

HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

June 24, 2003 Hearing Room E
1:00 PM Tapes 87 - 88

MEMBERS PRESENT: **Rep. Dan Doyle, Chair**
 Rep. Linda Flores, Vice-Chair
 Rep. Laurie Monnes Anderson, Vice Chair
 Rep. Vic Backlund
 Rep. Phil Barnhart
 Rep. Betsy L. Close
 Rep. Joanne Verger

STAFF PRESENT: **Cara Filsinger, Administrator**
 Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: SB 102 A – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
Tape 87, A		
004	Chair Doyle	Calls meeting to order at 1:05 p.m. and opens a public hearing on SB 102 A.
<u>SB 102-A – PUBLIC HEARING</u>		
008	Chair Doyle	Comments on his efforts to talk to those concerned with the bill to see if there might be another way to deal with this issue. Explains there is still work to be done beyond the SB 102-A7 amendments (EXHIBIT A). Thanks Legislative Counsel for their work.
087	Chair Doyle Ross Day	Explains the SB 102-7A amendments (EXHIBIT A). Oregonians in Action. States they are strongly opposed to SB 102-A because it kills the process for everyone in the initiative process for grass roots organizations. The 10 percent signature requirement would allow only those with big dollars to put a measure on the ballot. The key to a successful campaign is the ballot title; it makes or breaks the success of a measure. Ballot title shopping is presumed to be a problem because terrible titles come back from the attorney general's office. Comments on property owner notification measure. Explains their efforts in shopping the ballot title and getting different ballot titles on a duplicate measure.
152	Day	States the problem that needs to be addressed is how the ballot titles are drafted. Thinks the threshold of getting a ballot title is irrelevant; if you fix how the ballot titles are drafted, there would not be the perceived problem with ballot title shopping. Other groups have also had a measure submitted and the title did not describe it. SB 102-A says before they get a ballot title they must collect 10 percent of the required signatures to qualify the measure for the ballot.
183	Day	States he thinks it is improper for anyone, including the legislature, to place impediments in the initiative process.

202	Day	States they have permission to request draft amendments to SB 102 A to get at the problem and address the concerns of the proponents of SB 102 A.
206	Day	Explains the SB 102-A7 amendments take the ballot title writing process out of the attorney general's office and puts it with a three-judge panel appointed by the Supreme Court. Opponents and proponents could file ballot titles with the Supreme Court and the Supreme Court would transmit those to the panel. The panel could pick any of the titles submitted or choose none. The Secretary of State would then give proponents and opponents the opportunity to submit draft ballot titles. That runs the risk of having the opponent's ballot title selected. The incentive is on both sides to draft impartial, unbiased ballot titles from which the three-judge panel can select. The amendment would also require Legislative Counsel to submit a ballot title.
251	Day	Suggests that there be an amendments that say the titles will be submitted blindly, and require the Secretary of State to reformat the submittals and arguments. Under the SB 102-A7 amendment, the three-judge panel would rotate every six months and the panel could not serve more than twice in any five-year period, and the threshold for getting into the process was raised by requiring 1,500 signatures. States they would not object to making that 1,500 and 1,500, and would be concerned with a higher number, or verified signatures, or a dollar figure that would make it impossible for grass roots organizations or a citizen to spend \$1,500 and collect 1,500 signatures to get a measure into the initiative process.
288	Day	States another concept in the SB 102-A7 amendments that is supported by Oregonians in Action, various legislators, and the Secretary of State is the elimination of the post-election procedural challenges. Explains that the Supreme Court has asked the legislature to address on three separate occasions the challenge process after the initiative is adopted by the people.
313	Rep. Monnes Anderson	Asks why they would choose Legislative Counsel over the Supreme Court to do the work because Legislative Counsel represents the legislature.
327	Day	Responds that Article 4 Section 1 says the legislative powers of the state are vested in not only the legislature but also the people through the initiative and referendum process. Suggests that the initiative process is a legislative process, not a judicial process, and thinks it should remain in the legislature. Legislative Counsel seems to be the most logical choice.
320	Rep. Monnes Anderson	Asks if initiatives are the result of frustration with the legislature not doing their job.
	Day	Responds that is why many put initiatives out, but the SB 102-A7 amendments do not make Legislative Counsel the final arbiter; the Legislative Counsel ballot title would be one of many submitted.
373	Chair Doyle	Asks if the initiative language or the ballot title would be drafted by Legislative Counsel.
	Day	Responds it is the ballot title.
381	Rep. Verger	Asks what Day's opinion is of shopping for a ballot title that has

