

HOUSE COMMITTEE ON GENERAL GOVERNMENT Subcommittee on Government

February 9, 1993 Hearing Room 357 8:30 a.m. Tapes 11 - 14

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Jim Edmunson Rep. Cedric Hayden Rep. Patti Milne Rep. Sharon Wylie

VISITING MEMBER: Rep. Ken Baker

STAFF PRESENT: Janet Adkins, Committee Administrator Kimberly Burt, Committee Assistant

MEASURES CONSIDERED: HB 2275 HB 2278 HB 2272

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These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. [--- Unable To Translate Graphic ---]

TAPE 11, SIDE A

CHAIR PARKS: Calls meeting to order. (8:3 a.m.)

WORK SESSION ON HB 2278 Witnesses: Nina Johnson, Executive Assistant, Secretary of State's Office Al Davidson, Marion County Clerk

025 JANET ADKINS, COMMITTEE ADMINISTRATOR: Submits (-1) amendments and hand engrossed version, (EXHIBIT A).

040 NINA JOHNSON, EXECUTIVE ASSISTANT, SECRETARY OF STATE'S OFFICE: Describes HB 2278 (-1) amendments.

REP. HAYDEN: Is there a way to give people the maximum benefit, allowing them to file until midnight.

REP. EDMUNSON: If a post mark was used as verification of the date, the clerks' office wouldn't have to be open. - One proposed change is that "the application be in hand" and I'm suggesting that the application must be "post marked" by the 21st day.

085 AL DAVIDSON, MARION COUNTY CLERK: The issue of whether or not to use post marks for elections has been debated for a long time; the situation with the post marks is so uncertain that we are afraid we will be treating some differently than others. - We get mail in that doesn't have a post mark on it.

110 REP. HAYDEN: What if we said the clerks would accept them if they were post marked by the 21st day and received within 15 days.

JOHNSON: That would add more certainty.

DAVIDSON: We need to get that application within two or three days; 18th or 17th day.

130 MOTION: REP. HAYDEN MOVES TO AMEND HB 2278 BY STIPULATING THAT THE APPLICATION MUST BE POST MARKED BY THE 21ST DAY AND RECEIVED BY MAIL BY THE 15TH DAY.

150 REP. HAYDEN: I will withdraw my amendment.

JOHNSON: The amendments came from trying to clarify what elections can be conducted by mail; LC thinks it reads more clearly on what is going on, this is new language to clarify.

172 MOTION: REP. WYLIE MOVES THE (-1) AMENDMENTS TO HB 2278.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

REP. EDMUNSON: In thinking about vote by mail, I see this is an idea that has merit, but if it does have merit for the primary, it does for the general; as a policy matter could we state that the general election will be phased in to vote by mail in the 1998 general election.

205 REP. WYLIE: I would endorse that and agree that the benefits would also apply to the general as well as the primary.

REP. PARKS: There is some merit to preserving that part of the American heritage by having everyone go out to vote.

225 REP. MILNE: I agree with the proposal, but I'm still feeling torn.

REP. EDMUNSON: If you accept that premise of tradition and the American way, we shouldn't enact this bill. - I'm concerned about what would be involved in drafting to add the general.

202 JOHNSON: The mysteries of LC are different; if we had a straight ahead vote by mail for the primary and the general, it is more simple.

REP. EDMUNSON: I will not make the motion today; I intend to vote for the bill at this point.

325 MOTION: REP. EDMUNSON MOVES THAT HB 2278 AS AMENDED BE SENT TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION.

ADKINS: Clarifies amendment, adding time change.

339 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES.

WORK SESSION ON HB 2272 Witnesses: Vicki Ervin, Director of Elections, Multnomah County

355 JANET ADKINS, COMMITTEE ADMINISTRATOR: Describes HB 2272. Submits Oregon Common Cause Ballot position (EXHIBIT B).

REP. EDMUNSON: I found the Common Cause data disturbing and it is difficult for me to support a change that appears to give an advantage to the lucky candidate who appears first.

