

HOUSE COMMITTEE ON ELECTION AND RULES

June 14, 2005 Hearing Room E

1:00 P.M. Tapes 62 - 63

Corrected 8/11/05

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:

SB 691 A – Public Hearing and Work Session

SB 692 – Public Hearing and Work Session

SB 693 – Public Hearing and Work Session

HB 3238 – Public Hearing

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
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TAPE 63, A

003	Chair Kitts	Calls the meeting to order at 1:08 p.m. and opens a public hearing on SB 691 A and turns gavel over to Vice-Chair Thatcher.
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Vice-Chair Thatcher Opens pubic hearings also on SB 692 and SB 693.

SB 691 A, SB 692, AND SB 693- PUBLIC HEARINGS

024	Cletus Moore	Committee Administrator. Reads summaries of SB 691 A, SB 692, and SB 693 with the SB 693-1 amendments (EXHIBIT A).
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037	Kristina McNitt	Oregon Water Resources Congress. Presents a prepared statement (EXHIBIT B) in support of SB 691 A, SB 692, and SB 693 with the -1 amendments (EXHIBIT A).
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065	Chair Kitts	Asks what holiday falls in the description of the language in lines 18-20 on page one of SB 692.
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	Rep. Greenlick and Rep. March	Respond it is Veterans Day.
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088	Rep. Dalto	Asks if Senator Shields has an irrigation district in his legislative district.
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	McNitt	Responds she does not believe so but he is interested in district governance.
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086	Chair Kitts	Asks what the reason is for the change on lines 12-15 of SB 693.
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	McNitt	Explains that most irrigation districts have either three or five board members. If someone is on vacation or out of town it restricts the ability of the board to do business. Explains that the language is in lines 13 and 14 of the -1 amendments which replace the bill.
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101	Chair Kitts	
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Closes the public hearings on SB 691 A, SB 692 and SB 693 and opens a work session on SB 691 A.

SB 691 A – WORK SESSION

118	Rep. March	MOTION: Moves SB 691 A to the floor with a DO PASS recommendation.
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120 **VOTE: 7-0-0**

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

Chair Kitts The motion CARRIES.

127 Rep. Greenlick MOTION: Moves SB 691 A be placed on the CONSENT CALENDAR.

128 **VOTE: 7-0-0**

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

130	Chair Kitts	Closes the work session on SB 691 A and opens a work session on SB 692.
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SB 692 – WORK SESSION

136	Rep. March	MOTION: Moves SB 692 to the floor with a DO PASS recommendation.
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139 **VOTE: 7-0-0**

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

Chair Kitts The motion CARRIES.

141 Rep. Greenlick **MOTION: Moves SB 692 be placed on the CONSENT CALENDAR.**

143 **VOTE: 7-0-0**

Chair Kitts Hearing no objection, declares the motion CARRIED.

146 Chair Kitts Closes the work session on SB 692 and opens a work session on SB 693.

SB 693 – WORK SESSION

150 Rep. Thatcher **MOTION: Moves to ADOPT SB 693-1 amendments dated 6/01/05.**

153 **VOTE: 7-0-0**

Chair Kitts Hearing no objection, declares the motion CARRIED.

154 Rep. March **MOTION: Moves SB 693 to the floor with a DO PASS AS AMENDED recommendation.**

157 **VOTE: 7-0-0**

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

Chair Kitts The motion CARRIES.

161 Rep. Greenlick **MOTION: Moves SB 693 be placed on the CONSENT CALENDAR.**

162 **VOTE: 7-0-0**

Chair Kitts Hearing no objection, declares the motion CARRIED.

165 Chair Kitts Closes the work session on SB 693 and opens a public hearing on HB 3238.

HB 3238 – PUBLIC HEARING

Cletus Moore Committee Administrator. Reads summary of HB 3238 and explains differences between the -12 (**EXHIBIT C**) and -13 amendments (**EXHIBIT D**).

