

To: Chair Prozanski and Members of the Senate Judiciary Committee.

From: Hon. A. Carl Myers, Presiding Judge City of Keizer, City of Jefferson.  
On Behalf of the Oregon Municipal Judges Association and the Oregon  
Justice of the Peace Association.

Date: May 21, 2015

Subject: Written Testimony In Opposition To **HB 3399A**

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Chair Prozanski and Members of the Senate Judiciary Committee:

I appear on behalf of the Oregon Municipal Judges Association and the Oregon Justice of the Peace Association with concerns about HB 3399A. Those concerns are so great that we must oppose the bill in its present form.

Thank you for your consideration

## **ISSUES WITH HB 3399A**

### **1. CONSTITUTION PROBLEMS UNRESOLVED.**

#### **a. Under Oregon Constitution, MAY THE LEGISLATURE OVERRIDE A MUNICIPAL CHARTER?**

##### **i. Oregon Constitution, Article XI, Section 2.**

**1. "...The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town."**

**ii. The qualifications of Municipal Judges are established by the city's Municipal Charter.**

**iii. State mandated qualifications such as these will amend that Municipal Charter.**

#### **b. Is this a HOME RULE issue?**

**i. Are Home Rule Cities and Counties exempt from this new requirement?**

#### **c. Is this an UNFUNDED MANDATE issue?**

**i. There are costs involved that must be absorbed by the local government.**

**ii. Counties and cities that need lay judges are financially strapped as they are all small sparsely-populated rural counties and cities that can least afford the added costs.**

1. This may not be an issue for the Portland metropolitan, the Willamette Valley, Southern Oregon region, parts of the Central and Northern Coast area, and large central and eastern Oregon cities.
2. However, small towns and low-populated rural counties will suffer. Many of these jurisdictions are far from the county seat and are a much more convenient forum for resolution of these minor issues.

## **2. RECORDING/TRANSCRIPT REQUIREMENT**

### **a. What is the purpose of this new Recording requirement?**

#### **i. VERBATIM RECORD? If it is to keep a verbatim record for some purpose, only major equipment will work. Estimated cost per court room \$8,000-10,000.**

1. To record all speakers, who may be speaking at the same time, a multi-track system must be used with several microphones and a staff person to make sure it is operating and recording properly.
2. System necessary is similar to those in this hearing room.

#### **ii. DISCOVERY? If the record is not to be verbatim, then why keep it at all?**

1. These cases are appealed de novo to the circuit court
2. Tapes cannot be used elsewhere unless verbatim.
3. Quality too poor on most low cost recording equipment to be usable for other purposes.

### **b. There are no standards in the bill for what is required.**

- i. Does ORS 8.340 et. seq. apply?
- ii. If no standards, then why require?
- iii. If low cost recording equipment is used and the recording is bad, what happens? Dismissal of charges, retrial, appeal?
  1. This WILL be litigated.
  2. There is no provision for excusable problems as in Grand Jury Recording bill.

### **c. Quotes for recording equipment from some sources that are for less than \$4000-\$5000 may be for inferior systems and will not record sufficiently.**

### **d. Adequate records already kept by way of written record and orders, waivers, etc. to comply with Due Process standards set by appellate courts.**

- i. Audio Record has no purpose beyond what is now kept.

### **e. Storage, maintenance and retrieval of records will take staff time and storage space.**

- i. **Small city and county courts are under-staffed as it is.**
  - ii. **If the record is kept electronically, how do you index it and what do you do when a public records request is made for a certain portion.**
  - iii. **If the record is kept on tapes or disks, how do you index them, store them, and retrieve them.**
  - iv. **This will burden already short-staffed court staff.**
- f. De novo Review protects parties when the Court is not a court of record.**
- i. **Adequate safety of rights is guaranteed by appeal to Circuit Court when local court is not a Court of Record**
    - 1. **Appeal is to Circuit Court where recording is done and all judges have legal background.**
  - ii. **HB 3399 assumes sending audio recording with written file to Circuit Court for a new trial.**
    - 1. **Circuit Court will have no use for the recording since it is a new trial.**
    - 2. **Circuit Court will not have appropriate equipment to listen to the tape, if needed.**
    - 3. **Tape recording is an outdated technology not utilized by the Circuit eCourt system.**
    - 4. **The circuit court equipment is not compatible with simple recording equipment.**
- g. There is no indication from the Supreme Court that the current system does not meet all due process and other Constitutional minimum standards.**
- i. **In fact, most cases where a lack of adequate record has been a problem seem to come from circuit courts.**
- h. By passing this new recording equipment requirement, is legislature suggesting there is a need and thereby setting an unintended standard?**
- i. **Does the bill unintentionally create mandatory courts of record?**

**3. QUALIFICATIONS FOR JUDGES**

- a. **Bill requires “Juris Doctor.” Oregon law schools give out “Doctors of Jurisprudence” degrees. They are the equivalent in effect, but not the same.**
  - i. **Sharp defense attorneys or constitutionalists will challenge this provision.**
  - ii. **They did so some years ago regarding the oaths taken by the judges.**

