

## SENATE COMMITTEE ON RULES

August 21, 2003  
1:30 PM

Hearing Room B  
Tapes 124 - 127

**MEMBERS PRESENT:**     **Sen. Kate Brown, Co-chair, Presiding**  
                                  **Sen. Roger Beyer, Co-chair**  
                                  **Sen. Jason Atkinson, Vice-chair**  
                                  **Sen. Tony Corcoran**  
                                  **Sen. Bill Fisher**

**MEMBER EXCUSED:**     **Sen. Ginny Burdick, Vice-chair**

**STAFF PRESENT:**       **Jim Stembridge, Committee Administrator**  
                                  **Romy Dye, Committee Assistant**

**MEASURES HEARD:**         **SJM 7 – Public Hearing**  
                                  **SB 941 – Public Hearing**  
                                  **HB 3666 – Public Hearing and Work Session**  
                                  **HB 2899B – Public Hearing and Work Session**

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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.

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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>TAPE 124, A</b>		
005	Co-chair Brown	Calls meeting to order at 1:30 p.m. Opens public hearing on SJM 7.
<b><u>SJM 7 – PUBLIC HEARING</u></b>		
010	Jim Stembridge	Committee Administrator. Presents overview of SJM 7, which urges United States Congress to pass Senate Bill 1552 to correct provisions of USA Patriot Act.
015	Sen. Vicki Walker	District 7. Testifies in support of SJM 7. Discusses concerns of Oregonians over impact on civil liberties by the Patriot Act.
040	Rep. Floyd Prozanski	District 8. Testifies in support of SJM 7. Discusses constitutional rights both at the federal level and under the Oregon constitution.
070	Co-chair Brown	Closes public hearing on SJM 7. Opens public hearing on SB 941.
<b><u>SB 941 – PUBLIC HEARING</u></b>		
073	Jim Stembridge	Committee Administrator. Presents overview of SB 941, which requires state government to consider using open source software when acquiring new software.
075	Rep. Phil Barnhart	District 11. Testifies in support of SB 941. Describes policy intent of measure, to require state agencies to consider open-source software. Discusses proposed amendments. Explains advantages, including security and availability.
150	Sen. Corcoran	Asks about use of the Unix computer system.
152	Rep. Barnhart	Explains use of Linux computer system.
155	Sen. Corcoran	Asks about communication between different systems.
179	Rep. Barnhart	Discusses interaction of word processing systems and formatting features.

220 Ken Barber Eugene, Oregon. Testifies in support of SB 941. Refutes statements by opponents. Explains that Department of Administrative Services (DAS) drafted the measure. Submits written testimony **(EXHIBIT A)**.

260 David Pool Multnomah County. Discusses positive aspects of open source software:

- Savings to state
- Security
- Economic development opportunities

Submits written report “The Inevitability of Failure,” regarding security from National Security Agency **(EXHIBIT B)**. Reads from report. Submits report to the President regarding Developing Open Source Software **(EXHIBIT C)**. Submits report on Use of Open Source Software in Department of Defense **(EXHIBIT D)**.

**\*\*Note: Tape 124, A faulty. Continue with tape 125, A.**

**TAPE 125, A**

005 Pool Continues. Suggests it is a common-sense solution that the state would consider software which costs nothing.

015 Michael Corvallis. Testifies in support of SB 941. Submits written Papadopoulos testimony **(EXHIBIT E)**.

045 Ben Barrett Eugene. Testifies in support of SB 941. Offers to answer questions.

065 Cooper Stevenson Benton County, business owner. Testifies in support of SB 941. Discusses history of SB 941. Describes his experience with open source software. Submits CD-ROM demonstration **(EXHIBIT F)**.

150 Stevenson Continues. Discusses opposition to the measure, and provides rebuttal.

245 Cindy Becker Assistant Director, DAS. Testifies as neutral and clarifies DAS’s role in investigating and using open source software.

270 Jim Craven American Electronics Association (AEA). Testifies in opposition to SB 941. Explains AEA has no position on open source software. Discusses development of open source software market in Oregon. Suggests SB 941 is not necessary.

310 Sen. Corcoran Points out the problem to be addressed is the high cost of purchasing and maintaining computer software systems.

320 Craven Responds current statute allows agencies to use open source software, and there are differing opinions whether it is more cost-effective. Submits written testimony **(EXHIBIT G)**. Explains the term is not yet defined. Suggests the Joint Interim Legislative Committee on Information Technology (JLCI&T) consider the issue.