413 REP. HAYDEN: If this were representative of the spectrum of thousands of races it is statistically more significant.

REP. EDMUNSON: Refers to Common Cause testimony; this ballot position affect is always present in election results and always follows the same pattern.

470 REP. BAKER: School board races aren't rotated.

TAPE 12, SIDE A

042 REP. WYLIE: Is there a way of determining the difference in voters between vote by mail and polling place votes?

050 VICKI ERVIN, DIRECTOR OF ELECTIONS, MULTNOMAH COUNTY: There is no way to know because currently the only election that is rotated is the primary.

053 REP. HAYDEN: In the interest of economy and search for scientific truth, this should be tried.

MOTION: REP. HAYDEN MOVES THAT HB 2272 BE SENT TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION.

064 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: EDMUNSON AND WYLIE.

WORK SESSION ON HB 2275 Witnesses: Nina Johnson, Executive Assistant, Secretary of State's Office Colleen Sealock, Director of Elections, Secretary of State's Office Vicki Ervin, Director of Elections, Multnomah County Al Davidson, Marion County Clerk Todd Jones, Secretary of State's Office Tammy Detwyler, Elections Division. Denise McPhail, PGE

075 NINA JOHNSON, EXECUTIVE ASSISTANT, SECRETARY OF STATE'S OFFICE: Describes (-3) amendments hand engrossed bill and submits sample ballots and ballot lists as they would look is HB 2275 passes, see (EXHIBIT C).

130 REP. HAYDEN: If I were to be a presidential elector and I wasn't going to have the glory of the spotlight in having my name on the statewide ballot, I might be more reluctant to do it. They would be so anonymous no one would ever know. Would you have trouble getting electors; would it reduce participation in the process?

140 COLLEEN SEALOCK, DIRECTOR OF ELECTIONS, SECRETARY OF STATE'S OFFICE: The parties do choose the electors and it is done by party rule. So you would have to turn to either the democratic or republican party or now the independent initiative party. That process is done at one of their conventions.

160 REP. MILNE: How many votes for president are really voted because of who the elector is? My guess is that people vote for who they truly want for president.

190 REP. HAYDEN: My premise is who is going to be in the electoral college and if they go to all that trouble, why can't they have their name on the ballot?

205 VICKI ERVIN, DIRECTOR OF ELECTIONS, MULTNOMAH COUNTY: Voter behavior is the motive; we had over 25,000 ballots in the general election that had to be remarked or duplicated, and because of that we are asking that the names be removed.

225 CHAIR PARKS: We will eliminate the names and will give you an opportunity at the end to change it. Next changes.

216 JOHNSON: Page 4, line 13 changes this to include the new position of an elected auditor. - On page 6A, lines 5 and 12; LC discovered that too many references to presidential electors had been deleted so that is being restored.

CHAIR PARKS: Asks for clarification between minor and major changes.

250 JOHNSON: Page 6b, Sections 13 and 14, deal with the election of a sheriff and we are reinstating prior law, see hand engrossed version, Exhibit B.

CHAIR PARKS: On 6A there's a provision that deals specifically with the justice of the peace; is that a new addition?

JOHNSON: That's pretty minor. That's to clarify that we still have the incumbent designation by justice of the peace. It got deleted in the first draft and that was inadvertent.

CHAIR PARKS: Do we do that with judges now?

JOHNSON: Yes we do. - This is intended for clarification on the Justice of the Peace issue; incumbency designation. - the original 2275 provided that Justice of the Peace not file with the Secretary of the State's office and we inadvertently deleted this language, so it is being reinstated.

313 MOTION: REP. EDMUNSON MOVES TO ELIMINATE THE DESIGNATION OF INCUMBENT FOR ANY JUDICIAL.

JOHNSON: This section keeps the law the way it is; it would be a major change for Justice of the Peace to not have incumbency status.

