

SENATE COMMITTEE ON RULES AND REDISTRICTING

January 25, 2001 Hearing Room C
03:00 PM Tapes 8 - 10

MEMBERS PRESENT: Sen. Steve Harper, Chair
Sen. Peter Courtney, Vice-Chair
Sen. Jason Atkinson
Sen. Lee Beyer
Sen. Kate Brown
Sen. John Minnis

MEMBER EXCUSED: Sen. Randy Miller

STAFF PRESENT: Craig Allen, Committee Administrator
Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: Reconsideration and Work Session
SB 215
Informational Meeting
Initiative Reform Issues
Public Hearing
Initiative Reform Issues
Work Session
Introduction of Committee Measures

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 8, A		
003	Chair Harper	Calls meeting to order at 3:00 p.m.
003	Chair Harper	Opens a work session for the purpose of reconsidering the vote on SB 215.
<u>SB 215 - RECONSIDERATION AND WORK SESSION</u>		
009	Sen. Courtney	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 215.
012		VOTE: 5-0 EXCUSED: 2 - Miller, Minnis
	Chair Harper	Hearing no objection, declares the motion CARRIED.
016	Sen. Courtney	MOTION: Moves to RECONSIDER the vote by which SB 215 was sent to the floor with a DO PASS AS AMENDED recommendation.
019		VOTE: 5-0 EXCUSED: 2 - Sen. Miller, Minnis
	Chair Harper	Hearing no objection, declares the motion CARRIED.
022	Chair Harper	Asks Sen. Brown to explain the reason for reconsideration of and

021	Sen. Brown	<p>further amendments to SB 215.</p> <p>Explains that the bill as amended by the committee deleted the statute that prohibits fundraising during session. Many members expressed concern about deleting the current statute before it was actually found unconstitutional. Explains that the new amendments, SB 215-2 (EXHIBIT A), leave the statute in place.</p>
032	Ted Reutlinger	<p>Legislative Counsel. Explains that the SB 215-2 amendments take out any reference to ORS 260.174 and put in a new Section 2 in its place. Everything that was in bold print in 260.174 in the original bill is now the bold print in Section 2. ORS 260.174 is completely out of the bill. The SB 215-2 amendments adopt the SB 215-1 amendments previously adopted by the committee which took out several sections the Secretary of State's office did not want. (SEE COMMITTEE MINUTES DATED JANUARY 18, 2001.) The SB 215-2 amendments have an added Section 2 reference into Section 3 of the bill that will help clarify situations where people who are not members of the legislature are receiving money and have to report. Other than this explanation, the amendments are identical to the SB 215-1 version. The only change is that ORS 260.174 is gone.</p>
044	Sen. Brown	<p>Comments that when the committee voted to repeal the current statute there had not been a court case finding that the statute was unconstitutional. The committee had an Attorney General Opinion and a Legislative Counsel Opinion, but no court ruling. By repealing the statute, assuming it goes through the House, we prohibit someone from bringing the lawsuit to actually find the statute unconstitutional. The concern was raised that we were being very premature by deleting the prohibition on fundraising before a court has actually found it to be unconstitutional.</p>
060	Sen. Minnis	<p>Comments he would like more explanation why some suit or action will be brought that would cause the court to render the opinion.</p>
	Sen. Brown	<p>Explains the problem with the current statute is who has standing to bring a lawsuit to challenge the constitutionality, particularly when legislators are not raising money during the legislative session.</p>
070	Reutlinger	<p>Comments Sen. Minnis has a very good question and it is made more difficult by the fact that the Secretary of State's office is acting under the advice of the Attorney General not to enforce the statute. Therefore, it will be hard to find anybody who will be affected in any way by the statute because one cannot violate it any more. It is also made more difficult by finding somebody who would actually be injured by the operation of this statute. Advises that a statute in the election law says that anybody who is aggrieved by an action or inaction by the Secretary of State can go to circuit court but he is not sure anyone could get over the threshold to show that there has been any kind of injury except if one could argue there is some negative effect on the public interest generally by the inoperation of the statute.</p>
090	Sen. Courtney	<p>Comments it is a challenge. If the courts go along with it, a PAC could contribute to a member right now and the member could officially return it to the PAC on the basis of the law. It is conceivable that the PAC could then take it to the court.</p>
107	Sen. Minnis	<p>Asks if this legislation could grant original jurisdiction to the</p>

