

## **HOUSE COMMITTEE ON ELECTION AND RULES**

**February 15, 2005 Hearing Room E**

**1:00 P.M. Tapes 9 - 10**

**MEMBERS PRESENT: Rep. Derrick Kitts, Chair**

**Rep. Paul Holvey, Vice-Chair**

**Rep. Kim Thatcher, Vice-Chair**

**Rep. Billy Dalto**

**Rep. Debi Farr**

**Rep. Mitch Greenlick**

**Rep. Steve March**

**STAFF PRESENT: Cletus Moore, Committee Administrator**

**Annetta Mullins, Committee Assistant**

### **MEASURES/ISSUES HEARD:**

**HB 2167 – Public Hearing**

**SB 162 – Public Hearing**

**HB 2169 – Public Hearing and Work Session**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

TAPE/#	Speaker	Comments
--------	---------	----------

**TAPE 9, A**

003	Chair Kitts	Calls the meeting to order at 1:11 p.m. and opens a public hearing on HB 2167.
-----	-------------	--

**HB 2167 – PUBLIC HEARING**

022	Cletus Moore	Administrator. Reviews the provisions of HB 2167.
-----	--------------	---

028	Fred Neal	Campaign Finance Manager, Elections Division, Secretary of State's Office. Explains that HB 2167 is the Secretary of State's campaign finance housekeeping measure. States they have discovered two additional technical changes that are included in the HB 2167-2 <b>(EXHIBIT A)</b> amendments.
-----	-----------	--

041	Neal	Submits a section-by-section explanation of HB 2167 <b>(EXHIBIT B)</b> . Comments on Section 1 amending ORS 260.005 modifying the definition of "independent expenditure."
-----	------	--

075	Neal	Continues presentation <b>(EXHIBIT B)</b> . Comments on <u>Crumpton v. Keisling</u> case. The case says that "expressly advocate" includes not just magic words like "vote for" or "vote against" but if a message names the committee or the candidate and says pro or con that a reasonable listener would conclude 'I am supposed to do something about this...and it is clear from the message what I am supposed to—vote for or vote against without having the message be explicit. States they do not believe the proposed changes would change or dilute the <u>Crumpton</u> decision. The bill does not explicitly lay out the Crumpton test, but the legislature could do that, but may want to do it in a separate bill, not in a housekeeping measure. States that the proposed change is dipping into both statutes—the definition of independent expenditure and the independent expenditure statute itself, ORS 260.044, Section 7.
-----	------	--

098	Rep. March	States that as he reads the proposed change, it would clarify that those standards apply not only for or against a candidate, but for or against a measure.
-----	------------	---

Neal

Responds affirmatively. Explains that since the passage of Measure 9 (2002), they have told major committees the same thing. The guidelines for them are whether or not they have to report expenditures they or their campaigns had participated in as in-kind contributions or whether it was incumbent on the persons making those expenditures to report those independent expenditures.

- 107      Chair Kitts      Asks if a 501(c4), which cannot advocate for or against a candidate but can spend money in an informative fashion, such as explain what a ballot measure would do and say if the reader agrees with what the measure would do, they should vote yes. Asks if that would be taking a side.
- Neal      Responds that a 501(c4) can do that with issues; they cannot do it with candidates.
- Chair Kitts      Asks if their expenditures would be defined as independent expenditures on behalf of something.
- Neal      Responds that it depends on the actual content of the message. Gives example of the Tobacco Free Coalition of Oregon (TOFCO) case in which they determined that because they had a 501(c3) they were using Foundation Grant funds for anti-smoking education efforts. There were two measures on the ballot and a campaign for and against those measures. They provided educational advertising that named the measures and made it quite clear that the measures did not meet their tests. They therefore determined those were political expenditures and needed to be reported.
- 133      Chair Kitts      Comments there is a television ad campaign promoting TEE, an organization to get youth of all backgrounds into golf. The ad is promoting or informing about the program, not saying whether it is good or bad. Asks where those expenditures would fall.
- Neal      Responds that because the advertisement does not relate to a measure on a ballot in Oregon, they do not care. The expenditures must be relating to a question, either an electoral contest between candidates or a measure, state or local that is on a ballot. People can spend all the money they want opposing an initiative petition without reporting the expenditures or source of money until the initiative has been certified to the ballot. First TEE is simply a public education effort.
- Chair Kitts      Asks how the scenario could be translated into a ballot measure message saying what the measure would do with an announcement

that the message was a public service message of someone but did not advocate for or against the ballot measure.

