

HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

August 20, 2003 Hearing Room E
3:00 PM Tapes 127 - 131

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
 Janet Adkins, Administrator
 Rick Berkobien, Administrator
 Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: HB 3669 – Public Hearing and Work Session
 HB 3668 – Public Hearing and Work Session
 SB 910 – Public Hearing and Work Session
 SB 145 A – Work Session
 SB 102 A – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
Tape 127, A 004	Chair Doyle	Calls meeting to order at 5:26 p.m., announces order agenda items will be considered, and opens a public hearing on HB 3669.
<u>HB 3669 – PUBLIC HEARING</u>	Brian DeLashmutt	Oregon Nursing Association.. Testifies in support of HB 3669. Explains that HB 3669 is a reincarnation of HB 2828, the nurse practitioner workers' compensation bill that passed the House 56-1. Explains that the Governor vetoed the bill on the basis that it did not get the full blessing of the Management Labor Advisory Committee (MLAC). The parties were convened at the request of the Governor and have presented a new bill. A compromise is a sunset of January 1, 2008.
033	John Shilts	Administrator, Workers Compensation Division, Department of Consumer and Business Services. Testifies in support of HB 3669 (EXHIBIT A).
067	Shilts	Makes statement as clarification for the courts in two areas of the bill. In reference to page 9 of HB 3669, lines 31-37, an amendment to ORS 656.245(1)(e), they want to be very clear that the intent is not to force the injured worker to see a nurse practitioner instead of an attending physician if the nurse practitioner just happens to be closer in geographic area to the worker. The worker would still have the ability to see a medical doctor if they choose. And, on page 9, in lines 38-45, they want to make sure the courts are aware that there is no intent here to

		expand the injured worker’s opportunity to choose an initial choice of medical provider and then to change two times that choice without the approval of the director or the insurer at that time.
086	Shilts	Explains that “nurse practitioner” and “physician” are mentioned throughout the bill. Typically physician or nurse practitioner is what you will see referred to and they are talking about them as a category of providers and the worker only gets the initial choice plus two changes, whether it is a nurse practitioner or attending physician.
096	Brad Witt	Secretary-Treasurer, Oregon AFL-CIO and member of MLAC. Testifies in support of HB 3669. This bill will increase patient access to medical services for injured workers. They feel the provisions for education of nurse practitioners in occupational return to work is in the interest of the entire system.
116	Rep. Close	Asks for an explanation of the reference to ORS 656.245.
121	Shilts	Responds that Section 5 is an amendment to ORS 656.250 which has to do with referrals to physical therapists. The amendment references back to the nurse practitioner authority under ORS 656.245 on page 10, lines 14-26. Explains that references are made to make sure it was very clear that nurse practitioners have the authority to provide medical services for the 90 day period and in other cases provide temporary disability benefits for 60 days.
142	Rep. Close Shilts	Comments that ORS 656.245 talks about use of generic drugs. Explains ORS 656.245 establishes where medical benefits and services must be provided to an injured worker. It talks about what happens when a patient is considered to be medically stationary. After the case is closed, only certain services are compensable. Explains provisions of ORS 656.245.
183	Rep. Close Shilts	States she is trying to ascertain if a physician is more highly trained than a nurse practitioner. Responds that goes to the heart of the discussion—that is, whether nurse practitioners are as qualified to treat injured workers. The nurse practitioners have an established relationship with the patient and while they do not have as much training as an M.D., they do have quite a bit of training and can prescribe medications. Currently, if the patient has to be referred away from the nurse practitioner who is the primary care provider, the worker does not have the choice to bring the provider with them into a managed care organization where they have that choice.
	Rep. Close	Asks if ORS 656.245(2)(a) allows the worker to still have the choice.
214	Shilts	Responds it does.
216	Rep. Flores	Asks if nurse practitioners will be empowered to do surgical procedures under Section 4(b) on page 12.
227	Shilts	Responds the nurse practitioners will be allowed to do only what is allowed under the scope of their licenses.
230	DeLashmutt	Responds that nothing in this statute expands the nurse practitioners’ scope of practice.
237	Chair Doyle	Chair Doyle closes the public hearing and opens a work session on HB 3669.

HB 3669 – WORK SESSION

241 Rep. Flores

MOTION: Moves HB 3669 to the floor with a DO PASS

243 Rep. Monnes
Anderson **recommendation.**
Comments she hopes the committee realizes that before changes were made in the workers compensation laws in the early 1990s, the nurse practitioners were full participants in the care of injured workers.

261 **VOTE: 7-0-0**
Chair Doyle **AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**
REP. MONNES ANDERSON will lead discussion on the floor.

265 Chair Doyle Closes the work session on HB 3669 and opens a public hearing on HB 3668.

HB 3668 – PUBLIC HEARING

253 Rep. Tootie Smith District 18. Testifies in support of HB 3668 with the HB 3668-1 amendments (**EXHIBIT B**). Explains that HB 3668 with the HB 3668-1 amendments increases personal injury protection (PIP) insurance on automobile coverage in Oregon from \$10,000 to \$15,000; it has been at \$10,000 for the last 20 years and they feel it is inadequate to medical costs in the event of an accident. Uncompensated costs for trauma care providers are threatening the quality of Oregon’s trauma care system. Explains that the amendments take care of a drafting error on her part when requesting the bill be drafted. Reads list of organizations supporting HB 3668.

Shawn Baird EMT-P, President, Oregon State Ambulance Association, and owner of Woodburn Ambulance Service. Testifies in support of HB 3668 (**EXHIBIT C**).

338 John Powell State Farm Insurance Companies. Testifies in support of HB 3668 and the HB 3668-1 amendments. States they hesitate to recommend an increase in insurance due to cost. However, they have been working on the issue of trauma centers and how to get more money to the trauma centers which have been losing their qualifications due to the lack of money to hire physicians to provide the care. This is one small step but they believe the bill has balance and in the most serious automobile accidents there will be more PIP available. When people do not have health insurance or any insurance at all, an accident can leave the providers stranded. This bill increases the benefit. They support the HB 3668-1 amendments which delete increases in liability coverage which State Farm cannot support.