196	Susan Graebe	Oregon State Bar. Explains that the -13 amendments deletes lines 10-12 on page 4 of the -12 amendments. States that the language was confusing the two different tests.
210	Rep. Greenlick	Asks if the words “For purposes of” in line 12 on page 4 are also deleted.
	Graebe	Responds that the words “For purposes of judicial review,” is slightly reworded in the -13 amendments. States that the same language that relates to judicial review of the denial of a rule waiver is still there. The only other change is the addition of subsections (a), (b), and (c) after each sentence.
224	Patrick Allen	Office of Regulatory Streamlining. Comments he has been pleased to work with the Speaker’s office and Rep. Thatcher in merging the contents of three bills on the topic of how the state goes about enacting administrative rules and regulations. States he has met with each committee member individually and provided a detail briefing document (EXHIBIT E) about what was in the -10 amendments and indicated that the -12 (EXHIBIT C) amendments would involve some minor fixes and adjustments. States they are fine with the -12 amendments. States there are three broad themes of what is being done. Reviews explanations in the briefing document on advisory committees, small business impact, and waivers (EXHIBIT E).
311	Rep. Greenlick	Asks if “absurd” is a term of art.
	Allen	Responds he does not believe it is a defined term. It would be a term of interpretation.
	Rep. Greenlick	Asks if there would be interest in defining what absurd means for the purpose of this bill.
328	Allen	States he thinks it would be more easily defined in the waiver rule an agency would establish if it chooses to consider waivers—identify what kind of outcomes it would consider eligible for waiver.
368	Rep. Greenlick	Asks what the definition of “undesirable” is because if someone asks for a waiver and does not get it, that would be an obvious undesirable result.
	Allen	Refers to (b) in line 30 on page 3 of the -13 amendments and states that the waiver has to be consistent with the objective of the rule

being waived and the statutes implemented. States they have to be consistent with achieving the outcome and believes “undesirable” would have to venture into the context of that kind of base line.

Rep. Greenlick States that agencies would be given the right to waive rules. If they did not waive the rule, that would lead to a judicial review. Asks if that is usual, or absurd and undesirable.

Allen States that is a technical issue they were going to correct on the Senate side. The restriction of the review to denials was inadvertent; elsewhere one could read it to apply to denials and approvals. They were going to fix the review section to be the review standard for denials and approvals.

399 Rep. Greenlick Asks what merits a judicial review of behavior by an agency in the current process, and if this is expanding litigation or if it is common currently for an agency to be judicially reviewed.

409 Allen Responds that judicial review of agency actions is something that happens now. It would happen in the context of an agency finding someone in violation of rules and moving to enforcement. They would get into judicial review of not only the agency’s enforcement action but potentially the appropriateness of the rules and the process the agency went through to establish the rule. States waiver provisions exist in certain isolated statutes now. This adds a new authority and a new kind of review to go with it but does not think it adds a huge new area of litigation.

429 Christine Chute Oregon Department of Justice. Comments that pretty much everything agencies do, including their refusal to do anything, is subject to judicial review. This highlights something by flagging it and may provide more opportunities for judicial review, but does not believe it expands judicial review.

448 Rep. Holvey Asks if rules are reviewed for compliance with the statutes.

455 Allen Responds affirmatively. Explains there is already a legislative review process in statute. That process is triggered when the agencies give notice of intent to enact or amend a rule. The agencies provide those notices to Legislative Counsel. If the rule is to implement a statute within two years of passage, it also goes to the chairs or co-chairs of the committees that took action on the bill during session. States that right now any one person affected by a rule or any one legislator can ask a legislative committee to review the rule. The committee can offer an opinion whether that rule complies with statutory intent. It

does not stop a rule from being implemented or cause it to loose its affect. The bill raises the threshold to get the review from one affected person or one legislator to one legislator plus 25 people. It also broadens what can be asked for in the review from new proposals to any existing rule. States that legislative committees are generally pretty free to set their agendas and believes committees have a great deal of latitude if they want to look at a rule area or a rule proposal and offer an opinion. This does have the effect of raising the bar but broadens the topic area.

