

HOUSE SPECIAL COMMITTEE ON RULES

January 10, 2005 Hearing Room E

1:30 PM Tape 1

MEMBERS PRESENT: Rep. Derrick Kitts, Chair

Rep. Jeff Merkley

Rep. Wayne Scott

STAFF PRESENT: Janet Adkins, Committee Administrator

Annetta Mullins, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

Adoption of Rules of the House of Representatives

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 1, A		
003	Chair Kitts	Calls the meeting to order at 1:31 p.m. for the purpose of adopting proposed House Rules for the 2005 legislative session. Asks the committee to stand at ease pending the arrival of Rep. Scott.
008	Chair Kitts	

Calls meeting back to order at 1:38 p.m. Refers to the proposed House Rules for the 2005 session, which include proposed changes from the 2003 House Rules (**EXHIBIT A**).

- 015 Rep. Scott **MOTION: Moves to ADOPT the proposed House Rules dated January 10, 2005 (EXHIBIT A).**
- 017 Rep. Merkley Comments that the Rules are critical to the appropriate functioning of the legislature. Our entire constitutional system is founded on the ability to bring Representatives together, enable those Representatives to propose legislation, to debate legislation, and to vote upon that legislation. Throughout our history there have been fundamental principles embodied in the law that attempt to ensure that the process of proposing, debating and voting can go forward in a manner that honors the rights of each and every representative, whether it be in the House of Representatives or Senate. When we look to these rules, we need to look to whether they enhance, facilitate and provide for a fair process of proposing, debating and voting. States he has looked at the rules and discussed them with others and there are a number of points that there are substantial concerns about that take away from the power to propose, debate and vote in a system designed to ensure a healthy legislature and healthy democracy.
- 037 Rep. Merkley Submits proposed amendments (**EXHIBIT B**) to address three of the issues in the proposed House Rules dated January 10, 2005. Reviews the three amendments.
- 047 Rep. Merkley **MOTION: Moves to ADOPT the first proposed amendment to Section 2.05 of the proposed House Rules dated January 10, 2005 in order to ensure ability to debate and vote on issues by amending Section 2.05 to read: “Procedure for Amending Rules: Thirty-one votes are required to adopt, amend or rescind any rule. However, forty votes are required to amend or rescind rule 9.30. The adoption, amendment or rescission of any rule must be proposed in writing, read at a regular business session under the order of business “Other Business of the House,” referred to the Committee on Elections and Rules by the Speaker, and if reported from the Committee on Elections and Rules, upon distribution of the report, it shall be in order to vote on the proposed amendment immediately.”**
- 056 Rep. Merkley Explains that the only change in the paragraph is the sentence, “However, forty votes are required to amend or rescind rule 9.30.” Explains that Rule 9.3 is the rule that says...
- 062 Chair Kitts Asks if Rep. Merkley is making a motion to amend or to substitute.

- 064 Rep. Merkley Explains that the proposed section would be substituted for 2.05 in the proposed House Rules dated January 10, 2005.
- 070 Rep. Merkley Explains that the proposed clause is related to the ability to bring forward issues for debate by the legislature. Gives example of how it would work: a law is drafted, it is sent to a particular committee by the Speaker and when it is in the committee, it is heard at the discretion of the chair of the committee. This is a time-honored provision. Section 9.3 would be protected by the forty-vote rule. The reason it has been protected by a forty-vote rule in the past is that it is so important to the function of democracy that a single chair not be able to suppress a piece of legislation from consideration that the majority of the House wishes to consider. In that sense, is a super majority required to change a rule that would enable a committee chair to block that legislation from getting to the House floor. Although it is complicated to lay out, it essentially puts this rule to a continuous peril by 31 members, and it is such an important rule it has been protected by 40, and it is such an important rule because it prevents a chair from bottling up the bill that the legislature would like to consider on the floor. This is about openness of the system and the ability to consider issues. Encourages the committee to restore that one sentence, which has been the rule of the House for a great long time—this special protection for this important rule that allows issues to be brought to the floor for consideration; restore the sentence that reads, “However, forty votes are required to amend or rescind rule 9.30.”
- 099 Chair Kitts Clarifies that the motion is to substitute the proposed amendment language to 2.05 for the 2.05 language in the proposed House Rules dated January 10, 2005.
- 101 **VOTE: 1-2-0**
AYE: 1 - Merkley
NAY: 2 – Scott, Kitts
- 105 Chair Kitts **The motion FAILS.**
- 107 Rep. Merkley Explains that the second amendment (**EXHIBIT B**) is related to the ability to have full debate on the floor of the House. States that many bodies have a provision that allows closure of debate and sets that at two-thirds of the body, which essentially says again that a super

majority is required to limit this very critical piece of a functioning legislature, a functioning democracy.