378 Jim Anderson Oregon Chapter of American College of Emergency Physicians. Urges adoption of the bill with the HB 3668-1 amendments. The PIP has not been increased for more than 20 years. States they know the compensation will be there if this bill passes.

368 Rep. Barnhart
Powell Notes the deletion of Sections 3 and 4 of HB 3668 by the amendment. Asks when those requirements were increased. Submits and explains chart on bodily injury coverage (**EXHIBIT D**).

433 Rep. Barnhart
Powell Asks if Powell has data on policy limit payments. Responds the average bodily injury and property damage claims are always taken care of. These are the minimum limits; most people carry higher limits. Increasing the limits impacts the

437	Rep. Barnhart Powell	premiums and causes people to drive without any insurance. Asks what effect the PIP increase will have on premiums. Responds they hope it will be relatively slight, perhaps about \$7 per vehicle per year.
TAPE 128, A		
023	Rep. Close Powell	Asks if her family insurance rates will go up. Responds it will depend on the carrier and what their rates are now. If they have inadequate rates now, they may be about to file actuary data to allow them to increase their PIP.
031	Rep. Close Baird	Asks if the trauma centers and the State Ambulance Association qualify for 9-1-1 money that is collected on utility bills. Responds the money pays for the 9-1-1 telephone service; no money is passed through to providers, either trauma centers or ambulances, in a direct sense. The funds go to the center that takes the calls.
043	Rep. Close	Asks if they have attempted to qualify for the 9-1-1 money.
045	Anderson Rep. Close Baird	Responds legislation has been attempted to tap the source; it is guarded very closely by the 9-1-1 centers. Asks if the State Ambulance Association has ever attempted to qualify. Explains that when they started talking about increasing the PIP, there was a piece separate from the PIP. They were looking for an additional surcharge on 9-1-1 telephone line tax to help offset trauma costs and it met staunch opposition from the 9-1-1 folks.
058	Rep. Close Patterson	Comments that the general tax payer is already paying for 9-1-1 service and it seems this should come from that instead of raising insurance rates. Responds they could not agree more. They tried that route and was opposed by the telecommunications industry. Adds that they will discuss this during the interim because he believes there are efficiencies that can be realized within the 9-1-1 system that may free up some money.
070	Chair Doyle	Advises members that this issue was originally in HB 2572 and there were issues with the bill, and that the committee has not yet received a fiscal statement. HB 2572 had a fiscal of a one-time cost of approximately \$75,000 for the Department of Consumer and Business Services for new form and rate filings by insurance companies. Adds that the committee expects to have the fiscal statement on HB 3668 by the time the bill reaches the floor. Closes the public hearing and opens a work session on HB 3668.
083	Chair Doyle	
<u>HB 3668 – WORK SESSION</u>		
086	Rep. Flores	MOTION: Moves to ADOPT HB 3668-1 amendments dated 8/18/03.
098		VOTE: 7-0-0
	Chair Doyle	Hearing no objection, declares the motion CARRIED.
099	Rep. Flores	MOTION: Moves HB 3668 to the floor with a DO PASS AS AMENDED recommendation.
	Rep. Verger	Comments on quality of people providing services in cases of accidents, and expenses following the call. VOTE: 6-1-0 AYE: 6 - Backlund, Barnhart, Flores, Monnes Anderson, Verger, Doyle NAY: 1 - Close

Chair Doyle

The motion CARRIES.

REP. TOOTIE SMITH will lead discussion on the floor.

143

Chair Doyle

Closes the work session on HB 3668 and opens a public hearing on SB 910.

SB 910 – PUBLIC HEARING

148

Rep. Jeff Merkley

District 47. Testifies in support of SB 910 A with the SB 910-7 amendments (**EXHIBIT E**). Explains the amendments.

210

Julie Brandis

Associated Oregon Industries (AOI) Retail Council. Comments on a similar law passed by Utah and lawsuits that were filed. States they sent the bill to the national trade association and they said they believed the Oregon bill would cause the same type of uproar and asked that AOI provide amendments (**EXHIBIT E**). States they would not oppose the bill with the amendments. Quotes FTC Chairman statement on the spam no-call list in *The Oregonian* on August 20, 2003. Suggests that this legislation be sunset in July 2005 or require the legislature to revisit this in some form.

283

Jim Craven

American Electronics Association. Thanks those who worked on this legislation. States they hope we will have at some point a uniform national law to address spam that has real teeth. Unsolicited email represents about 50 percent of corporate email traffic in America today. Twenty-six states have made an effort. This bill will be congruent with other state laws.

323

Craven

States that they have tried to create minimal disruption to legitimate businesses and some teeth to go after the most egregious offenders. Believes the attorney general and individuals will make some efforts. Hopefully there will be class action suits against the more egregious offenders and not against the legitimate business people. They support SB 910 A and the SB 910-A7 amendments.

336

Craven

States a business that has customers is not covered by this law. Comments on the definition of a business relationship in Section 2.

360

Rep. Close

Comments when the bill was in the Business committee, the “adv” was required in the subject line of the email. States she is concerned that it has been changed and that the deletion provides a loophole.

Rep. Merkley

Comments that the first legislation did not required “adv” in the subject line for an established business relationship. Explains that “adv” is an excellent management tool for the consumers who use their ISP features and software programs.

406

Craven

Comments that he believes the carve out for existing business relationships was in HB 2737 that passed the House floor. The definition was narrowed in the Senate bill. Explains their decision to remove the “had” in a relationship to tighten the definition in SB 910.

421

Rep. Close

Reads quote of Gott, Chief Executive of inboxcop.com, a Portland spam filter maker, in *The Oregonian* June 29, 2003.