430 Sen. Corcoran Asks about programmers being disciplined or terminated for pursuing use of open source software.

440 Becker Offers to review agency policies and actions, and return information to the committee.

450 Sen. Fisher Inquires whether open source software use would allow constituents to have better access to state websites, and allow agencies better communication with each other.

475 Craven Defers to Legislative Administration staff.

**TAPE 126, A**

020 Becker Responds and discusses problems with interoperability between state agency computer systems. Describes open source software as one tool to be considered.

The following prepared testimony is submitted for the record without public testimony for SB 941:

Ed Black Submits written testimony (**EXHIBIT H**).  
040 Co-chair Brown Closes public hearing on SB 941. Opens public hearing on HB 3666.

**HB 3666 – PUBLIC HEARING**

045 Jim Stembridge Committee Administrator. Presents overview of HB 3666, which specifies that person who successfully solicits sale or purchase of security in violation of securities laws or by means of untrue statement or omission may be liable for damages in action brought under securities laws.

053 Scott Shorr Attorney. Testifies in support of HB 3666. Submits written testimony (**EXHIBIT I**). Explains changes needed to SB 609 (2003). Testifies in support of -4 amendments dated 8-21-03 (**EXHIBIT J**).

070 Sen. Atkinson Asks about the problem to be addressed.  
075 Joe Arellano Attorney. Testifies in support of HB 3666. Explains unintended consequences of SB 609 (2003), including changes to liability for participants in fraudulent securities transactions.

085 Andrew Morrow Attorney. Testifies in support of HB 3666. Offers to answer questions.

088 Sen. Corcoran Asks about opposition.  
090 Co-chair Brown Explains there is none.  
092 Sen. Fisher Asks for explanation of amendments.  
094 Co-chair Brown Clarifies only the -4 amendments are being considered.  
096 Morrow Affirms.  
105 Michael Esler Attorney. Testifies in support of HB 3666 with the -4 amendments.

110 Kate Richardson Oregon State Treasury. Testifies as neutral on HB 3666. Discusses -3 amendments dated 8-21-03 (**EXHIBIT K**). Submits written testimony of Treasurer Randall Edwards (**EXHIBIT L**). Discusses Treasurer's need for status as lead plaintiff in class action lawsuits. Advises there is no opposition to the amendment.

150 Jim Craven American Electronics Association (AEA). Testifies in support of HB 3666 with -4 amendments.  
175 Co-chair Brown Closes public hearing on HB 3666. Opens work session on HB 3666.

**HB 3666 – WORK SESSION**

180 Sen. Beyer **MOTION: Moves to ADOPT HB 3666-4 amendments dated 8/21/03.**  
**VOTE: 5-0**  
**EXCUSED: 1 – Burdick**  
Co-chair Brown **Hearing no objection, declares the motion CARRIED.**

185 Sen. Corcoran **MOTION: Moves HB 3666 to the floor with a DO PASS AS AMENDED recommendation.**  
**VOTE: 4-0**  
**EXCUSED: 2 - Beyer, Burdick**  
Co-chair Brown **Hearing no objection, declares the motion CARRIED.**  
**SEN. BROWN will lead discussion on the floor.**

190 Co-chair Brown Closes work session on HB 3666. Opens public hearing on HB

2899B.

**HB 2899B – PUBLIC HEARING**

195	Rob Douglas	Columbia River Steamship Operators Association; Maritime Fire and Safety Association. Testifies in support of HB 2899B, which relates to the environment. Submits written testimony <b>(EXHIBIT M)</b> . Provides background on spill response program. Requests change in the fee schedule for dredge vessels.
230	Sen. Atkinson	Clarifies the amendment number in question.
235	Douglas	Confirms he is advocating for the –B8 amendments dated 8-19-03 <b>(EXHIBIT N)</b> .
260	Nick Coffey	Wetland consultant. Testifies in support of HB 2899B. Discusses ways the Division of State Lands (DSL) handles wetlands. Describes wetland mitigation banking.
290	Dick Novitzki	Consultant, hydrologist, wetland scientist. Testifies in support of HB 2899B without amendments. Explains wetland mitigation for unavoidable wetland impacts, and mitigation banking. Explains private funding of the process. Suggests improvements to process.
395	Sen. Fisher	Expresses concerns over DSL actions. Discusses list of functional attributes of wetlands.
415	Novitzki	Responds the mitigation banking process has operated reasonably well, but there is room for improvement. Discusses functions of wetlands versus societal value.
450	Coffey	Provides background of DSL committee to quantify functional attributes of wetlands, and ways to mitigate.
480	Sen. Fisher	Asks about limiting the list of functional attributes.
<b>TAPE 125, B</b> 030	Phil Scoles	Terra Science, Inc. Discusses preference for dropping the definition of functional attributes from the bill due to ambiguity. Submits written testimony <b>(EXHIBIT O)</b> .
045	Sen. Fisher	Expresses concerns over DSL changing parameters of projects.
060	Scoles	Discusses defining terms in administrative rule rather than statute.
085	Scoles	Summarizes and reiterates advantages of mitigation banking.