	Neal	Responds that they would have to look at the text on a case by case basis.
180	Neal	Explains Sections 3 – 5 of HB 2167 ( <b>EXHIBIT A, page 1</b> ).
218	Rep. Holvey	Asks if there is a time limit on discontinuing political committees or whether it could be immediate.
	Neal	States there are committees that have kept a balance and are required to file annual September supplemental reports but have not. States that the Department of Revenue employees have tried to track the people and sometimes are successful, but not always. SOS tries to work with the people to attain zero balances so they do not have to file reports. Comments they would put the parameters in an administrative rule that is easier to adjust.
252	Rep. Farr	Ask if the committees have to file each September and if this would be after the first filing.
	Neal	States they send reminder notices and would rarely apply this; it is meant to get rid of those committees that do not want to exist. If a candidate fails to file campaign finance reports during an election, they would not get a certificate of nomination if it is in the primary election. If it is in the general election, they would not get a certificate of election to office.
	Rep. Farr	Asks if there should be a time limit in the statute.
	Neal	Responds it is up to the legislature. States they would adopt that by rule and they would be happy to work with the legislature if the legislature wants to provide some guidelines.
287	Neal	Explains Sections 6 and 7 of HB 2167 ( <b>EXHIBIT A, page 2</b> ).
320	Rep. Greenlick	Questions the meaning of the language in Section 7 (4) (b) and (c) on page 8. Asks if it is correct that he could collect \$350,000 and keep passing it on, and it would not be an issue because the recipient would be reporting it.

	Neal	Responds that Rep. Greenlick is correct. Adds that HB 2167 also gets into the contributions in false names statute. States that if individuals solicit contributions on behalf of others, they are a political committee. That, however, conflicts with the definition of a political committee meaning two or more individuals. They are trying to clarify that you are just a conduit if the person is passing the money on in seven days. The person would not be collecting the interest on it or deciding they will spend the money somewhere else. They would then be a political committee and the SOS would go after them.
380	Rep. Farr	States that the statute says, "...must forward the contribution to the intended recipient within seven business days". Asks what happens if the recipient does not go to their post office box to pick up the mail for seven more days—how do they regulate the date of receipt.
	Neal	States they would not make her a political committee because the candidate it was forwarded to took their time going to their mail box. The issue is the timeliness of the reporting. SOS's concern is with the candidate. The candidate needs to check their mail box.
	Chair Kitts	Comments that the criteria is when the contribution is received.
	Neal	States that a candidate must check their mail box at least every seven days because if the contribution has been sitting there for seven days, the candidate must enter it in the books on that seventh day.
	Rep. Farr	Comments that she has picked up mail with a post mark weeks earlier.
	Neal	States she should report it as soon as she knows she has a contribution from someone. States that this statute deals with the conduit and when that person forwarded it—was it within seven business days of receiving it. States he does not know when they would get that far with the conduit situation unless it was an issue of a contribution under a false name. Then the question of who gave it to whom and when becomes very relevant, and to whose benefit.
409	Rep. Farr	Asks why there needs to be a rule if they never get as far as the conduit.
	Neal	Explains they used an existing statute that talks about conduits and said the person does not have to be a committee and said 'if you do it in seven days'.

420 Rep. March Poses hypothetical case of delayed delivery of money from a Georgia brewery to Billy Beer for delivery by an employee of Billy Bear. Asks if it is a violation if the employee sits on the money for two weeks.

Neal Responds it is a violation by Billy Beer.

**TAPE 10, A**

011 Rep. Greenlick Asks if he could be gathering checks in his name for someone else if he were to write checks saying where it came from.

Neal Responds that Rep. Greenlick would then be a political committee. Explains how the transactions should flow from the Georgia brewery to the candidate.

030 Rep. Holvey Provides scenario of gathering several cash contributions and asks if the person is required to tell where the contributions came from and identify the names and addresses.

Neal Responds, yes; otherwise the person would have to file as a political committee.

