

## SENATE COMMITTEE ON RULES AND ELECTIONS

**May 18, 1999 Hearing Room B**

**4:30 p.m. Tapes 57 - 58**

**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: HB 2717A Public Hearing and Work Session**

**Executive Appointments**

**Tri-Met Board**

**Environmental Quality Commission**

**State Marine Board**

**SB 1245 Public Hearing and Work Session**

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 57, A		
000	Chair Starr	Opens the meeting at 4:33 p.m. and opens a public hearing on SB 2717A.

**SB 2717A PUBLIC HEARING**

001	Rep. Wilson	House District 49. Testifies in support of HB 2717A which exempts an owner, licensee or operator of radio or television station from the prohibition on false political publication broadcasting advertisement provided by a candidate or political committee.
041	Rep. Wilson	Notes that political advertising on radio must be sold at the lowest rate, congests programming and alienates listeners. States that he is not confident that radio operators will continue to advertise for political candidates/measures because the races are becoming so contentious and because of the threat of lawsuits.
068	Rep. Wilson	Reviews efforts by local radio stations to screen political advertising for content and suitability. States that if present conditions continue, it may no longer be worth the risk to advertise for political races.

107	Chair Starr	Comments that the issue at hand is liability. Asks if the radio stations will continue to run political advertising if the liability is removed.
113	Rep. Wilson	Responds that that is correct and adds that stations will continue to monitor the content of advertisements.
122	Sen. Miller	Asks if there are other forms of media which would be entitled to the same exemption from liability.
127	Rep. Wilson	Answers that print media is not required to sell to politicians at a discount. Adds that radio air time is finite and operators are not able to simply "add another page."
137	Sen. Miller	Asks if there is a way to insulate the station by taking the time to determine if the content is suitable.
149	Rep. Wilson	Responds that young disc jockeys may not have the time to determine the advertisement's suitability. Adds that the station is also under obligation to air the advertisement at the time stipulated in the contract.
165	Sen. Miller	Remarks that a person offended and harmed by false publication would still have cause of action against the person providing the false information.
170	Rep.	Answers that he believes that would be the case.
172	Sen. Miller	Asks what the station owner would do in the event of false information if exempt from liability.

183	Rep. Wilson	Responds that operators would apply pressure to a local candidate to change the advertisement. Adds that they would refuse to run the advertisement in the event of a national campaign.
204	Sen. Bryant	Asks if the station would be liable not only locally but with the Federal Communications Commission (FCC) when there is advertising aired that is false and libelous.
215	Rep. Wilson	States he is not sure what the FCC's jurisdiction or concern would be.
240	Pat Egan	Oregon Association of Broadcasters. Presents ( <b>EXHIBIT A</b> ) and testifies in support of SB HB 2717A. Explains that the intent of the bill is to provide some protection to radio broadcasters from liability for the airing of political speech.
290	Egan	States that amendments had been drafted to extend the protection to include the newspaper industry. Notes that the print media does not consider it necessary since there is usually sufficient time to review the advertising.
309	Mike Dewey	Oregon Cable Telecommunications Association. Testifies in support of HB 2717A. Remarks that many small cable operators receive misleading advertisements, usually late in campaigns. Notes that these operators need protection to continue to carry political advertisements.
344	Dominic Monihan	Legal Counsel, Oregon Association of Broadcasters. Testifies in support of HB 2717A.
350	Sen. Miller	Asks what recourse the damaged candidate would have to prevent harmful advertisements from being broadcast if the stations were exempt from liability.
376	Dewey	Responds that operators will continue to have the opportunity to pull an advertisement if they are shown it is untruthful or misleading.
392	Sen. Miller	Asks if the radio station operator can recover costs in the event of a frivolous lawsuit.
397	Egan	Answers that the statute does provide for recovery of attorney fees.
411	Sen. Miller	Asks if there are other states with this statutory protection for broadcasters.
416	Monihan	Responds that he is unaware of other states with this protection. Reviews a 1996 lawsuit against the publisher of a false advertisement.
466	Monihan	Emphasizes that the messenger should not be liable in the event of a false political advertisement.

**TAPE 58, A**

001	Sen. Miller	Remarks the it would not be appropriate to sue the Postmaster General for defamatory materials sent through the mail.
003	Monihan	Answers that would be an accurate analogy.
004	Chair Starr	Closes the public hearing and opens a work session on HB 2717A.