		the most public appeal.
394	Day	Responds he does not think anyone can stop the shopping for a ballot title. Even under SB 102-A, if he has enough money, he can collect signatures for a myriad of different ballot measures and poll each title. The difference is a person must have a lot of money to do that. Believes that represents the importance of the ballot title and why people are motivated to ballot title shop.
439	Philip Schradle	Special Counsel to Attorney General. Presents a prepared statement on SB 102-A (EXHIBIT B) .
TAPE 88, A		
020	Schradle	Continues presentation.
088	Schradle	States that SB 102-A leaves ballot title drafting in the attorney general's office. They do not have a vested interest in doing ballot title drafting. If there is another mechanism that will lead to accurate, impartial, effective, efficient ballot title drafting, that is fine. States they have a level of legal resources they can call upon and they have experience of doing ballot title drafting that, he thinks, makes their office the best repository for that responsibility. States that Legislative Counsel is certainly a capable institution that could do it, too, but thinks they would need additional resources to do it. As long as the mechanism leads to an accurate and impartial ballot title at the end of the process, that should be the driving purpose behind their concerns. They have 200 attorneys in their office they can call upon. The breadth of proposed measures runs from sophisticated, complex tax matters to the Measure 7 matter, which led to a 250 page legal opinion from their office.
108	Rep. Close	Asks if the reason for the duplicate is because if their office does not act in a timely manner, they cannot collect further signatures.
115	Schradle	Responds that the process is governed by strict statutory timelines. There are no opportunities for inadvertent delays and he can only surmise why duplicate measures are filed.
131	Rep. Close	Asks if Schradle would agree that if the attorney general is not acting in a timely manner that the petitioner is slowed down in collecting signatures.
	Schradle	Responds there is no mechanism for their office to delay the process. The only period that is open is at the Supreme Court challenge level, which can be a different period of time depending on the court's docket and caseload and how quickly it issues an opinion and can refer the measure back to their office, if need be.
142	Rep. Barnhart	Asks if a different title must be assigned to two identical measures.
	Schradle	Responds that for duplicate measures, they would issue exactly the title. Explains that there is a statutory prohibition in drafting substantially similar ballot titles if it will confuse the voters. A Supreme Court decision issued a few years ago said that where there are identical measures, or virtually identical measures, it would be confusing and misleading if they didn't have the same or very similar ballot titles.
156	Rep. Barnhart	Asks if they filed 35 titles for the 70 measures.
	Schradle	Responds he may have been inaccurate in calling them duplicates because he does not believe they were absolutely duplicative. Some of them were virtually identical.

