

SENATE COMMITTEE ON RULES AND ELECTIONS

April 20, 1999 Hearing Room B

4:30 p.m. Tapes 41 - 42

MEMBERS PRESENT: Sen. Charles Starr, Chair

Sen. Randy Miller, Vice-Chair

Sen. Lee Beyer

Sen. Neil Bryant

MEMBER EXCUSED: Sen. Kate Brown

STAFF PRESENT: Brian E. Smith, Administrator

Rachel E. Halupowski, Administrative Support

MEASURE/ISSUES HEARD: SB 1013 Public Hearing and Work Session

SB 704 Public Hearing

SJR 7 Public Hearing

Drafting and Measure Introduction Requests

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 41, A		
000	Chair Starr	Opens meeting at 4:35 p.m. and opens public hearing on SB 1013.
<u>SB 1013 PUBLIC HEARING</u>		
019	Mark Wiener	Direct Mail Consultant for Oregon Campaigns. States SB 1013 specifies an agent is someone that a candidate or campaign authorizes to spend money on

		<p>their behalf. States that the definition of an agent is important because the agent's activities trigger a higher level of detailed reporting for candidates. States the new interpretation that Elections Division has requested could lead to complications for candidates and their vendors. States that, after the last election cycle, he was informed that he was not an agent, even though he did agent work. States his clients do not authorize his spending their money, rather they buy a product from him, specifically, brochures to be mailed. States the Elections Division suspended the enforcement of this new interpretation to be revisited after the legislative session, unless new legislation offers a more specific interpretation of an agent. States SB 1013 tightens up the definition of agent for the purpose of contribution and expenditure (C&E) reporting.</p>
069	Wiener	<p>Believes the new interpretation of agent creates problems, such as requiring businesses to publicize private information that should not be available to competitors. Asks if pollsters who hire telemarketers to make phone calls, do they need to report what those callers are paid. States that the intent of identifying agents is to keep large payoffs from happening. States SB 1013 clarifies that when a campaign buys a single specific product or service from a vendor, that is the way it needs to be reported. States the system should work the same way a radio station works where costs are listed as a single expense by the production of the advertising and the delivery of the advertising to the audience. States the ñ1 amendments, based on discussions between legislative counsel and the Elections Division, seem to clarify the intent of SB 1013.</p>
119	Stan Matthews	<p>Contributions and Expenditure Systems of Oregon. States he was an investigative reporter for 25 years and involved with several "freedom of information" organizations. States that he has produced more than three or four C&Es that were over 2,000 pages long. Concerned that if C&Es are more detailed it becomes difficult and dangerous for candidates to do their own C&Es. States that reporting should occur as stated in SB 1013.</p>
161	Vice-Chair Miller	<p>States that the opponents of the candidates are most interested in C&Es. Asks if the common person bothers to review C&Es.</p>
169	Wiener	<p>States he is correct about the opponents, but there is a public interest in knowing who supports a candidate and how much money they spent on a campaign. States it is difficult being a candidate or the treasurer. States the treasurers are civilly liable for what they disclose in C&Es.</p>
189	Vice-Chair Miller	<p>Asks to what detail SB 1013 requires a campaign manager to report on the C&E.</p>
195	Wiener	<p>States SB 1013 would not allow the candidate to give the name of the campaign manager and the check amount. States SB 1013 requires that the public receive disclosure, which would continue the current trend of C&Es without belaboring the service charges. States that if there is a great public purpose for it, he would understand, but to satisfy the interest of a competitor by disclosing the costs of printing is inconsequential.</p>
218	Vice-Chair Miller	<p>Asks if the detail supplied for a radio commercial would be documented by stating \$15,000 went to radio commercials or would it specify those funds went to KXL for specified time slots.</p>

