

SENATE COMMITTEE ON RULES AND ELECTIONS

January 19, 1999 Hearing Room B

4:30 p.m. Tapes 2 - 3

MEMBERS PRESENT: Sen. Charles Starr, Chair

Sen. Randy Miller, Vice-Chair

Sen. Lee Beyer

Sen. Kate Brown

Sen. Neil Bryant

MEMBER EXCUSED:

STAFF PRESENT: Brian E. Smith, Administrator

Rachel E. Halupowski, Administrative Support

MEASURE/ISSUES HEARD: SB 438 Public Hearing

SJR 7 Public Hearing

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 2, A		
000	Chair Starr	Opens meeting at 4:30 p.m. and opens public hearing on SB 438.
		States there will be no work sessions on either bill this evening.

SB 438 PUBLIC HEARING

008	Brian Smith	Administrator. Explains SB 438 designates the Governor as the superintendent of public instruction, giving him the power to appoint a deputy superintendent subject to Senate confirmation. States that the bill would also provide for the current superintendent to complete his term of office. States that a constitutional change is not required for the bill to take effect according to the Department of Justice (EXHIBIT A) .
021	Ozzie Rose	Confederation of Oregon School Administrators. Supports SB 438. Believes the position of the superintendent of public instruction should be an appointed position instead of an elected position. States he supported SB 438 in the last session. Explains the state school fund is using up half of the resources of the state, and the state budget and state funds are the Governor's responsibility. States we currently elect the superintendent at the same time we elect the Governor causing difficulties in raising money and raising concern when talking about issues before the Education Board. States a heated Governor race would avert attention and funds from the superintendent race. Believes a process should be set up with the public to debate school issues, and the Governor, in cooperation with the State Board, would appoint a qualified administrator to head the agency.
048	Vice-Chair Miller	Questions what the public would believe if they were allowed to input their ideas.
051	Rose	Comments on the prior failure of the bill as an election issue, due to the need to change the Constitution in a more direct way. Questions if Oregon can give up the right to elect the state superintendent.
062	Vice-Chair Miller	Asks if Rose knows the current superintendent's opinion on SB 438.
067	Rose	Responds that he believes the current superintendent disagrees with the position of change.
074	Sen. Beyer	Explains the Governor's opposition during the last session, and his own disagreement with the Governor. States he would like to have an elected official in the state who is primarily focused on education. Observes that regardless of the quality of the administrator, the public will not pay attention to him, due to the fact the administrator is appointed and not elected.
087	Rose	Explains that a race in which you cannot raise money or make the race visible to the public leaves potential for electing people who are not the type to run the Department of Education. States difficulties with running a campaign with no money, and in the long term Oregonians face the potential of ending up with people who do not represent education.
100	Sen. Beyer	Asks Rose to reflect on prior superintendents.
101	Rose	Explains, that until the last two races, the candidates running have always been

		people in education, and the office was not viewed as a political office.
111	Chair Starr	Calls Sen. Derfler and Sen. Bryant to testify.
114	Sen. Derfler	Senate District 16. Explains how eight years ago there was a change in education funding (from property taxes to income taxes). Believes the Governor is responsible for putting qualified people in control. States 57% of the budget goes to education. Believes that with Senate confirmation Oregonians will have the ability to get people who are qualified to make decisions about education, rather than elected officials.
140	Sen. Bryant	Supports SB 438. Stresses the importance of a good advocate in education and his concerns that the right person may not be found through the elective process. States the need for coordination between the Governor's office and the Department of Education. Believes the best way to support coordination of the offices is through the appointed position and Senate confirmation.
165	Sen. Beyer	Explains the people of his district have expressed that they do not believe that they elect a Governor to be accountable for education, they believe that it is the responsibility of local school boards. States his constituents elect the Governor and Legislature to decide how much money is appropriate for education. States his constituents would rather elect local officials to control expenditures, and hold the local officials accountable.
180	Sen. Derfler	Agrees with school boards being responsible for school operations, and asks no change in that direction. States that whoever controls the agency should be working for the Governor.
202	Chair Starr	States he had not seen the bill last session, and asks if the committee is looking at the final product that was passed through the Senate.
204	Sen. Derfler	States it is exactly the same bill.
206	Chair Starr	Closes public hearing on SB 438.
<u>SJR 7 PUBLIC HEARING</u>		
207	Chair Starr	Opens a public hearing on SJR 7. States the first to testify will be the senators who sponsored this legislation.
217	Brian Smith	Explains SJR 7 proposes an amendment to the Oregon Constitution that would allow the Legislative Assembly to require Senate confirmation of the Governor's appointments to fill vacancies in certain judicial offices (Judges of the Supreme Court, Court of Appeals, Oregon Tax Court, any circuit court). States this bill also requires a statutory change which is a companion bill to be introduced.
226	Sen. Bryant	States he is a co-sponsor with Sen. Derfler for SJR 7. States he is supportive and

