

Senate Government Operations May 29, 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.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

May 29, 1991Hearing Room "B" 3:00 p.m. Tapes 102 - 103

MEMBERS PRESENT:Sen. Glenn Otto, Chair Sen. Jane Cease, Vice-Chair
Sen. Jim Bunn Sen. Ron Grensky Sen. Tricia Smith Sen. Dick Springer

MEMBERS EXCUSED:Sen. John Kitzhaber

STAFF PRESENT: Gail Ryder, Senior Committee Administrator Julie
Muñiz, Committee Assistant

MEASURES CONSIDERED: HB 2595 - Relating to lobbying
regulation, PH/WS HB 2039 - Relating to Joint Legislative Audit
Committee, PH HB 2974 - Relating to public records, WS HB 2890 -
Relating to state agency reports; declaring an emergency, WS

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TAPE 102, SIDE A

005 CHAIR OTTO: Called the meeting to order at 3:16 p.m. as a subcommittee

(TAPE 102, SIDE A)

PUBLIC HEARING

HB 2595 - RELATING TO LOBBYING REGULATION

Witnesses: Wallace P. Carson, Judicial Department

010 WALLACE P. CARSON, JUDICIAL DEPARTMENT: I'm here to represent the Judicial Department in support of the bill. The purpose of the bill is to amend the lobby registration statutes to exempt judges from being required to register as a lobbyist.

090 OTTO: What types of issues will you be lobbying for or against?

095 CARSON: We can appear on anything dealing with judicial administration, but not all judges agree on what this is. Some believe they ought to have the right to lobby for anything that involves them as a citizen, others say they can only lobby to the extent it involves judicial administration. The type of things I deal with are budget.

WORK SESSION

125 MOTION: SEN. SPRINGER MOVED HB 2595 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

134 VOTE: MOTION CARRIED, 4-0. (EXCUSED: SEN. BUNN, SEN. GRENSKY, SEN. KITZHABER). SEN. SPRINGER WILL LEAD THE FLOOR DISCUSSION.

(TAPE 102, SIDE A)

PUBLIC HEARING

HB 2039 - RELATING TO JOINT LEGISLATIVE AUDIT COMMITTEE

Witnesses:Bob Muir, Representing the Treasury Department John Lattimer,
Legislative Fiscal Office Kathleen Beaufait, Legislative Counsel

140 JOHN LATTIMER, LEGISLATIVE FISCAL OFFICE: Explains the background for HB

203 9. Some agencies are reluctant to provide access to records. The Joint Legislative Audit Committee (JLAC) feels we should have the same authority to look at records in public agencies that the state auditor has. The bill gives the Legislative Fiscal staff the authority to view these documents when they are performing their duties. There has been discussion with the Attorney General about whether we can make these documents public. The -A4 amendments, dated 5/29/91, Exhibit B, makes it clear that the Fiscal officers don't have the authority to make these documents public.

182 CEASE: What is the lack of clarity about §2, (2,) on pg. 2?

190 LATTIMER: I could try to explain it, but I would prefer Kathleen to do it.

193 CEASE: I'm referring to the -4 amendment.

194 LATTIMER: Would you like me to try to explain it, or would you rather it come from Kathleen?

195 CEASE: Probably Kathleen.

197 RYDER: Mr. Muir from the Justice Department is also here to discuss the amendment.

202 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: This amendment reflects convoluted reasoning. The Attorney General has taken the position in an amendment adopted in 1989, that the Legislative Assembly exempts itself from the public records law. Given that, when a fiscal officer becomes privy to confidential information, that officer cannot repeat it. It's an attempt to overcome an interpretation problem of the definition segment and to restate it clearly.

231 CEASE: Do you need both (2) and this new language?

233 BEAUFIT: It's an abundance of caution.

240 CEASE: Would you mind if we read this out-loud. Page 2, §2 (2) would read, "this section does not authorize the Legislative Fiscal Office or a designee thereof to publish any records obtained under this section so as to reveal the identity of any individual or reveal information that is confidential under federal or state law or the making available such records under ORS 192 .410 to .505 except to the extent that the records are public and subject to disclosure under ORS 192.410 to .505. The Legislative Fiscal Office is subject to ORS 192 .501 to .505 when acting for the Joint Legislative Audit Committee insofar as not disclosing records otherwise exempt from disclosure." If I were in the public, I would not understand this.

