

Senate Government Operations January 21, 1991 Page 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.

GOVERNMENT OPERATION AND REDISTRICTING January 21, 1991 - Page

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SENATE COMMITTEE ON GOVERNMENT OPERATIONS

January 21, 1991 Hearing Room "B" 3:00 p.m. Tapes 3 - 5

MEMBERS PRESENT: Sen. Glenn Otto, Chair Sen. Jane Cease, Vice-Chair  
Sen. Jim Bunn Sen. Ron Grensky Sen. Tricia Smith Sen. Dick Springer

MEMBERS EXCUSED: Sen. John Kitzhaber

STAFF PRESENT: Gail Ryder, Senior Committee Administrator Joan Green, Committee Assistant Jayne Hamilton, Committee Assistant

MEASURES CONSIDERED: SB 290 Ethics, PH SB 291 Ethics, PH  
SB 292 Ethics, PH SB 293 Ethics, PH SB 294 Ethics, PH SB 295 Ethics, PH  
SB 296 Ethics, PH SB 297 Ethics, PH

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TAPE 3, SIDE A

005 CHAIR OTTO: Calls the meeting to order at 3:06. Extends invitation from Rep. Lonnie Roberts to attend the Horse races on February 15th or 22nd.

(TAPE 3, SIDE A)

PUBLIC HEARING

INTRODUCTION OF BILL PACKET

Witnesses: Carl Hosticka, Oregon State Representative

025 CARL HOSTICKA, STATE REPRESENTATIVE: Refers to LC 2553, relating to complaints against candidates, Exhibit A. Wants to expand it to complaints against Election law violations. Exception being: A complaint could be filed if the incident occurred within the 21 day period. Suggests combining both ideas in one bill.

064 OTTO: Did you say that if a complaint were filed, it could be filed any time within the 21 day period.

067 HOSTICKA: No. If the incident which gives rise to the complaint occurs within the 21 day period you could complain about that.

086 GRENSKY: Some would argue that it would still be possible to go to the media with the intent to file a complaint, and as a result have the same impact. So why not let them complain at that time?

092 REP. HOSTICKA: There is a practical effect of having a complaint filed. It is more than having a notice of intent. It deflects a good deal of the efforts of people who are involved in campaigns.

172 MOTION: SENATOR SMITH MOVED INTRODUCTION OF LC DRAFT 2552 AS A COMMITTEE BILL. HEARING NO OBJECTION, SO ORDERED.

(TAPE 3, SIDE A)

PUBLIC HEARING

SB 296 RELATING TO ETHICS

Witnesses: Dave Frohnmayer, Attorney General, Justice Department Jack Landau, Deputy Attorney General

182 DAVE FROHNMAYER, ATTORNEY GENERAL: Introduces the new Deputy Attorney General, Jack Landau. Expresses concerns with establishing separate authority for independent legal counsel to the Oregon Government Ethics Commission (OGEC). Gives the following reasons why this is not a wise policy and should be dealt with by the committee. 1. The necessity for consistency of legal advise to state officers, legislators, and members of the judicial branch. 2. The professional independence of those who act as legal counsel to the state. 3. Accountability. 4. We believe our office is better placed to be of assistance to the courts. 5. Conflicting views by people employed by the State of Oregon to give legal advise. 6. It's not necessary. Refers to ORS 180.235.

286 SPRINGER: Expresses concern regarding turn-overs with deputy Attorney Generals (AG).

296 FROHNMAYER: Yes there was an unusual period in which there was turn-over of counsel for this particular agency. They were all excellent. It is not uncommon to rotate counsel.

320 SPRINGER: For whom does that attorney work? If an agency has complaints, who do they take them up with?

334 FROHNMAYER: All of those questions are dealt with explicitly by the Department of Justice Act, Chapter 180. At any time if an agency head is dissatisfied with the performance of an attorney on my staff, or dissatisfied with an assignment they have an absolute statutory right of veto over the assignment of that attorney. The attorney works for the State of Oregon.

379 SPRINGER: Do you have a concern that this or any other agency won't seek legal advice because of the cost.

386 FROHNMAYER: Yes, that is always a problem, particularly with smaller agencies. If fiscal constraints are going to be the excuse for destroying and fragmenting state legal services there would of been many times in the hundred year history of the state in which a shortage of funds would of dictated that.