112	Reutlinger	Supreme Court to review this if there is a complaint. Responds that the legislature frequently directs cases directly to the Supreme Court bypassing all the lower court. In this case, the court might say the Secretary of State is not enforcing the statute and there is no harm, no foul and the court will not look at it.
120	Sen. Minnis	Asks if legislature can, by statute, determine who has standing with the court.
123	Reutlinger	Comments this is not his area of expertise, but the legislature could try that. Under the Constitution, the courts are supposed to look at cases and controversies that actually exist. There might be difficulty with that provision and if the committee is serious, he would want to go back and do research.
136	Sen. L. Beyer	Asks if the legislature could ask the court to issue a declaratory judgment.
136	Reutlinger	Responds affirmatively. Adds that the question would be whether the court would pay any attention to that--whether they would consider it a case they have the constitutional authority to look at. That is why in the past when the legislature has considered asking the court to render advisory opinions on the constitutionality of initiative measure, for example, those have not gone anywhere because the court has said they did not have the authority to do that.
150	Sen. L. Beyer	Comments he has been opposed to leaving things on the books that no one has any intention of enforcing. Clearly we need to fix part of it. Does not think there is anybody on this committee who doubts where the Supreme Court will be on this. They have been fairly consistent on a number of issues. They have absolutely said that the good law that we have on the books is not constitutional under either Oregon's Constitution under the Free Expression Clause or under the First Amendment of the U. S. Constitution. The suggestion for reporting is probably the best the committee can do and it should be moved forward quickly.
167	Sen. Brown	Comments that the House version of this bill does not delete the statute that prohibits fundraising during session. Adds that Rep. Williams drafted that bill and he left the statute in.
	Sen. Minnis	Comments he would move to add a conceptual amendment to SB 215 to grant original jurisdiction to the Oregon Supreme Court in any case that would give rise to the constitutionality of ORS 260.174.
200	Craig Allen	Advises members that a suspension of the rules is required because the rules say the committee must have an LC printed amendment.
202	Sen. Minnis	MOTION: Moves to SUSPEND the rules for the purpose of adding a conceptual amendment to SB 215. VOTE: 6-0 EXCUSED: 1 - Sen. Miller
	Chair Harper	Hearing no objection, declares the motion CARRIED.
206	Sen. Minnis	MOTION: Moves to conceptually AMEND SB 215 by adding an amendment granting original jurisdiction to the Oregon Supreme Court for

purposes of determining the constitutionality of ORS
260.174.

206 VOTE: 6-0
EXCUSED: 1 - Sen. Miller

Chair Harper Hearing no objection, declares the motion CARRIED.

216 Sen. Courtney MOTION: Moves to ADOPT SB 215-2 amendments dated
01/24/01.

217 VOTE: 6-0
EXCUSED: 1 - Sen. Miller

Chair Harper Hearing no objection, declares the motion CARRIED.

218 Sen. Courtney MOTION: Moves SB 215 to the floor with a DO PASS AS
AMENDED recommendation.

219 VOTE: 6-0
EXCUSED: 1 - Sen. Miller

Chair Harper Hearing no objection, declares the motion CARRIED.

SEN. BROWN will lead discussion on the floor.

222 Chair Harper Closes the work session on SB 215.

INTRODUCTION OF COMMITTEE MEASURES - WORK SESSION

224 Chair Harper Opens a work session for purposes of introduction of committee
measures.

226 Sen. Courtney MOTION: Moves LC 1567 BE INTRODUCED as a
committee bill.

227 VOTE: 6-0
EXCUSED: 1 - Miller

Chair Harper Hearing no objection, declares the motion CARRIED.