258 BEAUFIT: In line 13 where it says "this section does not," there is a feeling that there is a common right of disclosure and a public records law. If the public records law doesn't apply to the Legislative Branch, then there's the reassurance that it wasn't just this section that prohibits it but any section under public records law.

267 CEASE: It means any records obtained, under this section? If that's what it takes, ok. But I think it's a bad way of doing it.

275 BEAUFIT: Mr. Muir may want to help Sen. Cease.

279 SPRINGER: I like the original bill. If we specifically say that one committee has access, are we suggesting that other committees don't? Do we not have access to those records now, or does this just reinforce the argument that we're not specifically given access like the JLAC is. We may not be able to perform our duties because those records aren't disclosed to us.

300 BEAUFIT: The bill makes the records available to the legislative fiscal officer, not the JLAC. The accessibility of information to a committee is dealt with by the authority to subpoena records. When record is not being made available, the subpoena has been put to use. You use the subpoena as a testing method to whether it's a sound reason to reveal the records.

333 SPRINGER: So we're saying a Legislative Fiscal officer or a designee there of, shall have access to the records, but the chair of the committee does not?

338 BEAUFIT: If the Fiscal officer designates the Chair as a designee, that would be appropriate. It's a limited window of gaining information. It's paralleling the gaining of information without

identifying the individual.

357 SPRINGER: Who gave rise to this bill?

360 LATTIMER: I don't understand your question.

362 SPRINGER: As I understand it, this bill wouldn't be here if the Audit Committee hadn't run into some disclosure of information.

367 LATTIMER: There really wasn't a dispute. We have to look at individual records. People in those agencies were reluctant to releasing that information because they wanted those records confidential. So in effect, we've written an agreement that we would keep those records confidential.

393 SPRINGER: Is there any reason why the JLAC felt the subpoena wasn't appropriate?

397 LATTIMER: We felt that was too much authority. I wouldn't want to issue a subpoena unless it was absolutely necessary. We're trying to stay away from becoming an investigative unit. We want to work in a fashion that reviews and evaluates state programs, not investigating criminal activity.

422 CEASE: Could I have Kathleen, John and Mr. Muir talk about the amendment and (2) again?

429 BEAUFIT: It is possible that if I had more time, I could have drafted something less redundant.

441 CEASE: I would feel more comfortable if more time was spent putting these two clauses together differently.

455 BEAUFIT: We could have done that.

TAPE 103, SIDE A

017 BOB MUIR, REPRESENTING THE TREASURY DEPARTMENT: What I'm about to say isn't our advice, it's not without doubt. The treasurer does not oppose the concept of the bill. One question that must be addressed is once it's handed to the fiscal officer, do those documents remain subject to the same exemptions? Gives history of the legal issue involved. In 1989, the Legislature passed amendments stating that a state agency does not include the Legislative Assembly, it's officers or employees insofar as they are exempt under the speech and debate clause. It could be argued that "state agency" does not include the Legislative Assembly and its officers when they're carrying out their legislative duties. This argument raises the doubt of whether the public records law would apply. The Supreme Court has recognized that in *the absence of statutory law, there is some right of access to public records. The simplest solution was to make it clearer. Kathleen said the intent of the bill was to be able to transfer records to the Fiscal officer. With more time it could be better, but the attempt was to make it unambiguous.

085 CEASE: I understand. I don't have any objection with the doubts, I object with the language we have now. Could we have someone spend more time on this so it is clearer.

093 BEAUFIT: With more time, we could make it more succinct.

097 OTTO: Gail, do we have time to ...

097 RYDER: We can reschedule it for Monday.

(TAPE 103, SIDE A)

WORK SESSION

HB 2974 - RELATING TO PUBLIC RECORDS

Witnesses: Roy Turnbaugh, State Archivist

105 RYDER: Distributes a list of previous amendments presented to the Committee and some information from Michael Dolan, Exhibits C and D. Reviews list of amendments, Exhibit C.

166 SPRINGER: I missed the initial hearing on this. Do we have any one from the state archivist's office here? I have a couple questions.