095	Sen. Fisher	Asks about location of mitigation banks in Willamette Valley versus other areas.
105	Scoles	Discusses location and costs of mitigation banks in Oregon. Explains needs in areas other than the Willamette Valley.
140	Chris Bayham	Association of Oregon Counties (AOC); Oregon Association of County Engineers and Surveyors (OACES). Testifies in support HB 2899B without amendments. Expresses support for shortened timelines for permanent processing and for encouragement of development and implementation of mitigation banks.
155	Ross Day	Oregonians in Action (OIA). Testifies in support of HB 2899B only if amended. Suggests clarifying definition of functional values. Discusses agricultural exemption from removal-fill laws. Supports sections involving dredging.
195	Vice-chair Atkinson	Closes public hearing on HB 2899B. Reopens public hearing on

SJM 7.

**SJM 7 – PUBLIC HEARING**

205	Eddie Zawaski	Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT P</b> ). Discusses constitutionality of USA Patriot Act.
255	Hope Marston	Eugene. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT Q</b> ). Shows 950 pages of signatures gathered in support of the resolution. Discusses growing support of federal SB 1552, which amends the USA Patriot Act.
380	Brian Michaels	Attorney; Lane County Bill of Rights Defense Committee. Testifies in support of SJM 7. Discusses balance between civil rights and national security interests.

**TAPE 126, B**

025	Sen. Fisher	Comments on need to preserve personal freedoms and constitutional rights.
060	Kristen Magis	Silverton, Oregon. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT R</b> ).
110	Allyn Kaelin Bowers	Portland Bill of Rights Defense Committee. Testifies in support of SJM 7.
155	Jeanne Raymond	Benton County Bill of Rights Defense Committee. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT S</b> ). Discusses broad base of support for the resolution.
200	Michi Okuda	Eugene, Oregon. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT T</b> ). Explains measures to censor her own activities. Recalls treatment of Japanese Americans during WWII.
300	John Hock	Washington County Bill of Rights Defense Committee. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT U</b> ). Discusses broad support amount county residents.
360	Andrea Meyer	American Civil Liberties Union (ACLU). Testifies in support of SJM 7. Submits written materials ( <b>EXHIBITS V, W</b> ). Discusses support for federal SB 1552.

**TAPE 127, A**

030	Thomas Lifschutz	Portland, Oregon. Testifies in support of SJM 7. Submits written testimony ( <b>EXHIBIT X</b> ). Suggests Oregonians should be willing to take a risk to protect constitutional rights.
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050 Michael Papadopoulos Corvallis, Oregon. Testifies in support of SJM 7. Submits written materials (**EXHIBITS Y, Z**). Discusses issue of journalists and librarians persecuted under the Patriot Act.

085 Michael Slocum Gaston City Councilperson. Testifies in support of SJM 7. Submits written testimony (**EXHIBIT AA**). Discusses concerns of citizens in small towns over powers granted to the federal government by the Patriot Act.

105 Steve Esses Salem, Oregon. Testifies in support of SJM 7. Refers to writings of J. Edgar Hoover rejecting the idea of a national police force.

150 Lisa Melyan Washington County, Oregon; Tualatin Valley Water District Commissioner. Testifies in support of SJM 7. Submits written testimony (**EXHIBIT BB**). Explains concerns of utility sector and the increased costs of assessment and evaluation under the law.

The following prepared testimony is submitted for the record without public testimony for SJM 7:

Josanne Breeding Submits written testimony (**EXHIBIT CC**).  
 Alan DeWitt Submits written testimony (**EXHIBIT DD**).  
 Mark Hurwit Submits written testimony (**EXHIBIT EE**).  
 Colleen Llywelyn Submits written testimony (**EXHIBIT FF**).  
 Craig Manville Submits written testimony (**EXHIBIT GG**).  
 Amy Pincus Merwin Submits written testimony (**EXHIBIT HH**).  
 Gail M. Parker Submits written testimony (**EXHIBIT II**).  
 Bonnie Richman Submits written testimony (**EXHIBIT JJ**).  
 M. Brooke Submits written testimony (**EXHIBIT KK**).  
 Robertshaw  
 Melanie Zermer Submits written testimony (**EXHIBIT LL**).  
 Staff Submits written testimony emailed to the committee (**EXHIBIT MM**).