- b. No guarantee that a lawyer judge has any trial experience, criminal law background, or has had classes FED law or other civil matters handled in local courts.**
- c. Requirements for lay judges, should not the requirements be the same for attorney judges.**
- d. Judges are either elected or serve Council, so oversight is very immediate.**
- e. Lay Justices of the Peace are currently required to get and report 30 hours of judicial education approved by the Chief Justice every two years, the same classes, for the most part, that attorney judges take.**
- f. The National Judicial College Course Requirement.**
  - i. The NJC classes are more expensive, particularly considering room, board and travel expenses to Reno, NV, cost estimated at \$10,000 per judge.**
  - ii. Appropriate NJC classes are offered only once a year.**
    - 1. If judge is not available when course offered, then Judge must wait another year for cycle.**
    - 2. Judges and pro-tems judges cannot attend at the same time because one needs to cover the court.**
- g. The education should come from Oregon-based programs overseen by Chief Justice of the Supreme Court and the Oregon State Bar.**
  - i. They are better suited to explain Oregon law.**
  - ii. Local Oregon programs are cheaper.**
    - 1. The tuition and fee costs are significantly lower.**
    - 2. They involve less travel.**
    - 3. They incur less board and room costs.**
  - iii. Local classes are more convenient.**
    - 1. Can be taken over time, weekends, etc. without interruption of court schedule.**
    - 2. Can be taken in conjunction with classes already available in Oregon from several sources.**
  - iv. There are currently 2 education sessions per year in Oregon for Municipal and Justice Court judges.**
    - 1. Oregon State Bar approves the educational content.**
    - 2. These classes are attended by both lawyer judges and lay judges alike and together.**
- h. OJD has no budget money for ongoing judicial education of Circuit Judges.**

- i. The State cannot afford to continue to educate its judges, yet the legislature proposes to require the cities and counties to do so.**

**i. Justice of the Peace Judges are elected, so voters ultimately approve of their judge's qualifications.**

- i. Elected County Commissioners have the option of requiring a Justice of the Peace be a member of the Oregon State Bar under current law.**

#### **4. OTHER ISSUES.**

##### **a. Pro-tem Judges.**

- i. All courts need one or more pro-tem judges to cover the court in an emergency or when the Judge is unavailable.**
- ii. Pro-tem judges are subject to same qualifications as the Presiding Judges.**
- iii. Pro-tem judges might only serve as judge a few times per year.**
- iv. Cost (\$10,000 per pro-tem judge) vs benefit is too expensive for all counties and most cities.**

##### **b. This bill needs a Grandfather clause of some kind.**

- i. The Legislature may not change qualifications of Judges currently serving.**

**c. Delayed implementation of HB3399, if passed, is necessary because local budgets are already in the review and enactment process.**

- i. It is probably too late to get the additional expenses into city and county budgets for 2015-2016 fiscal year budgets.**

#### **5. SUGGESTIONS.**

##### **a. This bill needs review during the interim.**

- i. This concept needs more thinking and input from interested parties, such as circuit courts, appellate courts and chief justice as well as prosecutors and defense counsel.**
- ii. We need to address the unresolved constitutional issues.**
- iii. We need to address other unresolved issues.**

##### **b. Remove emergency clause.**

**c. Grandfather in current judges and pro-tem judges.**

**d. Fix reference to Juris Doctor.**

**e. Delay implementation and/or give more time to meet requirements.**

**6. IF HB 3399A PASSES UNCHANGED, THE POSSIBLE OUTCOMES ARE:**

**A. CITIES AND COUNTIES CAN ABSORB THE ADDED COSTS AND COMPLY WITH THE BILL.**

**B. MUNICIPAL COURTS AND JUSTICE COURTS WILL DETERMINE THAT THE COSTS OF RECORDING ARE TOO GREAT TO ABSORB AND REFUSE TO HANDLE MISDEMEANOR AND FELONY CASES. THOSE CASES WILL GO TO THE STATE COURT SYSTEM AND WILL EITHER GO UNHANDLED OR THE STATE COURTS WILL ASK FOR INCREASED BUDGETS TO HANDLE THE INFLUX.**

**i. NOT ONLY WILL THE STATE COURTS (INCLUDING PROSECUTORS AND INDIGENT SERVICE) FACE HIGHER COSTS, BUT THE STATE WILL LOSE THE REVENUES FROM THE LOCAL COURTS THAT CURRENTLY DO NOT COST THE STATE.**

**C. SOME ENTITY WILL CHALLENGE THE CONSTITUTIONALITY OF THE BILL OR THE AMBIGUITY THEREOF AND THE APPELLATE COURTS WILL HAVE TO RESOLVE THE ISSUE AND THE LEGISLATURE WILL BE DOING THIS ALL OVER IN THE 2016 OR 2017 SESSION.**