		<p>protective of the judiciary. Asks that his view of the issue should not be perceived as an attack on an independent judiciary, but to recognize a situation that has developed over the past few centuries. Explains most judges who are appointed and serve as judges are almost certain to win reelection. Believes "...this creates a tremendous advantage and, de facto, almost a life appointment for someone if they are appointed to a vacancy."</p>
279	Sen. Bryant	<p>States it is good public policy for the Senate to review the Governor's appointments. Explains several states have already accomplished Senate confirmations. Discusses fears some have that the government may head into decisions or Clarence Thomas-type hearings, but this is not the intent of the bill. States the person nominated would be asked questions and there would be a process comparable to the Governor's process of selection. Believes there is a need for a Constitutional amendment to accomplish this, though some feel this can be accomplished statutorily.</p>
325	Sen. Derfler	<p>Agrees that confirmation is an important process. States the legislature is an equal branch of government to the executive department and believes an equal level of government is good policy.</p>
352	Sen. Beyer	<p>Asks why, after 142 years, Oregon needs to change the system.</p>
353	Sen. Bryant	<p>Responds that for the last 20 years judges have been appointed and they remain in office as long as they choose. Believes SJR 7 is a responsible piece of legislation.</p>
374	Sen. Beyer	<p>Observes that in the past the Governor has chosen the top two or three recommendations from the Bar Association, and suspects this is why there has not been a lot of opposition in elections.</p>
392	Sen. Bryant	<p>States there is always a survey by the Bar Association, even if not requested by the Governor. States the Bar also publishes the position opening and asks for submissions. Believes this will require more consultation with the Senate.</p>
409	Sen. Beyer	<p>Asks about the potential for delay. States criticism of delay time and asks if that is an issue.</p>
420	Sen. Bryant	<p>States he does not see delay as an issue. Believes the federal process is onerous and the federal judges he has spoke to, who have been through the process, do not want to repeat it.</p>
434	Sen. Brown	<p>Expresses concern about politicizing the process to a point of having a litmus test, where politics will become the forefront of the appointment process.</p>
443	Sen. Bryant	<p>Believes the vast majority of the Senate and those serving on the committee will not allow politicizing of the process. States this is a political process presently, but more behind-the-scenes than a public hearing.</p>

460	Henry Lazenby, Jr.	Legal Counsel, Governor's Office. Submits written testimony (EXHIBIT B).
462	Vice-Chair Miller	Quotes written testimony of the Governor's opinion on how this process will lead to a perception among Oregonians that their court system is merely an extension of politics. Asks if Sen. Bryant agrees with the Governor that the federal system is wrong.
TAPE 3, A		
038	Sen. Bryant	States he does not agree. Believes the federal system works well.
046	Sen. Derfler	States the three branches of government are equal, and it is important for the judicial branch not to have a political agenda. Believes there needs to be a balance in the system, and currently the legislative branch is just as interested as the executive branch or the judicial branch in judge appointments.
051	Vice-Chair Miller	Questions if, during the recent appointment of two judges, Sen. Bryant was consulted on their appointments.
060	Sen. Bryant	States he was not consulted, but he had sent a letter to the Governor's office on behalf of another individual who was interested in the appointment.
062	Vice-Chair Miller	Qualifies that Sen. Bryant is the chairman of the Judiciary Committee, and notes that in the testimony to be received later the Governor consulted with legislators, though Sen. Miller had assumed the Governor would have consulted the chair of the Judiciary Committee. Addresses if a litmus test is currently applied by a single person. Believes the public needs to know what kind of test would apply and what is appropriate.
076	Chair Starr	Calls Judge West and Justice Gillette to testify.
081	Nick Gillette	Associate Judge, Oregon Supreme Court, appearing on behalf of the Executive Committee of the Judicial Conference. Explains he is here to oppose SJR 7. States he does not feel comfortable getting between two branches of government as they argue over whether one, the other, or both should be involved in making a choice that effects the third branch. Explains the Judicial Conference Executive Committee believes that elections seem an adequate safeguard. States the public has constituted themselves as part of the legislative branch. States the Executive Committee is concerned with the politicization of the process. Believes that the present process may not have enough politics, especially when a choice is made by a Governor of either party without any checks or balances from someone else. Believes this process is not an adequate way to do business. States he knows of no history of abuses of power in the present process. States changes will cause delays which are not in the public interest.
150	Gillette	Explains the difference in the state processes compared to the federal process. Explains that in the state the judges need to run for elections every six years, though federal judges do not. Asks that SJR 7 not receive favorable consideration from this committee or the Senate.

