

## SENATE COMMITTEE ON RULES AND ELECTIONS

**May 6, 1999 Hearing Room B**

**4:30 p.m. Tapes 51 - 52**

**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: HCR 5A Public Hearing and Work Session**

**HCR 9 Work Session**

**SJR 7 Public Hearing**

**SJR 41 Public Hearing**

**HB 3340A Public Hearing and Work Session**

**SJR 36 Work Session**

**HJM 8A 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 51, A		

000	Chair Starr	Opens meeting at 4:40 p.m. and opens public hearing on HCR 5A.
<b><u>HCR 5A PUBLIC HEARING</u></b>		
003	Brian E. Smith	Committee Administrator. Explains HCR 5A commends Elsie Stuhr for completing her 95 <sup>th</sup> year of life and continuous service to Beaverton and the State of Oregon.
011	Chair Starr	Closes public hearing and opens work session on HCR 5A.
<b><u>HCR 5A WORK SESSION</u></b>		
013	Vice-Chair Miller	<b>MOTION: Moves HCR 5A be sent to the floor with a BE ADOPTED recommendation.</b>
		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Starr	<b>The motion CARRIES.</b>  <b>SEN. HARTUNG will lead discussion on the floor.</b>
018	Chair Starr	Closes work session and opens work session on HCR 9.
<b><u>HCR 9 WORK SESSION</u></b>		
020	Smith	Explains HCR 9 commends the Oregon National Guard and Major General Raymond Frederick Rees for their service to Oregon and the nation.
024	Sen. Brown	<b>MOTION: Moves HCR 9 be sent to the floor with a BE ADOPTED recommendation.</b>
		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Starr	<b>The motion CARRIES.</b>

		<b>SEN. MILLER will lead discussion on the floor.</b>
033	Chair Starr	Closes work session and opens public hearing on SJR 7.
<b><u>SJR 7 PUBLIC HEARING</u></b>		
064	Judge Wally Carson	Chief Justice, Oregon Supreme Court. States he has no official position. States SJR 7 with the ñ3 amendments will affect all appointments to Circuit Court, Tax Court, Court of Appeals, and the Supreme Court.
082	Sen. Brown	Asks how he personally feels about the ñ3 amendments.
083	Carson	Defers to Justice Gillette.
095	Judge Michael Gillette	Associate Justice, Oregon Supreme Court. States the ñ3 amendments meet the objections he has previously voiced. States the amendments remove judges from the confirmation process and reflect a more useful way of selecting judicial nominees.
114	Sen. Brown	Asks if he has any concerns about having the list of potential judges submitted by people who are not lawyers.
122	Gillette	States it may be useful to include people appointed by the President of the Bar instead of those appointed by the Chief Justice. States there is great value in having the Bar provide names of appointees.
155	Sen. Bryant	Asks the chair to reschedule SJR 7 work session until a later date.
160	Chair Starr	Closes the public hearing and opens public hearing on SJR 41.
<b><u>SJR 41 PUBLIC HEARING</u></b>		
175	Edwin Peterson	Former Chief Justice, Oregon Supreme Court. Presents <b>(EXHIBIT A)</b> . Opposes SJR 41. Believes that electing judges would not create a constituency for any judges. Gives historical background of judge appointments.
225	Peterson	Believes there may be a considerable fiscal impact if judges are required to reside in the district in order to run for a court appointment.
275	Peterson	States that the quality of the court's decision would not be enhanced if SJR 41 is passed. Strongly supports the election of judges.

290	Sen. Bryant	Asks who is the proponent of SJR 41.
291	Chair Starr	States Sen. Nelson.
293	Sen. Bryant	Asks if he is going to testify.
294	Chair Starr	States he is supposed to be on his way.
296	Sen. Brown	Concerned if the judges will be qualified and experienced when the split occurs to create seven districts.
308	Peterson	States he has thought about that issue and chose not to address that argument. States that many people east of the mountains are disenfranchised by the difficulty of electing judges from that area.
323	Chair Starr	Asks if an elected Supreme Court judge would likely move his/her residence to the district during the time of service.
330	Peterson	Believes no. States that according to SJR 41 the judge must be a resident for a year prior to taking office, and specifies that the judge must retain residency for the duration of service.
349	Vice-Chair Miller	States that the issue of residency could be addressed. Asks what is the current geographical composition of the court.
364	Peterson	States that two members of the court are residents of Salem and the other members are all from Portland.
372	Vice-Chair Miller	Asks if that is true for the Court of Appeals.
373	Peterson	States the Court of Appeals has one judge from Eugene, but most are from Portland.
379	Vice-Chair Miller	Asks if he is aware of any judges from east of the mountains.
380	Peterson	States a judge on the Court of Appeals is from Bend.
383	Sen. Bryant	Believes that judge is no longer a resident of Bend.
389	Peterson	Believes that all Oregon Supreme Court judges should live in Salem.
398		Staff presents <b>(EXHIBIT B)</b> .

