

**HOUSE COMMITTEE ON ELECTION AND RULES**

March 29, 2005 Hearing Room E

1:00 P.M. Tapes 27- 28

**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:**

**HJR 39 – Public Hearing**

**HB 3343 – Public Hearing**

**Approval of Drafting Request – 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.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
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## TAPE 27, A

003 Chair Kitts Calls the meeting to order at 1:00 p.m. and opens a public hearing on HJR 39.

### HJR 39 – PUBLIC HEARING

020 Cletus Moore Committee Administrator. Reads summary of HJR 39.

023 Sen. Frank Morse SD 8. Co-Sponsor of HJR 39 states that Sen. Deckert will be arriving shortly and will explain what HJR 39 does. Testifies in support of HJR 39. Comments that the question is whether the existing language of the Oregon Constitution serves Oregon citizens well and if it serves representatives of the people well. Believes it does not serve us well. Believes the existing language has punished the citizens of Oregon as well as legislators. Reads implementing language in ORS 188.010 on criteria for apportionment for the Legislative Assembly and Congress.

Sen. Morse States that the current boundaries are stretched far and wide and narrow and thin. The current process has a critical partisan overtone. This resolution would elevate that to the greatest extent possible to a standard above partisanship because it would fall to the Supreme Court. The resolution identifies a commission that would represent the public in a nonpartisan way. Explains criteria for members of the commission. Believes the resolution advances a nonpartisan agenda which is what should be the case in establishing districts that reflect our communities of interest.

083 Rep. Thatcher Asks if, in line 23, the committee positions are based on party affiliation.

Sen. Morse Responds he believes that we would not find someone changing their affiliation and putting a cloud on their qualifications to serve.

103 Rep. Farr Comments that the idea is that someone would not change their political parties specifically to be appointed to the commission so they could sway the decision in another way. The idea was there would be equal representation. There would two members each from the Republican and Democratic parties and the fifth member could be of any other political party. It would take the politics out of redistricting.

- Moore Points out that on page 2 of HJR 39, paragraph 4 defines the breakdown of the committee.
- 137 Sen. Ryan Deckert SD 14. Explains they introduced two bills, one for an open primary and nonpartisan positions for the legislature and this bill, a nonpartisan redistricting commission, to take the politics out of the good work the legislature does and elevate the questions to the highest possible level. States with nonpartisan commissions tended to be better reflective of communities of interest.
- 169 Sen. Deckert Reads details in his written testimony **(EXHIBIT A)**.
- 218 Sen. Deckert Asks that the committee compare the model in HJR 39 to the status quo.
- 227 Rep. Farr Comments that the goal is to make sure constituents are really represented and their issues are determined by where they live in the state.
- 255 Rep. Greenlick Reading (4) on page 2 comments that the selection process would keep going until they get two members from the major parties and that the commission would only be operative if there were these two very weird first election. Asks if Morse reads the language differently.
- 273 Sen. Morse Responds the intent is to select a field of candidates from which there has not been an identification of party affiliation. Out of that there would have to be a balancing. If those selected are not in the balance that is mandated, then they draw again until they finally get the balance.
- 290 Rep. Greenlick States if that is the intent, then he believes the words are wrong.
- Sen. Deckert Comments they relied heavily on the California proposed statute.
- 314 Chair Kitts Asks if having everything run through the Supreme Court, which is by nature a political body, ends up being a conflict to the intent of the measure.
- 331 Sen. Morse Responds he does not know of any body with the stature of the Oregon Supreme Court.

- 352 Chair Kitts Asks if they have any idea how many qualified people there would be.
- 383 Sen. Deckert Responds they would want a big enough pool to sift through. States that in one model they looked at the parties manifested in the four leadership offices would have one representative and guidance would be given to them to pick someone for the fifth member, who obviously would represent their point of view. They believe the model in HJR 39 is the better model, but it is a model for this committee if the committee decides to change the process.
- 410 Chair Kitts Asks if it is possible to have four Republicans and one Libertarians on the commission or four Republicans and one Democrat.
- Sen. Deckert and Rep. Farr Responds negatively and explains the qualifications.
- 457 Rep. Holvey Asks if a new commission would be established for each redistricting
- Sen. Deckert Nods affirmatively.
- Rep. Holvey Asks what is wrong with the current system to cause a major change to our Constitution.
- 473 Sen. Deckert Responds his bill is not a comment on Oregon's redistricting process or the Secretary of State. It is married with the bill on the open primary and nonpartisan legislature.