411 CEASE: Where does it reside in the statute that an Agency head can force you to reassign counsel if they're not satisfied?

417 FROHNMAYER: It resides in the first part of Chapter 180.

427 SMITH: Would you explain further ORS 180.235.

448 FROHNMAYER: ORS 180.235 is a general provision written into the Department of Justice Act during the term of Lee Johnson, to deal with any preserved case where the Department of Justice, its attorneys or the Attorney General personally had a conflict of interest. This authority allows the Department to appoint private counsel, should there be a conflict of interest.

480 SMITH: It is the AG that makes the decision as to whether outside counsel will be sought?

481 FROHNMAYER: That's correct.

488 JACK LANDAU, DEPUTY ATTORNEY GENERAL: The reference is ORS 180 .060 sub-section 7.

TAPE 4, SIDE A

PUBLIC HEARING

SB 291, SB 292, SB 293, SB 294, SB 295, SB 296, SB 297 RELATING TO ETHICS

Witnesses: John DiIorenzo, Attorney Derek C. Johnson, Attorney

040 JOHN DILORENZO, ATTORNEY: Gives testimony on the Oregon Government Ethics Commission (OGEC) regarding what he believed to be procedural abuses during interim proceedings. " The degree of justice or procedural due process which a person should be able to expect from an agency should not be dependent on the person who happens to occupy the position of Executive Director rather it should be guaranteed in the law." Refers to the proposed amendments Exhibit B.

132 DILORENZO: Continues with explanation of Exhibit B.

153 GRENSKY: Do you mean they would not be protected under immunity?

155 DILORENZO: Yes that's what I mean. Under the printed bill the State of Oregon would no longer have liability, I imagine under that situation.

157 GRENSKY: And you would like to change that and make them subject to liability?

158 DILORENZO: No I am not suggesting that the State of Oregon should continue to have liability in that situation. I just want to avoid a situation where, if a private action is filed against an individual, that they then avail themselves of the shield of government immunity. Continues with explanation of Exhibit B. In my opinion, in the absence of procedural safeguards, I don't think I would advise a friend to seek public office.

244 SMITH: Referring to SB 296, regarding authorization to the OGEC to use legal services of Attorney General or to retain private legal counsel, you indicated that you think the reason this bill was drafted was because the OGEC did not avail itself with counsel adequately or often enough. Do you believe that this bill will correct that problem and why?

252 DILORENZO: I'm speculating as to the reason why the bill was drafted. I am presuming it was an alternative to the suggestion that OGEC director had to be a lawyer. I do not believe that SB 296 will force the Ethics to seek counsel.

270 SMITH: It seems to me that the Ethics Commission has the availability of the Attorney General's office all of the time whether or not they access it. If they don't because of budgetary restraint, that's a different issue, and this law isn't going to change that.

275 DILORENZO: I believe you are absolutely correct.

277 OTTO: Would one of your amendments require an attorney on the Ethics Commission at all times?

280 DILORENZO: I have not included that provision in any of my amendments.

282 OTTO: Mr. Johnson is an attorney.

290 DILORENZO: In defense of Mr. Johnson, he is an attorney but he is also a member of the OGEC and it is not his role to render legal advise to the OGEC. The lawyer for the OGEC should not be a member in that he or she should preserve their objectivity in rendering legal advise.

307 CEASE: You started out by emphasizing the bill that requires attorney fees when the judgement is favorable to someone contesting the OGEC. What's your sense of the merits of these bills, which ones do you think are most crucial?

320 DILORENZO: I believe the procedural safeguards and time lines are probably the most crucial of all of them. It is very difficult to

advise a client as to how the process works when there is no process.

336 CEASE: What do you think the public's needs and expectations are in that same particular area?

345 DILORENZO: I presume you are referring to the provisions regarding confidentiality. My view is that the rights of the individual for privacy and the rights of the public to know can be mapped along a continuum of sorts. There comes a point where the right of the public to know supersedes the right of the individual to privacy.