156	Rep. Barnhart	Asks if they would put the same title on two nearly identical measures.
	Schradle	Responds affirmatively. Comments on five tax measures that were very much the same except for the distribution of the taxes.
197	Schradle	States there is a tremendous amount of court resources expended on measure that never go anywhere, and there is incentive now for people to challenge ballot titles because it holds up signature gathering.
	Schradle	Continues prepared statement, commenting on the 10 percent of total signatures requirements (EXHIBIT B, page 1) .
254	Rep. Monnes Anderson	Asks how many attorneys are needed to draft ballot titles.
255	Schradle	Explains staffing for ballot titles. Notes attorney hours outlined in his statement (EXHIBIT B, page 1) .
270	Schradle	Comments on the SB 102-A7 amendments. The major element in the amendment is the requirement for 1,500 signatures or a filing fee. Suggest there should not be a differentiation between those who have money and those who do not.
298	Rep. Close	Comments that political candidates can gather signatures or pay a fee and asks if Schradle is opposed to that.
300	Schradle	Responds, no. States he thinks it is an issue the committee should give serious consideration to.
312	Schradle	States that the change from the Attorney General's office to Legislative Counsel is neither here nor there from their perspective. Concern would be if it goes to Legislative Counsel, they need to have the resources available to do the work. Comments on their office drafting ballot titles and the allowance for comments by anyone.
340	Rep. Flores	Asks what resources in Legislative Counsel are not adequate.
345	Schradle	Comments on number of attorneys in the attorney general's office. States that he is not suggesting that the attorneys in Legislative Counsel are not totally competent but he is not sure they have the opportunity to have the same exposure as attorneys in the attorney general's office. The process is time consuming and expertise is needed. Believes their office has more legal resources to call upon than Legislative Counsel does.
375	Schradle	States that having the review go to a three-judge panel has a lot of merit. It takes it out of the Supreme Court, which is overburdened. There are costs associated with the panel. The retired judges are currently being called upon to deal with cases in the judicial system elsewhere. States he has a concern with three-judge panel because the only thing that would go to them is the competing ballot titles. Explains the current process and notes the differences in the process in the SB 102-A7 amendments.
460	Schradle	Comments on requirement in the SB 102-A7 amendment that anyone wishing to challenge the Secretary of State's determination must do so within 21 days in Marion County Circuit Court. It is the only remedy. Compares present system to provisions of the SB 102-A7 amendments, noting the fiscal impact due to more challenges. Notes that the amendment does eliminate having the measure struck down after it is passed.
TAPE 87, B 020	Schradle	Continues explaining the differences in the challenge process.

033	Schradle	Comments he hopes there will be on-going conversations and would like to work with Chair Doyle on pieces that need further attention. States that SB 102-A could be changed to simply have Legislative Counsel supplanted for their office.
040	Kristen Leonard	Oregon Education Association (OEA). Testifies in support of SB 102-A. States they believe ballot shopping abuses the intent of the process, and they support the demonstration of public support prior to starting the ballot title process.
091	Rep. Monnes Anderson Leonard	Asks if OEA has looked at the SB 102-A7 amendments Responds they only briefly looked at the amendments. Their concern with the change in the signatures required is the language that says or they may pay the \$1,500.
105	Rep. Barnhart Leonard	Asks if OEA would support amendments that delete the \$1,500 requirement. Responds that their concern is more with the dollar amount. States she believes the 10 percent is an appropriate number but is concerned with offering a dollar amount as an option.
129	Bill Perry	Director, Government Relations, Oregon Restaurant Association (ORA). Testifies in support of SB 102-A. Comments on having to hire an attorney to watch measures, and if his industry is affected they have to file a challenge to establish a standing in any future proceedings. Comments there were nine to ten measures on three subjects in one election that never went out for signature. He spent \$26,000 on those nine to ten measures that people never collected signatures on. Last cycle there were seven measures on two subjects that impacted their industry and only one went out for signatures and made it on the ballot; he spent \$20,000. States he has not had a problem with the appeals process. States that the current 25 signatures are too few to cause a third party to have to be involved.
203	Julie Brandis	Associated Oregon Industries (AOI). States their issue with getting involved relates more to the signatures that are gathered as opposed to trying to eliminate grass roots activity. They would argue that 25 signature is not enough grass roots activity. They believe there should be broader commitment before someone starts to shop a ballot title. States that the business community must take a look at it in a defensive posture and decide if they need standing, and what is the risk if they do not get standing on the measure. They are asking in SB 102 A that a group should demonstrate a broader support for an initiative before a third party has to get involved.
243	Rep. Barnhart	Comments that he assumes AOI faces similar kinds of costs as those described by the ORA.
244	Brandis	Responds affirmatively.
257	Perry	Comments that measures in recent years have been targeted at certain industries and that general groups have not needed standing as much as the specific industry groups.
280	Patrick Green	AFL-CIO. Testifies in support of SB 102-A. States they believe ballot titles are important and are time consuming and costly for the state and interested parties. States they have the same experience as AOI and ORA. Notes that the bill came from the Senate with support from AOI, AFL-CIO, ORA, and OEA and believes that demonstrates consensus around the issue of ballot