224	Wiener	States SB 1013 would not change the current practice. States he reports the stations and the amounts of money allotted to each station.
234	Vice-Chair Miller	Asks if it is valuable for the public to have that information.
236	Wiener	States some members of the public may want to know which radio stations they advertised with and how much was spent on those stations. Explains that SB 1013 would not change the requirements of the present reporting practices.
247	Matthews	States that SB 1013 draws a difference between buying an actual product and giving money to someone who turns around and pays out that money for a service.
253	Phil Keisling	Secretary of State. Supports SB 1013 with the ñ1 amendments. States SB 1013 will strike a balance between too much or too little disclosure.
276	Sen. Beyer	Asks if he would clarify the difference SB 1013 brings.
277	Keisling	States that lines 7 and 8 have the language that would allow a vendor, who provides any goods or services, not to itemize exactly where the money is spent.
303	Sen. Beyer	Asks that if the candidate hires Wiener to produce campaign brochures, and the contract was to produce and mail those brochures, could the candidate report that he paid that company \$25,000 to produce those brochures. States that if the mailing is included in the contract, could the mailing also be listed as a blanket cost.
316	Keisling	States the brochures can be reported with the company name and the \$25,000 figure, but the postage would be separately itemized. States the language says prepare or produce brochures. States that SB 1013 does not specify distribution.
330	Sen. Beyer	Asks that if someone is hired to produce and mail brochures, can the candidate buy that type of contract service.
347	Keisling	States SB 1013 provides an instance to bundle services. States that everything is bundled to prepare or produce. States that mailings would be separate and would not be bundled.
363	Sen. Beyer	Asks that if delivering a finished product to a mailing house, where they are sorting, preparing, mailing, and writing a check to their post office as an ongoing account, under SB 1013, would that entire service be bundled.
367	Keisling	States no, the postage would need to be itemized separately.
374	Wiener	States that under SB 1013 mailing would be separate and he supports that. States

		that SB 1013 will let someone else produce the brochure and will not require the candidate to itemize the brochure maker's business.
405	Sen. Beyer	States that one of his businesses delivers to the mailing house who bills him X amount of dollars per piece.
411	Wiener	States that mailing houses do that. States mailing houses will separate out postage and brochure services, which conforms to the law of not mixing services.
425	Chair Starr	Asks why the single check will not be acceptable.
437	Wiener	States that it is where the line is drawn to separate out those functions.
TAPE 42, A		
001	Wiener	States there is a logical distinction between the services of creating brochures and the services from the post office of delivering brochures. States it is reasonable to separate these functions.
011	Chair Starr	States in his campaigns he had usually sent out three separate checks: one to the artwork, one to the printer, and one to the mailing house. States the mailing house is where they prepare the brochures and distribute them, yet there is not a breakdown of the costs of services to prepare for the mailing and the actual mailing costs.
023	Keisling	States that Sen. Starr's campaign had directly contracted with the mailing house, through fully disclosing his costs on the C&E. States SB 1013 makes sure there is a minimal level of disclosure. States the public is interested in how much money was spent, where the money was spent, and for what purpose the money was spent during a campaign. Supports SB 1013.
043	Chair Starr	Closes public hearing and opens work session on SB 1013
<u>SB 1013 WORK SESSION</u>		
047	Sen. Bryant	MOTION: Moves TO ADOPT the ñ1 amendments dated 4/20/99 to SB 1013.
048	Sen. Beyer	MOTION: Moves TO ADOPT the ñ1 amendments dated 4/20/99 to SB 1013 with the conceptual change adding "or to provide mail handling and postage."
054	Sen. Bryant	MOTION: Amends previous motion and moves TO ADOPT the ñ1 amendments dated 4/20/99 to SB 1013 with the conceptual change adding "or to provide mail

		handling and postage."
		<p>VOTE: 4-0</p> <p>EXCUSED: 1 n Brown</p>
	Chair Starr	Hearing no objection, declares the motion CARRIED.
067	Sen. Bryant	MOTION: Moves SB 1013 to the floor with a DO PASS as amended recommendation.
		<p>VOTE: 4-0</p> <p>AYE: In a roll call vote, all members present vote Aye.</p> <p>EXCUSED: 1 n Brown</p>
	Chair Starr	<p>The motion CARRIES.</p> <p>SEN. BEYER will lead discussion on the floor.</p>
075	Chair Starr	Closes work session and opens public hearing on SB 704.
<u>SB 704 PUBLIC HEARING</u>		
086	John Geil	Lawyer, Portland. Opposes SB 704 and SJR 7. States he has practiced law for the last 20 years and believes both bills jeopardize the checks and balances between the branches of government. States there is a delicate balance between the three branches of government. States that both bills add another layer of bureaucracy to the function of judges and impede the judiciary from doing their job. Believes partisan politics impede the selection process, similar to what happened with the federal function between the President, the Senate and the Ninth Circuit Court of Appeals.
125	Sen. Bryant	States his motivation to sponsor SB 704 is because of the de facto system in place today. States that approximately 150 judicial vacancies were filled by appointment since 1981. States that of those appointments, 18 faced contested elections and only two were defeated. Explains that senate confirmations are done in 10 states, and one state has confirmation by the general assembly. Explains that the vast majority of states use a variation of the Missouri Plan. Explains SB 704 should be non-partisan. States the appointment process that is used today came about in 1977 or 1979 through a democratic Governor, House, and Senate. States, in the past, judicial offices were not included in the referral to the voters that allows the Senate to confirm appointments. Asks if it is a good

