HB HJR 27

June 21, 1991Hearing Room E 4:30 p.m.Tapes 112-113

SENATE MEMBERS PRESENT: Sen. Dukes Sen. Timms

HOUSE MEMBERS PRESENT: Rep. Minnis Rep. Dwyer

STAFF PRESENT: Janet Adkins, Committee Administrator Karen Edwards, Committee Assistant Joan Robinson, Legislative Counsel

WITNESSES:Rep. Kevin Mannix, District 32

MEASURE CONSIDERED:HJR 27-C - Includes policing within authorized uses of highway fund moneys,upon voter approval of amendment to Oregon Constitution at next primary election. - WORK SESSION

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TAPE 112, SIDE A

004 REP. JOHN MINNIS, CHAIR: Calls the meeting to order 4:36 p.m.

HJR 27 - WORK SESSION

006 REP. KEVIN MANNIX, DISTRICT 32: Summarizes HJR 27: >Will limit the use of money for policing highways. >New revenues would have to be dedicated to the purpose that current highway trust fund money could not be used. >Concerned that some form of HJR 27 survives the process.

040 REP. MINNIS: Joan, you wrote a memo (EXHIBIT A) to Chair Hayden about the constitutionality of HJR 27. Could you address the committee of that concern?

047 JOAN ROBINSON, LEGISLATIVE COUNSEL: Refers to paragraph two, page two, line two of HJR 27-C: >Where it states, "if a bill providing for an increase in vehicle registration fees" is not a standard provision. Instead of saying to the Secretary of State send this to the ballot, it would be sent to the ballot under certain circumstances. >Raises serious legal questions regarding delegation of power and whether it follows the

constitutional format for amending the Constitution with amendments proposed by the Legislative Assembly. Believes this is subject to challenge. This language is potentially dangerous.

078 REP. BILL DWYER: Did you talk about single subject too?

ROBINSON: The Single Subject Rule in constitutional amendments does not really apply to paragraph two because that is not the subject of the measure. The subject of the measure is the proposed constitutional amendment itself. The court interpretation is that you cannot refer a proposed constitutional amendment containing two different subjects so that the people would have to vote one time on what is, in effect, two different questions.

REP. DWYER: The voters are voting on two different questions. They are voting on a registration fee increase that is tied to this bill, in addition to this. Even though the question is not before them.

093 ROBINSON: Legally, because the question is not before them, they are not voting on two different questions. They are voting on the question of whether the Constitution should be amended to authorize use of specified money for policing?

REP. DWYER: Do you think that this is an honest way to do things? To ask the people to raise taxes that are not before them?

ROBINSON: Is here for legal advice not ethical advice.

SEN. EUGENE TIMMS: Do we have a constitutional problem because we are passing, under HB 3577, the gas tax increase of 15 cents?(Sic) Passing something that has not already been authorized in the Constitution?

102 ROBINSON: The parts of HB 3577 that are related to HJR 27 are sections one through four. The gas tax provisions of HB 3577 are completely independent of HJR 27.

SEN. TIMMS: Is referring to the registration fees.

ROBINSON: They do not go into effect unless the constitutional amendment is adopted. They would be unconstitutional without it.

SEN. TIMMS: Even though we are prematurely passing a bill that has not been authorized by a change in the Constitution to allow us to increase the gas tax?

109 ROBINSON: The bill has a clause that states it does not take effect unless the amendment is adopted.

SEN. TIMMS: You do not want the wording on page two, lines two through four in the resolution?

ROBINSON: In resolutions, where there is a procedural paragraph and this kind of procedure is not specified in the Constitution, makes me uneasy.

118 REP. DWYER: What type of procedure was it that tied the increase in registration to this?

ROBINSON: Right now it is unconstitutional to use registration fees for policing. In order to be able to use registration fees for the policing

of highways, you have to amend the Constitution. HJR 27 proposes an amendment to the Constitution. The bill itself, on a contingent basis, increases the registration fee and dedicates that money to policing.

128 SEN. JOAN DUKES: Since HB 3577 has passed, there is no longer a need for paragraph two in HJR 27.

REP. MINNIS: Putting aside the constitutional question, if this committee decided to amend the operative date which in the existing bill is 1991, what would be the effect of that?

ROBINSON: Amend the operative date of what?

149 REP. MINNIS: Reads page two, lines two through four of HJR 27.

ROBINSON: You would have to do more than that. Paragraph two refers to "the next primary election if". If you said passed in the 1993 regular session, it could not be referred to the next primary election which is May of 1992.

SEN. DUKES: Would it not be possible to write a section that said that we will open the trust fund if the Legislature appropriated, then using the wording in section one, subsection three of HJR 27, putting a later effective date that would not affect the ability of the voters to pass the bill? What if we said it became effective in 1992?

172 ROBINSON: You mean a specifically dedicated tax that became effective in 1992?

SEN. DUKES: Would we then negate the vehicle registration fee that is in HB 3577 and open the opportunity for future Legislative Assemblies to come in and dedicate new revenues for policing?

