

## SENATE COMMITTEE ON RULES AND ELECTIONS

May 20, 1999 Hearing Room B

4:30 p.m. Tapes 59 - 60

**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:** Executive Appointment

Oregon Government Standards and Practices Commission

SB 831 Public Hearing and Work Session

Drafting and Measure Introduction Requests

HB 2964A Public Hearing and Work Session

HB 2657A Public Hearing and Work Session

HB 3035A Public Hearing and Work Session

HB 2585A Public Hearing and Work Session

SB 9 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 59, A		

000	Chair Starr	Opens meeting at 4:36 p.m. and opens public hearing on Oregon Government Standards and Practices Commission.
<b><u>EXECUTIVE APPOINTMENT to OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION</u></b>		
019		Staff presents <b>(EXHIBIT A)</b> .
020	Mike Smith	Structural Engineer. Explains why he would like to be a member of the commission and what he brings to the commission. Believes the commission's mission is to protect public trust.
048	Chair Starr	Asks if there is a conflict with a former public official or an aspiring public official serving on this commission.
051	M. Smith	States he does not believe there is a conflict.
061	Chair Starr	Asks if he is planning to continue serving in state government while on the commission.
067	M. Smith	Clarifies that an elected official cannot be a member of the commission.
074	Chair Starr	States that Smith's campaign was run vigorously but friendly.
089	Chair Starr	Closes work session and opens public hearing on SB 831.
<b><u>SB 831 PUBLIC HEARING</u></b>		
102	John Mangus	Director, Oregon Department of Veterans Affairs. Presents <b>(EXHIBIT B)</b> . Supports SB 831. States that SB 831 would allow all veterans a one time opportunity for job preference in public employment for a period of fifteen years, starting from the date of separation from active duty.
127	Sen. Bryant	Asks how many people are effected by SB 831 and what is the impact.
130	Mangus	States he does not know. States it would be very few people, but the numbers rise during wartime periods.
140	Sen. Bryant	Asks if the definition of "veteran" includes the National Guard.
147	Mangus	States it would only cover veterans on active duty.
149	Sen. Bryant	Asks how much active duty must be served in order to be qualified.

151	Mangus	States that Oregon law requires 90 days in active duty.
157	Jack Magnuson	United Veterans Groups of Oregon. Presents <b>(EXHIBIT C)</b> . Supports SB 831 with the ñl amendments.
176	Sen. Bryant	Asks what the current method is for special consideration.
182	Magnuson	Believes it is an examination process.
183	Sen. Bryant	Asks if the process is achieved by rule or statute.
188	Chair Starr	Clarifies the intention is to create a uniform method.
190	Sen. Bryant	States a reference should be made to SB 831 to show the intention of a uniform method.
193	Chair Starr	Asks to clarify that a uniform method is stated in SB 831 to give a five percent preference.
195	Sen. Bryant	States this is the only uniform method being discussed.
202	Chair Starr	Closes public hearing and opens public hearing on HB 2964-A.
<b><u>HB 2964A PUBLIC HEARING</u></b>		
248	Jack Lenhardt	Owner, Hubbard Airport. Presents <b>(EXHIBIT D)</b> . Supports HB 2964A.
290	Roger Severson	Codes and Technical Services Unit, State Fire Marshals Office. Presents <b>(EXHIBIT E)</b> . Opposes HB 2964A. Concerned about adjusting current rules. States HB 2964A would eliminate fire regulations for fuel truck transfers in all but eight airports in Oregon.
355	Sen. Bryant	States there was a committee working out the issues. Asks if Severson has some proposed amendments to offer the committee.
356	Severson	States there are proposed amendments drafted.
357	Sen. Bryant	Asks what the proposed rules do.
358	Severson	States the rules would provide for setback distances, transfer distances between vehicles, valving for bottom load types, and filling requirements.

376	Sen. Bryant	States that the legislative session will last for at least a few more weeks. States that if he can make clarifications to fix this bill, now is the time to propose those changes.
391	Severson	States he would submit a draft for the committee to review.
402	Chair Starr	States the HB 2964A can be set aside for a short period. Urges Severson to make the changes as soon as possible.
415	Jim Everitt	Western Regional Chair, National Fire Protection Association. States that code development is created by a 16 member commission with only two members who are fire officials. Believes that overriding national code consensus sets a dangerous precedent.
<b>TAPE 60, A</b>		
001	Everitt	States that taking power and authority away from the fire marshal puts them in a bind by making fire prevention difficult.
005	Severson	States he will provide a copy of the drafted proposed amendments from his office.
010	Chair Starr	Recesses public hearing on HB 2964A and opens work session on Oregon Government Standards and Practices Commission.
<b><u>EXECUTIVE APPOINTMENT to OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION</u></b>		
<b>019</b>	<b>Vice-Chair Miller</b>	<b>MOTION: Moves the appointment of Mike Smith to the Oregon Government Standards and Practices Commission to the floor with the recommendation that the appointment be confirmed.</b>
		<b>VOTE: 3-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 2 - Beyer, Brown</b>
		<b>Chair Starr</b>  <b>The motion CARRIES.</b>  <b>SEN. MILLER will lead discussion on the floor.</b>