**TAPE 28, A**

- 020 Rep. Holvey Asks how we would determine if the commission would do a better job than the system we have now.
- Sen. Morse Responds the current process is partisan, and asks if that serves Oregon well. The question is whether we can or should attempt to improve it.
- 048 Rep. March Asks if anyone has designed a plan for the 60 House districts using the 2000 census data and joining those to form 30 perfect Senate districts.

	Rep. Farr	States there is no perfect system. Believes that regardless of whatever political party is in the Secretary of State's office there will be partisanship.
070	Sen. Deckert	Comments it would be a better process by removing those with a vested interest in the outcome and getting the legislators out of the process.
080	Rep. March	Comments on California appointing a commission for redistricting Asks the sponsors to rethink and use the requirements of ORS 188 and plug them into a data system with the Census Bureau data to see what they come up with. Comments on the redistricting in 2001 by the Secretary of State. Comments on legal cases in the National Conference of State Legislatures (NCSL) document "Shifting Sands of Redistricting Law" ( <b>EXHIBIT B</b> ). States that Colorado and Pennsylvania are two of the twelve states that have commissions and those were challenged all the way to the federal courts for partisan gerrymandering. States there is no perfect system or reapportionment plan and that HJR 39 does not provide for public hearings.
108	Chair Kitts	Comments that North Plains, a city of less than 57,000, has three State Representatives.
	Rep. Dalto	Comments that the public had an extensive opportunity to participate in the legislative redistricting process in 2001. Many from the public participated and we still have a district that goes from Keizer to Hillsboro. We also have a district that goes from Woodburn to North Salem based on the justification that they share a community of interest of a clinic that some residents of Woodburn come to north Salem to visit and some play soccer at some of the soccer arenas in north Salem. States he is not sure what occurred in 2001 was anything close to taking the public comment concerns into consideration.
138	Rep. Greenlick	Comments on timelines in present process and states that the system in HJR 39 could still be running as late as December 1. Asks Sen. Deckert if that would be a problem.
	Sen. Deckert	States he wants to be flexible in terms of insuring the adjudication of a plan. Comments that if the legislature wants to do something different on redistricting, this is the session to do it and he would be happy to rework this plan, maybe move the dates up. Comments on conversations with former Secretary of State Clay Meyers about the redistricting commission in Arizona.

- 173 Rep. Greenlick States he was appalled by the Texas situation and asked if there is anything in HJR 39 that would assure that redistricting is only going to happen once every 10 years.
- Sen. Deckert Responds he thinks the state courts should be included because the commission is formed and if we need, we could put an exclamation point on that. The Texas example would be a good one where there was a process that was hijacked by politics, and believes HJR 39 would help avoid that.
- 184 Chair Kitts Comments that the intent of the bill is commendable but it has a long road to resolution.
- 190 Kappy Eaton Governance Coordinator, League of Women Voters of Oregon. Submits and reads a prepared statement taking no position on HJR 13 and providing caution to the committee (**EXHIBIT C**). Comments on involvement in redistricting committees under former Secretaries of State Clay Meyers and Phil Keisling.
- 253 Rep. Dalto Asks how Eaton compares the 2001 process to the 1991 redistricting process.
- Eaton Responds it was different. States she cannot remember if a citizen commission was involved but believes some people were involved. The legislature had more of an opportunity in 2001 because technology was available and computers were set up in this building where legislators could work with the numbers. Believes that was good but the legislators simply could not agree because of partisanship.
- 284 Rep. Dalto States that the legislature did agree and once the Governor vetoed the legislative package. Ask how Eaton feel the process at the Secretary of State's level ran compared to the 1991 process.
- Eaton Responds that there were hearings held around the state and there were opportunities for people to discuss it. In the long run, the districts that were established with the process were fairly fair.
- Rep. Dalto Asks if it is fair to have a district that goes from Keizer to Hillsboro. Asks what the League's position was on the process used by the Secretary of Sate in 2001.
- Eaton

Responds they did not evaluate it. In 1991 there were a couple of districts that were as egregious as the ones Rep. Dalto speaks to. The League was involved in the hearings in 2001 to make sure the interest of the people and minorities were considered.