354 CEASE: Are we talking about public service individuals?

360 DILORENZO: Yes that's correct, but public officials have a private side to them. If public officials had no right to privacy I doubt very much whether many private individuals would want to be public officials. In my opinion there comes a point where the public's right to know supersedes that person's right to privacy.

394 CEASE: What do you think of the 21 day cut-off proposal?

404 DILORENZO: This concept, providing that no complaints would be filed with the Ethics Commission concerning public officials who were up for election within 21 days of the filing, was not a part of our proposal. I believe it was generated by members of the interim committee, who wanted to protect the Ethics Commission itself from being used as a political pawn by others. Nothing in this bill, or in the bills which I've spoken to would prevent a compliant from talking with the press. That isn't the purpose. These bills would restrict the Ethics Commission staff from saying more than, yes a complaint has been filed and it is being processed.

454 CEASE: Where is the point of benefit for the public?

456 DILORENZO: Obviously the public's information would be restricted. I believe the public's information is currently restricted in cases involving judges before the Commission on Judicial Fitness. I know the public's right to information is restricted before the Federal Elections Commission. It is inappropriate for the members of the staff to publicly comment concerning the merits of particular cases.

TAPE 3 SIDE B

025 BUNN: In SB 291 referring to confidentiality, it says until the OGE makes a finding of "probable cause" the records are confidential. One thing it doesn't deal with is once the OGE decides there isn't "probable cause". Is that information then available to the public?

032 DILORENZO: Under the terms of this language, yes the information would then be available to the general public.

033 BUNN: If the statute says that until it makes a finding the information is confidential, what happens if the OGE says there is no finding, there is no "probable cause"?

039 DILORENZO: Your interpretation may be accurate. That was not the form of the proposal when it came from my group, but we expected there to be numerous changes during the hearings.

044 BUNN: So the intent of your group, and I think the intent when it was drafted, was that there is no permanent confidentiality, but simply during the window when "probable cause" is being determined there is confidentiality.

046 DILORENZO: Correct, that was the intent of our group.

047 BUNN: So if we amend it to reflect that the public is guaranteed access to the information, it's just a time window that is closed during the investigation?

049 GRENSKY: During these proceedings, was there an Assistant AG present in order to assist the Executive Director when they would have to make rulings?

057 DILORENZO: I am not aware of all the instances in which the advice

of the AG may or may not of been sought. I know that on occasion Mr. Russell from the Attorney General's office was available. 067 GRENSKY: My concern would be that the person making those decisions, if they were not an attorney, would not necessarily understand or appreciate the significance of the language they were interpreting or trying to follow.

081 DILORENZO: I might also say that the situation is even more pronounced, because it is my understanding that issuing Ethics Commission opinions are, by statute, strictly within the province of the Ethics Commission, and the AG, although he may opine with respect to whether certain conduct might violate an ethics rule, may not even give binding opinions. The rationale that you are expounding, is precisely the reason why we advocated that the Executive Director be a lawyer.

090 GRENSKY: Did you find yourself in the situation where you were having to educate your client on what the language he was interpreting meant?

096 DILORENZO: We never really got to a contested case proceeding, but I can tell you that during the course of this ordeal I found myself in a situation where yes I attempted, in my view, to educate.

118 DEREK JOHNSON, ATTORNEY AND VICE CHAIR OF THE OGEC: Read written testimony, Exhibit C.

190 BUNN: Is anyone denied the right to file a complaint based upon the bills that have been introduced in this package?

194 JOHNSON: No one is denied the right to file a complaint, however, the bills in the package set up procedural hurdles for ordinary citizens filing a complaint. It requires a signed sworn notarized statement made under the penalty of perjury. These hurdles deter ordinary people, who are not familiar with the workings of government, and could prevent them from performing a valuable function.

205 BUNN: When we file our tax return, isn't it under penalty of perjury?

206 JOHNSON: That's correct.

207 BUNN: I'm not sure how big of a deterrent that is. Is anyone denied the right to see the records under these proposed designations?

214 JOHNSON: Several of the proposals make the process more closed during proceedings. At the conclusion of the process no, the records are not closed. However, by having the proceeding be confidential, by closing the records while the proceedings are going on, by having a 21 day mandate, and all the other procedural hurdles that are put in the place of an ordinary citizen, you're once again closing the government process in Oregon in a way that doesn't do anything to advance or convey the concerns of this committee, but does do something to further alienate the citizens of the state from participating in government.

