

SENATE COMMITTEE ON RULES AND ELECTIONS

March 4, 1999 Hearing Room B

4:30 p.m. Tapes 24 - 25

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: Executive Appointments

Coastal Salmon Restoration and Production Task Force

Drafting and Measure Introduction Requests

SB 560 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 |
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| TAPE 21, A | | |
| 000 | Chair Starr | Opens meeting at 4:30 p.m. and opens work session on the Coastal Salmon Restoration and Production Task Force. |
| <u>EXECUTIVE APPOINTMENTS in COASTAL SALMON RESTORATION AND PRODUCTION TASK FORCE</u> | | |
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| 007 | | Staff presents (EXHIBIT A). |
| 008 | Sen. Brown | MOTION: Moves the reappointment of Joan Dukes to the Coastal Salmon and Restoration Task Force to the floor with the recommendation that the appointment be confirmed. |
| | | VOTE: 3-0 EXCUSED: 2 ñ Miller, Bryant |
| | Chair Starr | Hearing no objection, declares the motion CARRIED. SEN. STARR will lead discussion on the floor. |
| 017 | Chair Starr | Closes work session and opens work session on drafting and measure introduction requests. |
| <u>DRAFTING AND MEASURE INTRODUCTION REQUESTS</u> | | |
| 018 | Sen. Brown | MOTION: Moves LC 2674 dated 2/2/99 BE INTRODUCED as an Agriculture and Natural Resources committee bill. |
| | | VOTE: 5-0 |
| | Chair Starr | Hearing no objection, declares the motion CARRIED. LC 2674 is introduced as SB 1267. |
| 022 | Sen. Brown | MOTION: Moves LC's: 2584 dated 2/25/99, 3956 dated 2/26/99, 3815, 3892, 3893, and 3995 dated 3/1/99, 1562, 3153, 3741, 3890, and 4034 dated 3/2/99 BE INTRODUCED as Committee bills. |
| | | VOTE: 5-0 |
| | Chair Starr | Hearing no objection, declares the motion CARRIED. |

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| | | <p>LC 2584 is introduced as SB 1266.</p> <p>LC 3956 is introduced as SB 1041.</p> <p>LC 3815 is introduced as SB 1268.</p> <p>LC 3892 is introduced as SB 1269.</p> <p>LC 3893 is introduced as SB 1270.</p> <p>LC 3995 is introduced as SB 1271.</p> <p>LC 1562 is introduced as SB 1272.</p> <p>LC 3153 is introduced as SB 1275.</p> <p>LC 3741 is introduced as SB 1274.</p> <p>LC 3890 is introduced as SB 1265.</p> <p>LC 4034 is introduced as SB 1273.</p> |
| 044 | Sen. Brown | MOTION: Moves the drafting and introduction requests from Sen. Adams and Sen. Nelson BE APPROVED. |
| | | VOTE: 5-0 |
| | Chair Starr | Hearing no objection, declares the motion CARRIED. |
| 052 | Chair Starr | Closes the work session and opens public hearing on SB 560. |
| <u>SB 560 PUBLIC HEARING</u> | | |
| 063 | Chair Starr | Calls Sen. Beyer and Greg Chaimov to testify. |
| 064 | Sen. Beyer | Presents (EXHIBIT B) . States SB 560 was written with the intent to not stifle the initiative process, but to place information on the ballot that gives the voter full knowledge that the measure may have a constitutional or legal problem. States, since 1992, nine measures have passed and been subsequently ruled unconstitutional. States if this concept finds favor with the committee, he asks to have Legislative Counsel (LC) prepare a disclaimer as an advisory in the voter's pamphlet. |
| 113 | Vice-Chair Miller | Asks if the measures to go to LC are those that have qualified to be on the ballot or if it would be all the measures proposed. |
| 120 | Sen. Beyer | States he would include those that qualify for the ballot. States there would be the process of opponent and proponent statements, and the disclaimer would be |