(LC 1567 INTRODUCED AS SB 481)

INITIATIVE REFORM ISSUES - INFORMATIONAL HEARING

233 Chair Harper Explains that this is an attempt to have a general informational
hearing on the initiative process. The committee would like to
get ideas and to try to fix any problems that exist in the process
with a committee bill.

245 Sen. Rick Metsger State Senator, District 14. Advises committee that he will be
introducing a couple of concepts that will be coming to the
committee for discussion.
The first concept is a constitutional referral to the people that will
validate the original intent of the fathers of the initiative system
that constitutional amendments should be limited to the form and
structure of government and the limitations of government
power. States that in recent years constitutional amendments
have been carried to the people with the effect of putting
constitutional limitation on private persons and property. The
measure will be identical to SJR 21 (1999).

281 The second proposal is being brought by a bi-partisan group of
the Senate and poses the fundamental question of respecting the
voice and the vote of the electorate. The proposed constitutional

referral would provide that measures rejected by the voters, either an initiative petition or legislative referral, cannot be forced upon the voters again until after one general election cycle has elapsed.

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Believes the proposals that will be suggested to this committee this afternoon can further streamline the process by reducing the burden on our courtrooms and provide more disclosure to voters on measure impacts and the proponents, and reduce the practice of ballot title shopping.

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Phil Schradle

Special Counsel to Attorney General (AG). Introduces Jas Adams, coordinator for the ballot title drafting process in the AG's office. Gives overview of ballot title process and reports on litigation pending in the Supreme Court:

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- AG's office is charged with drafting ballot titles in a compressed timeframe. The office has five days to draft the draft ballot title. It is then filed back with the Secretary of State.
- There is then a 10-business day opportunity for people to file comments with the Secretary of State's office.
- The AG's office is statutorily charged with considering comments made to the Secretary of State's office and issuing a certified ballot title within five business days of receiving the comments. Anybody who has submitted comments on the draft ballot title and has been a participant in the process can petition the Oregon Supreme Court, within the next 10 business days, for review of the ballot title.

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- Timeframes are all statutorily imposed and cannot be extended.

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- In 1999 the AG's office responded to 122 proposed measures, expended almost 1,400 hours drafting ballot titles, responding to comment letters, drafting certified ballot titles, and defending them in the Oregon Supreme Court. The AG's office incurred about \$120,000 of expenses that are unfunded.

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- The compressed timelines and volume presents real questions of time constraints and expenses for their office.
- The AG's office is currently involved in litigation in the Oregon Supreme Court in a case called Flannagan versus Meyers. Under the current historical practice, if a party has challenged the certified ballot title, and the Supreme Court has determined the ballot title did not substantially comply with the statutory requirements, the court itself has redrafted that ballot title. The court's ability to engage in that drafting process has been raised. The AG's office has responded in briefing to the court. The Court's view is that there may be a separation of powers question about whether they can engage in the redrafting themselves. They have asked for supplemental briefing on what would be the appropriate disposition if they make the determination on separation of powers. The AG's office has presented the Court with the best solution they think is consistent with the existing statutory scheme and workable. Consistent with the statutory scheme we think the Supreme Court could potentially

remand the case to the AG's office for redrafting of a ballot title. If they do that, one would hope they would give some guidance in how that drafting could go so that when the AG's office re-files it with the Court, it would meet the Court's determination of what was required to substantially comply with the statute.

