

**HOUSE COMMITTEE ON RULES, ELECTIONS, AND PUBLIC AFFAIRS**

**April 27, 1999 Hearing Room D**

**3:30 P.M. Tapes 47 - 48**

**MEMBERS PRESENT: Rep. Mark Simmons, Chair**

**Rep. Richard Devlin, Vice-Chair**

**Rep. Bruce Starr, Vice-Chair**

**Rep. Jason Atkinson**

**Rep. Chris Beck**

**Rep. Roger Beyer**

**Rep. Randall Edwards**

**Rep. Dan Gardner**

**Rep. Kevin Mannix**

**Rep. Jim Welsh**

**Rep. Max Williams**

**MEMBER EXCUSED: Rep. Kitty Piercy**

**STAFF PRESENT: Cletus B. Moore, Jr., Administrator**

**Kevin E. Wells, Administrative Support**

**MEASURE/ISSUES HEARD: HB 3285 Public Hearing**

**HJR 76 Public Hearing**

**HB 3174 Public Hearing and Work Session**

**LC 3820 Work Session**

**HJR 42, Public Hearing**

**HJR 67 Public Hearing**

TAPE/#	Speaker	Comments
<b>TAPE 47, A</b>		
003	Chair Simmons	Calls meeting to order at 3:30 p.m. Opens Public Hearing HB 3285. Points out the ñ6 amendments to HB 3285 ( <b>EXHIBIT A</b> ).
<b><u>HB 3285 PUBLIC HEARING</u></b>		
008	Rep. Jackie Winters	District 31. Testifies in support of HB 3285. Comments on a letter from the Governor's office ( <b>EXHIBIT B</b> ) and her reply ( <b>EXHIBIT C</b> ). Reviews the ñ6 amendments.
033	Rep. Beyer	Asks how the Legislative Ombudsman is appointed in HB 3285.
039	Rep. Winters	Responds that the Legislative Ombudsman will be appointed by the Legislature with consultation of the Governor.
041	Rep. Beyer	Asks if President of the Senate and the Speaker of the House decide on someone and then seek the Governor's input. Asks what happens if the two parties cannot agree.
046	Rep. Winters	Replies that is correct. Explains the Governor's role is only to consult and has no binding authority in the process.
048	Greg Chaimov	Legislative Counsel. Explains that the Legislative Administration Committee (LAC) appoints the Legislative Ombudsman by a majority vote.
054	Rep. Beyer	Asks who is on the LAC.
055	Rep. Winters	Replies that she does not know.
056	Rep. Beyer	Asks Chaimov who is on the committee.
057	Chaimov	Defers to Dave Henderson.
060	Dave Henderson	Legislative Administrator. Explains who is on the Legislative Administration Committee: the Speaker of the House, the President of the Senate, four members of the House appointed by the Speaker, and three members of the Senate appointed by the President.

067	Rep. Beyer	Asks if the members are appointed by either the Speaker or the President. States HB 3285 moves existing Ombudsmen offices into one office in the Legislature.
071	Rep. Winters	States that is correct.
073	Vice-Chair Starr	Asks if HB 3285 eliminates existing Ombudsmen.
074	Rep. Winters	States the plan is to create one Ombudsman office for the state.
076	Vice-Chair Starr	Asks if HB 3285 eliminates existing Ombudsmen in various state agencies.
077	Rep. Winters	States that is correct.
079	Rep. Beck	Asks if they are eliminating the workers compensation ombudsman and saving the state \$928,000.
085	Rep. Winters	States there would be one office that everyone would go to for all complaints.
089	Rep. Beck	Notes that the fiscal impact is \$177,000.
093	Rep. Winters	Clarifies where the various existing ombudsmen serve. Explains that HB 3285 would have all Ombudsmen serve in one office.
107	Rep. Beck	Asks how many people lived in Oregon when Rep. Winters served as an Ombudsman.
109	Rep. Winters	States that she does not know. Explains how her office was staffed.
115	Rep. Beck	Asks if HB 3285 shifts all of these offices or if only one person will serve as Ombudsman in the state.
118	Rep. Winters	States that one person cannot do all of this.
120	Rep. Williams	States that HB 3285 does not have any provisions to replace existing Ombudsmen. Asks if that is correct. Asks Rep. Winters what her intentions were in drafting HB 3285; to create one position or many positions in one office.
128	Rep. Winters	Indicates she intended to shift existing positions into a legislative office.
130	Rep. Williams	Asks Chaimov what HB 3285 does.

