

**SENATE COMMITTEE ON RULES AND ELECTIONS**

**May 4, 1999 Hearing Room B**

**4:30 p.m. Tapes 48 - 50**

**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**

**Gary Roulier, Administrative Support**

**MEASURE/ISSUES HEARD: HCR 3 Public Hearing and Work Session**

**SCR 12 Public Hearing and Work Session**

**SCR 13 Public Hearing and Work Session**

**SB 913 Public Hearing**

**HCR 6 Public Hearing and Work Session**

**SB 1312 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 48, A		

002	Chair Starr	Opens the meeting at 4:30 p.m. and opens a public hearing on HCR 3.
<b><u>HCR 3 PUBLIC HEARING</u></b>		
010	Sen. Bill Fisher	Senate District 23. Testifies in support of HCR 3 which honors former State Representative Robert M. Stults, 1919-1998. Summarizes his political and personal relationship with Mr. Stults.
059	Chair Starr	Closes the public hearing and opens a public hearing on SCR 12 and SCR 13.
<b><u>SCR 12 AND SCR 13 PUBLIC HEARING</u></b>		
064	Gary Wilhelms	Oregon State Senate President's Office. Testifies in support of both SCR 12 and SCR 13.
116	Lee Hazelwood	Capitol Coordinator, Governor's Commission on Senior Services. Presents <b>(EXHIBIT A)</b> and testifies in support of SCR 13.
162	Chair Starr	Closes the public hearing and opens a work session on SCR 12.

**SCR 12 WORK SESSION**

164                      Sen. Beyer    **MOTION: Moves SCR 12 be sent to the floor with a BE ADOPTED recommendation.**

**VOTE: 3-0**

**EXCUSED: 2 - Miller, Brown**

**Chair Starr    Hearing no objection, declares the motion CARRIED.**

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

172                      Chair Starr    Closes the work session and opens a work session on SCR 13.

**SCR 13 WORK SESSION**

174 Sen. Beyer **MOTION: Moves SCR 13 be sent to the floor with a BE ADOPTED recommendation.**

**VOTE: 3-0**

**EXCUSED: 2 - Miller, Brown**

**Chair Starr** **Hearing no objection, declares the motion CARRIED.**

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

181 Chair Staff Closes the work session and opens a work session on HCR 3.

**HCR 3 WORK SESSION**

185 Sen. BEYER: **MOTION: Moves HCR 3 be sent to the floor with a BE ADOPTED recommendation.**

**VOTE: 4-0**

**EXCUSED: 1 - Miller**

**Chair Starr** **Hearing no objection, declares the motion CARRIED.**

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

193 Chair Starr Closes the work session and opens a public hearing on SB 913.

**SB 913 PUBLIC HEARING**

184 Peter Toll Regulatory Affairs Officer, International Association for Financial Planning. Testifies in support of SB 913 which requires educational institutions to establish tax-sheltered annuity plans upon the request of five or more employees of the institution.

215 Toll Outlines the 403(b) retirement plan which allows a public school employee to set aside and invest up to 20 percent of pre-tax annual income. Explains that the purpose of SB 913 is to open the doors for additional vendors to provide financial services to the school districts.

248 Sen. Bryant Asks why the North Clackamas School District decided to limit services to one

vendor.

251	Toll	Responds that he is not aware of the specific reason but surmises it was to provide cost savings.
254	Sen. Beyer	Asks if there is a cost to the employer to provide these services.
257	Toll	Answers that the cost is minor.
266	Sen. Beyer	Asks if there are restrictions regarding electronic transfer.
271	Toll	Responds that there are none and adds that some school districts require only one employee request to establish a plan.
289	Sen. Bryant	Asks if there are any audit responsibilities on the part of the school districts.
290	Toll	Answers that there are some audit and compliance responsibilities. Adds that those responsibilities would remain whether there were one or multiple vendors.
301	Sen. Beyer	Asks for the specific responsibilities of the school districts.
304	Toll	Responds that the 403(b) is a tax-qualified vehicle. Adds that the Internal Revenue Service (IRS) becomes concerned when more than the allowed 20 percent of annual income is set aside.
312	Sen. Beyer	Asks if the school district must allow the employees to participate in a 403(b) plan.
315	Toll	Responds that the law presently allows employee participation and reviews actions by the North Clackamas School District to limit participation to one vendor.
324	Sen. Brown	Asks if the tax and audit burden would be on the school district or the employee.
328	Toll	Responds that the burden would be on the district.
355	Al Shannon	School District Services Specialist, Oregon School Boards Association. Presents <b>(EXHIBIT B)</b> and testifies in opposition to SB 913.
407	Shannon	Notes that the largest concern is that school districts will lose local control. Emphasizes that the Salem-Keizer School District currently has 37 vendors and