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| | | included as a short statement, in the same way the fiscal impact is included. |
| 125 | Vice-Chair Miller | Asks if this is more valuable or, at least, equally so to "Öthis really august group of former Deans CommitteeÖon occasion they weigh in and say something of great importance." |
| 130 | Sen. Beyer | Interjects "ÖI donít necessarily see it that way." States the process was done in the last cycle, but it was done outside the votersí pamphlet as a news report to the media. States that process might be an alternative if there is a way to state the august bodyís opinion in the document the voters read. Concerned that the voters have a sense of the validity of the measure. States an advisory opinion is needed to let the voters know if there are constitutional problems. |
| 146 | Vice-Chair Miller | Explains the Secretary of State had defended Ballot Measure 9, campaign finance reform law, as absolutely constitutional. States the Supreme Court ruled unanimously that the Secretary of State was wrong. Asks what comfort level a voter is to receive because of an opinion. States in <u>Tanner v OHSU</u> the opinion of the court opposes the opinion of Legislative Counsel. Suggests the voters may "Öbe at their peril to rely on any assertion, before a court, as a last resort, has actually taken the matter up." |
| 174 | Sen. Beyer | States he is in agreement. States he went to LC to try to get outside of the political process. States Legislative Counsel takes interest in the law, not the politics of the bill. States he would like to treat measures the same way as fiscal impacts are treated: non-politically. States Ballot Measure 8 caused a major frustration with the public when the courts found the measure unconstitutional after the voters had voted it in. Believes it undermines the government to have voters vote on unconstitutional issues. States a disclaimer may help improve the process. |
| 205 | Greg Chaimov | Legislative Counsel. Explains that statutes require the LC Committee to prepare explanatory statements for the measures that are on the ballot. States if the committee for the Secretary of State cannot agree on a form of explanatory statement, then it is the statement from LC that is printed in the votersí pamphlet. Assumes the same type of process would be used for a measure when it qualifies for a ballot: it would be assigned to an LC attorney who specializes in that area of the law, then the lawyer would prepare a preliminary opinion to be reviewed within the office and then it would be presented to the LC Committee for review. |
| 236 | Ray Phelps | Oregon American Federation of State, County, and Municipal Employees (AFSCME) and Oregonians to Maintain Community Standards. Presents (EXHIBIT C) . States, rather than using LC, or any alternative, they could use the Attorney General. States HB 2421 is closely related to SB 560. Proposes the citizens of Oregon have the right to mandamus. States that after any measure qualifies for the ballot, a citizen who wishes to file a lawsuit can approach the Supreme Court to issue a writ of mandamus ordering the Secretary of State not to place the measure on the ballot. States that if something is determined unconstitutional shortly after an election, why not have the constitutionality determined before the election. States it was common knowledge that Ballot Measure 8 was unconstitutional prior to the election. |
| 273 | Sen. Brown | Asks about the practical implications of allowing individuals to initiate |

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| | | mandamus proceedings. |
| 280 | Phelps | States the mandamus would only be in the area of constitutionality with regard to the United States Constitution or the Oregon Constitution. States if the individual cannot make the connection to either Constitution they would have no business filing the mandamus. Believes, in that case, the Attorney General could move quickly to defend the proposition. States there would be frivolous lawsuits, but they could be dealt with expeditiously. |
| 296 | Sen. Brown | Asks how the average citizen would familiarize themselves with that process. |
| 306 | Phelps | States that information would be found in the Initiative Referendum Manual that the Secretary of the State produces. |
| 314 | Vice-Chair Miller | Believes there would be frivolous lawsuits if the mandamus process was applied, but the losing party could be made to pay for the effort. States that if the court finds a measure constitutional, prior to placing it on the ballot, it would eliminate one of the scare tactics used to sway voters. |
| 333 | Phelps | States agreement. States the LC process and the attorney general process is still inside the legislative process. States if the Supreme Court determines constitutionality within three months after an election, why not make a determination three months before the election. States the public may be frustrated that the issue did not make the ballot, or worse, that the measure passed and was later found unconstitutional. States SB 560 is "Öthrowing the ballot box away." |
| 363 | Sen. Bryant | Asks if there is any constitutional problem with the court being willing to rule before an election. States, previously, the court has made it known they will not rule on a measure, only a law. States HB 2421 would require a Constitutional Amendment to allow the court to rule on a measure before it becomes a law. |
| 374 | Vice-Chair Miller | Asks Chaimov if the court will do advisory opinions of measures. |
| 379 | Chaimov | States the court does not do advisory opinions. |
| 384 | Phelps | States he is unsure why the court will not do advisory opinions, whether it is practice, court rule, or a Constitutional provision. |
| 392 | Sen. Bryant | States HB 2421 is practical. States it makes sense politically, but believes there may be constitutional problems in the court. |
| 393 | Phelps | States the idea can be referred to the people. |
| 405 | Chaimov | Believes the Supreme Court would decline an invitation from the legislature to decide whether a proposed initiative was substantively unconstitutional. States the Supreme Court, in order to exercise its judicial authority, would need to have |

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| | | a concrete case or controversy. States it may be possible to craft a process. |
| TAPE 25, A | | |
| 013 | Vice-Chair Miller | States to pursue the method suggested by Phelps, a Constitutional Amendment would be necessary. |
| 017 | Sen. Beyer | States Chaimov was suggesting a way to construct an administrative act to generate a challenge to meet the Supreme Court's needs. |
| 025 | Kappy Eaton | Chair, Oregon League of Women Voters. Presents (EXHIBIT D) . Agrees with Sen. Beyer's opinion on SB 560. States resources, time, and money are spent due to the review after the measure has reached the ballot. States the review process should look at the measure for constitutionality and clear language. Asks the committee to look closely at this issue. States the need to improve the process for review. |
| 065 | Chair Starr | States the committee will not go into a work session at this time. Closes the public hearing on SB 560. Adjourns the meeting at 5:08 p.m. |

Submitted By, Reviewed By,

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

EXHIBIT SUMMARY

A ñ Executive Appointments, interest form and resume, staff, 5 pp

B ñ SB 560, written testimony, Sen. Beyer, 1 p

C ñ SB 560, written testimony, Ray Phelps, 1 p

D ñ SB 560, written testimony, Kappy Eaton, 1 p