**HB 2717A WORK SESSION**

005	Sen. Miller	<b>MOTION: Moves HB 2717A to the floor with a DO PASS recommendation.</b>
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**VOTE: 4-0**

**AYE: In a roll call vote, all members present vote Aye.**

**EXCUSED: 1 - Brown**

Chair Starr	<b>The motion CARRIES.</b>
	<b>SEN. MILLER will lead discussion on the floor.</b>

008	Chair Starr	Closes the public hearing and opens a work session on the Tri-Met Board.
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**EXECUTIVE APPOINTMENTS to TRI-MET BOARD**

018	Brian Smith	Administrator. Presents ( <b>EXHIBIT B</b> ), the Executive Appointments Interest Form for the proposed appointment of Kay Stepp to the Tri-Met Board.
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019	Kay Stepp	Summarizes her experience and why she wants to serve on the Tri-Met Board.
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034	Sen. Bryant	Asks if she graduated from the American Leadership Forum.
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036	Stepp	Responds that she was a member of the second graduating class.
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046	Sen. Bryant	<b>MOTION: Moves the appointment of Kay Stepp to the Tri-Met Board to the floor with the recommendation that the appointment be confirmed.</b>
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**VOTE: 4-0**

**AYE: In a roll call vote, all members present vote Aye.**

**EXCUSED: 1 - Brown**

**Chair Starr**

**The motion CARRIES.**

**SEN. BRYANT will lead discussion on the floor.**

055            Chair Starr            Closes the work session and opens a work session on the Environmental Quality Commission.

**EXECUTIVE APPOINTMENTS to ENVIRONMENTAL QUALITY COMMISSION**

062	Smith	Presents ( <b>EXHIBIT C</b> ), the Executive Appointments Interest Form for the appointment of Rose Marie Davis to the Environmental Quality Commission (ECQ).
065	Dee Bridges	Oregon Water Resources Congress (OWRC). Presents ( <b>EXHIBIT D</b> ) and testifies in opposition to the appointment of Rose Marie Davis to the EQC.
105	Bridges	Reviews the relationship of this appointment to Ballot Measure 66 (page 2 of the exhibit).
122	Sen. Beyer	Ask if the objections are due to the belief that Ms. Davis is more likely to support environmental positions.
128	Bridges	Answers that is the concern of some members of the OWRC.
129	Sen. Beyer	Asks if the balance of the EQC is tilted.
133	Bridges	States he is not aware as he does not closely follow the activities of that commission.
135	Paulette Pyle	Director of Grass Roots, Oregonians for Food and Shelter (OFS). Testifies in opposition to the appointment. Explains that her members do not feel that Ms. Davis would be objective as a member of the EQC.
159	Sen. Beyer	Asks if the OFS members felt that Ms. Davis was a valuable person to have participating in discussions.
163	Pyle	Responds that she was considered a valuable participant. Reiterates that the concern is that Ms. Davis is more "in tune" to environmental issues than economic needs.
170	Glen Stonebrink	Oregon Cattlemen's Association. Testifies in opposition to the appointment of Ms. Davis.
176	Pyle	Reiterates her opposition.

182	Sen. Beyer	Asks if the ECQ is tilted one way or the other.
185	Pyle	Responds that there have been major improvements and there is more balance. Notes that there are fewer complaints about the ECQ than in the past.
196	Bridges	Adds that before the 401 Certification there was a court case requiring the state to waive certification or require certification of cattle producers who graze on federal land. States the case was obviously slanted against cattle producers and the appellate court reversed the decision.
219	Sen. Miller	Asks if the witness is aware whether Ms. Davis had an opinion on Measures 38 and 64.
229	Pyle	Responds that, when asked, most of Ms. Davis' answers were evasive.
236	Bridges	Adds that the cattlemen are attempting to be good stewards of the environment. Notes that the "jury is still out" on many of the proposed policies to protect the environment.
260	Chair Starr	Closes the work session and opens a work session on the State Marine Board.

**EXECUTIVE APPOINTMENTS to STATE MARINE BOARD**

261	Smith	Presents ( <b>EXHIBIT E</b> ), the Executive Appointments Interest Form for the appointment of Louise Gatlin to the State Marine Board..
269	Louise Gatlin	Testifies in support of her appointment and outlines her experience.
318	Gatlin	Summarizes her participation in boating safety programs and the U.S. Coast Guard Auxiliary.
333	Sen. Brown	Asks who is currently on the Marine Board and whether there are any representatives from the Portland Metropolitan Area.
340	Smith	Responds with a list of Marine Board members and geographical representation.
362	Sen. Miller	<b>MOTION: Moves the appointment of Louise Gatlin to the State Marine Board to the floor with the recommendation that the appointment be confirmed.</b>

**VOTE: 5-0**

**AYE: In a roll call vote, all members present vote Aye.**

**Chair Starr**

**The motion CARRIES.**

**SEN. BRYANT will lead discussion on the floor.**

383 Chair Starr Closes the work session and opens a public hearing on SB 1245.

**SB 1245 PUBLIC HEARING**

385 Chair Starr Recommends that the bill be set over as some proposed amendments have not been drafted.

419 Sen. Brown Points out that the first reading deadline was over three weeks ago.

426 Chair Starr Turns over the gavel to Vice-Chair Miller.

443 Sen. Miller Asks the witnesses to be brief since there will need to be an additional hearing.

**TAPE 57, B**

001 Jerry Schmidt Oregon Association of Realtors (OAR). Presents (**EXHIBIT F**) and testifies in support of SB 1245 which requires the Water Resources Director to give personal notice to a landowner or occupant before entering upon private property to perform duties. Notes that the notice could be oral or written through the use of first class mail.