175 ROY TURNBAUGH, STATE ARCHIVIST: Introduces himself to the Committee.

176 SPRINGER: As I understand it, under the bill as amended, you would have the authority to requisition current and non-current documents? And the Governor can require records from their office to be solely registered with the state archivist?

186 TURNBAUGH: Kind of. It requires the Governor to place records that are not being left for the successor with the state archivist rather than take those records with him/her.

194 SPRINGER: What if the Governor decides he wants to place records with the Oregon Historical Society or somewhere else?

202 TURNBAUGH: This prevents him or her from doing that. This states that public records belong to the public, not with the individual that holds office.

209 SPRINGER: Ok. I remember how a few years ago the Oregon Historical Society (OHS) asked legislators if they had anything that may be of public interest that could be given to the Society. I don't remember the state archivist ever offering to help me clean out my basement.

218 TURNBAUGH: We're very supportive of the OHS attempts to develop their collection. We don't consider the papers of legislators to be part of our charge.

225 SPRINGER: Thanks for the clarification.

233 OTTO: Any other discussion on the amendments?

241 MOTION: SEN. SMITH MOVED THE -9 AMENDMENTS TO HB 2974, DATED 5/15/91. HEARING NO OBJECTION, SO ORDERED.

248 MOTION: SEN. SMITH MOVED THE -10 AMENDMENTS TO HB 2974, DATED 5/15/91.

253 CEASE: This is reducing the number?

254 SMITH: Yes.

262 MOTION CARRIED BY ACCLAMATION.

264 MOTION: SEN. SMITH MOVED THE -12 AMENDMENT TO HB 2979, DATED 5/15/91. HEARING NO OBJECTIONS, SO ORDERED.

271 MOTION: SEN. SMITH MOVED THE -13 AMENDMENT TO HB 2974, DATED 5/15/91. HEARING NO OBJECTIONS, SO ORDERED.

278 RYDER: There are also amendments from the County Clerks' Association and some conceptual amendments regarding per diem. I would suggest we have Counsel put them together and have one last look at them on Monday.

282 SMITH: I would rather see the conceptual amendments in LC form.

284 RYDER: You can adopt them on concept and then you can see them both on the final package, if you like.

285 CEASE: Did the committee actually adopt the conceptual amendments?

287 RYDER: No. It was a suggestion by Rep. Edmunson that is was legislative intent on the House side not to pay per diem.

289 SMITH: I wouldn't support that (unintelligible)...

290 RYDER: All right. That would leave the County Clerk's amendment only.

291 SMITH: All the County Clerk amendments would do is identify the County Clerk as the county records officer...

293 RYDER: Yes.

293 SMITH: ... and require prior notification to whom?

299 RYDER: That is in §7, pg. 3, ln. 29. This would say "prior notification" to the destruction of state records. It does not specify to whom.

305 SMITH: Do we know who they want to be notified?

307 RYDER: The records officer, I believe.

309 SMITH: Of the agency from whom the records came?

309 RYDER: Either the state agency or the governing body.

313 SPRINGER: Do we know if the County Clerks have discussed this amendment with Rep. Edmunson?

316 RYDER: I don't know. I believe the archivist was involved in its drafting. You should all have a copy of it.

333 OTTO: What's the feeling of the Committee?

334 SMITH: I don't have a problem with the conceptual amendments.

336 CEASE: We're going to get it all back anyway.

337 SPRINGER: I'll reserve judgement on the County Clerk's amendment until Monday.

339 SMITH: Do you want us to move those amendments so we could get them into the bill...?

342 RYDER: If we have a separate amendment drafted with the County Clerk's amendment in addition to these, then we'll have to send it back to Counsel one more time. If we put it all together in one, then we could look at that one section on Monday and take final action on it.

350 MOTION: SEN. SMITH MOVED THE CONCEPTUAL AMENDMENTS TO HB 297 4, AS PROPOSED BY THE COUNTY CLERK'S OFFICE. HEARING NO OBJECTION, SO ORDERED.

355 SPRINGER: I reserve the right to reconsider when I see it.

357 OTTO: Do we do anything with per diem?

358 RYDER: No. We're not taking any action on per diem. Rep. Edmunson placed the intent on record that per diem was not an element. If you have a different feeling, you might want to place it on the record that it is an element.