BAKER: Are justices of the peace judicial?

CHAIR PARKS: That is a good question.

350 EDMUNSON: My motion is for any judicial; judges or justices of the peace.

JOHNSON: My only concern is whether or not this is the right bill to do it in. I don't think we have a strong position on it.

CHAIR PARKS: We will hold off on voting on that motion.

357 JOHNSON: Relating to sections 13 and 14; we talked about incorporating language to encompass the county clerks also and that amendment isn't included as LC was concerned about the wording; it is still a technical problem.

ADKINS: Describes situation.

400 AL DAVIDSON, MARION COUNTY CLERK: We tried to say "all non-partisan county officers" and that is where LC had problems; if you inserted "county clerk" you wouldn't have this problem unless HB 2612 isn't passed.

ADKINS: Clarifies situation.

450 CHAIR PARKS: Do we want to include county clerks without knowing for sure the fate of HB 2612?

TAPE 11, SIDE B

040 SEALOCK: Clarifies write in situation; this reverts back to the way the law was prior to this last legislative session.

REP. HAYDEN: That makes me uncomfortable; the people of Oregon should be able to nominate who they wish at elections; write in candidates do win at the primary and the general elections.

JOHNSON: This doesn't eliminate the right for a write in candidate to become sheriff, but moves it to the general election. - Describes history.

076 CHAIR PARKS: This proposal would eliminate the second finisher from the ballot although that person could be a write in candidate.

REP. HAYDEN: If there is only one candidate and they get no votes in the primary, how do you deal with that?

JOHNSON: That situation wouldn't exist as the only filed candidate would appear on the general; this just defers the election to the general.

100 REP. HAYDEN: Yes, but it eliminates the primary nomination.

DAVIDSON: This is similar with what we do in other non-partisan offices; I support write in votes.

122 REP. HAYDEN: Hypothetical situation.

DAVIDSON: You can't write in votes for an office not on the ballot.

140 JOHNSON: Page seven contains minor changes restoring language and making it clear that measures start again at number one. - Page eight, there were changes made at the request of this committee, dealing with explanatory measures stating that any other information considered has to be part of the record of the hearing.

CHAIR PARKS: The ballot number question was a bill itself last session that died; that might be a reason for not including it in this bill.

180 JOHNSON: Section twenty, page 9A, new language to clarify the way in which that is handled for the counties. - Section twenty clarifies that counties can use their codes at the beginning of measures. - Section twenty four, the committee raised the issue of deleting language and its affect in the requirements for what the explanatory statement should be for a ballot measure.

220 TODD JONES, SECRETARY OF STATE'S OFFICE: ORS 251.215 says that the explanatory statement committee shall prepare and file with the secretary of state and impartial, simple and understandable statement explaining the measure and its affect; more than half of our nine explanatory statement committees agreed not to comment on the affect in their statement. The best we can do is to come to an understanding of what this language means.

265 REP. EDMUNSON: Section twenty four; is the counterpart where the explanatory statement is prepared by the legislative council

committee which is not drawn up of opponents and proponents of the measure.

JONES: An argument can be made for consistency sake; an argument can also be made that LC should be involved as several of the explanatory committees used the LC statements as a starting place.

300 JOHNSON: In section twenty five there is a change on who can challenge an final explanatory statement before the supreme court and it is clear that the initial intent was any person could challenge it. That is different from ballot title challenges where the person has to have made comments on a proposed ballot title. This is a policy call by the committee and we don't feel strongly one way or the other. - Page 11, line 9, minor clarifying change to make sure that we are making it clear that people not affiliated with a major political party can vote in non partisan ballot.

REP. HAYDEN: What is the reason for codifying that?

JOHNSON: When the bill was first brought up the new language lost the concept, so it is to reinstate existing law. - Pg 14A, below line 33; the same issue comes up on page 14B.