195 Co-chair Brown Closes public hearing on SJM 7. Opens work session on HB 3666.

**HB 3666 – WORK SESSION**

200 Co-chair Brown Closes work session on HB 3666. Recesses the committee at 4:15 p.m.

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 RECESS \*\*\*\*\*

210 Co-chair Beyer Reconvenes the committee at 4:30 p.m. Opens work session on HB 2899B.

**HB 2899B – WORK SESSION**

215 Judith Callens Committee Administrator. Clarifies the committee will consider HB 2899B with –B8 amendments dated 8-19-03 (**EXHIBIT N**).

220 Sen. Fisher **MOTION: Moves to ADOPT HB 2899B-8 amendments dated 8/19/03.**

**VOTE: 4-0**

**EXCUSED: 2 - Brown, Burdick  
 Hearing no objection, declares the motion CARRIED.**

230 Co-chair Beyer Sen. Fisher **MOTION: Moves HB 2899B to the floor with a DO PASS AS AMENDED recommendation.**

**VOTE: 4-0**

**EXCUSED: 2 - Brown, Burdick  
 Hearing no objection, declares the motion CARRIED.**

235 Co-chair Beyer **SEN. CORCORAN will lead discussion on the floor.**

Advises the bill will probably go to conference committee.

245

Co-chair Beyer

Closes work session on HB 2899B. Adjourns the committee at 4:35 p.m.

## **EXHIBIT SUMMARY**

**A – SB 941, written testimony, Ken Barber, 2 pp**  
**B – SB 941, report “The Inevitability of Failure,” David Pool, 12 pp**  
**C – SB 941, report “Developing Open Source Software,” David Pool, 28 pp**  
**D – SB 941, report “Use of Free and Open-Source Software,” David Pool, 168 pp**  
**E – SB 941, written testimony, Michael Papadopoulos, 1 p**  
**F – SB 941, CD-ROM “The Open Source Impact,” Cooper Stevenson, CD-ROM**  
**G – SB 941, written testimony, Jim Craven, 10 pp**  
**H – SB 941, written testimony, Ed Black, 2 pp**  
**I – HB 3666, written testimony, Scott Shorr, 2 pp**  
**J – HB 3666, -4 amendments (8-21-03), staff, 1 p**  
**K – HB 3666, -3 amendments (8-21-03), staff, 3 pp**  
**L – HB 3666, written testimony of Treasurer Randall Edwards, Kate Richardson, 2 pp**  
**M – HB 2899B, written testimony, Rob Douglas, 1 p**  
**N – HB 2899B, -B8 amendments (8-19-03), staff, 1 p**  
**O – HB 2899B, written testimony, Phil Scoles, 2 pp**  
**P – SJM 7, written testimony, Eddie Zawaski, 1 p**  
**Q – SJM 7, written testimony, Hope Marston, 4 pp**  
**R – SJM 7, written testimony, Kristen Magis, 2 pp**  
**S – SJM 7, written testimony, Jeanne Raymond, 2 pp**  
**T – SJM 7, written testimony, Michi Okuda, 2 pp**  
**U – SJM 7, written testimony, John Hock, 1 p**  
**V – SJM 7, news release, Andrea Meyer, 12 pp**  
**W – SJM 7, news release, Andrea Meyer, 4 pp**  
**X – SJM 7, written testimony, Thomas Lifschutz, 1 p**  
**Y – SJM 7, written testimony, Michael Papadopoulos, 1 p**  
**Z – SJM 7, comments of John Ashcroft, Michael Papadopoulos, 2 pp**  
**AA – SJM 7, written testimony, Michael Slocum, 4 pp**  
**BB – SJM 7, written testimony, Lisa Melyan, 1 p**  
**CC – SJM 7, written testimony, Josanne Breeding, 2 pp**  
**DD – SJM 7, written testimony, Alan DeWitt, 1 p**  
**EE – SJM 7, written testimony, Mark Hurwit, 1 p**  
**FF – SJM 7, written testimony, Colleen Llywelyn, 1 p**  
**GG – SJM 7, written testimony, Craig Manville, 1 p**  
**HH – SJM 7, written testimony, Amy Pincus Merwin, 1 p**  
**II – SJM 7, written testimony, Gail Parker, 1 p**  
**JJ – SJM 7, written testimony, Bonnie Richman, 1 p**  
**KK – SJM 7, written testimony, M. Brooke Robertshaw, 1 p**  
**LL – SJM 7, written testimony, Melanie Zermer, 1 p**  
**MM – SJM 7, written testimony emailed to committee, staff, 68 pp**