- 370 Rep. Dalto States he does not understand the League's concerns about HJR 39.
- Eaton States they have no position on HJR 39; they simply are presenting comments to the committee about the need to move carefully on whatever the committee does and not leave the public out of the process. States they do not see a public process protected in HJR 39.
- 379 Rep. Farr Asks if the League would be more comfortable if public hearings were included in the bill. States they were surprised that public hearings were not included in the measure.
- Eaton Responds affirmatively.
- 391 David Buchanan State Chair, Common Cause Oregon. Submits and summarizes a prepared statement on guidelines for redistricting (**EXHIBIT D**). Comments that the process has generally worked well but there have been some rough edges but there has always been a fall back in each step of the process. States the major change in the process in HJR 39 is who does the work.

## **TAPE 27, B**

- 014 Buchanan Continues speaking in favor of creating a commission after giving the legislature a chance at redistricting. Believes more important than who does the work is the criteria; districts should be competitive.
- 066 Rep. March Comments it is difficult to find a competitive district in the heart of Portland.
- 075 Chair Kitts Closes the public hearing on HJR 39 and opens a public hearing on HB 3343.

## **HB 3343 – PUBLIC HEARING**

- 085 Cletus Moore Administrator. Reads summary of HB 3343.

	Rep. Kim Thatcher	HD 25 and co-sponsor of HB 3343. Comments that some people want to vote for none of the above. Some people write in a fictitious candidate if they are not pleased with the choices presented, and some people will vote for two or more of the candidates to cancel out their own vote. Some will write “none of the above” all over their ballots and many will leave their ballot blank when they don’t want to choose any of the candidates. Giving the voters a choice of none of the above seems like a logical way to let voters vote.
105	Rep. March	Comments that sometimes voters might not have an opinion on an office and including none of the above might give them an opportunity to say some things that should not be said.
	Rep. Dalto	Asks what happens if there are more none of the above votes than votes for any candidate.
	Rep. Thatcher	States it just makes it clear the voter did not want to vote for the candidates.
	Chair Kitts	Points out that HB 3343 says the votes for none of the above do not count in determining the number of votes cast for a candidate or a measure.
130	Rep. Greenlick	Asks if there is only a chance of enhancing the vote if they make a mark. States it would seem that we need to do something with none of the above because that is a vote and it should count and we should disqualified the person who is running and get more candidates.
	Eugene Schoenheit	Testifies that he wrote HB 3343 at the request of Geri Bitz who worked on the Election Integrity Project. Submits explanation of HB 3343 and testifies in support of HB 3343 ( <b>EXHIBIT E</b> ). States that none of the above has been on ballots in Nevada since 1975.
	Rep. Greenlick	Comments that it seems “no preference” would be different than none of the above.
	Schoenheit	Responds that he also thought about no preference.
	Rep. Greenlick	States that no preference should not count; none of the above is an opinion—it is a no vote.
	Schoenheit	Responds no preference would be okay. States he did include the choice of none of the above for measures, too.



- 198 Rep. Farr Comments on friend not voting because the person said she did not understand what the measures meant or she did not know the candidate. States that in many ways it would be better to say no opinion or no preference.
- 226 Geri Bitz Clackamas County resident and Chair of the Election Integrity Project for the past two years. Submits and presents a prepared statement in support of HB 3343 (**EXHIBIT F**).
- 331 Alice Brunning Clackamas County resident and member of the Election Integrity Project. States that her testimony would be the same as that presented by Bitz.
- 342 Annette Newingham Association of County Clerks. Submits and summarizes a prepared statement in opposition to HB 3343 (**EXHIBIT G**).
- 405 Rep. Farr Asks if there is any way to look at a current ballot to see if the additional choice would fit on the ballot.
- Newingham Responds that they have 256 ballot styles for the special district election coming up. States that it would fit on some ballots but sometimes it would be difficult to see what the cost would be based on the layout.