312	Green	<p>title shopping. Cautions the committee about not getting the ballot title process wrapped up around the initiative process. States that hundreds of initiatives are filed every year, many get ballot titles, many have no challenges, and many have no signatures gathered beyond the 25 and the people should not have to pay for that. Asks that the Supreme Court not be left out because they have experience in case law, and the attorney general is more experienced. States they think Legislative Counsel is great and it is a resource question the legislature can decide. Questions whether the legislature would want Legislative Counsel writing ballot titles during session. States that the \$1,500 is a problem because he would be able to buy a ballot title with his credit card.</p>
340	Rep. Close	<p>Asks if AOI and ORA are in support of the SB 102-A7 amendment provision on the three judge panel and the process.</p>
348	Perry	<p>States he has not had a problem with the appeals process and would have to have their attorney look at the provision.</p>
365	Brandis	<p>States that she agrees with Perry's response. States the reason AOI got involved in this legislation was because 25 signatures does not constitute what they would call a grass roots level of support. States she is not enough of an expert on the rest of the process to comment on the SB 102-A7 amendments and would defer to ORA's counsel.</p>
377	Rep. Close	<p>Asks what their opinion is on the title being written by the attorney general or the three-judge panel.</p>
382	Perry	<p>Responds he would have to look at the three-judge panel provision and cannot say now whether that is a good change.</p>
400	Dan Meek	<p>Attorney. Submits prepared statement in opposition to SB 102-A (EXHIBIT C). States that he testified on SB 102 before the Senate on behalf of the Oregon Common Cause, Coalition for Initiative Rights, and Pacific Green Party, all of which oppose strongly SB 102 A. States he strongly supports the SB 102-A7 amendments and believes the arguments brought against the amendments by Schradle can be overcome. Suggests we could easily have the parties who submit a draft ballot title to the three-judge panel include arguments in favor of their ballot titles. All information to the panel should be submitted blind, not identified as to source. The panel could evaluate the proposed ballot titles without allowing any possibility of bias to creep into the process. Nothing would prevent the three-judge panels from issuing written opinions that would provide the institutional memory Schradle was concerned about.</p>
431	Meek	<p>States that Schradle said that under the SB 102-A7 amendments, one might see a hundred different challenges going to the courts on the constitutional procedural requirements a year, but he did not take into consideration that most ballot measures are statutory and there are no constitutional procedural requirements applicable to them. <u>Armatta</u> is only applicable to constitutional amendment initiatives.</p>
	Meek	<p>The reason the people would need to litigate any that the Secretary of State determines to be not in compliance with the constitutional procedural requirements is because as Schradle himself stated, the Secretary of State's decision is currently unreviewable. Technically that is not true, a lawsuit can be filed</p>

in Circuit Court and appealed it to the Court of Appeals and then to the Supreme Court, but it is on a practical basis unreviewable because those processes take so long and there are no time limits on any of the processes. If the Secretary of State determines that a measure does not satisfy the Armatta requirements, that is the end of it; it is unreviewable. Explains current process.

TAPE 88, B

020	Meek	Testifies in opposition to SB 102-A (EXHIBIT C), and states that he supports the SB 102-A7 amendment.
079	Meek	States he thinks it is extremely important to adopt the SB 102-A7 amendments pertaining to the constitutional procedural requirements to get the challenges done up front, but does not believe the SB 102-A7 amendments include enough to get that done. They don't establish any time limit for the Circuit Court of Marion County to make a determination. In 99 percent of the cases it will be a preliminary determination anyway; it will probably go to the Oregon Supreme Court. Suggest that Marion County Circuit Court should be skipped entirely, or be given a statutory deadline for making the determination. There should be a reasonable time for the Supreme Court to make a decision. If the Supreme Court can take a year and a half or two to make a decision, it makes the determination of the Secretary of State unreviewable, no matter what the courts ultimately decide.
094	Chair Doyle Meek	Asks if the legislature can set deadlines for the judicial branch. Responds he believes so. If the legislature sets a deadline, the court can either meet it or say they don't have to.
103	Meek	Comments that Green, AFL-CIO, seemed to think there was consensus in the Senate, however, there was a minority report on the Senate side that was defeated on the floor by a vote of 16-14. States he thinks the minority report would have made reasonable changes to the process but SB 102-A devastates the process for grass root groups.
113	Rep. Barnhart	Asks what Meek thinks of the criteria proposed by OEA and others probably agree with, that a good bill would rein in the process of ballot title shopping and would require that those who get to the stage of a ballot title would have already shown some public support.
124	Meek	Responds that he is not sure ballot title shopping exists. If the measure is very similar to a petition that has been submitted before, the attorney general assigns the same ballot title to it. Comments on current efforts on campaign finance reform petitions, and states it would be impossible under the SB 102-A7 amendments because they would have to go through the process twice.
	Jason Williams	Executive Director, Tax Payers Association of Oregon. States they are worried that the ideas behind SB 102-A are not fixing the problem, but are creating more problems. A more difficult process causes an imbalance in the whole process because it allows the people with money to be able to afford to go through the process of gathering the 10,000 signatures. States they do not want to see that.
177	Williams	Comments on difficulties in circulating a petition again with a different title. States that the public needs something simple that they can understand. States they submitted two measures that