041 Sen. Bryant Comments that utilizing first class mail for notice would be an expense and would require referral to the Ways and Means Committee.

052 Schmidt Responds that the intent is to limit the expense.

061 Sen. Miller Points out that one of the amendments states that personal notice is oral notice given three days prior to entry to the property.

066 Schmidt Responds that the intent of verbal notice is to call or visit, and the mail option would take effect if no one answered. Adds that the intent is not to require the mailing of 40,000 inspection notices.

077 Sen. Miller Clarifies that the intent is to insure that the owner is given notice prior to

government intrusion on private property.

078	Schmidt	Answers that is correct.
088	Bridges	Presents ( <b>EXHIBIT G</b> ) and testifies in opposition to SB 1245. Explains that watermasters need immediate access to regulate diversions to protect water rights.
100	Sen. Brown	Asks what the current practice is for notification.
102	Bridges	States that an attempt is made to contact the land owner verbally and if there is no response the watermaster will enter the property.
107	Sen. Brown	Asks if there are methods other than entry onto private property to detect when water rights are being violated.
109	Bridges	Answers that he does not know.
147	Richard Whitman	Assistant Attorney General, Natural Resources Section, Department of Justice. Presents ( <b>EXHIBIT H</b> ) and explains existing limitations on state agency rights to enter private property and the expected effects of SB 1245.
163	Whitman	Remarks that as a general rule, a state agency cannot enter private property without a warrant, an administrative warrant, or consent. Outlines exceptions to the requirement for a warrant (page 2 of the exhibit).
213	Whitman	Points out that SB 1245 requires written notice prior to entry even though notice will not affect whether the entry onto the property is lawful. Adds that the bill appears to eliminate the authority of state agencies to enter property in emergencies.
244	Whitman	States that the provisions of SB 1245 would interfere with the statutory duties of some state agencies. Summarizes possible effects on the Department of Environmental Quality (DEQ) which could lead to a loss of U.S. Environmental Protection Agency (EPA) delegation approval to implement federal law.
287	Phil Ward	Director, Oregon Department of Agriculture (ODA). Presents ( <b>EXHIBIT I</b> ) and testifies in opposition to SB 1245. Remarks that the ODA conducts over 65,000 entries to private property per year to conduct inspections to serve the agricultural industry and protect public health and safety.
315	Paul Cleary	Director, Division of State Lands. Presents ( <b>EXHIBIT J</b> ) and testifies in opposition to SB 1245. Notes that advance notice is a current practice of the agency, but there are instances and emergencies where advance notice cannot be given.
338	Martha Pagel	Director, Water Resources Department. Presents ( <b>EXHIBIT K</b> ) and testifies in opposition to SB 1245. States that water rights holders do not inform the department of the current owner and would make it difficult to send notice.



388	Langdon Marsh	Director, DEQ. Presents ( <b>EXHIBIT L</b> ) and testifies in opposition to SB 1245. Emphasizes that DEQ needs to respond quickly to emergencies. Adds that SB 1245 would preclude DEQ's ability to enter public property in order to perform inspections.
424	Pagel	Clarifies that watermasters make frequent visits to properties to advise junior water rights holders of improper distribution of water.
445	Sen. Bryant	Comments that a watermaster has the right to be on a ditch road.

**TAPE 58, B**

001	Mike Dewey	Oregon Wheat Growers League. Testifies in support of addressing private property issues but expresses concerns with the notification requirements, particularly with respect to weights and measures inspections.
021	Stonebrink	Testifies in support of SB 1245 and explains that it addresses a private property rights issue. Adds that a private property owner should retain the rights to "say no" to an agency inspection.
046	Sen. Miller	Closes the public hearing on SB 1245.
049	Sen. Brown	States she would like to register an aye vote for HB 2717A.
055	Sen. Miller	Adjourns the meeting at 6:07 p.m.

Submitted By, Reviewed By,

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

**EXHIBIT SUMMARY**

**B ñ Executive Appointments, interest form, staff, 11 pp**

**C ñ Executive Appointments, interest form, staff, 7 pp**

**D ñ Executive Appointments, written testimony, Dee Bridges, 10 pp**

**E ñ Executive Appointments, interest form, staff, 16 pp**

**F ñ SB 1245, written testimony, Jerry Schmidt, 22 pp**

**G ñ SB 1245, written testimony, Dee Bridges, 1 p**

**H ñ SB 1245, written testimony, Richard Whitman, 5 pp**

**I ñ SB 1245, written testimony, Phil Ward, 2 pp**

**J ñ SB 1245, written testimony, Paul Cleary, 2 pp**

**K ñ SB 1245, written testimony, Martha Pagel, 3 pp**

**L ñ SB 1245, written testimony, Langdon Marsh, 3 pp**