

. , June 26, 1991 Hearing Room B 3:00 p.m. Tape 1- 2

SENATE MEMBERS PRESENT: Sen. Glenn Otto, Chair Sen. Ron Grensky Sen. Dick Springer HOUSE MEMBERS PRESENT: Rep. Ray Baum Rep. Peter Courtney Rep. Greg Walden STAFF PRESENT:Gail Ryder, Committee Administrator Julie Muniz, Committee Assistant

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TAPE 1, SIDE A (TAPE INAUDIBLE3 004 CHAIR OTTO: Called the meeting to order at 2:13 p.m. Witnesses: Pat Hearn, Oregon Government Ethics Commission Kathleen Beaufait, Legislative Counsel David Buchanen, Oregon Common Cause 011RYDER: Reviews list of issues between two chambers, Exhibit A. 050 WALDEN: I'm now confused. Can you give an example of what we're trying to accomplish? Reviews House's goals on bill. 066 RYDER: The clarification that was need regarded legislators hearing in front of legislative committees. 067 WALDEN: Are you talking about them being paid a fee to be there? 068 RYDER: Yes. A fee might have been construed this way. We don't need to change the language if we simply clarify it on the record. This would not be a fee that is received over Interim. It would have to be a fee that is SF ~cific to that period and for that purpose. Clarifies this for the record. 074 WALDEN: So a legislator that practices in the area of worker's compensation, could serve on the Labor Committee with those issues, even though they may work in a law firm that specializes in that?

081 RYDER: If you want to allow that, it would need to be clarified on the record. That was placed on the record in the House, but not the Senate. Conference Committee on SB 187 June 26, 1991 - Page 2

091 WALDEN: There was also discussion on the ability to return after session and be able to report what transpired back to your employer. This language would not preclude that. 096 GRENSKY: Could we get some testimony on that? 102 WALDEN: We were talking about language written on the House side precluding somebody being paid a fee to represent someone. Also, can a legislator report legislative activities to his/her employer? 105 PAT HEARN, OREGON GOVERNMENT ETHICS COMMISSION: I don't see the two issues as being related at all. (unintelligible) 113 GRENSKY: Gives example of a legislator making a paid presentation to a client regarding what the Legislature did on some issues. Would that be prohibited under this section? 118 HEARN: I don't believe it would. 121 GRENSKY: So any reporting of legislative activity would not be barred under this bill? 122 HEARN: Not as I understand it. 122 GRENSKY: Gives another example of someone with a legislative interest giving a presentation. in front of some government body. Would that be acceptable? 129 HEARN: Yes it would. 132RYDER: Only if the legislator was a member of the body s/he was presenting to. 136 GRENSKY: What if you were an attorney representing someone who needed to have testimony presented to a legislative committee? 140 HEARN: Do you mean for you on behalf of your client? 141 RYDER: Yes. Gives example. Will that be prohibited under this bill? 146 HEARN: Yes. 150 COURTNEY: Reviews what occurred in the House. We limited the Governor to appoint no more than two people from any one party. Is that a major point of contention with the Senate? 157 OITO: I don't think it is, but I can only speak for myself.

162 COURTNEY: We wouldn't have Senate confirmation by the House Democratic leader, right?

168 SPRINGER: Requests Kathleen Beaufait. I lean toward the Senate's language.

174 BAUM: Wasn't the objective of splitting the authority so they wouldn't be accountable to anybody but themselves?

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178 SPRINGER: I mean "accountability" as in who's responsible for the decision. Now, the public doesn't have a clue as to who makes the appointments. 193

OTTO: The way the Senate viewed the appointment process the Governor would make all the appointments and then the Senate would confirm them. Do you feel strongly about that? 197

COURTNEY: It's a sensitive area. If the Senate is going to be involved, why wouldn't the House also be? 209

OTTO: I think it's harder to understand now. You'd like to see us reach some compromise?

214 COURTNEY: I am but one. 219 BAUM: I thought it was an appropriate way to avoid it being stacked one way or another. Sen. Springer's talking about things in the past. 232

WALDEN: Wasn't this originally put into place by people who were voted in by this? 234

RYDER: Yes. Gives historical background of issue.

248 COURTNEY: They're appointed for a term. So the person who appointed them couldn't remove them, could they? 252

RYDER: Whoever appoints can also remove. It's general law. 254

BAUM: You're saying you would have to get two or three appointing parties to remove it would get hard to get all of them. 257

RYDER: You would have five appointing sources under the current process. Under the Senate version, you would have one appointing source. 268

OTTO: The way the bill left the Senate, we felt strongly about having the Governor do the appointing. In the history of Senate confirmation, we very seldom turn anyone down in the appointment process. 279

WALDEN: I'm more comfortable with the idea of the Governor appointing, than making it easier to remove an appointment. The House felt inclined to change that. We also modified attorney's fees. There was fairly strong consensus on that issue.

