

SENATE COMMITTEE ON RULES AND ELECTIONS

April 15, 1999 Hearing Room B

4:30 p.m. Tapes 39 - 40

MEMBERS PRESENT: Sen. Charles Starr, Chair

Sen. Randy Miller, Vice-Chair

Sen. Lee Beyer

Sen. Kate Brown

MEMBER EXCUSED: Sen. Neil Bryant

STAFF PRESENT: Brian E. Smith, Administrator

Rachel E. Halupowski, Administrative Support

MEASURE/ISSUES HEARD: SJR 21 Public Hearing

Drafting and Measure Introduction Requests

SJR 34 Public Hearing and Work Session

SJR 20 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 39, A		
000	Chair Starr	Opens meeting at 4:35 p.m. and opens public hearing on SJR 21.
<u>SJR 21 PUBLIC HEARING</u>		

011	Sen. Rick Metsger	Senate District 14. Presents (EXHIBIT A) . States SJR 21 seeks to address the problem of too many topics in the Oregon Constitution. States that many believe that the placement of laws into the Constitution itself is inherently unconstitutional. States it is incumbent upon all of Oregon's citizens to preserve the framework of Oregon's Constitution. States SJR 21 would have the Secretary of State make a determination as to whether the provisions of an initiative petition could be enacted by statute and offered to the public, rather than made a constitutional amendment.
050	Sen. Tony Corcoran	Senate District 22. Supports SJR 21. States the Oregon Constitution has become disorganized. States the process has become a money game where the capacity to put constitutional ballot measures up for a vote is almost directly related to the amount of money that can be raised per signature. States the founding fathers did not intend the initiative and referendum process to become what it is today.
079	Hans Linde	Retired Judge. Presents (EXHIBIT B) . States that in the last decade there has been a departure from the traditions of constitutions being about governing, structure, and the procedures of government, and the individual rights against government. States that in 1903, the year after the first initiative measure went into effect, the measure was challenged in the Oregon Supreme Court as being inconsistent with the requirement that Oregon have a republican form of government. States the Supreme Court unanimously agreed to allow initiatives and stated that Oregon is a republican form of government because the legislature has the power to change laws. States the 11 amendments are well drafted and there may be a way for the legislature to accomplish the issues without recommending an amendment to the voters.
128	Sen. Beyer	Asks how the legislature would address it without a referral to the voters.
130	Linde	States that, by statute, the Attorney General shall make a determination whether a proposed amendment is necessary and if the existing Constitution requires the amendment. States, otherwise, the Attorney General will have the sponsors submit it as a statute. States it is a directive to the Secretary of the State. States that if there is no need for a constitutional amendment the sponsors should submit it as a statute. States there is a good chance the Oregon Supreme Court would sustain that statute.
151	Sen. Brown	Asks if it makes sense politically to do this statutorily.
154	Linde	States that it does make sense because most people are interested in getting to vote on the issues.
168	Sen. Beyer	Asks that if the Attorney General determines there is no reason for an initiative to be a constitutional amendment, would it be submitted as a statutory change.
172	Linde	States it would be. States there is an additional provision that allows for judicial review, should the losing side deem the Attorney General erroneous. States there needs to be a provision that it goes directly to the Supreme Court for quick turnaround before the petitions circulate. States there is an expedited judicial review provision in the other election laws and should it be included in SJR 21.