Rep. Craven

Comments Gott was part of the working group. But thinks everyone in this room who was on the working group believes the concept of protecting the ability of a business to communicate with their customers has been a feature of all versions of the bill he has worked on. Gott has a different

		opinion on what he wishes the bill had.
450	Rep. Close	Comments we do want to protect the consumers and make sure the word advertisement is clear and does protect consumers.
	Craven	Comments they are trying to get at unsolicited email. Comments on the need to distinguish between the wanted ones and using a filter to rid the unwanted email.
TAPE 127, B		
011	Rep. Barnhart	Comments on capabilities of filtering systems. States that he understands this to say that only unsolicited email would have to be labeled with the "adv." Believes the amendment does what needs to be done. Asks if the bill allows the unwanted email to be discarded.
036	Rep. Merkley	Responds that he does not want any advertisements and will ask his ISP and filtering system to destroy them. If existing relationships were not able to use the "adv," he would not be able to use his email in a professional capacity.
059	Steve Dixon	OSPIRG. Testifies in support of SB 910 A (EXHIBIT F).
103	Rep. Barnhart	Comments that the requirement includes correct routing information. States that he cannot respond to emails telling them to stop but the routing information is inaccurate and he cannot get back to the sender. Asks if the bill requires correct routing information.
	Dixon	Responds affirmatively. States the sender would be subject to the penalties in the bill.
123	Cheryl Pellegrie	Assistant Attorney General, Financial Fraud-Consumer Protection Section, Department of Justice. Explains that this bill does not require a sender of unsolicited commercial email to put in the email an address for the recipient to send a do-not-send-me-again message. They have found that often by responding to spam, it only serves to let the spammer know they have found a live address. They did not want to put that requirement in the bill because it might create more mischief than it would solve. It does require the sender to not obfuscate the source of the email. To hinder the identification of the source would be a violation of the bill.
	Rep. Barnhart	Asks if a relay through an unsuspecting open computer would be illegal.
	Pellegrie	Responds affirmatively. Using an open proxy would be a violation.
141	Pellegrie	States that DOJ takes a neutral position on the bill. They view it as a compromise. They believe it is a good start to provide the tools necessary to combat spam. Believes they will be back next session with further ideas on how to improve the bill. The provision that prohibits class actions against companies that have established business relationships with recipients means that a business with a relationship may send an unsolicited mail and you could not join with others in suing the company.
165	Pellegrie	States they are not concerned about the businesses represented by Brandis. States they are concerned about those who send post cards and ask that people go to their website. By virtue of someone going to the website (it may or may not be a legitimate business) the person has established a business relationship

184	Rep. Barnhart	sufficient to allow the operator of the website to send spam. Asks if the current law allows for a class action suit in the situation described by Pellegrie.
	Pellegrie	Responds that currently Oregon has no spam law. A citizen would have to rely on the Unlawful Trade Practices Act, and you have to show an ascertainable loss of money or property.
194	Rep. Barnhart	Asks what tools the attorney general has to deal with this other than what Pellegrie has described.
	Pellegrie	Responds that the bill gives the attorney general the ability to bring an action under the Unlawful Trade Practices Act. Believes the challenge for their office will be one of technology and determining the source of the spam.
200	Rep. Close Pellegrie	Asks if they can go after those spammers who are off-shore. Responds she believes Oregon can go after those in countries that we have a treaty with. Gives example of a company located in England that the attorney general went after.
220	Rep. Backlund Pellegrie	Asks if the Department of Justice is neutral on the bill. Responds they are neutral because of the prohibition of class action suits against companies with whom a person has a business relationship because establishing a business relationship under this bill is so easily accomplished that it may be grounds for fairly easy exploitation by illegitimate businesses.
230	Rep. Verger Pellegrie	Asks if advertisers use email because it is free. Responds that Rep. Verger is probably correct. It doesn't cost a lot to send a lot of email and a very small return is profitable.
246	Chair Doyle	Asks if there are any cases where a class action suit is not allowed even with this provision.
255	Pellegrie	Responds that the bill only excludes class actions where members of the class have an established business relationship with the business that is the subject of the action.
261	Chair Doyle	Closes the public hearing on SB 910 and asks committee to stand at ease. Reconvenes the meeting and opens a work session on SB 910.

SB 910 – WORK SESSION

267	Chair Doyle	Advises members that the committee has the SB 910-7 amendments (EXHIBIT E) and that he will be proposing a conceptual to sunset the legislation January 1, 2006. Comments on testimony presented and states that dealing with this on a federal level would be more effective than on a state level. If the bill is still needed during the 2005 session, the issues can be addressed.
300	Rep. Flores	MOTION: Moves to ADOPT SB 910-7 amendments dated 8/15/03.
302		VOTE: 7-0-0
	Chair Doyle	Hearing no objection, declares the motion CARRIED.
307	Rep. Doyle	MOTION: Moves to SUSPEND the rules for the purpose of considering a conceptual amendment to SB 910.
309		VOTE: 7-0-0
	Chair Doyle	Hearing no objection, declares the motion CARRIED.
311	Rep. Doyle	MOTION: Moves to conceptually AMEND SB 910 to add a sunset date of January 1, 2006.
316	Rep. Monnes	Comments that she thinks the amendment will still be needed

	Anderson	January 1, 2006. If the federal government comes up with something to address the issue of spam, we can address it then, therefore, she sees no point in having a sunset.
322	Rep. Barnhart	Asks if we end up with a double bill—one that adopts these changes and one that deletes it after January 1, 2006.
	Chair Doyle	Responds that Rep. Barnhart is correct. Explains that Legislative Counsel has advised that if the conceptual amendment is added, they are ready to prepare the legislation.
333	Rep. Barnhart	Comments that the January 1, 2006 allows the legislature another chance to meet and work on this in regular session.
350		VOTE: 6-1-0 AYE: 6 - Backlund, Barnhart, Close, Flores, Verger, Doyle NAY: 1 - Monnes Anderson
	Chair Doyle	The motion CARRIES.
363	Rep. Flores	MOTION: Moves SB 910 to the floor with a DO PASS AS AMENDED recommendation.
369	Rep. Close	Comments this is a balancing act between free speech and free interstate commerce and people's privacy in their own homes. States there are eight bills in Congress and it will be interesting to see what Congress comes up with.
380	Rep. Backlund	Comments this bill affects virtually everybody in Oregon and agrees with Rep. Close about the issues. It is a start.
393	Rep. Monnes Anderson	Comments she is excited to have a spam bill because it is an irritant that everyone experiences and she is happy to support the bill.
404	Rep. Barnhart	Comments that he spends a minimum of one-half hour every day deleting messages, and states that it is a huge cost in our economy just in time that people spend getting to their real email. This is a step in the right direction.
445		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. MERKLEY will lead discussion on the floor.
450	Chair Doyle	Closes the work session on SB 910.
Tape 128, B		
005	Chair Doyle	Opens a work session on SB 145 A.
SB 145 A – WORK SESSION		
005	Chair Doyle	Advises that the committee has the SB 145-A4 amendments (EXHIBIT G) .
017	Ed Patterson	PeaceHealth. Proposes the SB 145-A4 amendments (EXHIBIT G) . Explains the history of the certificate of need, a process to provide hospital services to people throughout the state.
057	Patterson	Explains that the SB 145-A4 amendments only deal with adoption of rules applying to downstate. PeaceHealth has asked that these rules be adopted and put in the statute because of challenges being made with the Health Division to modify those rules because of certain situations. PeaceHealth feels it would be unfair to change the rules in the middle of the game having to do with locating a hospital or two hospitals in Lane County.
		Introduces Doug Barber, PeaceHealth.
070	Doug Barber	PeaceHealth. Explains that their organization includes Sacred Heart Hospital in Eugene, Peace Harbor Hospital in Florence,