399	Sen. David Nelson	Senate District 29. Believes that the judicial process needs to be depoliticized and SJR 41 can accomplish this. Supports SJR 41 because Eastern Oregon would be represented.
430	Sen. Beyer	Asks if SJR 41 speaks to residency at the original election.
441	Sen. Nelson	Believes yes.
447	Sen. Beyer	States the other option would be not to speak to residency but require the people of the district to elect the judges. Believes it is unlikely that a Pendleton resident would elect a Portland judge.
<b>TAPE 52, A</b>		
001	Vice-Chair Miller	Asks if SJR 41 implies that judges do possess a constituency because of different regions of the state. Asks if this is appropriate.
007	Sen. Nelson	Believes it is appropriate to require geographical representation.
013	Chair Starr	Closes public hearing and opens public hearing on HB 3340.
<b><u>HB 3340A PUBLIC HEARING</u></b>		
028	Charles Stern	Yamhill County Clerks Office. Explains that HB 3340A will change current law to restrict voter registration and voting rights of people imprisoned in any federal correctional institution.
063	Chair Starr	Closes public hearing and opens work session on HB 3340A.
<b><u>HB 3340A WORK SESSION</u></b>		
072	Sen. Bryant	<b>MOTION: Moves HB 3340A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
Chair Starr		<b>The motion CARRIES.</b>

		<b>SEN. SHANNON will lead discussion on the floor.</b>
084	Chair Starr	Closes work session and opens work session on SJR 36.
<b><u>SJR 36 WORK SESSION</u></b>		
088	Smith	Explains that SJR 36 proposes a constitutional amendment to change the number of votes necessary to be elected to legislative offices, certain statewide offices, and offices for US Senators and Representatives from Oregon from plurality to majority.
094	Chair Starr	States that SJR 36 allows for a run-off election at the choice of the defeated individual in a closely contested race in which no one received a majority.
103	Sen. Brown	Discusses issues with time frames and numbers of votes needed to win a run-off election.
118	Sen. Beyer	States that the Secretary of State cannot get the certification of the election done sooner than December 7 <sup>th</sup> or 9 <sup>th</sup> .
131	Smith	States that the Elections Director, Colleen Sealock, testified that between 1980 and 1998 there were 19 instances where SJR 36 would have come into effect.
136	Chair Starr	States that would encompass nine elections cycles.
143	Sen. Brown	States that it takes 30 days for the election results to be final and the abstracts returned. States there is an additional 60 days with the vote-by-mail process.
152	Vice-Chair Miller	States that the 30 days is the time allotted, not necessarily the time required. Asks if a district is more or less inconvenienced when sending a person to the capitol who only retained 30 percent of the vote instead of waiting to send a person who gained 50 percent of the vote.
171	Sen. Beyer	States that may be the case when someone wins a run-off election with less votes than the winner did in the general election because of low voter turn-out.
176	Chair Starr	Believes that if a run-off election was held directly after the general election there would likely be a higher voter turn-out.
182	Sen. Beyer	Asks if it would be better to have the elections in January.
186	Chair Starr	Suggests to send out the vote-by-mail ballots before the holidays.

188	Sen. Bryant	Asks how many states have a run-off provision, and asks if this is only during the general elections.
191	Chair Starr	States he is unsure of other states, but clarifies that this occurs during the general elections.
202	Smith	Explains there was no testimony regarding other states.
218	Stern	States one issue to address is how to handle the overseas and military voters. States those ballots generally are sent out 45 days before the other ballots.
220	Sen. Beyer	Asks what is the window of turn-around time for run-off elections.
228	Stern	States that once the election is over there are still ballots coming in from other counties. States the ballots could not be prepped until after the Secretary of State collects the data from the various counties and calculates who falls into the grouping for a run-off election.
240	Sen. Beyer	States that if it is known that there will be a run-off is there something that can be done to expedite the process.
246	Stern	States he has not worked out the logistics for the time issues. Asks if the clerk's office should make determinations by newspaper reports or should they wait for the count from the Secretary of State.
269	Vice-Chair Miller	Asks if vote-by-mail ballots are not counted until the polls are closed.
274	Stern	States the absentee votes are not counted until the polls are closed to be sure all voters only voted once. States there are ballot processes that occur early.
298	Vice-Chair Miller	Asks if that occurs on the day of the election.
310	Stern	States yes. States under current law a voter can drop a ballot anywhere in the state, so there needs to be a window of time to exchange ballots.
315	Vice-Chair Miller	Asks that if his office had the authority to begin the count a few days in advance would they be well prepared to determine a close race and comply with the aims of SJR 36.
318	Stern	Believes one can make a projection by 8:00 p.m. the day of the election but that does not show actual numbers.
320	Chair Starr	Explains that prior testimony from Colleen Sealock states there were 19 races over 18 years in which SJR 36 would have come into effect. Asks how many