186	Dave Hunnicutt	Attorney. Presents (EXHIBIT C) . States that he was a co-petitioner on Ballot Measure 65 and knows how difficult the initiative process is. States the most damaging aspect of that campaign was a voter's pamphlet statement from the former Deans Committee alleging that the measure could have been placed in statute and referring to the measure as constitutional clutter. States he was told that according to an administrative rule it would violate the Constitution to place Measure 65 in statute. States he would have gathered 20,000 less signatures if the measure could have been added statutorily. States that because of the damaging statement Ballot Measure 65 failed at the polls. States that had SJR 21 been in place, he would have had a determination by the Secretary of State as to whether or not the measure could have been statutory or an amendment to the Constitution. Supports SJR 21.
244	Sen. Brown	States the public may want to put changes into the Constitution instead of in statute so that the legislature cannot touch it. Asks if he agrees, and states that if that is the case SJR 21 may not do well at the ballot box.
254	Hunnicutt	States that is a concern and certain initiatives may have difficulty passing on the ballot. States that the voters may not note in large detail whether they are voting on a statutory amendment or a constitutional amendment.
266	Sen. Brown	Asks if it would be wise, politically, to place these changes statutorily.
267	Hunnicutt	States the legislature may be faced with a referendum which would require four percent of the voters' signatures. States that if it is placed on the ballot, politically, that is probably more palatable than trying to amend it through statute. States another caveat is needed to give authorization for a quick appeal should the Secretary of State make an error in determining whether the measure is statutory or constitutional. States it should not fall on the fault of the petitioners should the Secretary make an error. States the appellate courts should be able to make a quick determination if the Secretary of State makes an error.
297	Vice-Chair Miller	Concurs that most people place measures into the Constitution to keep the legislature out of it. Asks to whom the Oregon Revised Statute belongs and to whom the Constitution belongs. States he has no fear in the determination of the electorate. States the legislature is getting protective of the Constitution and does not want the clutter to continue.
321	Hunnicutt	States he shares Sen. Miller's concern. States there may come a time when an initiative to restrict the initiative process will be introduced. States SJR 21 will help to protect the initiative process. States the process should not restrict grass roots organizations.
345	Suzanne Townsend	Deputy Secretary of State. States their office is sympathetic to the issues addressed in SJR 21 but they oppose it. States that SJR 21 proposes a policy shift that gives wide-ranging discretion and authority to the Secretary of States. States SJR 21, as currently drafted, it does not provide any guidance about how that discretion and authority should be exercised. States that if SJR 21 passes in the May 2000 primary there would be issues with implementing the requirements directly after the vote. States her office would be receiving petitions in July 2000 for measures heading for the 2002 general election. States the current secretary would only be dealing with this issue for six months, but the new secretary

		would receive the bulk of the work when taking office in January 2001.
395	Townsend	States her office currently makes a number of constitutional procedural decisions about initiative measures. States that under SJR 21, the decisions from her office would be more difficult to make because they would be dealing with substantive areas of the Constitution. States that many of the areas of the Constitution have not been litigated before so her office would not have any court guidance. Opposes having the Attorney General make these decisions, when that office should only be giving advice and the discretion should remain with the Secretary. States SJR 21 needs language that will guide and direct the Secretary of State in making these determinations.
436	Sen. Beyer	Asks if the Secretary of State would be more supportive if the legislature made the Attorney General the arbiter.
TAPE 40, A		
003	Townsend	States that issue was not discussed so she cannot give the Secretary's opinion. Believes the issue would be present, however, if there were no guidance from the legislature.
005	Sen. Beyer	Asks if she believes the Attorney General has the legal knowledge to make those determinations.
007	Townsend	States that she is not questioning the legal abilities of the Attorney General but, when considering procedural issues, legal minds can differ. States that regardless of who makes the determinations there is significant leeway given to that office.
020	Sen. Beyer	States there has been quick turnaround from the courts recently. Asks if this can be resolved quickly and in a way to develop the necessary case law.
023	Townsend	States that it would make for quick decisions, but she has not discussed the 11 amendments with the secretary. States the legislature needs to consider if the decisions should come quickly from the courts or be deliberated at length to cover all aspects.
033	Chair Starr	Closes public hearing on SJR 21 and opens work session on drafting and measure introduction requests.
<u>DRAFTING AND MEASURE INTRODUCTION REQUESTS</u>		
044	Vice-Chair Miller	MOTION: Moves the three Rules and Elections drafting requests BE INTRODUCED as committee bills.
		VOTE: 3-0 EXCUSED: 2 - Bryant, Brown