120	Barber	and Cottage Grove Hospital in Cottage Grove. Explains that the situation that prompted the amendments occurred when Triad, a for-profit hospital chain out of Texas, announced it wanted to purchase McKenzie-Willamette Hospital, a community hospital. States the certificate of need process is a public process and should be upheld if a hospital wants to build outside its current service area. States this is not an attempt to stop Triad from building a new hospital in Eugene. Their expectation is if they find a site that works and they go through the certificate of need process, the Health Division will approve their project.
135	Rep. Monnes Anderson	Asks if this would always require an organization to go through the certificate of need process if they want to build or expand a hospital anywhere.
141	Patterson	Explains when the process must be used. They believe this should be put in statute so only the legislature can change the rule, at least for a period of time.
163	Rep. Verger	Comments this has been high politically and she does not want the state to be too involved, but is concerned about the proposed change. States she might be happier to see the certificate of need process used regardless of where they are building. Asks what changes the Health Division could make in October.
	Patterson	Comments on Higginson's work group; this does not change anything. It guarantees that the rules by which hospitals have been operating under for the last 10 years will continue.
202	Rep. Barnhart	Asks if it is just as likely that the regulations will become more stringent, rather than less stringent as these changes are considered.
210	Patterson	Comments that he believes Higginson is serious about making some changes and thinks they will be less restrictive.
210	Rep. Barnhart	Asks what process the Health Division required Sacred Heart to go through in the siting at River Bend.
	Barber	Explains the process that applied in the siting.
	Rep. Barnhart	Asks questions of percentages of patients served and location of Sacred Heart.
	Barber	Comments on competition for services due to proximity of Sacred Heart and McKenzie-Willamette.
302	Chair Doyle	Enters into the record a letter dated August 20 from Jason Heuser, Intergovernmental Relations Manager, City of Eugene, opposing the SB 145-A4 amendment (EXHIBIT H). Asks Patterson to respond to the fourth paragraph in the letter.
316	Patterson	Responds that he has not seen the letter nor read the paragraph. States that when the certificate of need law went through major modifications, it exempted all the small rural hospitals from any certificate of need law. The small hospitals are not advantaged or disadvantaged.
327	Chair Doyle	Asks how this bill provides a set of certificate of need rules that competitively disadvantage smaller hospitals.
	Patterson	Responds that if a smaller hospital wanted to relocate, they could do so within their service area. Does not see how that would be a disadvantage.
342	Barber	Comments that if a hospital wants to move to a new location to serve a new set of patients, they believe they should go through the public process, which is what certificate of need is all about.

324	Rep. Barnhart	Comments that they are asking the legislature to write a law to deal with an issue that is already in regulations.
	Barber	Agrees. States that this puts administrative rule into law.
365	Patterson	Comments that sometimes administrative rules clarify legislation or laws. Sometimes they write policy. States that his view is that the legislature establishes policy and the rules only clarify what that policy is and how it will be developed. The SB 145-A4 amendments clarify that it is legislative policy that for this use of the certificate of need, this will be the policy of the state, i.e. developing service areas by using the zip codes or the market share.
377	Rep. Barnhart	Comments that passing this law would preclude the Human Services Department from using another method of determining how hospitals ought to be located and what the standards ought to be. Even though there are presumably many other ways to determine that under the current law if they so chose.
394	Barber	Responds he believes they would come back next session if they want to change it.
	Rep. Barnhart	States without this bill the Department of Human Services would be free to pick some other criteria for making these kinds of determinations.
409	Barber	Responds that the two aspects of the law which require certificate of need that are dealt with in the rule deal with whether they are going to build a new hospital in a new service area. Presumably they can redefine “new” and “service areas.”
418	Rep. Barnhart Paterson	Comments this proposal is a way of freezing the current rule. Agrees. They are saying it is a better policy to freeze it than it is to leap off and make changes that are not clearly thought out or without knowing what the ramifications are. They would like to adopt the proposal to buy time so they can work with the Health Division more closely. Adds that they would consider a sunset on this measure if it would be helpful.
441	Rep. Terry Beyer	District 12. States she does not support the SB 145-A4 amendments, which have a definite impact on her community and their community hospital. Introduces Rosie Pryor and Lee Beyer.
TAPE 129, A		
006	Rosie Pryor	McKenzie Willamette Hospital. Testifies in opposition to the SB 145 A4 amendments (EXHIBIT I).
060	Lee Beyer	Citizen, Eugene-Springfield area, and a 10-year member of McKenzie-Willamette Hospital Board. Explains that this is PeaceHealth Systems, one of the largest health system operators on the west coast, against a community hospital. Explains the location and service areas of PeaceHealth and Willamette-McKenzie, and that PeaceHealth has announced plans and bought about 80 acres of land in North Springfield, less than two miles from McKenzie-Willamette Hospital. They have announced plans to build a 400-500 bed replacement hospital and to expand to 800 beds. That size is comparable to OHSU. The McKenzie-Willamette Hospital Board believes the citizens of central Lane County should have choices. They do not object to the building, but do recognize as a hospital that it will make it difficult for McKenzie-Willamette to compete. McKenzie-