046 Neal Continues presentation on Sections 7 - 9 (**EXHIBIT A, page 2**).

100 Neal Continues presentation explaining Section 10 (**EXHIBIT A, page 3**).

123 Chair Kitts Asks where affiliated political action committees (PACs) are covered in the bill.

Neal Responds the PACs are covered on page 14 beginning in line 10. Explains that during last session an amendment was inadvertently made to change the amount from \$500 to \$2,000.

Chair Kitts Uses example of Speaker PAC and Bowl PAC, and asks if he would fall under the same statute if he started a Derrick PAC but it was not related to the election of Derrick in any way,

Neal Responds affirmatively. States that the campaign finance disclosure panel dealt with the issue at length and their resolution is in SB 160.

150	Rep. Greenlick	Asks if that would be true if he were the chief petitioner for an initiative campaign.
	Neal	Responds negatively. States he has a letter of advice that goes back four years and will need to look at it again to give a definitive answer.
159	Neal	Reviews provisions of Section 12 of HB 2167 <b>(EXHIBIT A, page 3)</b> .
176	Rep. Dalto	Asks if Section 12 deals mostly with initiative committees.
	Neal	Responds it applies to committees that oppose initiative efforts. They think a chief petitioner committee is the only committee that is in favor of the initiative because anyone else spending money on it is making an in-kind contribution to the chief petitioner committee. Groups that oppose signature gathering are raising and spending money to staff or gear up for a potential campaign in opposition to the initiative should it get enough signatures and be certified to the ballot. They cannot be a political committee and file a statement of organization until the measure has received certification to the ballot. Adds that SOS has advised that as soon as they start their activities, they should assume the measure is going to make it to the ballot and start keeping their books in a way that allows them to report the detailed transactions as though they were a political committee. If the initiative is not certified to the ballot, they never have to file a report.
209	Neal	Continues presentation on Section 13 <b>(EXHIBIT A, page 3)</b> .
225	Neal	Continues presentation on Sections 14 – 16 of HB 2167 <b>(EXHIBIT A, page 4)</b> .
279	Chair Kitts	Asks if everyone is held to the same liability for submitting false statements.
	Neal	Responds, yes, and states that false swearing is a Class C felony.
301	Neal	Reviews Sections 17 - 19 of HB 2167 <b>(EXHIBIT A, page 4)</b> .
320	Rep. Greenlick	Asks if the language on line 30 in Section 19 (3) on page 21 of HB 2167 should be “shall” instead of “may”.
	Neal	

Notes the language of the statute that is being deleted, is on lines 18 and 19 on page 21. Explains there was a criminal case about the statute in which it was determined that it could not be enforced if the benefiting candidate was also the treasurer of one or more political committees as well as his own principle campaign committee because of the current language even though it may have been an effort to hid the money or hide the source of the money. They could not get to that conclusion to go to a grand jury because of the language that seems to be exculpatory—it shall be sufficient. States he does not believe “may” will be exculpatory.

Rep. Greenlick Asks if there is some other way they could enter it into the record.

374 Neal Responds that if it were from Billy Beer who has the check from the Georgia brewery, and Billy Beer is not a political committee...

Rep. Greenlick Asks what else he could enter the money from except the political committee. If there is nothing else, the language should say “shall” enter.

413 Neal Responds that he would hesitate to agree with Rep. Greenlick. If the political committee received the contribution and it was earmarked for a campaign. They should not deposit the money; they should only pass it on.

Rep. Greenlick Asks if they write a check, which they can’t do because it would make them a political committee, and pass it on from PAC 325 and say it is from somebody else, it would be from a political committee.

Neal States that even with the language in the statute, if Rep. Greenlick knew the money was from the original source and not from the committee that is writing the check, then he would be knowingly accepting a contribution in a false name.

Rep. Greenlick Asks if he could enter it in the books with the name of the political committee.

Neal Responds that he could, provided Rep. Greenlick did not know it was earmarked. The remainder of the statute would make Rep. Greenlick liable if he knowingly receives.

Rep. Greenlick Comments that it says if he receives money from a PAC, he must enter it as received from a PAC, or if he gets it from a PAC and it



says it is from someone else, then he needs to enter it from the person even though he received it from the PAC. States he would hide that it is received from the PAC.

446        Neal        Comments that he has researched the Corrupt Practices Act back to 100 years ago. States he believes the problematic language in the current statute that seems to be more exculpatory than was intended was put in there to recognize political committees. They have tried to save the concept with the “may”. Just because the political committee got contributions from a number of places, the recipient does not have to penetrate that veil unless the monies were earmarked contributions. They believe the statute suffices for the knowingly receiving a contribution in other than the name of the real giver.