	Chair Starr	Hearing no objection, declares the motion CARRIED.
050	Chair Starr	Closes the work session and opens public hearing on SJR 34.
<u>SJR 34 PUBLIC HEARING</u>		
060	Inez Weissman	Chairman, Oregon Chapter of Americans for a Safe Israel. National Coordinator, Alliance for Israel. Thanks the many Oregon citizens who have helped the State of Israel fulfill its national, historical, and religious mandate as a democracy, and have recognized the sovereignty of Israel. States SJR 34 moves the United States Embassy from Tel Aviv to Jerusalem. Urges the committee to pass SJR 34.
082	Paul Romain	Chair, Oregon Chapter of American Israel Public Affairs Committee. States that SJR 34 supports action already taken in 1995. States that Congress passed the Jerusalem Embassy Relocation Implementation Act which calls for the United States Embassy to be moved from Tel Aviv to Jerusalem. States that 183 of 184 embassies are situated in the country's chosen capital. States that only the US Embassy in Israel is not situated in the chosen capital. States that Israel is the land King David chose because it was neutral land and he used it to unite his people. States that Jerusalem has been the capital of the Israeli people for 3,000 years. States SJR 34 simply praises Congress and the President for taking action that is appropriate.
126	Chair Starr	Closes public hearing and opens work session on SJR 34.
<u>SJR 34 WORK SESSION</u>		
127	Vice-Chair Miller	MOTION: Moves SJR 34 be sent to the floor with a BE ADOPTED recommendation.
		VOTE: 3-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Bryant, Brown
	Chair Starr	The motion CARRIES. SEN. STARR will lead discussion on the floor.
129	Chair Starr	Closes work session and opens public hearing on SJR 20.

SJR 20 PUBLIC HEARING

139		Staff presents (EXHIBIT D) .
140	Sen. Gene Timms	Senate District 30. States that SJR 20 requires that 20 percent of the total number of signatures gathered for a petition must be gathered from each congressional district. States that SJR 20 was defeated last session, but because Oregonians believe in a fair initiative process he has brought this bill forward again.
178	Vice-Chair Miller	Explains that he has testimony that states that SJR 20 is the "son of Measure 24" that voters rejected in May 1996.
192	Sen. Timms	States that is correct.
197	Sen. Ted Ferrioli	Senate District 28. States his district covers 11 counties. States a petition can be put on the ballot without having even one signature from Senate District 28. States that an issue can be put on the ballot that reflects the mentality and belief of the I-5 corridor and never need signatures from rural areas. States there needs to be a mechanism which would require petitioners to sell a measure's concept to a wider geographical area, and perhaps there would not be so much government by initiative. States there would be less concerted effort to gather signatures at supermarkets and shopping malls and a more educational effort between the urban and rural areas. States that capping the signatures from each congressional district at 20 percent would provide a better balance and educational opportunities for rural communities. Supports SJR 20.
245	Vice-Chair Miller	Asks if other states, with active initiative petition processes, are moving toward a geographical balance.
250	Sen. Ferrioli	Explains that he does not know how many states have taken this approach. Believes Oregon has always established itself as "unique." States SJR 20 would give a broader representation of Oregonian views. States SJR 20 is a fitting modification in recognition of the growth of political activism and the concentration of that activism in populated areas.
270	Chair Starr	States this measure failed in 1996. Asks if the committee should consider a lower percent, perhaps 15 percent of each congressional district.
277	Sen. Ferrioli	States this was based on the following math: there are five congressional districts and 20 percent would be an even division among all the districts. States the proponents would discuss anything that diffuses the opportunity for education and debate. States that it failed in an earlier referral to the people, but this could be an educational opportunity. States each time this bill is considered, more people understand the reasons to do this. States this is not an attempt to nullify the initiative process, but to involve more communities in the process.
299	Vice-Chair Miller	States he resides in the metropolitan area, but represents a more dispersed Senate District. Asks if an initiative gets on the ballot, would it need to receive acceptance by a percentage of each of the congressional districts.