303 SPRINGER: I think attorney fees are a problem. At one point last session I supported such a position, but because of the fiscal impact I can't support this bill. 311

WALDEN: It's our understanding that there was one case that was split on \$1000-\$2000. It would come out of the general fund, not out of commission. The fiscal impact was very minor.

318 HEARN: On the knowledge I have, two cases went to the Court of Appeals, one was confirmed in part.

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334 GRENSKY: It looks like the attorney fees apply to a contested case hearing as well as the Court of Appeals.

335 HEARN: That's correct. I'm not sure of cases that prevailed (unintelligible).

340 GRENSKY: My feeling is that the impact on the general fund is outweighed by the necessity of not penalizing someone for defending their good name. I don't want to see an official that pleads guilty to avoid incurring attorney fees, knowing they wouldn't recover them if they win.

364 SPRINGER: I'm still against the attorney's fees.

367 OTTO: In other words, it could be discretionary?

370 SPRINGER: That's not much of a compromise. When you say "discretionary" what's the court going to do? That's not sufficient guidance.

375 BAUM: Either all or nothing.

379 RYDER: Gives historical reason between discretionary and mandatory.

391 OTTO: I think we will have a difficult time selling it to our caucus.

393 BAUM: Why is that?

395 OTTO: I don't think the fiscal impact plays much of a part. It's just on general principle. 411 BAUM: The attorney fee issue is going to cost these people big bucks.

425 GRENSKY: We're referring to section 9? That seems to be the attorney fees section.

431 MOTION: SEN. GRENSKY MOVED TO ALLOW ATTORNEY FEES USING THE LANGUAGE PROPOSED BY THE HOUSE, USING "SHALL" RATHER THAN "MAY".

442 GRENSKY: People serve in the public more for service than enumeration. I think people could be scared off. It's the fair thing to do. 468 COURTNEY: I'll support the motion. I'm not sure you can make the statement that if you're found guilty, you can't recover attorney fees. There are many findings. 475

GRENSKY: I'm looking at the wording that says "the public official who prevails". We need clarification on what "prevails" means. 481 COURTNEY: You may be right, but there are many different outcomes. 492 GRENSKY: I think that's a question that would be decided in each case.

TAPE 2, SIDE A

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020 COURTNEY: For example, we'll settle if I get my attorney fees?

021 GRENSKY: This will be an element of the case. 025 WALDEN: Agrees with Sen. Grensky. You could win the case and still lose everything. This is a reasonable safety net. 042 VOTE: MOTION CARRIED, 5-1.

VOTING NO: SEN. SPRINGER. 044 DAVID BUCHANEN, OREGON COMMON CAUSE: When

Rep. Baum asked for some history on this it, the appointment model used by the Etbics Commission occurred to me. This system was challenged by the Supreme Court who ruled that it was a violation of the separation of powers. The solution used is the legislative people would make a recommendation and then the Governor appointed that person named. It might solve some of these problems. 064 BAUM: Has our model been challenged on the separation of powers? 067 OTTO: Not to my knowledge. This might be a way out. 069 BAUM: We'd have the four legislative entities make the recommendation to the Governor who would then make the appointment to the Commission? 072 OTTO: Or we could make it so that if the Governor didn't approve the recommendation, s/he could reject it and ask for more. 076 BAUM: That might be good. 077 COURTNEY: Is the Senate approval also a factor in this? 078 OTTO: Confirmation, yes. 078COURTNEY: So that's part of the proposal. The Governor makes the appointment with the confirmation of the Senate? 082MOTION: REP. COURTNEY MOVED THAT THE DEMOCRATIC OR REPUBLICAN LEADER OF THE SENATE OR THE HOUSE MAKE A RECOMMENDATION TO THE GOVERNOR WHO WOULD THEN MAKE THE APPOINTMENT WITH THE CONFIRMATION OF THE SENATE. 082 RYDER: Is that one recommendation or more than one? 085BAUM: Make it one until we get it right. 088 WALDEN: Be sure to make it the Republican and Democrat leaders in each chamber. 093 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: Do you want to retain the provision we now have that says that two out of three of the appointments must be from the same political party? If you adjust the numbers, do you still want to maintain a limitation on the number of

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members from the same political party?