ROBINSON: It would certainly do the latter. Probably, it would do the former. The Constitution would then say something different from what the bill says.

184 SEN. DUKES: What if we removed paragraph two? Thinks that would be the effect. It would be complicated.

ROBINSON: Refers to page two, line 11 of HB 3577-A.

SEN. DUKES: What if we changed the effective date to be December 1, 1991 in HJR 27?

200 ROBINSON: Would your purpose be to avoid the provisions of HB 3577?

SEN. DUKES: Yes. Would that do it?

ROBINSON: Probably. But it might not be automatic. You would have a conflict between the bill and the Constitution and the Constitution would always win. It may be the court that would have to make that decision. Could possibly come up with language in section one, subsection three of HJR 27 that made it clear that this specifically dedicated money had to come from a tax that was adopted after some certain date.

233 REP. MINNIS: Joan, is it technically possible to draft an amendment to a bill that would void the sections of HB 3577?

ROBINSON: It is technically possible to do it in a bill. It is not technically possible to do it in a resolution, other than through amending the Constitution.

REP. DWYER: That may be technically possible. You would have to somehow reference the amendment to HJR 27 and not the original bill. Nothing becomes law until three people sign it.

256 REP. MINNIS: Joan, if the language on page two, lines two through four were deleted from HJR 27, would that eliminate the constitutional question?

ROBINSON: Yes.

273 SEN. DUKES: Would like to see subsection three in section one of HJR 27 survive where it prohibits the police from getting into the existing trust fund.

294 SEN. TIMMS: What is the issue that we are currently deciding in this Conference Committee?

313 SEN DUKES: Does not think the Senate side ever received any reason as to why the House did not concur with HJR 27.

322 REP. MANNIX: The Chair of the Transportation Committee who was the maker of the motion voted against HJR 27. In a procedural vote on the floor 32 of the member did not concur. The majority in the House has adopted the position that any time a Chair of a committee stands up to move to not concur, it should be considered procedural, and all the members of that majority should vote with that Chair.

342 SEN. DUKES: Is there anyone on this committee who disagrees with the language in section one, subsection three of HJR 27?

362 REP. MINNIS: One of the major objections aside from the registration fee is the allowance of local government option.

SEN. DUKES: That is in HB 3577, not in HJR 27.

371 REP. MINNIS: HB 3577 makes that operative. That is an important factor. Feels the Legislature is free to pass any piece of legislation that supplements budgets for policing in any tax form of the law. It does not necessarily have to be in the form of the highway trust fund.

SEN. DUKES: Do you have difficulty with the language that precludes the state police from getting into the current trust fund?

383 REP. MINNIS: Yes.

398 SEN TIMMS: Voted against HB 3577. Voted for HJR 27 to give the people an opportunity to vote on it. John, were you for the 15 dollar fee in HB 3577?

418 REP. MINNIS: No.

REP. DWYER: The problem is we passed a law that would allow local option that would be equal to the amount that the state levies. Every time we have doubled or raised the registration fee, we give local government, with the vote of the people, a commensurate amount of

authority to raise the fees. It makes me uneasy that we tied HB 3577 to HJR 27. It was not an honest way of doing things.

TAPE 113, SIDE A

010 JANET ADKINS, COMMITTEE ADMINISTRATOR: We went around and around about whether the local option registration fee would be able to be doubled with HB 3577. In speaking with the DMV and Legislative Counsel, it would not be. The additional increment of 15 dollars is called a surcharge on the registration fee. It is not part of the basic 15 dollar registration fee. The basic registration fee is not amended in HB 3577.

025 REP. MINNIS: What is the affect of HB 3577?

ADKINS: There is no affect on local option. They could still match the basic registration fee which is 30 dollars every other year. They could vote in, with the local vote, that amount of additional registration only.

029 SEN. DUKES: Thinks it may be possible to negotiate an agreement on the HB 3577 vehicle registration fee. If we were able to keep policing out of the existing fund. Which would basically say that they had authority some time in the future to be able to get some specially dedicated money for policing.

036 REP. MINNIS: You would like to have HJR 27 with the language in the bill that would set up that system if the Senate is willing to negotiate over the provision in HB 3577 with that provision? How would that be accomplished since HB 3577 has passed the Senate?

SEN DUKES: It was the language we were discussing earlier which would say that the trust fund would be opened, if the Legislative Assembly passed new revenue dedicated to policing after December 1, 1992 or whatever. It would be something we would have to pass after HB 3577 becomes law.

049 ROBINSON: It would take care of the dedication. But, in fact, section two of HB 3577, in closing the registration fee could be seen stand alone. It would be clear to everyone looking at it that was not your intent. If the constitutional amendment says, "revenues resulting from a tax or excise specifically dedicated to that purpose", this particular tax or excise is dedicated to that purpose but, it is levied independent of that.