030	Chair Starr	Closes work session and opens work session on SB 831.
<b><u>SB 831 WORK SESSION</u></b>		
033	Vice-Chair Miller	<b>MOTION: Moves to ADOPT SB 831-1 amendments dated 5/18/99.</b>
		<b>VOTE: 3-0</b> <b>EXCUSED: 2 - Beyer, Brown</b>
	Chair Starr	<b>Hearing no objection, declares the motion CARRIED.</b>
036	Vice-Chair Miller	<b>MOTION: Moves SB 831 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 3-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 2 - Beyer, Brown</b>
	Chair Starr	<b>The motion CARRIES.</b>  <b>SEN. STARR will lead discussion on the floor.</b>
045	Chair Starr	Closes work session and opens work session on drafting and introduction requests.
<b><u>DRAFTING AND MEASURE INTRODUCTION REQUESTS</u></b>		
050	Brian E. Smith	Explains the drafting request is for a bill which would create a school performance report card for all Oregon schools.
054	Sen. Miller	<b>MOTION: Moves drafting request from the Senate Rules and Elections Committee BE APPROVED.</b>
		<b>VOTE: 3-0</b> <b>EXCUSED: 2 - Beyer, Brown</b>

	Chair Starr	Hearing no objection, declares the motion CARRIED.
062	Chair Starr	Closes work session and reopens public hearing on HB 2964A.
<b><u>HB 2964A PUBLIC HEARING</u></b>		
065	Rep. Carl Wilson	House District 49. Discusses issues with small airports in his district. States the small airports fuel their planes directly from fuel trucks. Explains, last year, the State Fire Marshal's office abruptly began enforcing a rule that had been previously ignored: vehicles that are used to fuel airplanes must only receive their fuel from approved storage and pumping facilities.
115	Rep. Wilson	Discusses safety and insurance codes currently in practice.
123	Sen. Bryant	Concerned that if the State Fire Marshal's office opposes HB 2964A the Governor may veto the bill. Asks if Rep. Wilson has discussed the issue with the Governor.
132	Rep. Wilson	States he has not spoken with the Governor's office. States he would be willing to negotiate with the Fire Marshal's office.
140	Sen. Bryant	States an amendment to HB 2964A could satisfy Rep. Wilson's concerns as well as aid in obtaining the Governor's signature.
148	Rep. Wilson	States he would appreciate the committee holding onto HB 2964A until some changes can be made to satisfy all parties involved.
150	Sen. Bryant	Closes public hearing and opens public hearing on HB 2657A.
<b><u>HB 2657A PUBLIC HEARING</u></b>		
170	Jon Chandler	Director, Governmental Affairs, Oregon Building Industry Association (OBIA). Presents ( <b>EXHIBIT F</b> ). States HB 2657A prohibits construction excise taxes, and grandfathers those taxes currently in existence. States HB 2657A was originally drafted to allow construction excise taxes as long as those taxes are treated as an impact fee, but Legislative Counsel could not draft this type of legislation. States HB 2657A passed through the House with a vote of 42 to 15. Urges the committee to pass HB 2657A.
214	Steven Kafoury	Oregon Remodelers Association. Supports HB 2657A.
224	Chair Starr	Closes public hearing and opens public hearing on HB 3035A.

**HB 3035A PUBLIC HEARING**

235	Rep. Jeff Kropf	House District 37. States that 3035A would allow the appropriate legislative committee to review contested rules written by an agency before the agency adopts those rules. States the committee would not have the power to change the rules, but could give policy input to any contested rules before they are adopted.
285	Chair Starr	States that the Department of Administrative Services requested the committee consider a 35 day period instead of a 49 day period. Asks if this was debated in the House.
293	Rep. Kropf	States no. States he has concerns with interim committees, and believes 49 days is a reasonable amount of time to allow a legislative committee to come together to review a contested rule. Defers to Greg Chaimov.
307	Greg Chaimov	Legislative Counsel. States that the 49 day period was in the original bill, and that was based on an estimate of the time Legislative Counsel needs to review proposed rules and report them to the committee.
324	Chair Starr	Closes public hearing and opens public hearing on HB 2585A.

