

SENATE COMMITTEE ON JUDICIARY

March 07, 2005
1:00 P.M.

Hearing Room 343
Tapes 56 - 57

MEMBERS PRESENT: **Sen. Ginny Burdick, Chair**
 Sen. Charles Starr, Vice-Chair
 Sen. Roger Beyer
 Sen. Floyd Prozanski
 Sen. Doug Whitsett

MEMBER EXCUSED: **Sen. Charlie Ringo**
 Sen. Vicki Walker

STAFF PRESENT: **Joe O'Leary, Counsel**
 Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD:
 Oregon Constitutional Issues - Informational Meeting
 SB 278 – Work Session
 SB 219 – 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 |
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| TAPE 56, A | | |
| 003 | Chair Burdick | Calls the meeting to order at 1:15 p.m. and announces the committee is meeting as a subcommittee. Opens an informational meeting on Oregon Constitutional Issues. |
| <u>OREGON CONSTITUTIONAL ISSUES – INFORMATIONAL MEETING</u> | | |
| 017 | Honorable Sue Leeson | Retired, Associate Justice of the Oregon Supreme Court. Submits the Oregon and United States Constitution, a document on Oregon's Constitutional background, and an overview of the Oregon Constitution (EXHIBITS A - C). |
| 033 | Leeson | Points to the power of judges and legislators in the Oregon Constitution. Discusses the sovereign powers of the states, and their comparison to the federal powers. |
| 075 | Leeson | Recaps the powers of the legislature and talks about the separation of powers in 1787. Comments on page 9 of the Oregon Constitution dealing with the Bill of Rights (Exhibit A). |
| 120 | Leeson | Acknowledges the Bill of Rights and social contract theory. Discusses the role of government to protect the rights created in these contracts. |
| 140 | Leeson | Addresses the history of the Oregon Constitution (Exhibit B). |
| 170 | Leeson | Brings up a recent court case, <i>Smothers</i> , that dealt with a large break between Oregon's Constitution and the United States Constitution. Comments on Article 1, section 20. |
| 205 | Chair Burdick | States that there were two controversial issues brought up in the |

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| | | last election being challenged by Article 1, Section 20. |
| 218 | Leeson | Talks about the freedom of speech in Oregon in comparison to the United States. Stresses the differences in language relating to the separation of powers in the Oregon Constitution and the United States Constitution. |
| 268 | Leeson | Brings up the idea of an independent judiciary. Explains why the original policy-makers wanted to keep the government small. |
| 304 | Leeson | Addresses the addition of the 14 th amendment to the United States Constitution during the Civil War (Exhibit A). |
| 340 | Dave Heynderickx | Acting Legislative Counsel. Talks about the Oregon Bill of Rights and Article 3 in the Constitution relating to the separation of powers (Exhibit A). |
| 381 | Heynderickx | Comments on the powers of the Oregon Judicial Department. Brings up the court case, <i>Marbury vs. Madison</i> relating to statutory interpretation. |
| 420 | Heynderickx | Points out that around 90% of what occupies the Court of Appeals at this time is statutory interpretation. |
| 470 | Heynderickx | Discusses Oregon court decisions dealing with statutory interpretation. |
| 484 | Chair Burdick | Asks the name of one of the cases discussed earlier. |
| 485 | Heynderickx | Replies he wasn't sure of the name, but affirms that the case was Oregon's <i>Marbury vs. Madison</i> . |
| 491 | Leeson | Emphasizes that the Oregon Judicial branch established the authority for statutory interpretation as soon as possible. |
| TAPE 57, A | | |
| 010 | Heynderickx | Points out that the state and federal Constitutions are meant to be a system of checks and balances. |
| 030 | Heynderickx | Addresses the issues between the executive and the legislative branch. Brings up the possibility of the executive branch using legislative powers. |
| 097 | Chair Burdick | Inquires about the standard for throwing out a regulation. |
| 100 | Heynderickx | Replies with information as to the decision for throwing out regulations. |
| 115 | Chair Burdick | Wonders about the court that has original jurisdictions over a regulatory challenge. |
| 118 | Leeson | Responds with information on the court process used to deal with challenges to regulations. |
| 125 | Sen. Whitsett | Comments on the morass of legal proceedings being used as a method of protecting past rulings. |
| 133 | Leeson | States that such a structure was implemented by the legislature. |
| 136 | Heynderickx | Talks about drafting a bill this session that addresses this issue. |
| 144 | Chair Burdick | Discusses the land use court of appeals. |
| 152 | Sen. Whitsett | Inquires about amendments for the state and federal Constitutions. |
| 171 | Heynderickx | Comments on amendments to the state and federal Constitutions. |
| 187 | Chair Burdick | Convenes the Senate Judiciary committee as a full committee at 2:00 p.m. |
| 190 | Heynderickx | Continues the discussion on amendments to the Constitution. |
| 240 | Heynderickx | Talks about the rules in place to deal with initiated amendments. |
| 290 | Leeson | Discusses how courts react to problems when brought to their attention while the legislature can take action on issues before a problem exists. Cites examples of the actions taken by the legislature to address these issues. |