		Willamette has been trying to stay in business for three years as their competitor has used anti-competitive practices which got them to the anti-trust lawsuit. They have taken every step along the way to close down McKenzie-Willamette while saying they don't have a problem with McKenzie-Willamette existing. They are trying to bring the issue to the legislature to let the legislature decide instead of letting the people in their community make the decision.
110	L. Beyer	Comments on certificate of need study that is being conducted by doctors as directed by the legislature. Asks that the issue not go forward because it is bad public policy.
134	Rep. Barnhart	Comments that SB 145 A is not a bad policy. It refers to some important issues in public health policy. Thinks L. Beyer would agree that there are a number of other things that the committee might do with the relating clause. Suggests an array of subjects the bill could be used to address instead of the issue it is being used for.
230	Rep. Verger	Asks if there is any objection to going through the process of certificate of need.
244	Pryor	Responds that they have no objection to public involvement in decisions before the McKenzie-Willamette Hospital Board of Directors with respect to its future. Comments on the attorney general evaluation of the proposed joint venture. This is not about that.
269	L. Beyer	Comments there is nothing in the Eugene-Springfield area that does not go through a long public process.
273	Rep. Flores	Asks if McKenzie-Willamette Hospital and Triad are merging, which will allow McKenzie-Willamette to expand their facility.
278	Pryor	Explains the joint venture would enable the hospital to re-stabilize financially and build a replacement hospital.
290	Rep. Flores	Asks what the anticipated size is for the new facility.
	Pryor	Responds they propose to duplicate the current hospital in another location.
299	Rep. Flores	Asks if they would increase the number of beds.
	Pryor	Responds that it is not the current plan to increase bed size. Their goal is to add services they do not currently offer so they can solve the problem of being competitively disadvantaged.
307	Rep. Barnhart	Comments he believes the desire of the community is to maintain their current status as a community with two hospitals. One of the issues they face in looking at the certificate of need evaluation process is, to some extent, the desire of the community to maintain two hospitals may be more difficult in the existing process. Asks if that is an accurate statement.
324	Pryor	Responds she believes it is an accurate statement.
	Rep. Barnhart	Comments that one of the considerations that is unique to this situation is the desire of many members of the community to maintain the two-hospital system and that is not one of the criteria in the existing rules. Adding flexibility to the existing rules to take into account that community interest might be beneficial to promote that interest.
340	Pryor	Responds they are not seeking any special treatment. They are responding to a recommendation by the State of Oregon Human Services Department staff that they ask them to consider revising existing certificate of need rules as they relate to service area

designation. They would like to have the opportunity to make the same strategic decisions about hospital operations and location of hospitals that PeaceHealth is currently entitled to make. States they were told by state staff that certificate of need rules were never established to disadvantage smaller hospitals, but as they are currently written they do that. They are constrained from having the freedom to make the same choices for their future in terms of location as PeaceHealth has the privilege of making. There was no process, no public involvement that preceded PeaceHealth's decision to move to Springfield.

	Prior	Submits but does not present letter from Roy J. Orr, CEO, McKenzie-Willamette Hospital addressed to Rep. Barnhart, and news clipping from <i>The Business Journal</i> , August 15, 2003 (EXHIBIT J) .
	Rep. Barnhart	Submits but does not present copies of a Media Release on the AG approval of the joint venture between McKenzie-Willamette Hospital and Triad Hospital (EXHIBIT K) .
370	Rep. Flores	MOTION: Moves to ADOPT SB 145-A4 amendments dated 8/14/03.
374	Rep. Barnhart	Comments he likes the bill as it is now and will vote no.
377	Rep. Monnes Anderson	Comments she thinks there is an equity issue here. Comments on timing of the scheduling of the bill, states she feels the committee needs information from the Department of Human Services, and cannot vote yes for something that was hurried through the process without adequate public hearing.
392	Rep. Backlund	Comments he would like to consider this at another time and not vote on the amendments tonight.
	Rep. Verger	Comments that sometimes larger hospitals such as Sacred Heart that has such a large clientele and many services have different stipulations. States she is concerned about this because it is very contentious and does not think it is good for the legislature to get into the middle of this until we have a lot more information. States she is not ready to vote on this yet.
429	Chair Doyle	Asks the committee to stand at east at 7:47 p.m.
430	Chair Doyle	Reconvenes the meeting at 7:52 p.m. and comments that more work needs to be done on the amendments.
439	Rep. Flores	Withdraws her motion to adopt the SB 145-A4 amendments.
443	Chair Doyle	Recess the meeting at 7:50 p.m.
448	Chair Doyle	Reconvenes meeting at 8:32 p.m. and opens a public hearing on SB 102 A.

SB 102 A – PUBLIC HEARING

452	Chair Doyle	Notes that the committee has the SB 102-A10 amendments (EXHIBIT K) .
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Tape 130, A