#### **TAPE 9, B**

013        Rep. Greenlick        Comments he thinks if we create political committees that have to report where their money comes from, the language should be “shall.”

Rep. Greenlick        Asks how he would know where the money came from if he received it from a PAC.

Neal        Responds that Rep. Greenlick would report it as being received from the person that earmarked it for Rep. Greenlick when it was given to the PAC.

Rep. Greenlick        Comments he thinks the “may” may be a point of confusion instead of clarifying the law.

059        Neal        Reviews the provisions in Sections 20 - 27 (**EXHIBIT A, page 5**).

077        Chair Kitts        Notes the committee has the HB 2167-2 amendments (**EXHIBIT B**).

Neal        Explains the -2 amendments fix dates for the deadlines for filing a certificate of limited expenditure. Lines 4-6 of the -2 amendments correct a series reference.

086        Kappy Eaton        Governance Chair, League of Women Voters. Submits and reads a prepared statement in support of HB 2167 (**EXHIBIT C**).

113        Sarah Wetherson        Money in Politics Research Action Project. Submits prepared statement and speaks in support of HB 2167 (**EXHIBIT D**).

143	Chair Kitts	Advises members that the committee will not take action on HB 2167 today. Closes the public hearing on HB 2167, asks the committee to stand at ease and then recesses the meeting at 2:22 p.m.
155	Chair Kitts	Reconvenes the meeting at 2:28 p.m., recesses the meeting and reconvenes the meeting at 2:31 p.m.
	Chair Kitts	Announces that the committee will postpone the hearing on HB 2168, have a public hearing on SB 162, and attempt to move HB 2169 if time allows.
	Chair Kitts	Opens a public hearing on SB 162.

### **SB 162 – PUBLIC HEARING**

165	Sharon Cornish	Hillsboro. Presents a prepared statement for Mike Balanesi and Ruth Bendl ( <b>EXHIBIT E</b> ) expressing concern about security of ballot drop sites, distance poll watchers were required to be from signature verifications, and opening of the secrecy envelopes.
	Chair Kitts	Asks how the testimony relates to SB 162.
	Cornish	Responds that she is simply presenting the statement for Bendl.
236	Ruth Bendl	Portland. Comments they would not want to see any options to vote at the polls deleted until vote by mail has been cleaned up. States there is nothing in Oregon law that requires people be citizens to vote. SB 162 (1) refers to the definition of elector in the Oregon Constitution, which says a citizen must be 18 years of age and be a resident for the past six months. Asks that the definition not be amended in SB 162.
295	Andi Miller	Executive Director, Common Cause Oregon. Submits prepared statement and testifies in support of SB 162 ( <b>EXHIBIT F</b> ).
313	Rep. Dalto	Comments he does not believe Bendl is completely accurate in her statement that one does not have to be a citizen to register to vote. States that the two versions of the registration cards he has asks the person to check yes or no whether they are a citizen and whether they would be 18 before election day.

364	Chair Kitts	Responds that Bendl's concern is proof of citizenship is not required; the form only requires someone to check the box.
	Rep. Dalto	Asks if it is a crime to falsely register to vote.
	Chair Kitts	Responds it is a crime and believes Bendl believes people knowingly check yes and vote when they probably should not vote.
365	John Lindback	Director of Elections, Secretary of State's Office. States that SB 162 does not make any changes to how elections are conducted in Oregon; all elections are now conducted by mail. Comments generally on citizens' vote to create the vote by mail system and increased participation in the voting system. Submits a prepared statement in support of SB 162 and explains the changes made by SB 162 <b>(EXHIBIT G)</b> .
419	Chair Kitts	Announces that the committee is not going to take action on the bill today.
	Kappy Eaton	Governance Coordinator, League of Women Voters. Submits a prepared statement and testifies in support of SB 162 <b>(EXHIBIT H)</b> .
508	Chair Kitts	Closes the public hearing on SB 162 and opens a public hearing on HB 2169.