the administration can be cumbersome. Notes that under current federal law, an employee may direct contributions to a specific company through a fiduciary transfer (page 1 of the exhibit).

**TAPE 49, A**

010	Sen. Beyer	Asks for a definition of a fiduciary transfer and the transfer of funds.
013	Shannon	Responds that a fiduciary transfer is a transfer that is not taxable. Adds that the school districts may execute salary reduction agreements with the employees.
028	Sen. Beyer	Asks if transfer fees are attached to these transfers.
033	Shannon	Responds that transfer fees sometimes apply.
043	Wayne Sackley	Aon Consulting. Presents ( <b>EXHIBIT C</b> ) and testifies in opposition to SB 913. Adds that some transfers can be made without fees. Discusses the mechanics of transfers with Sen. Beyer.
064	Sen. Beyer	Asks if these services are federally mandated to be offered to employees.
073	Sackley	Responds that these plans must be offered to all employees and the allowable amounts are 20 percent of salary up to \$10,000, whichever is less.
080	Marilyn Kribs	Salem-Keizer School District. Adds that the process is complex and tedious to administer.
083	Sen. Brown	Asks about local districts losing control and notes that the situation seems out of control already if the Salem-Keizer School District has 37 vendors.
089	Sackley	Responds that is why the North Clackamas School District hired his company.
091	Sen. Brown	Asks about IRS audits and the amount of exposure for school districts under the provisions of SB 913.
098	Sackley	Responds that the language of SB 913 does increase the exposure for the public school districts.
104	Kribs	Notes that the Salem-Keizer School District requires 30 employees to sign up before a company can be contracted.

109	Sen. Brown	Asks what would happen if the school districts were limited to just one vendor.
110	Sackley	Responds that it would depend on how much control the legislature wants to exert.
117	Sen. Beyer	Asks about trends with school districts throughout the state.
120	Shannon	Answers that the school districts are developing criteria for vendors and it should remain a local decision controlled by the school board.
126	Sen. Beyer	Asks if the reason for change is due to increased aggressiveness by the IRS.
129	Kribs	Responds by explaining how vendors are selected and accounts are established and administered.
158	Denise Yunkers	Human Resources Manager, Oregon University System (OUS). Presents <b>(EXHIBIT D)</b> and testifies in opposition to SB 913. Reviews the administration of the 403(b) plan and emphasizes that the process is enormously complex.
216	Yunkers	Comments that limiting vendors reduces vendor solicitation of employees. Concludes that the institutions should be responsible for determining the minimum number of participants.
231	Sen. Beyer	Asks if the issue is that employees may participate in more than one plan.
233	Yunkers	Responds with a review of plans available and notes that OUS now has 18 vendors certified.
249	Grattan Kerans	Oregon University System. Testifies in opposition to SB 913. Notes that SB 913 would complicate the administration of 403(b) plans and would not allow a decentralization of services.

272	Chair Starr	Closes the public hearing and opens a public hearing on HCR 6.
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#### **HCR 6 PUBLIC HEARING**

287	John Gervais	Citizen, Salem, Oregon. Testifies in support of HCR 6 honoring Robert A. Elliott, 1916-1998.
307	Sen. Verne Duncan	Senate District 12. Testifies in support of HCR 6. Reviews the distinguished life and political history of Mr. Elliott.