133	Chaimov	States that HB 3285 creates the office of Legislative Ombudsman, but does not effect in any way any other offices in the state.
135	Chair Simmons	Suggests that Rep. Winters draft additional amendments.
137	Rep. Winters	Replies she will if it needs to be done.
140	Vice-Chair Starr	Asks if Chaimov has received a copy of the letter from the Governor's office. Asks if HB 3285 is potentially unconstitutional.
145	Chaimov	Answers that the six amendments are not unconstitutional in the opinion of LC.
154	Vice-Chair Devlin	Asks about the constitutionality of a Legislative Ombudsman directing executive agencies to take action.
162	Chaimov	States that a potential separation of powers problem exists as HB 3285 is drafted.
166	Chair Simmons	Clarifies what Rep. Winters' intentions were. Asks if Rep. Winters will get additional amendments. States HB 3285 will be posted again. Closes Public Hearing HB 3285. Opens Public Hearing HJR 76. Asks for staff summary.
<b><u>HJR 76 PUBLIC HEARING</u></b>		
190	Cletus Moore	Administrator. Reviews HJR 76.
200	David Fidanque	Executive Director, Oregon American Civil Liberty Union. Opposes HJR 76. Discusses previous efforts, Measure 19 (1994) and Measure 31 (1996), to amend the Free Speech provision in the Oregon Constitution. Explains the broad effects of HJR 76 in all sectors of society. Expresses concern over HJR 76.
235	Chair Simmons	States that other states live with the provisions of HJR 76.
240	Fidanque	Explains that there are cases of problems in other states from which Oregon's Constitution protects its citizens. Discusses potential effects of HJR 76 on businesses.
285	Rep. Williams	Discusses the Oregon's Free Speech Rights and relevant court cases.
318	Vice-Chair Devlin	Explains that free speech laws are the most basic laws protecting civil liberty. Asks for a broad debate on the issue.
330	Fidanque	Responds that the more discussion there is about free speech the better. States the Oregon Bill of Rights is more extensive than the Federal Bill of Rights. Explains

		that Oregon's Bill of Rights used to be the only protection available to the citizens of Oregon.
380	Fidanque	Continues to explain why Oregon's Bill of Rights is more specific than the Federal Bill of Rights. Notes that Oregon voters have consistently upheld Oregon's Bill of Rights.
420	Chair Simmons	Closes Public Hearing HJR 76. Opens Public Hearing HB 3174. Asks for Staff summary.
<b><u>HB 3174 PUBLIC HEARING</u></b>		
425	Moore	Explains HB 3174 eliminates the authority of state agencies to file legislation except through a member of the legislative assembly.
<b>TAPE 48, A</b>		
003	Chair Simmons	Closes Public Hearing HB 3174. Opens Work Session HB 3174
<b><u>HB 3174 WORK SESSION</u></b>		
<b>009</b>	<b>Rep. Starr</b>	<b>MOTION: Moves HB 3174 to the floor with a DO PASS recommendation.</b>
011	Rep. Beck	Asks if HB 3174 forces state agencies to file measures through legislators.
014	Vice-Chair Devlin	Notes that the Governor retains the authority to file measures.
016	Rep. Beck	Asks what that means.
017	Vice-Chair Devlin	Explains the Governor can introduce legislation to the Legislature.
021	Rep. Beck	Asks how many bills were filed without the Governor's knowledge. Suggests that HB 3174 is unnecessary. Critiques the bill and its effects.
040	Vice-Chair Starr	States that HB 3174 reinforces the separation of powers in the three branches of government. Supports HB 3174.
053	Rep. Edwards	Explains that HB 3174 is a small bill that retains the balance of power in light of term limits. Suggests that HB 3174 upholds the separation of powers and the legislative process.