322	Sen. Ferrioli	States that looking at the percentage game brings to mind the question of the one vote to one voter principle. States that is why the number came as an equal amount of signatures from the five congressional districts. States it is unfair that people in one or two counties have a population advantage over the rest of the state. States there are benefits in looking at the geographic distances from east and west, beyond the valley.
361	Vice-Chair Miller	Asks, because it was voted down in 1996, if it is too soon to refer this issue up to the voters.
369	Sen. Ferrioli	States that after voting to refer the Death with Dignity Act, he swore he would never vote to refer to the people again. Believes that this issue needs additional consideration. Believes that if this goes out to the voters they will see the fairness. States that should the voters reject SJR 20 he will know that the effort was made.
407	Vice-Chair Miller	States SJR 20 calls for an election on the primary election date. Asks if there is a preferred date.
416	Sen. Ferrioli	States it is drafted to go to the voters at the next available election after the session. States there was no strategy used to select the date.
426	Vice-Chair Miller	Asks if the date selected makes any difference.
428	Sen. Ferrioli	States the date can be changed if the committee prefers to bring this before the voters at the general election.
TAPE 39, B		
001	Don Loving	Public Affairs Director, Oregon American Federation of State, County, and Municipal Employees (AFSCME). States that Oregon needs to ask the question why constituents from one target region are able to place issues on the ballot. Defers to Ray Phelps.
023	Ray Phelps	Oregonians to Maintain Community Standards, AFSCME, International Brotherhood of Electrical Workers. Presents (EXHIBIT E) . Supports SJR 20. States that SJR 20 was defeated in 1996 because the voters were not educated on the issues. Believes the issue should be placed on the ballot for the general election to reach a broader base of voters. States that when Oregonians do not possess all of the information on an issue, they will vote no. States that the current initiative process has become an "insiders" process, and this is evidenced by the fact that only 19 of the 49 initiatives placed on the ballot during the last 4 election cycles were approved by the voters.
073	Phelps	Requests that the committee refer a constitutional amendment asking Oregonians if they want the Supreme Court to determine the constitutionality of an initiated legislative measure before the people are asked to vote on it. States it is imperative to ask Oregonians to reconsider the issue now that they are more informed.

098	Vice-Chair Miller	Asks if this creates a constitutional objection by virtue of where the voter lives.
102	Phelps	States he does not believe so, and the value of the one person one vote principle is a policy choice at the ballot box. States that SJR 20 is a fair system that is fairer than the current process.
118	Vice-Chair Miller	Asks if it deviates from the notion that the majority of Oregonians would possess the ability to determine the future of the state.
120	Phelps	Believes it is always true. States the initiative process is a valuable tool and is directed toward mirroring the legislative process. States the process should require standards. States that SJR 20 is a small step that would be a significant improvement.
135	Vice-Chair Miller	States that the last time he ran for an office and lost was due to not enough information reaching the public. Asks what information did not get developed when this issue was raised in 1996.
147	Loving	States the increase in the volume of measures has led voters to look at the initiative process. States he prefers to have the Supreme Court preview measures so that if the measure is unconstitutional it will not make it to the ballot.
170	Vice-Chair Miller	States Ruth Bendlis testimony, (EXHIBIT D) , which opposes SJR 20 and which relates that some believe this is a restriction on the process. Asks if it would be argued that some voices in the initiative process would be heard by virtue of adopting SJR 20. States the disenfranchised voters are not in the concentrated population areas. States that if a percentage is required from these outlying areas, there may be a better mix of what is an acceptable initiative.
194	Loving	States that there are checks and balances, and SJR 20 is a modification to put checks and balances into the initiative process.
211	Phelps	States the clutter of all the ballot measures is wearing out the voters. States the system should be explained to Oregonians. States this is nothing different from the legislative process. States a good part of the public is being ignored.
268	Mike Dewey	Oregon Wheat Growers League. Defers to Daren Coppock.
274	Daren Coppock	Executive Director, Wheat Growers League. States SJR 20 is fair and it balances population with geography as well as urban and rural interests. States that SJR 20 may make the work for professional petitioners difficult.
286	Dewey	States, in 1996, the opposition to this measure ran a better campaign than the proponents for the bill. States there needs to be a higher standard of what is ultimately on the ballot. States SJR 20 would be good for the rural economy and for tourism.