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| 417 | Schradle | States that he presents the issue because some of the proposals that may be presented would deal with the timelines. One proposal they have had discussions about would be some kind of mechanism where petitioning to the Supreme Court would not occur until enough valid signatures were filed with the Secretary of State to place it on the ballot. That would mean the time period for the Supreme Court review might be moved to a later date in the process. If that were to occur, and if the Oregon Supreme Court determines it cannot redraft ballot titles, and agrees one mechanism might be to remand it to the AG's office for a redrafting of a ballot title, could lengthen the process between filing the certified ballot title with the Supreme Court and ultimately getting approval by the Supreme Court. |
| 417 | Jas Adams | Coordinator for the ballot title drafting process in the A G's office States that HB 2213 has been introduced at the request of the Attorney General and would double the business days allowed for drafting the certified title, from five to 10 days. Gives examples of lengthy measures that required considerable time for review. |
| 445 | Schradle | Explains that the effect would add five days for issuing a certified title. Comments on timing of proposals made to the Secretary of State's office resulting in shorter timeframe for drafting ballot titles. |
| TAPE 9, A | | |
| 024 | Chair Harper | Asks if there are suggestions for preserving the process and reducing the system workload and costs. |
| 031 | Schradle | Responds that there have been discussions on a couple of concepts. One is to have either a "measure summary" that is utilized during the period of time when the measure would be out for circulation for signatures. Then once enough valid signatures are filed with the Secretary of State to place it on the ballot, the ballot title drafting and review process could be used. About 4/5 of the measures do not get enough signatures to qualify for the ballot. Conceptually, the difficulty is if it gets moved too late into the election cycle there may not be enough time from the date for filing the verified signatures with the Secretary of State's office and the publication date for the Voter's Pamphlet to get litigation or processes to get the ballot title. |
| 049 | Sen. L. Beyer
Schradle | Asks if the state of Washington does it that way. Responds he does not know. Another suggestion might be for the AG's office to draft the ballot title and prevent the challenges until after enough verified signatures have been filed with the Secretary of State. It might help with the number of titles they would have to defend in the Supreme Court process. Suggests the committee will hear comments that people use the process to get a ballot title they like. If a measure summary were utilized, it would have no relationship to the ballot title and attempts to obtain different ballot titles would be forestalled. States there |

		would be some duplicity because there would have to be a measure summary and a ballot title drafted.
077	Chair Harper Schradle	Asks why the proponents do not write the titles. Responds it is because of the statutory language.
080	Sen. Minnis Schradle	Asks if ballot titles are required constitutionally. Responds that ballot titles are only statutorily required.
102	Paddy McGuire	Deputy Secretary of State. Comments on three issues related to the initiative process: <ul style="list-style-type: none"> • The ballot title process is not working well for the Attorney General or Secretary of State offices and does not think the chief petitioners are happy either. • Concerned about pushing back the writing of a ballot title while the signature gathering is going on or is completed because of production of the Voter's Pamphlet. The deadline for signature verification would be early July to early August and the deadline for the submission of the Voter's Pamphlet statements is late August.
121		<ul style="list-style-type: none"> • The concern about moving the verification period earlier impinges on certification of the primary election. Currently they can use the employees for the primary certification process and then use them for verification. If the processes are overlapping the Secretary of State's office will need more people.
128	Sen. L. Beyer	Asks if the problem is not getting the statements for the Voter's Pamphlet.
141	McGuire	Responds that there is also an issue for people who submit statements for the Voter's Pamphlet to be able to respond to the ballot title.
123	Sen. L. Beyer McGuire	Comments he would hope that people are writing statements on the measure, not what the ballot title says. Comments their office is concerned about the timeline but does not have the greatest interest in ensuring that people are able to say what they need to say or want to say in the Voter's Pamphlet, except to raise the concern. It is a concern that has been raised to their office. It is not particularly a concern in production of the Voter's Pamphlet, which is the primary concern of their office.
149	Sen. L. Beyer McGuire	States he is curious about the statement that there is no constitutional requirement to have a ballot title. Believes people rely on the ballot title and the pamphlet for their major source of information.
160	McGuire	Comments on statutory language relating to the preparation of the financial impact statement process. The language is fairly limiting. Gives example of Measure 90 on the 2000 General Election ballot; the measure itself had no fiscal impact, but Columbia County taxes would have been reduced by the measure.
209	McGuire	The third issue is campaign finance reporting during signature gathering. The Secretary of State has introduced a bill in the House to require reporting by petitioners where their funding is coming from earlier in the process. Currently it is not required until the measure qualifies.
238	Bill Sizemore	Executive Director, Taxpayers United. Comments on the initiative process:

- Yes/No vote ballot title
 - The idea of not being able to amend the Constitution on anything but a limited number of ideas would mean that the areas of the Constitution that are currently there would be locked in and could not be changed.
 - On the idea of not reintroducing a measure just rejected by voters, questions whether that could be extended to tax measure, bond measures, and serial levies.
 - On ballot title shopping, states that if the measure says substantially the same thing, the ballot title will be substantially the same. Voters vote on the AG's description of the measure.
 - The idea of not having ballot titles until after signatures are collected would mean that the ballot title would not have much use. Gives example of Measure 46 in 1996.
- 310
- 374 Sen. L. Beyer
Sizemore
Comments that perhaps the 35 words are too few to allow a full description of the measure.
Responds that the law was expanded from 15 words last session and it is probably sufficient.
- TAPE 8, B**
- 004 Sen. Minnis
Sizemore
Asks if ballot titles should be retained.
Responds he believes the current process serves the public better than just putting the measure on the ballot.
- 025 Sen. Minnis
Sizemore
Comments on time and expenses to the AG's office.
States that the costs are their own doing. Explains process used in the state of Washington.
- 080 Sen. Minnis
States Sizemore is making a very logical and rational argument for no ballot titles.
- 082 Sizemore
Sizemore
Continues presentation:
- States he thinks there are alternatives. If there are objections to the certified ballot title, the supporters could write their own and the opponents could write their own. The ballot titles could then be sent to an independent body and that body would pick the best one. It would also remove the question of separation of powers that the Supreme Court is struggling with about them changing ballot titles after the AG has certified them. Suggests a system similar to the way explanatory statements are prepared: two ayes, two nays, and a fifth neutral party that the four pick. If the ballot title should not get the majority support, the solution is that the supporters and opponents write their own. They also include a provision in their proposal that Legislative Counsel draft a third ballot title. The independent body would then pick one of the three.
- 128
- States he would like this body to appoint a task force or committee to remove some of the obstacles in the initiative process. Gives example of the color of paper used in Sen. Burdick's initiative on gun control. Also gives example of all signatures not being counted because a circulator signed his initials instead of his name.
- 185
- Comments on crowded ballots. The Constitution says initiatives will be placed on the ballot in general elections or another date appointed by the legislature.

207		<ul style="list-style-type: none"> • Supports HB 2213.
236		<ul style="list-style-type: none"> • Believes ballot titles would sound better if the petitioners were to write their own.
257	Greg Wasson	<p>Founder and Executive Director, Committee for Petition Rights. Comments on the initiative process.</p> <ul style="list-style-type: none"> • Comments on establishment of the initiative process. In 1910 the people removed the power of the legislature to levy a tax without a vote of the people. Paid petitioners remained from 1902 to 1932 and did write their own ballot titles.
303		<ul style="list-style-type: none"> • Disagrees with idea of expenses of Attorney General being unnecessary. States he intervened in the <u>Flannagan</u> case. • There is nothing in the Constitution or statutes that limits initiative to every other November. • There needs to be something set up to revamp the initiative process because representative government has been attacking the process since before it was established.
367		<ul style="list-style-type: none"> • If this legislature does anything, it should refer back to the voters the constitutional amendment that said changes in the initiative process were exempt from the single subject rule, and establish a congress to combine the many, many sections of the Constitution that conflict with each other, and redesign the system.
394	Don McIntyre	<p>Comments on ballot title shopping. States that if you don't get the right ballot title, you have to shop it. Asks that, since the Constitution does not require a ballot title, why not allow the chief petitioner, by statute, to write the ballot title as long as the rules are followed. Adds that he likes the idea there could be ballot titles from a couple other sources. It could be adjudicated quickly by a local circuit court with a timeline and the chief petitioner could have a choice of whether to have a judge or jury decide within five days.</p> <p>It would cut down on the number of measures filed and the Attorney General and Supreme Court would not have to waste their time.</p>
475		<p>Article 1, Section 1 is powerful language saying all power is inherent in the people. It says the people have the right to alter, reform, or abolish the government in any manner they think proper. The initiative process is recourse for the people to alter, change, or abolish their government.</p> <p>Comments on when general elections are set. Constitution does not say that general elections are every second November. It is a convenient interpretation by the AG's office. The Constitution also does not say if you miss the deadline the signatures are dead, but the Attorney General has decided they are dead.</p>
TAPE 9, B		
037	McIntyre	<p>Suggests that perhaps the signature requirement is not tough enough.</p>
048		<p>States he will submit written recommendations if the committee will take them under advisement.</p>
	Chair Harper	<p>Comments the committee would appreciate written testimony. Explains that the attempt is to make the process simpler and cleaner.</p>
	McIntyre	<p>Comments that Sen. Courtney's bill with a \$100,000 fine would</p>