- 114 Rep. Merkley **MOTION: Moves to add a (6) to Section 6.30 in the proposed House Rules dated January 10, 2005: “(6) Until each member requesting authority to speak is granted the opportunity to speak, any motion closing debate on a bill during third reading requires the affirmative roll-call vote of 2/3 of the House.”**
- 124 Rep. Merkley Explains that going back to the early establishment of our constitutional democracy of the United States and in every state that followed up, there have been certain core principles. Reads description of debate from Mason’s Manual of Legislative Procedures: “As an essential part of this free discussion, every person must have a right to present that person’s own views for consideration of other members of the group, to have the opportunity to persuade them to that person’s way of thinking and to be able to listen to the arguments of others.” That is the principle we are asking to be protected—the ability of every member of this body to present their views on the floor within the five-minute rule. This does not allow any form of filibuster because it is just to require the two-thirds until every person has spoken within the other rules of the House. This has a philosophical construct, which is, should anyone be voting when members have key information and perspectives to share while we are still trying to come to a decision. Second, it has a very, very key operational effect in that it says that we will not engage in the art of putting forward certain views and then suppressing other views cutting off debate after two or three or four people and not giving others a chance to present their point of view. It is a very important principle and would encourage members of the committee to support this very reasonable provision on this very important principle.
- 150 **VOTE: 1-2-0**
- AYE: 1 - Merkley**
- NAY: 2 – Scott, Kitts**
- 151 Chair Kitts **The motion FAILS.**
- 155 Rep. Merkley **MOTION: Moves to ADOPT the proposed amendment to the proposed House Rules dated January 10 to delete (4) in Section 7.10, and in 15.05, remove “either” and “or by the Speaker of the House”.**

- 161 Rep. Merkley Explains that (4), which would be deleted, in 7.10 of the proposed House Rules dated January 10, 2005, currently says “The Speaker shall fix the compensation of the Chief Clerk.” Reads the first paragraph of 15.05 as it would be amended by his proposed amendment.
- 169 Rep. Merkley States that this amendment to 15.05 is the most important of the amendments he is proposing. States that once the Territorial Legislature was established, they had a provision that provided that the Clerk would be elected by the members. They had no provision that any individual could fire that person; the Clerk was hired and fired by the members symbolizing that the Clerk serves all of the body. In 1859, at the founding of our state, we put into the Constitution language that provides that the House shall choose its Chief Clerk. For 146 years, this language has been interpreted to involve both the election of the Clerk and the firing of the Clerk. States there is a good reason for this. The Chief Clerk serves the entire body. Quotes from the principle in Mason’s that preceded both the territory and statehood, “The officers of the House are not officers of the members individually but of the entire House. The chief legislative officer and other officers are without authority to execute an order on any individual member that would in any way affect the entire House.” States that dismissing the Clerk affects the entire House.
- 214 Rep. Merkley Comments that the Chief Clerk is very much like the referee in a ballgame. We would not want to see a game in which the coach of one team has the ability to fire the referee. And, we would not want to see one coach have the ability to set the compensation for the referee. States that many other analogies can occur. One from the corporate world is that a board of directors in a corporation, following the rules of good governance for a corporation, have collective responsibility to choose the CEO of the company and collective responsibility to dismiss the CEO and they cannot divest that power to the chairman of the board or any other single person on the board. This keeps the responsibility vested in the body as a whole and makes it very clear that the Clerk, who in our case is the parliamentarian, serves the entire body. Once one individual has the ability to dismiss the Clerk and to set the Clerk’s salary, then it takes away from the arm’s length administration of the House. It puts in a certain air of suspicion about any given parliamentary ruling. Most of those ruling are provided to the Speaker who has the ability to fire and set compensation, and it puts a cloud of concern over whether that will be an arms-length parliamentary ruling. We call upon the parliamentarian to come to committees, to help provide advice to the Speaker on the floor, and to give private advice to members so they

can understand how to utilize the system in an appropriate way. In all of those ways, you want this arms-length role. Asks that the committee sustain the 146-year tradition of leaving all the power with the body for firing. Given that it is being made explicit in the rules, it is kind of a double presentation of the taking away from the body as a whole and removing that arms-length relationship.

257 Rep. Merkley

Asks that the committee adopt his third proposed amendment for the integrity of the institution.

259 Rep. Scott

Comments that the language in 15.05 in the proposed House Rules dated January 10, 2005 simply bring us more closely in line with the federal government and what the federal government may do under its procedures and what may transpire in that regards. It is not only in the Constitution of the State of Oregon, it is also in the Constitution of the United States. States that Rep. Merkley stated what the rule would do, but believes there are opportunities that have come before the different corporations where the leaders have had the opportunity to do what this is proposing. Believes times have progressed and our rules need to be progressed. Believes the proposal that has been brought forward and the motion included on the proposal to 15.05 in the proposed rules dated January 10, 2005, does have value--the partisan representation or the lack thereof. That the Chief Clerk takes an oath to support the Constitution of the United States and the Constitution of the State of Oregon, and in doing so, would represent an absolute positive nature to both constitutions. Adds that he does not know that in all cases the representative has directed us to something that will not be honored in the fashion it is proposed. States he will not vote to allow the amendment.

308

VOTE: 1-2-0

AYE: 1 - Merkley

NAY: 2 – Scott, Kitts

312 Chair Kitts

The motion FAILS.

318 Chair Kitts

Ask for a roll call vote on the original motion by Rep. Scott.

308

VOTE: 2-1-0

AYE: 2, Scott, Kitts

NAY: 1 – Merkley

312 Chair Kitts The motion CARRIES.

320 Chair Kitts Adjourns meeting at 2:00 p.m.

EXHIBIT SUMMARY

- A. Rules, House of Representatives, proposed House Rules for the 2005 session, staff, 24 pp**
- B. Rules, proposed amendments to the proposed House Rules for the 2005 session, Rep. Merkley, 1 p**