**HB 2585A PUBLIC HEARING**

352		Staff presents <b>(EXHIBIT G)</b> .
353	Pat Hearn	Executive Director, Oregon Government Standards and Practices Commission. States the Commission is neutral on HB 2585A. States the Commission desires to maintain the present level of public disclosure of conflicts of interest.
394	Sen. Bryant	Asks if HB 2585A is based on the Attorney General's opinion issued two or three months ago.
398	Hearn	Believes only parts of HB 2585A include those opinions. States there was another bill that came out of the House that was specifically in response to that.
400	Sen. Bryant	Asks if he knows where that bill is now.
401	Hearn	States he does not.
411	Chair Starr	Recesses public hearing and opens work session on HB 3035A.

**HB 3035A WORK SESSION**

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440	Sen. Bryant	<b>MOTION: Moves HB 3035A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 4-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 1 - Brown</b>
	Chair Starr	<b>The motion CARRIES.</b>  <b>SEN. BRYANT will lead discussion on the floor.</b>
<b>TAPE 59, B</b>		
001	Chair Starr	Closes work session and opens work session on HB 2657A.
<b><u>HB 2657A WORK SESSION</u></b>		
022	Sen. Bryant	<b>MOTION: Moves HB 2657A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 3-1</b> <b>AYE: 3 - Starr, Miller, Bryant</b> <b>NAY: 1 - Beyer</b> <b>EXCUSED: 1 - Brown</b>
	Chair Starr	<b>The motion Carries.</b>  <b>SEN. STARR will lead discussion on the floor.</b>
024	Vice-Chair Miller	Asks if there was any adverse testimony.
026	Sen. Bryant	Explains there was not.
028	Vice-Chair Miller	Asks if the cities and counties were in opposition.



030	Sen. Bryant	Explains the cities and counties were neutral.
038	Sen. Beyer	Opposes HB 2657A in terms of precluding the local general purpose government from figuring out what they can do with the consent of their citizens.
047	Chair Starr	Closes work session and opens public hearing on SB 9.
<b><u>SB 9 PUBLIC HEARING</u></b>		
050	Sen. Bryant	Explains he may have a potential conflict of interest due to his legal practice in which he represents businesses involved in both Internet and cable industries.
067	Shelly Jenson	Governmental Affairs Manager, GTE. Defers to Ed Shimizu representing GTE, Stephan Kafoury representing the Oregon Internet Service Providers, and David Olson representing the City of Portland.
073	Ed Shimizu	GTE. Presents ( <b>EXHIBIT H</b> ). Explains how most consumers connect to the Internet. States that current phone wires do not have the capacity to support all the applications needed for Internet connection, especially when the wires were designed to carry voice traffic. States the existing copper wire slows down the process of downloading information from the Internet. States SB 9 is aimed at the cable modem service, which uses existing cable companies lines.
123	Shimizu	States the cable companies are currently closed networks and SB 9 would require cable operators to open their networks to other Internet providers who would like to use the cable wires. Urges the committee to pass SB 9.
178	Sen. Bryant	Asks if there was anything stopping GTE from running their own cable.
179	Shimizu	States they are presently running their own cable.
183	Sen. Bryant	Asks if GTE's network is open because they are regulated by the Public Utility Commission (PUC).
184	Shimizu	States yes.
185	Sen. Bryant	Asks if the cable companies are regulated.
186	Shimizu	States no.
189	Sen. Bryant	Asks if the cable companies should be regulated by the PUC.
192	Shimizu	States not by the PUC. States the cable companies were built as a de facto