002	Ross Day	Director of Legal Affairs, Oregonians in Action. Explains the initiative process pointing out parts of the current law that are cumbersome and untimely, and the SB 102 A10 amendments (EXHIBIT K) . States there is angst about the second part of the bill that has to do with post-election challenges to adopted initiatives. The intent is to eliminate the possibility that after the voters have voted on a measure and it has gone into law, someone can come in and take out the measure through the courts.
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114	Rep. Monnes Anderson	Referring to page 8, Section 7 of SB 102-A10 amendments, asks how many judges meet the retired PERS criteria.
125	Chair Doyle	Advises that a staff member of the Supreme Court is present and can answer the question later.
129	Day	Explains the intent was to avoid having judges continually rule one way or the other on ballot titles; the decisions may not be consistent, but they will be fair every time.
141	Rep. Monnes Anderson Day	Asks if a ballot title decision can take more than six months. Responds that it is possible. Gives example of submitting a measure for a ballot title for the entire six-month period that the judges are on the panel.
156	Rep. Monnes Anderson	Comments that if someone doesn't like the ballot title from the panel of judges, they can wait six months for the next set of judges.
	Ross	Responds that is possible, but the judges are picked by lottery so they would not know which judges will be on the next panel.
180	Chair Doyle	Asks if it might be left be up to the Chief Justice to make the determination under Section 7. States the judges may be able to extend their own terms just to complete the cases.
190	Day	Responds that he agrees with Chair Doyle's interpretation.
201	Dan Meek	Representing the Pacific Green Party and Oregon Common Cause. States they testified on June 24 against SB 102 A and they are here to oppose the SB 102-A10 amendments. Presents prepared statement in opposition to the SB 102-A10 amendments (EXHIBIT M) .
292	Meek	States they do agree with the pre-election review. There should be a process to allow the people to know what the attorney general thinks without having to spend weeks or longer collecting 3,000 signatures and then finding out the 3,000 signatures were collected in vain.
311	Evan Manuel	Director of Education and Research for 1,000 Friends of Oregon. Testifies in opposition to the SB 102 A10 amendments (EXHIBIT N) . States they support SB 102 A as it came from the Senate.
388	Manuel	Adds that the judge panel would be reviewing the titles without having anyone else reviewing them. If someone submits an inaccurate ballot title, no one would be able to comment on it.
407	Rep. Flores	Asks if 2,500 signatures does not indicate some serious level of interest and intent.
	Manuel	Responds that he appreciates the 2,500 signatures compared to the current 25 signatures. States he would estimate that the cost could be about \$700 each if they group five or six initiatives and paid signature gatherers.
434	Rep. Backlund	Asks if the supreme court judges would prefer to be out of the process.
	Manuel	States he presumes that most people involved in the process would like to be out of it. They are not opposed to having another group of judges grow to review ballot titles other than the Supreme Court. States he is mostly concerned with the permanency of the panel.
456	Rep. Barnhart	Asks what the differences are between the bill and the amendments in relation of the issue when one can adjudicate the procedural constitutional question.

476	Manuel	Explains there is a section in the SB 102-A10 amendments that says this is the sole remedy and when it can be adjudicated. Currently someone can adjudicate it at any time.
489	Chair Doyle	Explains there is no provision in SB 102 A; a new provision is being added in the amendment in Section 11(2).
Tape 129, B		
012	Rep. Barnhart Manuel	Asks when the challenge would have to be made. Responds he believes it is within 25 days of filing the signatures.
017	Rep. Barnhart	Comments on the difference in the current provision and the new provision on filing challenges.
026	Manuel	Responds that some challenges are filed early. There would still be challenges under the amendments on other legal theories under the SB 102-A10 amendments.
035	Rep. Barnhart Manuel	Asks if the challenges would be on constitutional procedures. Responds affirmatively.
038	Meek	Comments on current procedural challenges. States that the Lipscomb decision in Marion County said that the ultimate statute of repose applies so there is a 10 year limit after a measure is adopted. The Lipscomb decision has not been appealed.
047	Chair Doyle	Advises that Section 8(2)(a) and (b) on page 9 of the SB 102-A10 amendments was intended to work together. It should not be as drafted where the panel first determines that the Legislative Counsel draft title complies and if it does comply, it goes directly to the Secretary of State. Instead the title was to be considered as one of the others as well. It wasn't supposed to be that if the Legislative Counsel passed the test, it would win. They are still supposed to consider the others as well. States he believes it can be fixed in conference committee.
061	Meek	Also suggests amendment to allow for written comments on an alternative ballot title that would be submitted; there is a provision for oral argument, however.
072	Philip Schradle	Special Counsel to the Attorney General. Testifies that he thinks SB 102 A from the Senate is the better bill. Believes it gets at many of the same issues as the SB 102-A10 amendments do without quite the disruption to the current system and without as many costs associated with it. The amendments also have mechanism that will ultimately end up in a ballot title that satisfies statutory requirements as accurate and impartial. Comments on the use of Legislative Counsel as the ballot title drafter. From the attorney general's office's perspective, it is very important to have someone with legal training involved in the process to help guide the process, if nothing else.
098	Schradle	States he is glad the comment period has been added. States that the current comment period allows their office to get insights and perspectives that they may not have seen. The comment period in the amendments goes half way because Legislative Counsel never has a chance to respond to comments on its ballot title.
112	Schradle	States there are other cumbersome pieces of the SB 102-A10 amendments that are going to be more costly than the current system. Keith Garza will testify to some of the difficulties in administering it from the court's perspective.
118	Schradle	States that the second half of bill on constitutional procedural

		<p>compliance issues and requiring them to be reviewed pre-enactment is set out in Sections 10 and 11 of the SB 102-A10 amendments. It is simply a philosophical-political-financial decision for the legislature to make. There are costs associated with the current system by having the voters will overturned by the courts. There is some merit in going through pre-enactment review. The costs associated with pre-enactment review are included on the partially completed fiscal impact estimate (EXHIBIT O).</p>
136	Schradle	<p>Comments on current process and timing of challenges. States that not as many challenges are brought. If one has to challenge it pre-enactment or lose the right to challenge it on those grounds, there is an incentive to bring the cases at the only time one can. That time, under this proposal, is before one knows if they will get enough signatures or whether they will be approved by the voters.</p>
149	Schradle	<p>Reviews the fiscal impact estimate (EXHIBIT O). States he is not trying to convince the committee but wants to give as much information as he can. Asks that the committee not impose the pre-enactment review without considering the additional costs associated with it.</p>
197	Schradle	<p>Comments he believes Day misspoke when he said the 2,500 signatures did not need to be verified. States that to his knowledge, to the Secretary of State's office there is no difference between verification and validation. It would have the same fiscal impact on the Secretary of State's and county clerks' offices. Explains the verification process, and states that the statistical sampling methodology used by the Secretary of State would have to be retooled.</p>
218	Rep. Barnhart Schradle	<p>Asks Schradle to explain the fiscal statement (EXHIBIT O). Explains the costs (EXHIBIT O, page 2).</p>
249	Rep. Barnhart Schradle	<p>Comments they have removed items that would have cost to the attorney general's office but which would be costs for someone else.</p> <p>Responds yes, it is the drafting of the ballot titles. Under the SB 102-A10 amendments that would go to Legislative Counsel. Explains that the current cost to their office is more than the cost would be for Legislative Counsel under the SB 102-A10 amendments. The \$556,640 figure is their best guess as to the fiscal impact increase over what they currently experience.</p>
269	Rep. Barnhart	<p>Asks what their estimate is of the cost to Legislative Counsel under the SB 102-A10 amendments.</p>
277	Schradle	<p>Comments on time spent by the Attorney General's office and states they would anticipate Legislative Counsel would spend about the same amount of time for a draft ballot title. States that Legislative Counsel would have to do additional work if the three-judge panel found that none of the ballot titles submitted met the statutory requirements. States that the court could ask for oral argument and would assume the court would ask Legislative Counsel to participate in the oral argument process. It is also unclear whether the court would ask for anything by way of memoranda or something to help explain; that would be additional costs. The only costs that are required are the drafting</p>