075	Tim Nesbitt	have a chilling effect on the process. President AFL-CIO. Submits outline of testimony (EXHIBIT B).
091		<ul style="list-style-type: none"> • Comments that it only takes 25 signatures to set the process in motion. • The process was initiated for over 160 measures in the last election cycle. Over 90 of the measures went all the way to the Supreme Court. Fewer than 20 of those eventually made it to the ballot. Believes there should be more interest shown by the voters before the process is started.
178	Nesbitt	<ul style="list-style-type: none"> • More consideration should be given when voting on constitutional amendments. Believes the voters will be better informed by presenting constitutional amendments separately.
212		<ul style="list-style-type: none"> • Supports disclosing the funding source while the campaign is going on.
220		<ul style="list-style-type: none"> • Comments on Measure 62 in 1998 regarding funding of initiative campaigns. States the provision could be adopted statutorily.
240		<ul style="list-style-type: none"> • All suggestions can be made statutorily.
214	Richard Burke	Legislative Assistant for Sen. Gary George. Comments he has not received any phone calls from constituents saying they are unhappy with the initiative process. Does hear complaints about the length of the voter's pamphlet. Thinks any changes to the process would have to come from the citizens, not the legislature. If the legislature can find a way to help things go more quickly, it would be good. Anything to take power away from citizens will be knocked down.
290	Kappy Eaton	League of Women Voters of Oregon. Presents written testimony (EXHIBIT C).
330	Eaton	Continues presentation.
380	Eaton	Continues presentation.
401	Steve Novick	Center for Constructive Action. Presents prepared statement (EXHIBIT D).
TAPE 10, A		
035	Novick	Continues presentation (EXHIBIT D, page 2).
058	Sen. L. Beyer	Asks if the requirement for 25 signatures to qualify to circulate an initiative for the ballot were raised, whether the increased number, 500 or 1000, would count in the total signatures required to place the measure on the ballot.
060	Novick	Responds affirmatively.
062	Novick	Suggest a measure summary rather than a ballot title be written for purposes of circulating the petition. States that the ballot title does matter; it should be written by an objective party.
089	Novick	Comments on ballot titles (EXHIBIT D, pages 2 and 3).
128	Bill Perry	Oregon Restaurant Association. Believes one word in a ballot title can swing the vote by 20 percent. Comments that in his view ballot measures are put on because either people are unwilling to compromise at the legislative level and think they have a better chance with the public, or they are punitive in nature. Thinks two things have to be done. Ballot title issues are being dealt with. Believes the ballot titles must be longer and more descriptive. States that a system in another state does not

181	Sen. L. Beyer	include the language in the initiative, but allows the legislature to deal with the issue.
184	Perry	Asks if Perry's suggestion is that the initiative is only a directive to the legislature to deal with the issue.
204	Chair Harper	Responds affirmatively. Gives example of a directive saying 'I want tax cuts' or '...personal income tax cuts'. It would not set the rate.
		Adjourns meeting at 5:05 p.m.

Submitted By,

Reviewed By,

Annetta Mullins,
Committee Assistant

Craig Allen,
Committee Administrator

EXHIBIT SUMMARY

A - SB 215, SB 215-2 amendments, staff, 17 pp

B - Initiative Reform Issues, prepared statement, Tim Nesbitt, 1 p

C - Initiative Reform Issues, prepared statement, Kappy Eaton, 2 pp

D - Initiative Reform Issues, prepared statement, Steve Novick, 3 pp