364 CEASE: If we don't address it, do people not get per diem?

367 OTTO: I think that is correct.

368 CEASE: It concerns me that we would only have people who could afford to participate if we didn't help with some small amount of per diem.

372 OTTO: I would like to have you make a motion to include per diem and travel.

374 MOTION: SEN. SMITH MOVED TO INCLUDE PER DIEM AND TRAVEL IN THE AMENDMENTS.

384 OTTO: Yes, you are discriminating against a certain class of people.

385 SMITH: I agree with that. Also, we just included a sunset that will require a pretty heavy workload. To require that much time would be difficult at best.

397 MOTION CARRIED BY ACCLAMATION.

398 OTTO: Do we want to address the sunset?

398 RYDER: It's been done in the -9 amendments.

400 OTTO: Is there anything else we want to put in before we send it to Legislative Counsel?

402 SMITH: Are we going to get a B-Engrossed version of the bill?

404 RYDER: No, we'll get you a full set of amendments for Monday's meeting.

413 SPRINGER: Is there a fiscal impact here and how will we deal with it?

418 RYDER: This bill has a referral to Ways and Means. One of the things suggested at the last meeting was that the referral could be removed because the state archivist has assured us that this can be

absorbed in their existing budget. That was prior to the sunset being added, so we'll try to get those down to fiscal and back by Monday.

428 OTTO: The other thing is the per diem, I assume it will be minimal. We shouldn't have to refer that to Ways and Means.

430 CEASE: They've made it clear that they don't want to see things with small impacts.

434 BUNN: It's important to identify if the per diem is what puts us over the threshold. In that instance, we might want to remove it.

439 RYDER: I'll try to run all the amendments through Legislative Fiscal before Monday.

442 OTTO: Would you find out what the threshold is?

444 RYDER: From the Senate President's office? Alright.

445 CEASE: Sen. Bradbury stated it on the floor once. I wouldn't think this would hit it.

TAPE 102, SIDE B

WORK SESSION

HB 2890 - RELATING TO STATE AGENCY REPORTS; DECLARING AN EMERGENCY

Witnesses: Roger Bassett, Director of Government Relations, State System of Higher Education

005 RYDER: Distributes -A13 amendments, Exhibit E.

022 ROGER BASSETT, DIRECTOR OF GOVERNMENT RELATIONS, STATE SYSTEM OF HIGHER EDUCATION (SSHE): It's come to my attention that a wide variety of documents, published by our colleges and universities for educational purposes, would be covered by the bill. Some carry a charge and are already excluded by the language of the -A13 amendments. Some documents, as can be seen in the catalogue, Exhibit F, are free to all people. We also distribute certain documents to certain select groups of individuals. Reviews SSHE amendment, Exhibit G.

050 OTTO: We have two sets of amendments before us. One from Ron Bassett, Exhibit F, and one from -- who's the other set from?

052 RYDER: It's from you, Mr. Chair. It's the one you asked to have prepared on behalf of the Department of Human Resources and the Department of Economic Development.

062 CEASE: This bill is getting too complicated.

065 MOTION: SEN. BUNN MOVED HB 2890 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

074 VOTE: MOTION FAILED, 2-4. VOTING NO: SEN. CEASE, SEN. SMITH, SEN. SPRINGER, CHAIR OTTO. (EXCUSED: SEN. KITZHABER).

079 CEASE: It might be a candidate for the OOSOOM agenda.

081 MOTION: SEN. SPRINGER MOVED TO PLACE HB 2890 ON THE OOSOOM AGENDA.

088 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

089 OTTO: You might explain the OOSOOM agenda.

090 SPRINGER: Out of sight, out of mind.

092 OTTO: In other words, we will no longer hear the bill.

Meeting adjourned at 4:20 p.m.

Submitted By:

Reviewed By:

Julie Muñiz
Assistant

Joan Green
Assistant

EXHIBIT LOG

A - Written testimony, Wallace Carson, 5 pgs. B - HB 2039-A4 amendments,

Staff, 1 pg. C - HB 2974-A amendments, Staff, 2 pgs. D - Handout,
Micheal Dolan, 1 pg. E - List of HB 2890-A13 amendments, Staff, 2 pgs. F
- Pamphlet, Roger Bassett, 48 pgs. G - HB 2890-A amendment, State System
of Higher Education, 2 pgs.