		multiple candidate races fell outside of the intent of SJR 36.
337	Colleen Sealock	Director, Elections Division. States that in 1998 every candidate received a majority. States that in 1996 there were four races that would have fallen into a run-off decision. Gives history of races where SJR 36 would have applied.
387	Chair Starr	Asks if there is any way to expedite the run-off election process.
393	Sealock	States the issue needs to be looked at carefully. States the vote-by-mail ballots are not being sent in from the voters until the last minute. States that there needs to be time slated for a recount before a run-off election can occur.
449	Sen. Bryant	Asks how long it takes to conduct a recount.
450	Sealock	States it usually takes three to five days.
462	Chair Starr	Closes work session and opens work session on HJM 8.
<b><u>HJM 8A WORK SESSION</u></b>		
<b>TAPE 51, B</b>		
011	Sen. Brown	Asks where in the Constitution, the US Code, or the Oregon Revised Statutes is statistical guessing prohibited. Asks if the memorial is inaccurate. Asks why the phrase "statistical method or sampling" is not utilized as used in the US Code.
027	Vice-Chair Miller	Believes the method may be in the "nature of guessing."
028	Sen. Brown	States not according to the Constitution.
030	Vice-Chair Miller	Asks if the Constitution refers to actual enumeration.
031	Sen. Brown	Explains yes, but HJM 8A states the Constitution prohibits statistical guessing.
033	Chair Starr	States actual enumeration is not guesswork.
035	Sen. Brown	Asks why the phrase "statistical method or sampling" was not used in HJM 8A.
038	Vice-Chair Miller	Suggests that the writers of HJM 8A were describing the current sampling method as being not as accurate as enumeration.



041	Sen. Brown	Asks who are the authors of HJM 8A.
042	Vice-Chair Miller	States Rep. Snodgrass and Rep. Winters.
043	Sen. Brown	States the same bill was introduced in Minnesota with the exact same language. Asks if there were any court challenges to Oregon's 1990 Redistricting Plan, and if that plan had data enhanced by statistical methods. Asks who brought those challenges to the state and how much did it cost.
055	Chair Starr	States he does not have those answers.
056	Vice-Chair Miller	States there were challenges and there were costs incurred.
057	Sen. Brown	Asks if anyone has read the Census Bureau's plan for the 2000 census. States their plan is to count 100 percent of the households in housing units. Asks why Congress is being memorialized on this issue.
068	Sen. Beyer	States there has already been a court case in which the US Supreme Court ruled that the Census Bureau must do direct enumeration.
078	Sen. Bryant	Asks why the sponsors wanted this drafted.
080	Smith	States the sponsor wanted to make state legislative redistricting more accurate.
087	Sen. Brown	States that the Supreme Court also ruled in that case that the Secretary of Commerce is required, if feasible, to use statistical methods in developing census data for all purposes except apportioning congressional districts among several states.
094	Vice-Chair Miller	States that Rep. Winters presented impressive testimony. States that Rep. Winters felt, as a minority, she was being treated as a statistic and she wanted to be counted.
107	Vice-Chair Miller	<b>MOTION: Moves HJM 8A be sent to the floor with a BE ADOPTED AS AMENDED recommendation.</b>
108	Sen. Brown	States that she has received several letters of disagreement from national organizations.
114	Sen. Beyer	States the US Supreme Court has already ensured enumeration.
122	Vice-Chair Miller	States that anytime Congress is in session they can reconsider an issue.

123	Sen. Beyer	States that Congress cannot reconsider a US Supreme Court order.
124	Vice-Chair Miller	Believes they can reconsider.
125	Sen. Brown	States the reason HJM 8A is being considered is because the Republican National Committee asked state legislators to address the issue.
131	Vice-Chair Miller	States that Rep. Winters did not mention that she was testifying on the request of anyone but herself. States his motion stands.
<b>133</b>		<b>VOTE: 3-2</b>  <b>AYE: 3 - Starr, Miller, Bryant</b>  <b>NAY: 2 - Beyer, Brown</b>
	<b>Chair Starr</b>	<b>The motion Carries.</b>  <b>SEN. STARR will lead discussion on the floor.</b>
144	Chair Starr	Closes work session and adjourns the meeting at 5:51 p.m.

Submitted By, Reviewed By,

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

#### **EXHIBIT SUMMARY**

**A ñ SJR 41, written testimony, Edwin Peterson, 2 pp**

**B ñ SJR 41, written testimony, staff, 1 p**