		of the initial ballot titles and redrafting new ballot titles under remand if they are found to be noncompliant.
313	Rep. Barnhart	Comments that if there are 150 measures and they spend about five hours drafting per measure, it would be 750 hours. Comments it sounds like \$75,000 just on that piece that has not been accounted for.
	Schradle	Responds that is the least Legislative Counsel would be called upon to do.
325	Rep. Monnes Anderson Schradle	Asks if the attorney general's office uses the Oracle system to track, and whether that would have to change their system. Responds he believes the Secretary of State uses that tracking for time-line purposes.
334	Rep. Monnes Anderson	Asks how many judges are retired under the PERS system and how many would want to be a part of the pool.
338	Schradle	Responds that Keith Garza will provide the information. States he believes the 22 or 23 judges under Plan B would be required to serve if the Supreme Court asks them to.
348	Rep. Barnhart	Asks what Schradle thinks the effect of the six-month judge panels would have on the consistency of decisions.
358	Schradle	Responds that he disagrees with the interpretation that either a case pending could continue on with the panel; he reads the amendment to say they serve for six months, which would lead to discontinuities. One is the pending cases, and the other is the loss of continuity in the sense of expertise.
384	Keith Garza	Lead Appellate Staff Attorney, Oregon Supreme Court. States the Oregon Judicial Department and the Supreme Court do not have a position on SB 102 A or the SB 102-A10 amendments, and he is here to answer questions.
400	Garza	Comments on the ballot title review in the SB 102-A10 amendments. States his best guess is there would be a slight increase in the over all number of ballot title review proceedings going to the judge panel as compared to the number that presently go to the Supreme Court. The proceedings would be more complicated for the panel to decide because there would be a potential for the court to review multiple ballot titles for each proceedings. States it is his reading of the SB 102-A10 amendments that the panel would be required to produce an opinion explaining the basis for its decision or why it was coming to the conclusion; that will cause more work for the panel.
451	Garza	States that the use of a rotating panel will raise administrative challenges to the Chief Justice. Comments on the number of judges that fit the criteria and other duties they are required to perform,
TAPE 130, B		
010	Garza	Continues commenting on the challenges to set up the judge panels, and states that oral arguments would complicate things more.
030	Garza	Comments on the pool of "senior judges" that do not have a requirement for providing additional service, and states those judges may create a larger pool which would make the administrative task of putting the panel together easier. Some accommodation on the non-consecutive, twice in five years, six month terms might make it easier to provide a schedule that the

panel could get together, perhaps telephonically, or by email.
The more flexibility, the easier it will be for the Judicial Department to properly staff and operate the panel.

074 Garza Comments on costs to the Marion County Circuit Court caused by challenges. Believes this will have a demonstrable effect on the court's ability to do its other work along its current timelines.

090 Garza States that on page 3 of the SB 102-A10 amendments on what a ballot title looks like Section 2(8) would add requirements of ballot titles. Comments on the requirements.

110 Garza Questions what is meant by "articulate the intent" on page 3 in line 11 of the SB 102-A10 amendments.

120 Garza Comments on statement by Day that there might be some reprocessing of the ballot titles submitted to the panel anonymously. States he does not see that in the language in the SB 102-A10 amendments.

131 Garza Comments he does not know if the selection of the Plan B judges for the panels could be done by lottery. States he does not think that is in the SB 102-A10 amendments and believes it would be pretty near impossible to have judges working on a 35-day schedule with no planning.

142 Chair Doyle Asks if these are Garza's opinions or those of the Chief Justice.

146 Garza Responds that he discussed the matter with the Chief Justice and the Chief Justice saw the talking points he had prepared.

159 Rep. Barnhart Asks how they can get access to the Plan B judges, how much it would cost for the senior judges, and the amount of time.

170 Garza Explains the retired judges receive an enhanced retirement benefit for working. Senior judges are paid the equivalent to one-day of the judges salaries for the court on which they are sitting, between \$300 and \$400 per day.

187 Rep. Barnhart Asks if the Plan B judges' time is well used doing court business in the circuit courts now, and whether it would cause a hardship on other courts.

194 Garza Explains how the system of using retired judges works.

Rep. Barnhart Comments that the judges would not be free because they are doing work that someone else will have to do.

207 Chair Doyle Asks if the Plan B judges travel around the state to fulfill their duties.

Garza Responds he believes that is correct but is not sure of the extent of traveling.

215 Chair Doyle Comments that Plan B judges come into Marion County from all over the state.

223 Pat Egan Legislative Director for Governor Kulongoski. Testifies that the Governor believes it should be difficult to insert a constitutional provision. States that the Governor would oppose a statutory construct that precludes a challenge post-enactment. If we are to say to citizens that the only way they can take out a constitutional change is through pre-enactment challenge, he believes the governor would probably oppose it..

274 Egan Believes the Governor, as a former Supreme Court Justice, appreciates the attempts and the overall intent dealing with thresholds and volume of work of the Supreme Court, but does not know if he has a philosophical or a policy objection to the Plan B judge proposal.

