

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 SB 722

June 27, 1991
a.m.

Hearing Room E 8:30
Tape 5, 6

MEMBERS PRESENT: Sen. Bob Shoemaker, Chair Sen. Jim Bunn Rep. Kelly Clark Rep. Kevin Mannix

MEMBER EXCUSED: Sen. Joyce Cohen

STAFF PRESENT: Bill Taylor, Committee Administrator Jacqueline Talbot, Committee Assistant

WITNESSES: Frank Brawner, Oregon Bankers Assn. Charles Williamson, Oregon Trial Lawyers Assn.

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TAPE 1, SIDE A

003 CHAIR SHOEMAKER: Calls the meeting to order at 9:35 a.m.

007 TAYLOR: Gives brief history of the bill. The bill as it passed out of the Senate is set forth in section 1 of the staff measure summary (Exhibit A). The added House amendments are described in parts 2-6 of the staff measure summary.

022 SHOEMAKER: Land surveying is added to the bill.

026 BUNN: Expresses concern with the land surveyor provision. Any flaw should appear in a set period of time. There were good arguments from the building trade as to why this could be different. There may be a situation where someone builds, and years later finds out that the survey was incorrect and there is no ability to go back and deal with it.

037 MANNIX: Concurs with Sen. Bunn.

038 SHOEMAKER: Agrees with proposed change. The next provision relates to the statutes of limitation and statute of ultimate repose regarding actions against trustees of an expressed trust. He stated that he personally had no trouble with the six-year statute of limitations from discovery, but was troubled by the tenure of ultimate repose statute, since there could be an error on the part of a trustee which couldn't be discovered until the trust is closed and that could be longer than ten years.

050 FRANK BRAWNER: This is a bill that came from the OBA trust division and was drafted last November, and somehow it did not get introduced. There is no present statute that addresses the time limit during which a beneficiary may bring action against a trustee for some act of omission. The purpose of this bill was to address a real concern of what might be interpreted as a permanent and open-ended liability of the fiduciary.

The OBA sections of this bill are to make clear that the provisions of ORS 12.115, the statute of ultimate repose, will apply in the case of fiduciaries. This bill will also give guidance as to the retention of records. If there is no limit of time in which a fiduciary will be called upon to defend an act of omission or action, a fiduciary may be expected to keep records for all time. The retention of records is a real issue. Nothing in this bill removes the extension of time provided in ORS 12.160 (Exhibit B).

083 MANNIX: That section refers to situations where someone is incompetent to handle their own affairs and they have a trust, the statute provides for extensions of time on these time limitations, so there are still exceptions in the bill for these people. The testimony Mr. Brawner just presented was presented before the House Committee. I understand that the Trial Attorneys are not opposed to this.

093 SHOEMAKER: Because the House is under a Call, the Senate could continue to hear testimony on what changes were made in the House. Then the House could return. My concern is that, whether or not a beneficiary is a disabled person, if a trustee were to make a mistake they could conceal that, until after the estate is closed. We could have the statute of ultimate repose run from the closing of the estate, rather than the commission of the error.

112 BRAWNER: The trust officers thought 10 years was a reasonable length of time, given their other fiduciary responsibilities and other statutes which govern their actions.

126 SHOEMAKER: Do you know what other states have done in this regard?

127 BRAWNER: Most states do speak to the issue; our statute is silent. Ten years is what most states have chosen.

132 SHOEMAKER: Would it be acceptable to have the ultimate repose six years after the closing of the estate?

128 BRAWNER: I would like to have a few minutes to determine that.

134 CHARLES WILLIAMSON: It may be that the bill could be left as it is, and add "or two years after the close of the estate, whichever is later" and give people two years.

144 BUNN: While we are waiting on that, could someone explain the need for section 6 to me?

147 TAYLOR: This amends ORS 105.655, which allows people with properties next to water, forest land, or range land, a different level of liability for recreational users.

156 BUNN: Why doesn't the language on line 16 already do this?

160 SHOEMAKER: The language does seem redundant.

161 TAYLOR: I believe it was Rep. Mannix who moved this language on the House side. I believe there was some ambiguity on the definition of ocean & body of water.

