

# SENATE COMMITTEE ON RULES AND REDISTRICTING

March 13, 2001 Hearing Room H 174  
3:00 PM Tapes 30 - 31

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

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

**MEASURE/ISSUES HEARD:** Government Standards and Practices  
Overview by Oregon Government Standards and Practices Commission  
Staff  
Presentation by Capitol Club of Draft Proposal  
LC 542  
LC 543  
LC 544  
Introduction of Committee Legislative Counsel Draft Request  
Public Hearing  
SB 361

---

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.

---

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 30, A</b>		
004	Chair Harper	Calls meeting to order at 3:05 p.m. and opens an informational meeting on government standards and practices. Explains this is an informational hearing to find out if the committee needs to consider changes.
<b><u>GOVERNMENT STANDARDS AND PRACTICES - INFORMATIONAL MEETING</u></b>		
017	Kathryn Tennyson	Chair, Government Standards and Practices Commission. Introduces commissioners Dave Moss, Dilyn Larsen-Hill, Alice Schlenker, Vice Chair, and Tom Higashi, and Executive Director Patrick Hearn. Presents prepared statement ( <b>EXHIBIT A</b> ).
062	Chair Harper Tennyson	Asks if the system is working. Responds she believes it is to a large extent. Adds that there are always areas that need revision or improvements and the commission has some suggestions in SB 361.
069	Chair Harper	Comments that SB 361 seems to suggest small changes.
069	Chair Harper	Asks what is needed to make the process work better.
070	Tennyson	Asks that other commissioners address the question.
073	Alice Schlenker	Commissioner. Responds that the commission has some pretty strict statutes to go by. Each case is very unique. Explains that

		the commission sees a lot of people from small cities and towns. States she thinks the commission needs to be reaching out to the local communities to preempt some of the problems through better information and education.
	Schlenker	Adds that there seems to be a lot of misunderstanding about the role of the commission and the authority the commission has. There is also some concern that when the people come before the commission they feel they have been caught off guard. It upsets those people who feel they are doing a good job and "get caught" because they did not know something and perhaps did not get good advice from their attorney.
104	Schlenker	States the commission agrees they need to spend more time trying to help people before they get to the commission. Commissioner Larsen-Hill will be creating a video for the communities so they can see the right and wrong ways of abiding by the state statutes and keeping themselves out of trouble. That video and a video by Pat Hearn will be presented in those areas Hearn cannot get to. Adds that the commission has information about the state statutes that goes out to the towns and jurisdictions. Issues discussed:
140		<ul style="list-style-type: none"> <li>• Enforcement actions of Bureau of Labor and Industries and DEQ 10 years ago</li> </ul>
146		<ul style="list-style-type: none"> <li>• Level of intent or level of knowledge required by statute to prove guilt or establish a violation of ethics law</li> </ul>
164		<ul style="list-style-type: none"> <li>• Whether the commission asks itself if the person knew they were violating the law</li> </ul>
199		<ul style="list-style-type: none"> <li>• Different laws have different standards of proof</li> </ul>
225		<ul style="list-style-type: none"> <li>• Whether the commission has a list of laws and the burdens of proof</li> </ul>
237	Sen. Minnis	Advises that the legislature required that BOLI and DEQ separate education from enforcement and provide information to the violator when there was a violation.
	Tennyson	States they cannot find the violation without going through their process, but they can decline to investigate a complaint if it does not rise to the level the commission wants to get involved in. Gives example of a volunteer serving on a water district that very innocently committed a violation. States that it did not make sense to put the person through what he was being put through based on the fact that the commission had to follow rules. Community volunteers should not be discouraged from participating in their community, but the commission also cannot let them do things that might cause harm to the community by violation of certain rules.
253	Schlenker	States that sometimes they know full well they are violating the rules and those are the times they come before the commission.
262	Sen. Miller	Suggests if the commission were to advertise it will be providing a crash course, it would reduce the number of violations.
279	Hearn	Responds that for those presentations that might require overnight stay or significant travel reimbursement, he asks the inviting agencies to reimburse the Government Standards and Practices Commission the costs; most of the time they are willing to do that. States that periodic, regional presentations publicized