064 SEN. DUKES: Are you saying it is going to be collective regardless?

ROBINSON: Thought it may be a possibility.

071 REP. DWYER: Janet, are you saying because of the 15 dollar fee being called a surcharge and not an increase in registration the County option does not apply?

ADKINS: Reads authority for local option registration fee, ORS 801.041.

083 ROBINSON: The local option is not affected by this.

REP. MANNIX: Does not see how conferees can undo what their respective bodies have already passed.

104 SEN. DUKES: Believes the specific rules of both chambers refer to negotiating within the scope of the bill.

REP. MINNIS: The objective of the Conference Committee should be to try and come to some agreement.

116 SEN. DUKES: Would like to recess and have Joan Robinson work on something to enhance her comfort or discomfort level on HJR 27.

REP DWYER: Will not support the tax and does not like the process that was used to tie the two bills together. If some process could be developed to put these questions before the people together, then we can talk about it.

127 SEN. DUKES: What if we negated the vehicle registration fee that was just passed so that opening up the trust fund to future revenues went on all by itself and then some future Legislative Assembly or vote of the people had to enact any money that went into it? The only thing the people would be voting on would be opening the trust fund to future money.

135 REP. DWYER: What about the registration fee increase in HB 357 7?

SEN. DUKES: Under what we are talking with Joan about, it would be negated and would not take effect.

REP. DWYER: It would not take effect or could not take effect?

137 SEN. DUKES. Both. We would just cancel it out.

CHAIR. MINNIS: Recesses the work session until 7:30 p.m.

145 CHAIR. MINNIS: Reopens the work session at 7:42 p.m.

163 ROBINSON: Summarizes the HJR 27-C02 amendments (EXHIBIT B): >Page 2, line five. The phrase, "a tax or excise levied or imposed on or after January 1, 1993". Would make it clear that the tax or excise that is going to be used for policing cannot be one that was levied before January 1, 1993. >Page two, lines eight through twelve. This wording was adopted by the Senate. Sections one through four of HB 3577 will not be able to take effect. They will be unconstitutional in the sense that tax or excise would be levied before January 1, 1993 and it would be unconstitutional for an agency to collect a registration fee. >Amended paragraph two to take out anything after the standard clause that says it is referred at the next primary election.

206 REP. MINNIS: Janet just mentioned this is not limited necessarily to a registration fee.

ROBINSON: If you refer to section 3A, article nine of the Constitution which is being amended, that tells you what kind of taxes you are talking about.

222 ADKINS: This language will stay in the Constitution?

ROBINSON: Right.

SEN. DUKES: The HJR 27-C02 amendments (EXHIBIT B) would undo what the Legislature has done in terms of enacting a motor vehicle registration

fee surcharge in HB 3577. If passed by the people, it would open up the trust fund to policing, if, after January 1, 1993 the Legislature or the people were to enact a law with some money specifically dedicated to policing?

239 ROBINSON: Right. It would have to be a tax or excise that is in addition to anything in effect on the effective date of the act.

SEN. DUKES: It has to be in addition to what is currently in the trust fund? What is there right now stays in the trust?

251 ROBINSON: Right.

SEN. TIMMS: That is a law enacted January 1, 1993 with the Oregon Legislature. To impose a law that is enacted after January 1, 1993 does what we are putting in section three which can be done by the Oregon Legislature. If it goes on the ballot, it would be placed on the next primary election?

ROBINSON: Right. If it were adopted in May 1992, it would become effective in June 1992. Between June 1992 and January 1, 1993 you could not meet in a special session and enact a registration fee and dedicate it to the police.

280 REP. MINNIS: Feels the significance of this with Ballot Measure Five will have more of a significant impact on local government budgets, the emphasis may be clear to move in this direction.

285 SEN. DUKES: Feels this is a conscious decision for voters to decide as to whether or not they want any tampering with funding for policing. Can HB 3577 be placed on the ballot even though there is no constitutional validity yet? Would HJR 27 have to pass before HB 3577 was placed on the ballot?

304 ROBINSON: It could not be done.

325 SEN. DUKES: Is it possible for the voters to put something on the ballot even though it is not enacted and it is not legal?

ROBINSON: The people have as much right to do something unconstitutional as the Legislature has.

332 MOTION: SEN. TIMMS moves the HJR 27-C02 amendments dated 6/28/91 (EXHIBIT B) to HJR 27-C.

REP. DWYER: Speaks to the motion. Feels the registration fee and the amendment should have been voted on by the people. Will vote no.

VOTE: In a roll call vote, the motion fails with Representative Dwyer voting NAY.

369 CHAIR MINNIS: Recesses the work session until Saturday, June 29, 1991 at 10:00 a.m.

Submitted by: Reviewed by:

Karen Edwards Janet Adkins Assistant Administrator

EXHIBIT LOG:

A - Memo on HJR 27-C - Staff - 1 page B - Amendments to HB
HJR 27-C - Staff - pages