162 BUNN: I see a possible ambiguity.

167 SHOEMAKER: I think it's fine. I have statute 105.665 states that an owner of land does not owe any duty of care to make the land safe for use of others for recreational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the land to persons entering thereon for any such purpose. So that is the standard, then there are exemptions for willful and reckless failures, and when the owner charges a fee to enter the property.

186 TAYLOR: You wouldn't be able to have a tiger pit on your land and be resolved from liability if someone was injured, however.

189 SHOEMAKER: Assuming that that was a known dangerous activity or

structure on the land.

202 BUNN: On section 5, it would seem that if we removed the subsection 4, the remainder of that should be workable.

204 SHOEMAKER: I think that Sen. Cohen suggested a \$7500 limit, rather than a \$10,000 limit, and that seemed reasonable to me. We will stand at ease for a few minutes.

214 BRAWNER: I just spoke to our trust officer. In the case of an incapacitated person, there is court involvement, so that affords protection. We would find it reasonable to add "or two years after the closing of the account, whichever is later."

216 TAYLOR: Should that be close of the "account" or "estate?"

217 BRAWNER: I asked this questions, and in the "trust lingo" estates are usually closed within a year from the time it becomes an estate. "Account" should be used. A previously passed bill this session, a records retention bill, also had some time limitations in it, and I will check that language.

225 SHOEMAKER: The closing of the account is the time that the bank turns it over to the beneficiary, and the bank's duties conclude, correct?

235 BRAWNER: Correct.

240 SHOEMAKER: So whatever word describes that event is the word we want.

242 BRAWNER: I will get the language.

252 BUNN: I think "account" would suffice.

Rep. Mannix returns to committee.

269 SHOEMAKER: Explains to returning House members the prior discussion.

273 MANNIX: "Account" would be a better choice; there may be a transfer of the estate from one trustee to another, and that first trustee might want to close their account, but the estate may be administered by another.

285 SHOEMAKER: Legislative Counsel should be able to choose the appropriate word.

286 MANNIX: Do you need any testimony from me explaining the parental liability?

303 SHOEMAKER: Calls a short recess until Rep. Clark arrives.

304 SHOEMAKER: Recaps prior testimony for Rep. Clark.

330 SHOEMAKER: The next topic is that of making parents and their minor children liable for civil penalties. I think on the Senate side, we are comfortable with "recklessly" and reducing the \$10,000 to \$7,500, striking the treble damage language. 337 MANNIX: I agree with that.

339 SHOEMAKER: Then the final change is adding "bodies of water or watercourses" to the definition of land to make it clear that it is not just the ocean shore to which the liability applies to.

343 BUNN: Does that raise the question of buildings?

358 CLARK: That should cause confusion because the ocean shore is in existing statutes.

360 BUNN: But on line 15, we use the "including" are we taking lines 14 and 15 and 16?

366 SHOEMAKER: As I read that, "land" means any land, including land with structures.

388 MANNIX: I agree with Sen. Shoemaker. For example, if I'm a hunter, and I want to cross someone's private parcel of land to get to a public pond, but also on that private land is a private stream, and I want to cross the stream, then the private landowner is also protected as I cross the water. We are just defining what we include within that owner's land.

411 BUNN: I'm comfortable with that.

421 BRAWNER: The bill I referred to earlier was SB 798. In it, the language used was "account." I would propose that language read on line 33, page 2, "or two years from the termination of the fiduciary account, whichever is later."

426 MOTION: Rep. Mannix moves to delete the reference to land surveying on line 15, page 1; to change the statute of ultimate repose regarding an expressed trust to 10 years or two years upon closing of the account, whichever is later on line 33, page 2; reducing the legal obligation of the parent from \$10,000 to \$7,500 on line 41, page 2; and delete sub (4) of section 5 on page 3.

VOTE: Hearing no objections, Chair Shoemaker so moved.

MOTION: Rep. Mannix moves SB 722, as amended, to the Senate and House floors for passage.

459 TAYLOR: This means that the Senate concurs with the House amendments, dated 6-13, and the bill be further amended and repassed.

VOTE: In a roll call vote, the motion passes, 4-0. Voting aye: Bunn, Clark, Mannix, Shoemaker; excused: Sen. Cohen.

Submitted by,

J.E. McComb

EXHIBIT SUMMARY

Exhibit A - Staff Measure Summary, SB 722, Bill Taylor, 1 pg.

Exhibit B - Testimony, SB 722, Frank Brawner, 3 pgs.