323	Sen. Miller	in advance would be an idea worth trying to implement. Asks if the commission can cite any cases in recent times where the commission has ignored advice from the Attorney General.
330	Tennyson	(Response is inaudible.)
331	Sen. Miller	Advises members that in the budget hearings on the Government Standards and Practices Commission budget they have tried to cut down on the time and expense of consulting the Attorney General. Adds that it was strongly suggested to the Ways and Means Committee that some agencies, including the Government Standards and Practices Commission, may have ignored some advice whether to pursue some cases and if that is not true, it is of interest to him.
349	Sen. Harper Hearn	Asks if they are familiar with the grand jury system in California. Explains grand jury jurisdiction of public entities and procedures in California when he was in law enforcement there.
407	Sen. Minnis Hearn	Asks if a grand jury in Oregon would hear criminal charges against public officials. Responds no because violations of the ethics law, as they exist now, Chapter 244, are not criminal.
416	Sen. Minnis	States if there were criminal charges against a public official, those would be an investigated by law enforcement or someone associated with the District Attorney's office and the case would be submitted to a grand jury.
420	Hearn	States that the case could go both ways. It could go before the Government Standards and Practices Commission and the criminal process. The court would be enforcing criminal laws, ORS 162.045 for official misconduct. The commission would review the matter in the context of ORS Chapter 244.
441	Dilyn Larsen-Hill	Comments that she has a concern that the commission does not have jurisdiction over the open meeting laws.
<b>Tape 31, A</b> 028	Hearn	Comments the commission gets a lot of inquiries that school boards, special district governing boards, city councils, etc. hold illegal meetings by meeting in someone's living room. It is apparent they make a decision because when they come back to the next public meeting, the first thing they do is vote to do something and there has been no public hearing on the issue. States that people are incredulous when they are told that the only remedy provided by statutes is for them to sue the body in circuit court.
047	Hearn	Comments that the commission often gets questions from other states or students doing graduate studies asking how many cases or how many matters the commission deals with relating to legislators. There are approximately 150,000 and maybe 200,000 Oregonians who serve as a public official in one or more capacities. The concerns are at the smaller government levels. Adds that there are people looking for the state to somehow bolster their confidence in the integrity of their local officials.
063	Dave Moss	Commissioner, Government Standards and Practices Commission. Comments he has been on the commission since September and believed when he went in that the concerns were with legislators. However, the bulk of the workload comes out of local government. Thinks a lot of what the commission needs to do is to reach out to the local officials. Comments that when he

		was appointed to Salem City Council he was never told what the law was on public meetings. Thinks local governments can do a lot of work in outreach, too. States that school boards are approving large contracts and large land dealings, but are not subject to the jurisdiction of the Government Standards and Practices Commission. Adds he is not advocating that they be drawn under the jurisdiction of the commission. They do not file a statement of economic interest and yet the reason a planning commission member may be investigated is to determine their economic interests if they are dealing with land use decisions.
098	Moss	Comments he can think of a couple of times when the commission did ignore legal advice and did not pursue a case because the commission felt it did not merit pursuit, when the Attorney General was saying there may have been a violation. Suggests if the commission is erring at all, it is on the side of caution.
106	Moss	Comments in response to Sen. Minnis' comments on what the commission has to look at for intent, it is a little bit like running a red light. Whether you intend to run the red light or not, if you run a red light, you run the red light.
116	Sen. Minnis	Comments there is not always a clear difference.
119	Moss	Responds that some things that the commission deals with are black and white. Those may include whether a person has reported lobbying interests.
133	Sen. Minnis	States that there are local officials who have had no training and were never given the opportunity to look at the laws or sign anything saying they have read the laws and will comply with them.
140	Moss	States that some things the commission deals with are black and white and others are gray.

**Capitol Club Draft Proposal - Informational Meeting**

144	Chair Harper	Advises members they have received a copy of the proposed Capitol Club draft suggesting changes to the statutes administered by the Government Standards and Practices Commission ( <b>EXHIBIT B</b> ).
135	Bruce Bishop	Board member, Capitol Club. Explains that the Capitol Club draft proposal ( <b>EXHIBIT B</b> ) has been proposed by their legislative committee and adopted by their board of directors. Asks that the committee request the proposal be drafted and introduced as a committee bill. States they believe there are a number of ambiguities in the current law regarding lobbyist registration and reporting requirements. Their goal is to clear up those provisions and make it more clear for lobbyists and entities that employ lobbyists about what their responsibilities are. Presents prepared statement explaining proposed changes ( <b>EXHIBIT C</b> ).
200	Bishop	Continues presentation of prepared statement ( <b>EXHIBIT C</b> ).
250	Bishop	Continues presentation of prepared statement ( <b>EXHIBIT C</b> ).
286	Chair Harper	Asks if the Government Standards and Practices Commission has seen the Capitol Club proposal.
	Bishop	Responds that he has provided the draft to the commission staff but does not know if the commission members have seen it.
294	Chair Harper	Questions whether the proposal could be included in SB 361.
303	Sen. Minnis	Asks if the Capitol Club considered the \$25 and \$100 figures.

308 Bishop Responds it was a controversial issue within the Capitol Club. The legislative committee did consider adjusting those thresholds because currently there is a \$25 expenditure threshold that is adjusted annually based on changes in the cost of living. The law has been on the books since 1979 and is adjusted annually by the commission. The cost is up to about \$64 now. Adds that their legislative committee talked about coming up with a new standard. Ultimately the committee and board decided not to forward that to this committee. They considered whether the \$25 should be higher or lower and how it should be adjusted.

327 Sen. Minnis Ask what the authority is to adjust the rate.

328 Bishop States the authority is in the commission but he does not believe it is by rule. In the expenditure reports filed for the previous year or semi-year or quarter, the amount is specified in the report but if one wants to know in advance what the standard is, one must call the commission and ask.

340 Char Harper Asks if the Capitol Club is requesting that this committee have the proposal drafted as a bill.

Bishop Responds affirmatively.