## **TAPE 10, B**

### **HB 2169 – PUBLIC HEARING**

023	Cletus Moore	Committee Administrator. Outlines provisions of HB 2169.
033	John Lindback	Director of Elections, Secretary of State's Office. States that the Help America Vote Act (HAVA) is the impetus behind some sections of HB 2169. Starting January 1, 2006, HAVA requires each state to have a system in place for voters with disabilities to be able to vote privately and independently. States they are looking to technology to provide the answers to the requirements.
043	Lindback	Submits and reviews statement explaining changes to Oregon law in HB 2169 <b>(EXHIBIT I)</b> .

085	Lindback	Continues testifying in support of Section 2 of HB 2169 to allow the Secretary of State to decertify any voting system if the system is in non-compliance with Oregon law <b>(EXHIBIT I)</b> .
093	Rep. March	Comments he believes this bill is anticipating people who can see, and ask if we currently have Braille ballots for those who are blind.
	Lindback	Responds we do not. Explains that Marion County has used a tact-tile ballot for a number of years. States that not all blind people can read Braille and it is not necessarily the answer. Explains that people with disabilities can call the county election office and the office will send out people who can help the voter; the current system lacks the privacy and independence that is required under HAVA.
119	Rep. March	Asks if the new federal law anticipates both oral and visual.
	Lindback	Responds they are looking for technology that will solve the problem. The Direct-Recording Electronic voting systems (DREs) address the problems of a lot of kinds of disabilities. States that on April 4, they will have some of the machines in the building for people to use and observe. States they are also looking at the possibility of telephone voting. Many kinds of equipment will be at the fair on April 4 in the building.
133	Chair Kitts	Asks if the county clerks are okay with this legislation.
	Lindback	Responds affirmatively.
	Chair Kitts	Acknowledges the affirmative nod of Annette Newingham, Association of County Clerks, in the audience.
124	Rep. Thatcher	Asks who is in possession of the paper copies of the Direct-Recording Electronic voting system (DRE).
	Lindback	Explains that the paper copy is verifiable by the voter but remains in the possession of the counties.
	Rep. Thatcher	Asks if the paper copy remains in county possession for the purpose of hand recounts.
147	Lindback	Answers affirmatively. States that the question has been raised in other states. The voters cannot take the receipts with them because

there have been allegations that the receipts could be used for vote selling or something else. Explains that Nevada used the verifiable paper audit trail in their primary election. They have the scrolls that are attached to the side of the DRE under glass. The voter can look at it as it scrolls up to verify their vote but they cannot touch it.

147	Kappy Eaton	Governance Coordinator, League of Women Voters. Submits prepared statement and testifies in support of HB 2169 <b>(EXHIBIT J)</b> .
	Chair Kitts	Closes the public hearing and opens a work session on HB 2169.

### **HB 2169 - WORK SESSION**

190	Rep. March	<b>MOTION: Moves HB 2169 to the floor with a DO PASS recommendation.</b>
-----	------------	--

193	Rep. Thatcher	Asks if all the changes in HB 2169 are a result of the Help America Vote Act (HAVA).
-----	---------------	--

182	Lindback	Reviews explanations in his prepared statement <b>(EXHIBIT I)</b> and explains that Section 2, which would allow the Secretary of State to decertify voting systems, is not required by HAVA.
-----	----------	---

223		<b>VOTE: 7-0-0</b>
-----	--	--------------------

**AYE: In a roll call vote, all members present vote Aye.**

	Chair Kitts	<b>The motion CARRIES.</b>
--	-------------	----------------------------

**REP. DALTO will lead discussion on the floor.**

236	Chair Kitts	Adjourns meeting at 3:04 p.m.
-----	-------------	-------------------------------

### **EXHIBIT SUMMARY**

**A. HB 2167, -2 amendments, Fred Neal, 1 p**

- B. HB 2167, prepared statement, Fred Neal, 5 pp**
- C. HB 2167, prepared statement, Kappy Eaton, 1 p**
- D. HB 2167, prepared statement, Sarah Wetherson, 1 p**
- E. SB 162, prepared statement of Ruth Bendl and Mike Belanesi, Sharon Cornish, 1 p**
- F. SB 162, prepared statement, Andi Miller, 1 p**
- G. SB 162, prepared statement, John Lindback, 2 pp**
- H. SB 162, prepared statement, Kappy Eaton, 1 p**
- I. HB 2169, prepared statement, John Lindback, 2 pp**
- J. HB 2169, prepared statement, Kappy Eaton, 1 p**