066	Vice-Chair Devlin	Supports HB 3174. Explains that the bill makes very minor changes to current practice.
076	Rep. Gardner	States that HB 3174 is unnecessary and does not improve the system.
080	Rep. Williams	Explains that HB 3174 does not make a major change, but it does retain legislative power for the Legislature. Notes that it protects the Governor's authority to introduce legislative measures.
096	Rep. Mannix	States that HB 3174 is not anti-executive branch legislation, but empowers the Legislature. Stresses that legislators need to be available to agencies and interact with them frequently. Supports HB 3174.
109	Rep. Atkinson	Supports HB 3174.
113	Vice-Chair Devlin	Asks Chaimov if Statewide office holders will still be able to file measures or if they will have to go through the Governor.
120	Chaimov	States that recently elected statewide officials would be able to file legislative measures. Adds that statewide officials, other than the Governor and those not recently elected, would be treated as an agency.
130		<b>VOTE: 9-2</b>  <b>AYE: 9 - Atkinson, Beyer, Devlin, Edwards, Mannix, Starr, Welsh, Williams, Simmons</b>  <b>NAY: 2 - Beck, Gardner</b>  <b>EXCUSED: 1 - Piercy</b>
	<b>Chair Simmons</b>	<b>The motion CARRIES.</b>  <b>REP. EDWARDS will lead discussion on the floor.</b>
142	Chair Simmons	Close Work Session HB 3174. Opens a work session to introduce LC 3820 as a committee bill ( <b>EXHIBIT D</b> ).
<b><u>: LC 3820 WORK SESSION TO INTRODUCE AS COMMITTEE BILL</u></b>		
152	Rep. Beyer	<b>MOTION: Moves LC 3820 BE INTRODUCED as a committee bill.</b>

		<b>VOTE: 10-0</b>  <b>EXCUSED: 2 - Piercy, Welsh</b>
155	Chair Simmons	Hearing no objection, declares the motion <b>CARRIED</b> .
156	Chair Simmons	Closes the work session on LC 3820. Opens Public Hearing HJR 42.
<b><u>HJR 42 PUBLIC HEARING</u></b>		
180	Kappy Eaton	Government Chair, League of Women Voters. Opposes HJR 42 ( <b>EXHIBIT E</b> ). States that Oregon voters have already voted against this idea. Discusses the amendment ( <b>EXHIBIT F</b> ). Explains that the current process protects the separation of powers. Discusses administrative rules and their creation. Notes that legislators are free to participate in that process.
240	Don McIntire	Gresham. Supports HJR 42. Discusses the process of creating administrative rules and their proliferation. Discusses the problem of non-responsiveness of state agencies.
290	McIntire	Continues to discuss problems with administrative rules. States HJR 42 is very different from Measure 45.
305	Rep. Edwards	States that HJR 42 gives the Legislature administrative powers. Expresses concern about giving the Legislature executive power.
316	McIntire	States that unelected officials should not have the authority to impose rules on the citizens.
328	Rep. Edwards	Comments on the separation of powers, and division of labor, between the executive branch and the Legislature.
337	McIntire	States that the Legislature has given too much discretion to agencies.
348	Rep. Edwards	Expresses concern that the Legislature can solve the problems McIntire is raising.
357	McIntire	States that HJR 42 will cause agencies to think more carefully before they propose administrative rules.
364	Rep. Edwards	Points out that this will not effect federal rules.

368	Rep. Beck	Asks, if this fails at the ballot, should the Legislature try again.
374	McIntire	Responds that it may not be necessary to keep trying. Adds that there is a persistent problem with administrative rules that needs redress.
383	Rep. Beck	Asks how many times Oregonians have voted on this issue in the last three years.
385	McIntire	Replies that he does not know.
386	Rep. Beck	States that there have been two votes in two years.
387	McIntire	Comments that they voted on two different measures.
388	Rep. Beck	States that the measures were very similar.
395	McIntire	Comments on Measure 65.
396	Rep. Beck	States that the issue has been revisited too often.
410	McIntire	Argues that previous initiative measures were very different.
<b>TAPE 47, B</b>		
004	Rep. Beck	Asks how often these issues need to be voted on.
012	McIntire	Points out that schools keep sending levies back to the voters.
017	Rep. Beck	Suggests the timing is not right for HJR 42, as it was voted on recently. Stresses that voting on an issue three times in six years is too often.
023	Rep. Ron Sunseri	District 22. Testifies in support of HJR 42. Explains why the resolution is necessary. Notes that administrative rules have the force of law, so the Legislature needs to have access to them.
043	Rep. Edwards	Asks how to determine what rules the legislative committee reviews.
047	Rep. Sunseri	Explains that if an administrative rule receives three complaints it would be referred to the legislative committee.
054	Rep. Edwards	Asks why this is proposed as a constitutional amendment.