		were exactly the same last election cycle but changed the measure based on the effective date. Because it went through the existing process with so much legal challenges, by the time they got it they only had a few months left and had to let it go. That is why two of the 170 never made it.
207	Williams	Comments on receiving a ballot title that they felt did not match their idea. States that the courts have changed the attorney general's ballot titles many, many times. If the attorney general is having a lot of corrections, it shows the pressure people feel.
230	Williams	States they like the idea of submitting their own ballot title and the three-judge panel.
223	John Lindback	Director of Elections, Secretary of State's Office. Comments on statistical sampling used in their current signature verification process and how the SB 102-A7 amendments would affect their sampling. Explains that a consultant from Oregon State University has helped them write their statistical sampling method for several years and this would require them to go back to the consultant for a rewrite. Explains the statute requiring signature verifications. Gives example of two statutory measure that made the ballots in the last election cycle that qualified for the ballot in the first sampling of signatures.
328	Lindback	States that the SB 102-A7 amendments will have a fiscal impact on their agency because they must go through the process of redoing the statistical sampling process.
337	Rep. Barnhart	Comments he assumes that their office assumes the balance of the signatures that are not sampled have the same properties as the sample they take.
	Lindback	Agrees.
349	Rep. Barnhart	Asks if they would have to verify 1,500 signatures under the SB 102-A7 amendment.
	Lindback	Responds affirmatively. States they would have the counties keep verifying until they reach the 1,500 valid signatures.
372	Rep. Flores	Asks if would be necessary to go through the statistical sampling to come up with the 1,500 valid signatures.
	Lindback	States that is his assumption of what they would do. The questions is, if we want the chief petitioners to get credit for those 1,500 valid signatures, how that fits in with how they treat the rest of the pool of signatures handed in. They have to figure that out. How to adjust the statistical sampling in step two is the question.
390	Chair Doyle	Asks if they would not say the number of valid signatures is the same percentage as the percentage of the sampling for the 1,500 valid signatures.
	Lindback	Responds maybe. Comments n uncertainties.
405	Chair Doyle	Asks if there is a fiscal on SB 102-A.
	Lindback	Responds there is no fiscal because there was no signature verification required.
420	Chair Doyle	Asks if there would be a fiscal impact if the verification requirement is removed on the initial 1,500.
	Lindback	Responds that would remove the fiscal impact.
429	Rep. Barnhart	Asks what the minimum number is for a good sampling.
	Lindback	Responds that the signatures verified for the measures on the last ballot were arrived at by a sampling process. That is different

		from full verification they would do in the initial 1,500 signatures.
457	Rep. Barnhart Lindback	Asks what the validity rates have been in past elections. States he has a chart of validity rates from the last election cycle. They ranged from the low 60s to somewhere in the mid 70s. Adds that if they get bad signatures originally, there will be bad numbers later. They have every incentive under SB 102-A to do as accurate a job as possible with the first 10,000 signatures as with the rest.
503	Chair Doyle	Advises members that another set of amendments will coming and the discussion will be continued.
522	Chair Doyle	Closes the work session on SB 102-A and adjourns meeting at 3:02 p.m.

EXHIBIT SUMMARY

A – SB 102, SB 102-A7 amendments, Rep. Doyle, 22 pp

B – SB 102, prepared statement, Philip Schradle, 2 pp

C – SB 102, prepared statement, Dan Meek, 9 pp