351	Gervais	Summarizes his relationship with Mr. Elliott.
398	Gervais	Continues testimony in support of the memoriam for Mr. Elliott.

**TAPE 48, B**

010	Gervais	Concludes with a review of Mr. Elliott's political career.
027	Don Hull	Citizen. Recounts Mr. Elliott's service to his church.
037	Sen. Duncan	Relates anecdotes about Mr. Elliott's marriage.
049	Chair Starr	Closes the public hearing and opens a work session on HCR 6.

**HCR 6 WORK SESSION**

053	Sen. BEYER:	<b>MOTION: Moves HCR 6 be sent to the floor with a BE ADOPTED recommendation.</b>
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**VOTE: 4-0**

**EXCUSED: 1 - Miller**

<b>Chair Starr</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
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**SEN. DUNCAN will lead discussion on the floor.**

059	Chair Starr	Closes the work session and opens a public hearing on SB 1312.
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**SB 1312 PUBLIC HEARING**

063	Sue Ann Smith, M.D.	Neonatal Physician. Presents ( <b>EXHIBIT E</b> ) and testifies in support of SB 1312 which directs the Oregon Health Division to adopt rules relating to the use of vacuum extractors during childbirth.
117	Smith	Presents slides showing infants with subgaleal hematomas. Notes that all of the infants shown were delivered with the use of vacuum extractors. Reviews the incidence of infants with subgaleal hematoma due to the use of vacuum assisted delivery (page 1 of the exhibit).
159	Jennifer Norrick	Citizen, Josephine County. Testifies in support of SB 1312. Reviews the history of her pregnancy.

197	Norrick	Notes that during labor, the doctor informed her that the baby was "stuck at the corner" and he would use a vacuum extractor for delivery. Summarizes the problems her baby had during childbirth. Adds that the baby was transported to Medford due to a "respiratory problem."
252	Norrick	States that her baby had a subgaleal hematoma and was transported to Portland for more advanced care. Notes that she was informed that her baby had only a 20 percent chance of survival. Relates her decision to take her baby off the ventilator.
306	Norrick	Presents ( <b>EXHIBIT F</b> ) and summarizes her research into the uses of the vacuum extractor and appearances on television shows to inform parents about the dangers. Emphasizes that hospital personnel need to be certified in the use of the vacuum extractor.
350	Norrick	Presents ( <b>EXHIBIT G</b> ), a video of her baby and a copy of the 20/20 television show featuring her story. Concludes that parents need the right of informed consent.
385	Sen. Bryant	Asks if the witness pursued legal action.
395	Norrick	Responds that she did pursue a wrongful death suit against the physician.
406	Sen. Brown	Asks what regulations other states have regarding specific training requirements and consent, and about the option of using forceps to assist delivery.
413	Smith	Notes that she is not qualified to answer.

**TAPE 49, B**

006	Traci Fry	Citizen, Linn County. Testifies in support of SB 1312 and emphasizes the parent's right of informed consent.
043	Scott Gallant	Oregon Medical Association. Presents ( <b>EXHIBIT H</b> ) and testifies in opposition to SB 1312.
050	Dr. Mark Nichols	Oregon Medical Association. Presents ( <b>EXHIBIT I</b> ) and testifies in opposition to SB 1312. Notes that vacuum extractors are useful instruments for managing some uncommon complications of labor. Expresses concern regarding Section 3 of SB 1312 requiring physicians to obtain informed consent prior to initiating any procedure (page 1 of the exhibit).
101	Sen. Bryant	Asks about the percentage of births where the vacuum extractor is used and whether the doctor in Mrs. Norrick's case followed the correct procedure.