375 CHAIR PARKS: Each change is going to update it to be justice of the peace as a judicial officer?

JOHNSON: The change reinstates what current law says; our goal was to not have justice court candidates file with the Secretary of State; in making that change, the incumbent designation got dropped off.

380 REP. EDMUNSON: In present law the Secretary of State is responsible for designating a Justice of Peace as the incumbent and you are saying that is a county job?

JOHNSON: Yes, currently we have to call the county and ask who the incumbent is.

400 JOHNSON: Page 15A; this clarifies how the ballot would read if we took off the electors name and this also deals with the Justice of Peace. - Section 45 is the same language you approved for HB 2278, making it clear which elections can be by mail.

440 JOHNSON: Section 46 is conforming language; on page 18A line 33, provides mandatory language on the secretary of state specifying the day on which all ballots will be mailed for a statewide election conducted by mail and that would be in conformance with uniformity provisions. - Page 20A deals with the issue of maps and what to do when there are changes in the boundaries of zones or subdistricts within a district. We have added language that provides: 1. That the voters pamphlet shall be available at a poling place if a clerk chooses to print the map in the voters pamphlet as opposed to having it posted in each election booth and 2. Clarifying that a clerk, if they do not do a voters pamphlet, needs to mail the map with the ballot if it is an election conducted by mail.

TAPE 12, SIDE B

045 TAMMY DETWYLER, ELECTIONS DIVISION: Refers to section 60; requires that a person who makes an expenditure of more than \$50 for a legislative race, more than \$100 for a statewide race or issue to file a

statement of expenditures. This is when they are independently making this expenditure out of their own pocket. It also closes a loop hole of the possibility of an individual being able to solicit funds and spend those funds and not have to file as a political action committee.

060 REP. HAYDEN: By regulating do we make it so onerous that citizens will be reluctant to participate?

DETWYLER: It doesn't change that requirement.

REP. EDMUNSON: What if the money is solicited for other purposes than political activity?

DETWYLER: That doesn't fall under the election law.

REP. EDMUNSON: Lets make it clear.

DETWYLER: We would support adding "an individual who solicits and receives a contribution or contributions for the purpose of supporting or opposing a candidate or other political action committee".

105 REP. HAYDEN What is change between the deleted language and the new language in section 60?

DETWYLER: The first portion is a clarification of current statutes, the second is added language relating to an individual as the definition of a PAC doesn't include individual.

125 JOHNSON: Section 63; this dealt with how long candidates need to keep their records and it is tied in with the issue of our statute of limitations for bringing a case against...

145 SEALOCK: We have very few complaints that we have started after the six month period; if the committee is opposed to four years we would recommend reducing it to two years.

REP. HAYDEN: All these records are kept for six years with archives; what is the benefit of keeping the records for six months?

SEALOCK: Some of the records you have may be more detailed than the C&E's filed; it would provide you a more detailed record.

210 JOHNSON: Page 35, line 36; this should have happened last session, it clarifies that you will only have to show the name of the payee and the amount of purchase for any expenditure.

215 JOHNSON: Page 38; clarifies some language on the deadline for dealing with accounting periods for reporting on statewide initiative or referring the petitions. - Page 42 line 6 puts a time certain in, we are suggesting ten business days. - Page 43, reinstates the fine provision, not to exceed \$250.

- There is added language for civil penalties.

10:20 Break

10:36 Reconvened

290 JOHNSON: We had talked about "slate cards" and that was too

complicated to get ready for this meeting but Rep. Wylie has submitted a bill & the recall situation in Lake Side is also being dealt with.

310 DENISE MCPHAIL: We have a problem in section 74 having to do with when you file as in support or opposition; this statute would reach out and capture anyone who opposed while at the same time capturing proponents. - It is appropriate to capture expenditures that are directed toward a ballot measure even though it is not going to be on the ballot. One way might be to define what "influencing" during that pre-period is; there is a huge loop hole out there.