307	Vice-Chair Miller	Asks if Dewey believes that Oregon is really more like two states in one.
312	Coppock	States there is evidence that this is the case, especially considering the measures that are making it to the ballot, such as Measure 64 and Measure 38 in the cycle before. States if there is a way to introduce balance in the process for both rural and urban areas, those ideas should be moved forward.
330	Dewey	States that SJR 20 may appear flawed if it goes into the Constitution, or if Oregon opens up a new congressional seat.
347	Vice-Chair Miller	States the last he heard there was not going to be an additional seat.
353	Rep. Tom Butler	House District 60. States that SJR 20 tries to tackle the rural vs. metropolitan issue. States that there is great opposition to having the rural areas included as even 1/5 th of the vote. States the two Oregon concept has been a long standing issue so the Portland Chamber of Commerce put out a brochure to help overcome the fallacy of the two Oregon concept.
403	Butler	Discusses the differences between urban and rural areas of Oregon.
TAPE 40, B		
020	Butler	States that rural Oregon is distinguished from the rest of the state by the high unemployment rate that is higher than the national rate. States that SJR 20 is appropriate and he supports it.
046	Vice-Chair Miller	States Measures 38 and 64 are perhaps the two worst bills ever to make it to the ballot. Asks if Butler is comforted by the fact that Oregonians understood the impact of these two measures.
064	Butler	States resources were used up fighting Measures 38 and 64. States that if Measure 38 were to run this year, he would not be able to get the resources to stop it. States Measure 64 was genuinely bad law and ill conceived, and if it were to come up for election, opposition would be able to gather the resources to stop it. Anticipates that as a result of cattle prices, farming, and produce prices there may be a recession in Eastern Oregon in the recent future.
114	Butler	States that when the backbone of Eastern Oregon has been broken, the situation can become tenuous to the State of Oregon. Explains that the directors of state agencies have literally been given the keys to a city to have free run of the place due to the city's lack of resources. States there are counties in Eastern Oregon that may, in the future, need to combine for economic reasons. States, as legislators, decisions would need to be made concerning who to hire to run the sewage plants, the water lagoon systems, and other fiscal resources.
164	Butler	States there are virtually no signatures gathered from the rural areas. States there is a lot of opposition to SJR 20, but we need to recognize the need for one person

		to be counted as one vote, and all districts to have an equal vote.
188	Terry Lammers	Lammers Forest Limited. States he was active on the No On 64 campaign. States there should be representation on ballot measures from the rural areas.
215	Vice-Chair Miller	Asks if he feels he is under attack in Polk County from citizens further north.
219	Lammers	States that he attends meetings where he is ridiculed for cutting down trees. States when he says he is a forester he is treated poorly.
236	Vice-Chair Miller	States the issue was on the ballot four years ago and the judgement was made not to pass this issue. Asks if the people of Polk County would be upset to see this issue back on the ballot. Asks if it is defensible to try again.
246	Lammers	Believes that it is.
247	Vice-Chair Miller	Asks if he could expect to hear negative criticism about revisiting this issue.
248	Lammers	States that criticism may come from some people. States he read an article in the Wall Street Journal that stated Oregon has the most initiatives in the United States. States he studies all information before voting on the issues. States he is upset when voters cannot recall what initiatives they voted on and which way they voted. States there are too many initiatives if the voters do not even remember how they voted.
271	Sen. Beyer	States he agrees.
281	Vice-Chair Miller	Closes the public hearing and adjourns meeting at 6:30 p.m.

Submitted By, Reviewed By,

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

EXHIBIT SUMMARY

A ñ SJR 21, written testimony, Sen. Metsger, 3 pp

B ñ SJR 21, written testimony, Hans Linde, 15 pp

C ñ SJR 21, written testimony, David Hunnicutt, 2 pp

D ñ SJR 20, SJR 21, written testimony, staff, 3 pp

E ñ SJR 20, written testimony, Ray Phelps, 2 pp