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- 004 Rep. March Asks if a yes vote would count if a ballot has a choice of yes, a no vote and a vote for none of the above and the person marks yes and none of the above.
- Newingham Responds there are issues that have to have decisions and that is what they use the Vote by Mail Manual for. Comments that voters always make mistakes regardless of what the system is, and the county clerks must determine voter intent, if it is clear. It would add another component to the process and the Secretary of State's office and the county clerks would have to try to determine what they would do under different circumstances because the voters will do all the different combinations.
- Rep. Thatcher Comments that currently, if someone writes in Mickey Mouse and a candidate, it is counted as an over vote because they count both because of something under the fictitious name rule. Asks why they

cannot establish by rule that if the voter is marking none of the above and a candidate, it would be an over vote.

- Newingham Responds that is what they would attempt to do but there will be circumstances that will not be as cut and dry as it sounds because there are so many combinations. States that sometimes the voter will write a note saying they made a mistake. Those ballots have to be duplicated or enhanced because the voter made it clear they made a mistake.
- 060 Richard Burke Executive Director, Libertarian Party of Oregon. States that in their organization they have choices of none of the above and abolish this office on their ballots. Even if people don't use the none of the above option, it is nice for them to have the choice. Believes the question of cost is a red herring because of the length of ballots and postage. If anything, there should be another term. To him, no preference means all the candidates are okay and none of the above says the opposite. Either way, it provides feedback on what the voters are saying and it gives voters more choices. If they have more choices, they will have more confidence in the system and by definition, more confidence in the people who are running to become part of the system. Urges support of this HB 3343.
- 104 Rep. March Comments it sounds like Burke believes that the none of above votes should count.
- Burke Responds he thinks at a minimum none of the above should be counted. That would be a good test to see how much confidence the people have in the system.
- 128 Chair Kitts Closes the public hearing on HB 3343 and announces that the hearing on HB 3043 will be carried over to the next meeting.
- Rep. March Comments that at the last hearing on HB 3043 he suggested they get together and discuss another bill he has that relates to the same issue and maybe combine them.
- 140 Chair Kitts Suggests that Rep. March speak with Rep. Boquist and if Rep. Boquist is agreeable, he would be happy to wait until the amendments can be drafted before it is rescheduled.
- Chair Kitts Closes the public hearing on HB 3343 and opens a work session for the purpose of approval of a drafting request.

**DRAFTING REQUEST, APPROVAL OF – WORK SESSION**

143        Rep. Thatcher        **MOTION: Moves to request that Speaker Minnis approve a LC drafting request that Congress free Oregon agricultural industry from undue regulatory barriers and transportation regulations of commerce.**

153        Rep. March            Asks if the LC draft would also free Oregon farmers from having to participate in the conservation reserve programs.

152        Chair Kitts            Responds that he understands the LC would relate specifically to transportation regulations.

**VOTE: 7-0-0**

**Chair Kitts            Hearing no objection, declares the motion CARRIED.**

161        Chair Kitts            Closes the work session on approval of a drafting request and adjourns the meeting at 2:42 p.m.

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**EXHIBIT SUMMARY**

- A. HJR 39, prepared statement, Sen. Ryan Deckert, 1 p
- B. HJR 39, NCSL document “Shifting Sands of Redistricting Law”, staff, 5 pp
- C. HJR 39, prepared statement, Kappy Eaton, 1 p
- D. HJR 39, prepared statement, David Buchanan, 2 pp
- E. HB 3343, prepared statement, Eugene Schoenheit, 1 p
- F. HB 3343, prepared statement, Geri Bitz, 2 pp
- G. HB 3343, prepared statement, Annette Newingham, 1 p