115	Nichols	Responds that the extractor is used in approximately 3 percent of births. Adds that a determination on whether proper procedures were followed in one particular case would be difficult without all the facts.
127	Sen. Bryant	Asks if informed consent should be obtained prior to using the vacuum extractor under procedures currently in effect.
130	Nichols	Answers that is correct.
137	Sen. Beyer	Asks when informed consent would be obtained.
140	Nichols	Responds that would be a decision made based on the particular situation.
154	Sen. Beyer	Asks about the procedure to obtain informed consent.
158	Nichols	Responds that the normal protocol would be to discuss all alternatives.
163	Sen. Beyer	Discusses with Nichols the types of emergencies that would necessitate the use of a vacuum extractor.
189	Nichols	Reviews the certification process for the granting of privileges by hospitals to providers of obstetric care.
207	Gallant	Comments on the review processes to reduce adverse events.
220	Sen. Brown	Asks if other states have specific regulations regarding vacuum extractors. Comments on the lowered rate of cesarean section deliveries.
230	Nichols	Responds that he is not aware of any other states that regulate vacuum extractors and lists a number of factors which have caused a reduction in the rate of cesarean section deliveries.
240	Chair Starr	Comments that the existing protocol for informed consent does not seem substantially different from the provisions mandated in SB 1312.
251	Nichols	Answers that there are a number of concerns to include the fact that the prenatal care provider may not be the physician performing the delivery.
260	Chair Starr	Asks if those concerns would be eliminated if the timing for informed consent were changed within SB 1312.

262	Nichols	Responds that the mandates are redundant since informed consent is already a required practice.
270	Chair Starr	Agrees that the requirement may be redundant but sees this as a legislative duty to protect consumers.
280	Sen. Brown	Asks if physicians regularly go over all possible delivery options prior to labor.
287	Nichols	Responds that prenatal providers try to educate parents about all options but the details of the informed consent process should occur at the time of need.
312	Sen. Beyer	Asks if all of the possible procedures are covered during prenatal care.
327	Nichols	Answers that the obstetric association has standards covering the information to be provided.
359	Grant Higginson, M.D.	State Health Officer, Oregon Health Division. Presents <b>(EXHIBIT J)</b> and testifies in opposition to SB 1312. Stresses that one cannot legislate good clinical judgement.
412	Sen. Bryant	Asks how the office would certify physicians in the use of the vacuum extractors.

**TAPE 50, A**

002	Higginson	Answers that the understanding is that the health office would ensure that hospitals were performing the certification process.
011	Sen. Bryant	Asks if certification and training standards for the use of vacuum extractors exist.
013	Higginson	Responds that certification standards do not exist but standards for the proper use of vacuum extractors do exist.
020	Jeri Hemmer	Citizen, Marion County. Testifies in support of SB 1312. Relates that her granddaughter was delivered using a vacuum extractor and died six hours after childbirth due to a subgaleal hematoma. Adds that her daughter was not given the right of informed consent.
071	Hemmer	Comments that people are not aware of the dangers involved with the use of the vacuum extractor.
092	Sheri Daig	Citizen. Testifies in support of SB 1312. Notes that medical facilities are not ensuring that proper use of vacuum extractors is part of the credential process.
105	Sen. Beyer	Asks if the Health Division establishes standards for the credential process in hospitals.

110	Higginson	Responds that the division is responsible for licensing hospitals in Oregon. Notes that part of the licensing requirement is that the hospital have the credential process for physicians in place.
120	Chair Starr	Closes the public hearing and adjourns the meeting at 6:36 p.m.

Submitted By, Reviewed By,

Gary Roulier, Brian E. Smith,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

- A ñ SCR 13, written testimony, Lee Hazelwood, 1 p**
- B ñ SB 913, written testimony, Al Shannon, 3 pp**
- C ñ SB 913, written testimony, Wayne Sackley, 1 p**
- D ñ SB 913, written testimony, Denise Yunker, 1 p**
- E ñ SB 1312, written testimony and reports, Sue Ann Smith, 15 pp**
- F ñ SB 1312, written testimony and reports, Jennifer Norrick, 14 pp**
- G ñ SB 1312, video tape, Jennifer Norrick**
- H ñ SB 1312, written testimony and reports Scott Gallant, 5 pp**
- I ñ SB 1312, written testimony, Mark Nichols, 1 p**
- J ñ SB 1312, written testimony, Grant Higginson, 2 pp**