290 Chair Doyle Asks if Egan has a suggestion on how to fix the pre-enactment

		challenge issue.
	Egan	States he does not but will try to talk to the Governor in the morning.
305	Day	Comments that the Department of Justice's assumptions on the fiscal impact statement are generous at best. States he believes there is no way under the Armatta decision to amend the Constitution, especially in light of Measure 3 decision by the Court of Appeals. Because of the 2,500 signature threshold that is in the SB 102-A10 amendments the incentive to file multiple amendments is removed. The reasons are the cost and the inability to ballot title shop.
344	Day	States he disagrees with Manuel on the pre-enactment challenge. The challenges should be upfront for constitutional amendments so the state does not incur the cost of running an election and the proponents and opponents of the measure do not waste money and time.
370	Day	States he thinks there is a solution. Thinks we can say a pre-enactment challenge must be filed 210 or 240 days before the date of the election. The review could go directly to the Supreme Court. The only measure that would get challenged are those "serious" measures and it would protect the process up front and not put the court in the position of invalidating the vote of millions of Oregonians. States he cannot remember what the correct terms is, whether it is "verified" or "validated" signatures. States that when he takes signatures into a county, it is to have them "verified." That is the process they are talking about with the 2,500 signatures. States that the amendments proposed at the committee's June meeting said the signatures would be "validated." The Secretary of State's office said there would be a huge fiscal impact because they would have to have a separate statistical sampling formula. They have made them "verified" signatures in the SB 102-A10 amendments. They are included in the final pool of signature at the end and the Secretary of State's office does not have to adopt an entirely new statistical sampling formula.
438	Rep. Barnhart	Asks if the 2,500 signatures would be found to be okay based on a statistical sampling, or based on looking at each signature.
441	Day	Responds it would be based on looking at each signature. Explains the process they use currently and states he does not know that they are increasing the burden on the county election offices.
474	Chair Doyle	Comments he is concerned about the governor's concern on pre-enactment challenge and hopes it can be addressed. States he does see with the lateness of the session that the committee must have decisions made quickly, and his interest is to allow the SB 102-A10 amendments to come in and if it can be resolved, it will be pulled out in conference committee. Adds that the other concerns are with getting the Legislative Counsel version of the ballot title approved or being certified that it meets the requirements of ORS 150.035 versus having all ballot title proposals considered at the same time, and the comment that there is no time for Legislative Counsel to respond to other comments, or for others to comment on each other ballot titles.

018	Chair Doyle	States it seems the primary cost that was addressed by the Department of Justice was relating to the pre-enactment challenges. Believes the committee will see a thorough analysis from Legislative Fiscal Office of the numbers and assumptions before the vote on the House floor. States the comments the committee heard on the Plan B judges was different than what he heard from the Chief Justice and that he will discuss it with the Chief Justice in the morning.
046	Chair Doyle	Closes the public hearing and opens a work session on SB 102 A.
<u>SB 102 A – WORK SESSION</u>		
048	Rep. Flores	MOTION: Moves to ADOPT SB 102-A10 amendments dated 8/19/03.
050	Rep. Barnhart	Comments he is very concerned about passing out a bill when it has so many significant issues. Thinks there is a cost to the state because the Plan B judges have their time fully utilized in other work. In order to fully account for the costs, we would have to figure out how to pay for the work they will not do. Asks how the SB 102-A10 amendments are similar to the Minority Report in the Senate.
072	Chair Doyle	Advises that the Senate Minority Report was entirely different.
076	Rep. Monnes Anderson	Comments she would rather see SB 102 A pass. States there are problems with the lack of judges, the costs, limits on the procedural challenges, and the need for the Secretary of State to change their Oracle system to track the different titles and comments on them.
092		VOTE: 4-2-1 AYE: 4 - Backlund, Close, Flores, Doyle NAY: 2 - Barnhart, Monnes Anderson EXCUSED: 1 - Verger The motion CARRIES.
095	Chair Doyle Rep. Flores	MOTION: Moves SB 102 A to the floor with a DO PASS AS AMENDED recommendation.
101	Rep. Barnhart	States he has the same comments as on the amendments.
103	Chair Doyle	Comments this is an attempt to try to strike a balance between those who look at the use of the initiative process as one to voice an opinion and to enact changes in law in Oregon that really is a unique situation for the State of Oregon and is something we need to preserve, ad balance with those who recognize that there can be and probably have been abuses of the initiative process. Comments that the 10,000 signatures required for a constitutional amendment is outrageous and is something that would truly thwart the public process. The primary concern on having changes made so Legislative Counsel can be involved as opposed to the attorney general’s office is that Legislative Counsel is the only office that drafts legislation, which is what an initiative is. Moving the function to Legislative Counsel makes sense. Having the three-judge panel addresses specific concerns by the Supreme Court about how they were being bogged down. The pre-enactment challenge provision is in response to the voter reaction to the Supreme Court decisions on striking an initiative that has been voted in by the people. States that he has confidence that Legislative Fiscal Office will be able to provide a strong analysis of the fiscal impact on the Department of Justice,

170	Rep. Backlund	Secretary of State's office, and Legislative Counsel. Comments that it seems to him that initiative reform is a laudable goal and thinks the Chair has stated the frustrations of many Oregonians. States he hopes the flaws can be fixed by a conference committee.
186	Chair Doyle	VOTE: 4-2-1 AYE: 4 - Backlund, Close, Flores, Doyle NAY: 2 - Barnhart, Monnes Anderson EXCUSED: 1 - Verger The motion CARRIES. REP. DOYLE will lead discussion on the floor.
191	Rep. Barnhart	Serves notice of a possible Minority Report on SB 102 A.
195	Chair Doyle	Closes the work session on SB 102 A and adjourns meeting at 10:15 p.m..

EXHIBIT SUMMARY

A – HB 3669, prepared statement, John Shilts, 2 pp
B – HB 3668, HB 3668-1 amendments, Rep. T. Smith, 1 p
C – HB 3668, prepared statement, Shawn Baird, 1 p
D – HB 3668, graph, John Powell, 1 p
E – SB 910, SB 910-7 amendments, Rep. Merkley & Julie Brandis, 2 pp
F – SB 910, prepared statement, Steve Dixon, 1 p
G – SB 145, SB 145-A4 amendments, Ed Patterson, 3 pp
H – SB 145, letter, Jason Heuser, 2 pp
I – B 145, prepared statement, Rosie Pryor, 1 p
J – SB 145, letter from Roy J. Orr, Rosie Pryor, 5 pp
K – SB 145, Department of Justice media release, Rep. Barnhart, 4 pp
L – SB 102, SB 102-A10 amendments, Ross Day, 22 pp
M – SB 102, prepared statement, Dan Meek, 10 pp
N – SB 102, prepared statement, Evan Manvel, 1 p
O – SB 102, fiscal impact statement, Phil Schradle, 2 pp