104 OTTO: I would think so.

105 COURTNEY: How many people are on this?

105 RYDER: Seven.

106 COURTNEY: So 4 of them are coming to this through the legislature?

108 BEAUFIT: Yes.

108 COURTNEY: So you'll be even coming out of the legislature?

112 RYDER: That would also allow for a third party to have a membership on the Ethics Commission as well.

115 HEARN: We should include that the counsel make (unintelligible).

129 BAUM: On the third person, when we talk about other political parties do we know what we have in mind?

134 WALDEN: I think the issue was, s/he couldn't appoint three Republicans or three Democrats.

139 BAUM: But when it says "party", does that exclude Independents?

140 BEAUFIT: It just says that "no more than two shall be from the

same party".

147 COURTNEY: Restates motion.

163 GRENSKY: The only problem is that you're assuming that the parties would be the same in each chamber. 165 BAUM: No.

169 COURTNEY: Continues to restate motion including the clause that no more than two of the three appointments can be from the same political party. Does that cover it? 176 RYDER: There needs to be a process. This would be a one at a time recommendation until the Governor approved it. 181 COURTNEY: The Governor does not have to accept that recommendation.

187 RYDER: The Governor ultimately would have to forward that recommendation to the Senate. Restates motion.

206 VOTE: MOTION CARRIED, 5-1. VOTING NO: SEN. SPRINGER.

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212 SPRINGER: I liked the 4th section.

215 GRENSKY: Didn't we cover that?

227 RYDER: Do we need a grandfather clause?

218 GRENSKY: There's a clarification issue?

219 RYDER: The Ethics Commission has some very strong concerns regarding the grandfather clause.

226 HEARN: Discusses grandfather clause.

237 BEAUFIT: I misunderstood you. This says "all matters pending". That's a policy issue. It doesn't matter which way we do it, as long as you make a decision.

251 RYDER: That was the original intent. 252 GRENSKY: That's the way the language reads, isn't it?

253 BEAUFIT: (Unintelligible).

255 GRENSKY: Do you have concerns with this now?

255 HEARN: Yes we do. If this got filed tomorrow, it would die.

261 GRENSKY: I guess you'll have to move faster.

268 HEARN: I don't think I'm stating this concern. With the provisions of this bill, for a case that was filed with the Ethics Commission, we would have 90 days to conduct a preliminary review, and then 100 days to conduct the investigation. This is a total of 210 days to make the finding of violation. This provision says that if a case is 100 days old on the date this became law, it would go away.

279 GRENSKY: That's a legitimate concern.

282 SPRINGER: Do we have a recommendation for a deletion?

282 BAUM: If we delete it, then it's the 90 days, right?

284 HEARN: It would be the Commission's request that the language be changed slightly so that action or complaints filed on or after the effective date of this law be impacted.

290 GRENSKY: How many cases do you have pending now?

291 HEARN: We have approximately 30 complaints underway right now.

294 GRENSKY: Do any fall under the time problem you stated?

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294 HEARN: Yes. 296 SPRINGER: Can you come up with language that would accomplish that, Kathleen?

297 BEAUFAIT: Yes.

303 SPRINGER: Can you accept that, Mr. Hearn?

303 HEARN: Yes. 304 MOTION: SEN. SPRINGER MOVED THE CONCEPTUAL LANGUAGE THAT SAYS THAT CASES FILED AFTER THE EFFECTIVE DATE OF THIS LAW ARE NOT SUBJECT TO THESE NEW PROCEDURES. 312 COURTNEY: Do you need that language? Wouldn't this just naturally take effect?

312 SPRINGER: Not necessarily.

313 BEAUFAIT: (Unintelligible).

314 GRENSKY: That's a classic problem.

315 BEAUFAIT: When the procedural rules change, people wonder what to do in different cases.

318 WALDEN: I defer to the learned counsel.

319 GRENSKY: Do you mean this whole bill would apply to the procedural changes or just parts of it? 323 SPRINGER: I think best to say the whole bill. 329 VOTE: MOTION CARRIED BY ACCLAMATION.

335 MOTION: REP. BAUM MOVED THE COMMITTEE REPORT THE CHANGES TO THE RESPECTIVE HOUSES. 340 VOTE: MOTION CARRIED, 5-1. VOTING NO: SEN. SPRINGER. REP. COURTNEY AND SEN. GRENSKY WILL LEAD THE FLOOR DISCUSSIONS. 341 Meeting adjourned at 3:05 p.m.

Submitted by, Reviewed by,

Julie Muniz Joan Green Committee Assistant Committee Assistant

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EXHIBIT LOG

A - List of Conference Committee issues, Staff, 1 page.

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