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| 351 | Chair Burdick | Inquires about the constitutions of conservative states that were used as templates for Oregon's Constitution. |
| 356 | Leeson | Talks about the comparison between the constitutions of Oregon and Indiana. |
| 377 | Heynderickx | Points out that many states adopted their constitutions based on which copies of other states' constitutions they had readily available. |
| 401 | Sen. Prozanski | Comments on the historical influences on the drafting of the Oregon Constitution. |
| 415 | Heynderickx | Discusses the history of interpreting the Oregon Constitution. |
| 423 | Leeson | States that because Oregon used Indiana's Constitution as a template, the Oregon courts often look to Indiana's court system for decisions on statutory interpretation. |
| 428 | Chair Burdick | Asks about the federal requirements being a floor for protection limitations. |
| 460 | Leeson | Agrees with the assessment, and talks about interpretative methodology. Brings up the issue of what the voters intended during the drafting; drafting sometimes not being exactly equal to the conceptual intent. |

TAPE 56, B

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| 043 | Heynderickx | Discusses the initiatives process. |
| 065 | Chair Burdick | Closes the informational meeting on Constitutional Issues and opens a work session on SB 278. |

SB 278 – WORK SESSION

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| 062 | Joe O'Leary | Counsel. Describes SB 278 relating to the personal representative of a deceased individual for purposes of access to protected health information records. Introduces and describes the -1 amendment (EXHIBIT D). |
| 085 | Sen. Starr | MOTION: Moves to ADOPT SB 278-1 amendments dated 2/25/05. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 - Ringo, Walker |
| 087 | Chair Burdick | Hearing no objection, declares the motion CARRIED. |
| 090 | Sen. Starr | MOTION: Moves SB 278 to the floor with a DO PASS AS AMENDED recommendation. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 - Ringo, Walker |
| 092 | Chair Burdick | Hearing no objection, declares the motion CARRIED. |
| | | SEN. BURDICK will lead discussion on the floor. |
| 095 | Chair Burdick | Closes the work session on SB 278 and opens a public hearing on SB 219. |

SB 219 – PUBLIC HEARING

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| 096 | Joe O'Leary | Counsel. Describes SB 219 relating to the authority of the Attorney General to exempt interstate and certain other intergovernmental agreements by state agencies from legal review. |
| 108 | Stephanie Smythe | Attorney, Business Transaction Section, Oregon Department of Justice. Submits testimony and testifies in support of SB 219 (EXHIBIT E). |
| 138 | Chair Burdick | Asks if this bill is different from the international agreements. |
| 140 | Smythe | Responds that the language is almost entirely the same, and goes on to cite the specific differences. |
| 148 | Chair Burdick | Inquires about what would occur if the Attorney General (AG) did not review a compact. |

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| 151 | Smythe | Replies that if the Attorney General did not review the compact within 30 days, it would be equal to agreement, and would therefore be enacted. |
| 158 | Chair Burdick | Wonders about the review process. |
| 166 | Smythe | Responds with information on the review process. |
| 169 | Chair Burdick | Asks if this in no way limits the AG's ability to review any agreements. |
| 172 | Smythe | Replies that it does not interfere with any interstate or international agreements. |
| 175 | Sen. Whitsett | Asks if the Attorney General can still review a compact after it has been enacted. |
| 180 | Smythe | States that the exemption may be revoked or modified at any time. |
| 185 | Sen. Whitsett | Raises his concern with removing important checks and balances. |
| 190 | Smythe | Discusses the reasoning behind leaving certain information unstated in the drafting. |
| 198 | Sen. Prozanski | Attempts to remove confusion over SB 219. |
| 209 | Sen. Whitsett | Inquires about examples of statutes that provide such exemption. |
| 195 | Smythe | Cites the ORS sections requiring state agencies to submit agreements to the Attorney General for review. Informs the committee that authority is given to the Attorney General to exempt form agreements or classes of agreements of review within those statutes. |
| 224 | Sen. Prozanski | Goes over the effects of SB 219 in order to clear confusion. |
| 233 | Smythe | Responds that the summarization is correct. |
| 244 | Chair Burdick | Closes the public hearing and opens a work session on SB 219. |
| <u>SB 219 – WORK SESSION</u> | | |
| 247 | Sen. Starr | MOTION: Moves SB 219 to the floor with a DO PASS recommendation. |
| | | VOTE: 5-0-2 |
| | | EXCUSED: 2 - Ringo, Walker |
| 250 | Chair Burdick | Hearing no objection, declares the motion CARRIED. SEN. PROZANSKI will lead discussion on the floor. |
| 255 | Chair Burdick | Closes the work session on SB 219 and adjourns the meeting at 2:30 p.m. |

EXHIBIT SUMMARY

- A. Constitution, Oregon and United States, Sue Leeson, 116 pp
- B. Constitutional History, Oregon, Sue Leeson, 4 pp
- C. Constitutional Issues, Overview of Oregon, Sue Leeson, 1 p
- D. SB 278, -1 amendment, staff, 1 p
- E. SB 219, written testimony, Stephanie Smythe, 1 p