CHAIR PARKS: Show us exactly where that language appears.

MCPHAIL: Section 74 page 36; "influencing" on line 44. - On page 37, line 13 the same situation with "intends to" oppose or support; allegations can be made about intentions.

380 CHAIR PARKS: Would it be fixed to say "after initiative has actually been filed with the secretary of state's office".

MCPHAIL: If you mean filed with approval and signatures, yes. - While Trojan is the best example, there are other situations.

430 REP. EDMUNSON: If you are saying influencing the potential signors of the petition should be treated differently than influencing the question that is before the voters; or garden variety public relations always try to influence public opinion, but when you have a specific measure in front of you that should be treated more specifically.

REP. WYLIE: Any public agency is going to be caught in a grey area if there is a groundswell for an initiative; I'm not comfortable saying there should be immunity, but would be comfortable where influence was defined to exceed normal public information activities.

TAPE 13, SIDE A

050 REP. EDMUNSON: I can think of instances of potential for abuse, but the problem is the first amendment and where do you draw the line on the quality of speech? - I'd feel comfortable with a date.

CHAIR PARKS: Filed and certified; certified meaning they have it out on the street or it is back within sufficient...I don't get it.

REP. EDMUNSON: What is the technical term for having returned the petition and having the measure now put before the people on the next election. "CERTIFIED". So if Parks takes out a petition to recall Edmunson, it is not going to occur until you certify the petition has been returned with the number of signatures necessary.

070 MCPHAIL: That deals with my problem, but I'm not sure that closes their loop hole.

SEALOCK: The suggestion Rep. Edmunson made is what current election law is; we've attempted to say that when you file a we want both proponents and opponents to start doing their C&E's at that point.

JOHNSON: The problem is that if the measure doesn't make the ballot, we have no provision for disclosure of millions of dollars that may have

been spent. - For the opponents during signature collecting we have no idea what kind of money was spent; this is a disclosure issue as well as a first amendment issue. - The question is, is that clear enough that they can make a delineation between public information, public relations...

REP. EDMUNSON: A recall is treated the same as a measure in this proposal, correct?

JOHNSON: Yes.

REP. EDMUNSON: It may be easier to think of this in terms of a recall. What are trying to influence and how do you draw the line? For us as law makers to try to make a law which qualitatively distinguishes speech makes me very nervous.

JOHNSON: You have the same issue once the measure qualifies.

140 REP. EDMUNSON: When a person takes out a petition, don't they have to disclose all the moneys that they expend in the gathering of signatures?

SEALOCK: They have 15 days after the filing deadline.

MCPHAIL: It appears to me that existing law says they are requiring them to file 15 days after they file for verification.

163 JOHNSON: The law limits it to chief petitioners not proponents. So if their name is not on the petition they do not have to disclose even if they are proponents.

MCPHAIL: Our problem is the unclarity about what is influencing and what is not.

195 REP. HAYDEN: What if people had to retroactively file expenses relating to measure; if they weren't certified they wouldn't have to disclose?

210 REP. WYLIE: Retroactive disclosure says that if you are a big corporation and you double your PR budget and shift public opinion so there aren't enough signatures on the ballot, you don't have to report and you don't have to deal with the ballot measure. - Maybe we want to take a shot at the qualitative issue and perhaps put a dollar amount on it.

245 CHAIR PARKS: I'm going to ask you to meet with Johnson and try to work it out. If you can't, both of you bring back your choice; next Tuesday we will consider only this bill.

Recess

Submitted by, Reviewed by,

Timothy Marshall Janet Adkins Committee
Assistant

Committee Administrator

Exhibit Summary:

A - HB 2278: (-1) amendments and hand engrossed version submitted by staff, pp 1 B - HB 2272: Oregon Common Cause submitted by staff, pp 3 C - HB 2275: (-3) amendments, hand engrossed bill and sample ballots submitted by Johnson, pp 4