167	Greg West	Circuit Judge for Marion County, here on behalf of the Circuit Court Judges Association. States concerns for judge appointments leading to judges who will always remain in office. Explains that judges are lawyers who have practice in their trade, and he is not sure if a life-time appointment is necessarily bad. Believes there is no certainty that all positions are life-time appointments.
204	West	Discusses past judges who were defeated in elections. States that many judges won who were not incumbent. States that judges are concerned with politicizing the process, especially with special interest groups. Explains that the judges were being pressured to answer questions that were not ethical under the Oregon Judicial Code of Ethics. Feels that if the process moves toward confirmation by a Senate committee the questions asked will be political and partisan in nature.
263	West	States the constituents expect judges to be responsible to the local constituency.
285	Sen. Bryant	Asks his opinion on the Missouri Plan.
290	West	Believes the most efficient way to attain judges are to appoint them and then have them stand for elections. States the Missouri Plan has merit, but there is the danger of abuses. Explains that people with an axe to grind against a particular decision could gather a campaign against a judge who they view as being political.
319	Sen. Bryant	Asks his thoughts concerning a vacancy appointed pro-tem until the next election.
323	West	Explains he is unaware if the present association has any particular position for or against pro-tem. States that appointing a pro-tem in the meantime may be viewed as giving preferential treatment by those who plan to run for election.
349	Gillette	Explains the Missouri Plan may be the worst possible solution, and states the example of problems in California. States that there are philosophical and constitutional difficulties with the way pro-tem is used presently. States that as long as judges are appointed from the Judicial Branch there is no need for a constitutional amendment.
375	Chair Starr	States he has set perimeters for the meeting time. Calls for witnesses from out of town.
391	Lawrence Wobbrock	Oregon Trial Lawyers Association. States opposition to SJR 7 and presents (EXHIBIT C) . Quotes from an article he wrote in March of 1998 (EXHIBIT C) , which states that judges take an oath not to seek higher offices, to remove the politics from the position.
TAPE 2, B		
003	Wobbrock	States he does not believe the system is broken. Believes the current system does not need to be changed because it is greatly different from the federal system,

		because judges need to run for reelection.
013	Wobbrock	Addresses pro-tem and private practices, and how difficult it would be to hold a pro-tem position and then return to the private sector in a matter of months.
020	Wobbrock	Refers to other testimony (EXHIBIT C), which are both resolutions passed by the Bar in September 1997 and 1998. States the importance to the Bar of a non-politicized judicial system.
036	David Hittle	Chair of Public Affairs of the Board of Governors, Oregon State Bar, Portland. States opposition to SJR 7. States the Oregon State Bar is governed by two bodies: the Board of Governors and the elected House of Delegates. Discusses the House of Delegates' authority to overrule any resolution or action of the Board of Governors. Mentions the two meetings in 1998 where the House of Delegates passed the resolution: the Oregon State Bar reaffirms its strong support of the current Constitutional and statutory structure for the selection and election of judges that guarantees an independent judicial branch.
051	Greg Mowe	Officer, Litigation Section, Oregon State Bar. States present system includes 1,500 practicing lawyers representing a broad cross section of the State Bar. Reiterates that the present judicial system is efficient, non-partisan, and hard working. Believes Oregon is unique in its lack of judicial politics because of the local peer review process in the selection of judges. Reiterates concern for any delays in the appointment of judges.
086	Vice-Chair Miller	Asks if the Bar has come to any resolutions to advocate that the federal system abandon Senate confirmation and impose monarch like powers in the President.
103	Mowe	Replies not to his knowledge. States the difference is that Oregon has elections in the state system.
106	Vice-Chair Miller	Asks if it is believable that there are competitive elections.
113	Mowe	States he has no hard data. States the trend toward election is slightly increasing.
117	Vice-Chair Miller	Asks if, in good conscience, the committee can suggest that the system is not really politicized.
130	Mowe	States his concern is in the quality of the candidates who are willing to endure the process, and a concern for potential partisan practices.
136	Hittle	States Multnomah County is submitting highly qualified names to the Governor's office. Explains that the Governor is not bound by the submitted lists, but he believes most appointees are selected from the list. States the Board of Governors specifically interview candidates, and do background checks prior to placing candidates on the list.

164	Chair Starr	Asks final witnesses to come back at a future date. Adjourns meeting at 5:45 p.m.
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Submitted By, Reviewed By,

Rachel E. Halupowski, Brian E. Smith,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 438, public letter submitted prior to meeting by staff, 6 pp

B ñ SJR 7, written testimony, Henry Lazenby, Jr., 1 p

C ñ SJR 7, written testimony, Lawrence Wobbrock, 5 pp