056	Rep. Sunseri	Explains that a statutory requirement can be overturned.
061	Rep. Edwards	Suggests that annual sessions would address many of Rep. Sunseri's concerns.
063	Rep. Sunseri	Agrees with that assessment and supports annual sessions.
068	Randy Tucker	1000 Friends of Oregon. Opposes HJR 42 ( <b>EXHIBIT G</b> ). Discusses the process for challenging administrative rules. Notes that administrative rules infrequently conflict with legislative intent. Expresses concern that the ability of three individuals or entities to overturn an administrative rule is a very low standard. States that legislators always have the power to overturn administrative rules.
105	Vice-Chair Starr	Asks how many votes were cast in the 1998 general election
107	Tucker	Answers that nearly a million votes were cast on Measure 65.
110	Vice-Chair Starr	Suggest that 50,000 vote margin is not decisive.
113	Tucker	Explains that it was fairly convincing given the circumstances.
118	Vice-Chair Starr	Suggests that as the early measure lost by a 3 to 1 margin and the later measure lost by a 50,000 margin, it indicates that the public is becoming aware of the problem of administrative rules.
120	Tucker	States that very few citizens understood Measure 65.
125	Staff	Distributes <b>EXHIBIT H</b> .
126	Vice-Chair Starr	Close HJR 42. Opens Public Hearing HJR 67.
<b><u>HJR 67 PUBLIC HEARING</u></b>		
121	Don McIntire	Supports HJR 67. Discusses the number of judges who run unopposed. Explains the need for voters to have more information about judges' perspectives and philosophies.
165	Rep. Gardner	Points out that the citizens of the state can recruit people to run against an unpopular judge.
168	McIntire	Explains that it is very difficult to find people to run for judicial positions. Relates personal experiences.

173	Rep. Edwards	Asks about the "None of the Above" option.
180	McIntire	Explains that the option may sensitize judges to public sentiment.
189	Rep. Edwards	Asks if under votes, people not voting on a race, offers a strong enough comment on a judge. Asks if the "None of the Above" option means judges run against someone even in an uncontested race.
195	McIntire	Replies that "None of the Above" is a campaign opponent.
200	Rep. Edwards	Asks if the system in Missouri works well.
203	McIntire	Indicates he does not know much about the system.
205	Chair Simmons	Asks if there are any other ideas that could be considered to address his concerns.
209	McIntire	Suggests that the Bar allow candidates to articulate their positions.
219	Chair Simmons	Closes Public Hearing HJR 67.
220	Vice-Chair Devlin	Clarifies that in HJR 42 the statewide elected officials retain the authority to file measures.
228	Chair Simmons	Adjourns at 4:50 p.m.

Submitted By, Reviewed By,

Kevin E. Wells, Cletus B. Moore, Jr.,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 3285, LC amendment ñ6 (4/21/99), staff, 7 pp.**

**B ñ HB 3285, written testimony, staff, 3 pp.**

**C ñ HB 3285, letter, Rep. Jackie Winters, 2 pp.**

**D ñ LC 3820, LC draft (4/13/99), staff, 2 pp.**

**E ñ HJR 42, written testimony, Kappy Eaton, 1 p.**

**F ñ HJR 42, LC amendment ñ2 (4/27/99), staff, 2 pp.**

**G ñ HJR 42, written testimony, Randy Tucker, 2 pp.**

**H ñ HJR 42, written testimony, staff, 2 pp.**