		idea to have a system of either senate confirmation or a variation of the Missouri Plan.
169	Geil	States the Missouri Plan is a good plan, and prefers to have the legislature implement that plan instead of passing SB 704 or SJR 7.
176	Vice-Chair Miller	Asks if the contests for judicial offices are competitive.
177	Geil	States, on the surface, they are not. States SB 704 is not a good solution to the problem.
184	Vice-Chair Miller	Asks if he feels the same way concerning federal confirmations.
185	Geil	States there is a difference even though this is not an official Missouri system. States that the public does not know enough about judges, but there have been cases where the state judges declined to run when the six year elections came up.
196	Vice-Chair Miller	States that the Senate Rules and Elections Committee has approved the executive appointments for 98 percent of the appointees made by the Governor during the last four years.
210	Geil	States he is concerned with the future, and if the system is not broken, why fix it.
218	Chair Starr	Closes public hearing and opens public hearing on SJR 7.
<u>SJR 7 PUBLIC HEARING</u>		
226	Judge Darryl Larson	President, Circuit Judges Association. States there are significant differences between state and federal judges. States that federal court judges are appointed for life. States that senators and representatives can get easily reelected, and because judges are reelected a high percentage of the time, this may reflect that those judges are doing a good job. States that a confirmation process increases the politicization of the judicial office. States the process needs to be assessed by looking at the long-term needs and not just the short-term remedies.
276	Larson	States that the process of making a decision is done in front of the judge with facts and arguments made in an adversarial process. States that the process is not broken and does not need to be fixed. Supports a Missouri Plan or variation of that plan. Opposes SJR 7.
310	Judge Greg West	Circuit Judge, Marion County. Opposes SJR 7. States the process is political enough as it is. States there may not be opposition because the Governor is making good choices for the appointments. Relates how he was appointed, and how lawyers are able to get bad judges out of office if necessary.

360	West	States a bar poll is taken to give the Governor an idea of who to appoint for a judge. States that in the most recent appointment in Marion County the Governor was approached by the public for input. States there is no need to add another layer to the checks and balances in this system.
401	Justice Mick Gillette	Judge, Oregon Supreme Court. States that in the past judges were appointed who were not particularly objectionable either initially or during reelection. States that when judges "go off the track," they do draw opposition. Relates that there were three trial judges in Oregon who were all removed from the bench by three opponents at the same time.
TAPE 41, B		
001	Gillette	States that there have been at least two judges on the Supreme Court who have been removed by opposition. States that six year elections will still leave judges open to the opportunity to draw an opponent or not. Asks the committee not to pass SJR 7.
031	Sen. Bryant	States there are many variations of the Missouri Plan. States the last time he testified he did not like the pure Missouri Plan. Asks if he approves of any of the modified Missouri Plans.
040	Gillette	States he made that remark because Missouri does not use the Missouri Plan. States he has reservations because "no votes" are stronger than "yes votes." States that if the wording is "shall Judge Gillette be retained," the only people interested in that are the voters who are not interested in seeing him retained. States that there is no retention system that works well. Suggests that no other system has worked better than Oregon's current system.
077	Sen. Beyer	Asks if Gillette would react differently if the question was posed "should Judge X be removed from office."
082	Gillette	States it would make life worse. States that a comparison to another candidate might make the judge look better, rather than just asking to remove the judge from office.
097	Sen. Beyer	States that one of the most difficult things to do for non-lawyers is to vote on judges. States, personally, he feels incompetent to make that vote. States he thinks it is a good idea to require lawyers to give the Governor a list of appointees.
113	Gillette	States he does not wish to appear as being against the Missouri Plan.
141	Sen. Bryant	States he would like to speak with Sen. Derfler before moving into work session.
149	Chair Starr	Closes public hearing and opens work session on drafting and measure introduction requests.

DRAFTING AND MEASURE INTRODUCTION REQUESTS

157	Brian E. Smith	Committee Administrator. Explains the first draft is related to HB 2274 which provides for January 1 as the effective date for all laws passed out of the assembly. States that Legal Counsel needed clarity to determine if the bill would apply to laws passed in the 1999 Legislative Session. States the draft would make laws passed in this session effective January 1, 2000. Explains the second draft is a memorial for former State Representative Carol Howe, who died in June.
167	Vice-Chair Miller	MOTION: Moves the two Senate Rules and Elections drafting and measure introduction requests dated 4/20/99 BE APPROVED.
		VOTE: 4-0 EXCUSED: 1 - Brown
	Chair Starr	Hearing no objection, declares the motion CARRIED.
190	Chair Starr	Closes work session 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 No exhibits