TAPE 63, A

002	Rep. Holvey	Comments that the language says that a session committee shall review, upon request. Asks if every request gets reviewed currently.
005	Allen	States that the same standard applies, "the committee shall review". The one affected person or one legislator threshold is a current tool that is not used very often.
010	Rep. March	Comments that in the judicial review section of the bill, we need to add the "or approval". States he sees instances where the Oregon Liquor Control Commission (OLCC) has approved a license and the neighbors are not happy about it. States they may have waived a rule to get the licensee in there and the neighbors are not happy about that.
015	Allen	States if they had known in time about the Oregon State Bar Association's issues that caused the -13 amendments, they would have put that issue in the -13 amendments as well and it is something they would intend to take care of on the Senate side. It would be their intent that the review applies to decisions either way on reviews. They even think it is implied with language later in the bill, but they want to be completely clear.
038	Rep. Greenlick	Explains to Dave Heynderickx that his question was whether the term "absurd" was a term of art in law, and whether it should be defined in this context.
042	Dave Heynderickx	Acting Legislative Counsel. Responds that "absurd" is not a legal term of art. States that when the courts have a term like that, they will turn to a very specific dictionary definition to determine legislative intent. States he presumes the agency would use the same definition. Adds that there can be disagreement with respect to what is "reasonable" and many other terms used in the law.

	Chair Kitts	Asks if Rep. Greenlick is suggesting amendments.
	Rep. Greenlick	Responds that if the committee is going to have amendments, “absurd” could be defined. States that he has a problem with “absurd” and “undesirable”, because “undesirable” does not say undesirable to whom. Asks if Heynderickx has any comment on “undesirable”.
064	Heynderickz	Responds that most of the statutes involve some delegation to the agencies and a lot of the terminology where the agency is charged with making those sorts of decisions, the legislature, if they want to, can make a much more specific listing of what they intend thereby reducing the discretion of the agency.
073	Allen	Comments that he has not been overwhelmed with requests from agencies eager to wade into waiver if this bill passes and would expect this would end up being an experiment and a limited number of agencies would take some very careful steps into the issue.
080	Chair Kitts	Asks Rep. Greenlick to work on the language.
091	Rep. Greenlick	Comments that they can also work on the amendment that talks about dealing with allowing judicial review on either side.
093	Chair Kitts	Suggests that Rep. Greenlick request two separate amendments.
090	Rep. Holvey	Asks Allen if their office sees this as an improvement to the current system of the legislature actually reviewing rules.
097	Allen	Responds that this bill largely mirrors the recommendations of an advisory committee the legislature established last session that was staffed by his office. That committee looked at these sensitive issues and he worked with Rep. Thatcher and the Speaker’s office on adding concepts from their bills that made this a fuller package. Thinks the things in the bill are concepts that don’t cause concern about separation of powers or other issues that came up in the previous hearing and in many respects improve the advisory committee’s recommendations.
119	J. L. Wilson	National Federation of Independent Businesses (NFIB). Testifies in support of HB 3238 and the amendments. Their concern is that agencies know what the impact is on business when they adopt rules. They have always been concerned about giving citizens and

businesses a forum with some substance if they have a problem with agency rules.

136	Chair Kitts	Closes the public hearing on HB 3238 and adjourns the meeting at 1:50 p.m.
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EXHIBIT SUMMARY

- A. SB 693, -1 amendments, Kristina McNitt, 2 pp
- B. SB 691, SB 692, SB 693, prepared statement, Kristina McNitt, 2 pp
- C. HB 3238, -12 amendments, Rep. Thatcher, 15 pp
- D. HB 3238, -13 amendments, Susan Graebe, 16 pp
- E. HB 3238, briefing document on amendments, Patrick Allen, 4 pp