		monopoly.
196	Sen. Bryant	States because of satellites there is competition for cable companies.
203	Shimizu	States the cable companies are competitors, but GTE will not be in every community where cable is available.
238	Sen. Bryant	Asks if, even though GTE is in an open system, they have the right to recover investment costs.
240	Shimizu	States they were entitled the right under the rate of return regulation but this is not at the federal level. States there is no right of recovery.
244	Sen. Bryant	Asks if there is a guaranteed rate of return in Oregon.
245	Shimizu	States Oregon guarantees a rate of return.
247	Sen. Beyer	Asks if there is any place in Oregon where Internet access is taking place via cable lines.
250	Shimizu	States there are a few places where TCI cable is offering it.
255	Kafoury	Oregon Internet Providers Association, First World Communications. Supports SB 9. Believes SB 9 will promote competition.
309	David Olson	Cable Communications Director, City of Portland. Presents <b>(EXHIBIT I)</b> . Believes Oregon needs to act on the issue of open access policy and to take a leadership position. States there are no substantive arguments against SB 9.
359	Olson	States the Federal Communications Commission (FCC) is at a stalemate and is looking at states and localities to develop a record for them on how open access can be accomplished. Supports SB 9.
375	Sen. Bryant	Asks if it is fair for Oregon to change the rules by regulating a service not previously regulated.
399	Olson	States it is not clear that the competitive advantage is grounded in current law. States that the market has developed in the last few years.
411	Sen. Bryant	States that some cable companies laid their wiring in hopes to provide faster access than the phone system.
419	Olson	States that it is not clear if the cable industry will suffer from providing both

		wholesale and retail access to their system. States there may be more customers entering the system once the access is open.
446	Sen. Bryant	Asks if small business operators would see the economic gain of open access and open their system.
449	Olson	States that one would hope, but currently the cable industry has the capability to market a widely penetrated, high speed cable modem, establishing dominance in the market before open access occurs.
<b>TAPE 60, B</b>		
001	Beth Vargas Duncan	League of Oregon Cities. Supports SB 9.
012	Mike Dewey	Oregon Cable Telecommunications Association. Opposes SB 9. Defers to Duane Bosworth.
026	Duane Bosworth	AT&T and TCI. States that SB 9 is a matter to be left to the FCC and Congress. Opposes SB 9. Explains that no state has imposed an open access requirement for cable companies. Explains there is sharp distinction throughout all federal legislation between cable and telecommunications. States that cable is not a common carrier and should not be forced to be.
076	Bosworth	States that AT&T and TCI would need to make technological changes to support open access. States the passage of SB 9 would create First Amendment issues. States if SB 9 passes there would be a need to expand the staff of the PUC to make decisions.
126	Chair Starr	Recesses public hearing on SB 9 and reopens public hearing on HB 2585A.
<b><u>HB 2585A PUBLIC HEARING</u></b>		
134	Rep. Kevin Mannix	House District 32. States HB 2585A was designed to avoid a strict liability situation in terms of interpretation of case law as to the disclosure of conflict of interest or the nature of conflict of interest.
184	Rep. Mannix	States he has no issue with adding amendments suggested by the Government Standards and Practices Commission. Encourages passage of HB 2585A.
206	Sen. Bryant	States that HB 2585A works in tandem with Rep. Williams' bill which codifies the Attorney General's opinion.
213	Chair Starr	Closes public hearing and reopens public hearing on SB 9.

**SB 9 PUBLIC HEARING**

220	Ron Hren	Divisional Vice President, Falcon Cable. Presents <b>(EXHIBIT J)</b> . Opposes SB 9. States his company has signed an agreement to provide cable modems and high speed data services to residents of Oregon beginning June, 1999. States that if SB 9 becomes law, his company would be required to provide access to any Internet service provider that warranted access to his company's private telecommunications network. States his company would not have made investments to offer high speed data services if they were to be forced to open their proprietary networks to all newcomers.
270	Hren	States SB 9 will create technical problems in accommodating the 6,000 or more providers that may ask for access to the cable companies' networks.
308	Dewey	States the high speed data business should not need to be regulated because the marketplace will take care of that. Believes SB 9 will stifle competition, not promote it.
358	Dewey	States that SB 9 should not pass.
362		Staff presents <b>(EXHIBIT K)</b> .
363	Chair Starr	States the committee is not going to be able to work this issue this Legislative Session. States there will be future opportunities, but he will not move on SB 9 at this time. Appreciates being confronted with the issues. Closes 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 Executive Appointments, interest form, staff, 10 pp**

**B ñ SB 831, written testimony, Jon Mangus, 1 p**

**C ñ SB 831, written testimony, Jack Magnuson, 1 p**

**D ñ HB 2964, written testimony, Jack Lenhardt, 1 p**

**E ñ HB 2964, written testimony, Roger Severson, 4 p**

**F ñ HB 2657A, written testimony, Jon Chandler, 1 p**

**G ñ HB 2585, written testimony, staff, 2 p**

**H ñ SB 9, written testimony, Ed Shimizu, 11 pp**

**I ñ SB 9, written testimony, David Olson, 4 pp**

**J ñ SB 9, written testimony, Ron Hren, 3 pp**

**K ñ SB 9, written testimony, staff, 1 p**