344 Sen. Brown Asks Bishop to explain the 24-hour rule. States that last session there was an Attorney General opinion on what constituted lobbying for the purpose of the 24-hour rule. Adds that she assumes it is not an issue for members of the Capitol Club but is an issue for others.

Bishop Responds he believes there was an Attorney General opinion after the 1997 session about what constitutes lobbying, particularly in the context of public employees lobbying. The \$100 expenditure or 24-hour rule may be implicated in that determination of what constitutes lobbying. Adds that it becomes an issue in the Capitol Club because the question is whether those requirements apply to all lobbying or only apply for each lobbying interest. If a person has multiple clients, the question is whether he must register as soon as he is going to lobby for an additional client or can he observe the 24-hour rule or \$100 expenditure rule for each new client. Those standards are not clear and their draft proposal (**EXHIBIT B**) tries to clarify that those requirements apply for the individual lobbyist and not for each client interest that the lobbyist may be advocating on behalf of.

377 Chair Harper Closes the public hearing and opens the work session for the purpose of requesting a Legislative Counsel draft.

**INTRODUCTION OF COMMITTEE LEGISLATIVE COUNSEL DRAFT REQUEST**

378 Sen. Harper **MOTION: Moves TO MAKE A LC DRAFT REQUEST FOR THE CAPITOL CLUB PROPOSAL (EXHIBIT B) TO BE INTRODUCED AS A SENATE RULES AND REDISTRICTING COMMITTEE LC DRAFT REQUEST.**

379 **VOTE: 6-0**  
**EXCUSED: 1 - Sen. Courtney**

**Chair Harper Hearing no objection, declares the motion CARRIED.**

382 Chair Harper Opens the public hearing on SB 361.

Executive Director, Government Standards and Practices Commission. Explains that SB 361 is to make technical adjustments and clarifications to certain provisions of ORS Chapter 244. Most of the proposals came about as a result of observations that have been made over many years, inquiries that frequently come into the office relating to certain parts of the statute, and cases they have had where it has been suggested certain ambiguities need to be clarified. Adds that the failure of SB 361 to pass will not cause the commission or its staff to bury their heads in their hands, but it will be unfortunate for public officials. Reviews proposed changes to statutes:

- The language beginning on page 1, line 7, restructures that section so it more clearly delineates in the statutes what each prohibition is.
- There is a provision in the conflict of interest disclosure requirements called class exception. It says that a conflict of interest does not arise; consequently no conflict of disclosure requirement is required. When public officials follow those requirements relating to conflict of interest disclosure, they, with some degree of reassurance, also believe they are exempt from liability under the prohibition against using their office for financial gain. It is not true. Refers to language on page 6 defining prohibited actions. The effort is to bring those same provisions from the conflict of interest section back to the use-of-office section.
- Section 2. There currently is a requirement that an economic interest form be filed. The form asks for disclosure by the public officials filing the form the name of any person for whom they have performed services for a fee in excess of \$1,000 during the filing year. States that none of the 4,000 plus people ever files a report. Part of the reason is that people such as social welfare counselors or attorneys don't want to disclose their clients and don't have to disclose their clients. Also other health care practitioners don't report. States it seems to be a requirement that does not serve any purpose because the information it seeks is never forthcoming. It may be that some way could be figured out so that people would understand and some degree of information could be reported.
- Section 3, page 4, is to clarify an amendment enacted in 1993. The amendment tried to say if a public official with an actual conflict of interest, once they declared a conflict of interest, could not vote or otherwise participate in the issue unless the minimum number of votes required for that public body to take action was needed. Gives example of a five-person body with one member disclosing a conflict of interest and not participating. If there is a two to two tie, it has been misinterpreted to mean that the person with the conflict of interest can vote to break the tie. Gives example of a three-member board of commissioners, one member having declared a conflict of interest but voting to break the

		tie. Suggests that the third vote was not required but the two voting members should have reached an agreement or found another candidate that the two members could vote for.
100	Sen. Minnis	Comments that members have had a discussion with Chief Justice Wallace Carson and he thinks it is very clear that the legislature should say what it means.
105	Chair Harper	Asks that the commission work on clarifications of SB 361.
109	Fred Girod	Stayton resident. Presents a prepared statement, news clippings, and LC drafts 541, 542, 543, and 544 ( <b>EXHIBIT C</b> ), and testifies generally on government standards and practices.
352	Chair Harper	Closes the public hearing on SB 361 and adjourns meeting at 4:23 p.m.

Submitted By,

Reviewed By,

Annetta Mullins,  
Committee Assistant

Craig Allen,  
Committee Administrator

**EXHIBIT SUMMARY**

- A - Government standards and practices, prepared statement, Katherine Tennyson, 5 pp**
- B - Government standards and practices, Capitol Club draft proposal, Bruce Bishop, 5 pp**
- C - Government standards and practices, prepared statement, Bruce Bishop, 2 pp**
- D - Government standards and practices, prepared statement, news clippings, LC 541, LC 542, LC 543, and LC 544, Fred Girod, 47 pp**