227 BUNN: Do you believe that the level of confidence in the Ethics Commission, as perceived by the general public, is higher or lower than five or ten years ago?

230 JOHNSON: I don't have anything to base that on. I think the level of confidence in the Ethics Commission is very high especially considering the amount of abuse it's taken over the past two years.

238 BUNN: You refer to these bills as having the effect of closing and formalizing the OGEC. Isn't it more formalizing than closing? Don't we leave the right open, although more formal?

241 JOHNSON: No. It doesn't limit someone from entering the Ethics Commission process. It does however, put up barriers which, in my opinion, closes the process, and also formalizes what should be an informal administrative proceeding. The committee has expressed a real concern about due process, this is addressed thoroughly in the Administrator Procedure Act, (APA), and no one is denied the opportunity to address that someone is accusing them, or have an open and impartial hearing.

254 GRENSKY: I am concerned about a couple of statements that are in

your statement because I don't think it reflects this committee. You indicate that each of these reforms starts with the proposition that citizen participation, which we now encourage, is bad and should be curtailed. What is it about these bills that you think is saying that citizen participation is bad and should be curtailed?

271 JOHNSON: The premise of each of these bills is that the current open and informal process needs changing. SB 290 deals with appointments by the Governor and would reduce the number of discrete constituent groups who have a say in the appointing process. It reduces confirmation from five down to one. It also takes control of the Executive Director from the hands of the citizen and places it in those of a public official which the Executive Director may be investigating. The confidentiality provisions clearly close the process; that fails to remedy the procedure problem.

293 GRENSKY: If that's the case then how can you say that we're closing off the public access?

297 JOHNSON: You're closing the public access to the OGEC records and processes.

300 GRENSKY: Is it your position that a public official when before the Ethics Commission, is afforded less due process than someone accused of a crime?

313 JOHNSON: These are not criminal allegations.

315 GRENSKY: We can argue that because I think when somebody pays fines and attorney fees in the amounts that these people did, that's as much a sanction in a criminal sense as it would be in front of the Ethics Commission. Do you start from the premise that a public official lacks the same due process as someone accused of a crime?

324 JOHNSON: I most certainly do not. The official's due process is fully protected under the Administrator Procedure Act, which we have to follow when we go into a case hearing.

329 SMITH: I am supportive of the assistance of the Ethics Commission, but in reading the positions of the Ethics Commission that Mr. Hearn presented to us last week, I couldn't help but feel there was a great deal of defensiveness in the positions, and it seems that in some of them, there was objective just to object. In SB 290, the last sentence indicates that the members shouldn't be placed in the difficult situation of having to investigate the person that appointed them. That seems to be the objection of changing the statute from its current appointment process to all seven members being appointed by the governor. Is that a correct assessment?

359 JOHNSON: That's one of the elements of concern. The principal concern here is it seems to be fixing something that's not really broken, removing what seems to be in our view a fairly balanced appointing process already and putting it into one person's hands.

374 SMITH: I would think that in the case you point out, that you would have difficulty should you be forced to investigate the appointee authority. You talk about how unseemly it is for a legislative body to have a part in selecting any member of the professional staff, if the Senate confirms the Executive Director. You don't have an objection to the Senate confirming the members themselves. Why is that?

392 JOHNSON: I think that the concern should be that the Executive Director should not be under the thumb of an appointing body.

400 SMITH: Do you consider yourself to be under the thumb of the appointing body?

402 JOHNSON: No I do not.

403 SMITH: Why would you consider the Executive Director to be? Why does the Executive Director have a different status than the members in your view?

409 JOHNSON: In my view the Executive Director is depending on the appointing body for a paycheck, which is not the case for me, and that's

a significant distinction. It's also a career position for that person, rather than a piece of public service, which is what I concenter my role to be.

425 SMITH: Referring to Exhibit D, SB 291, your first position states that this proposal might necessitate a change in the open meetings law. Did you consult with legal counsel to determine whether or not that was true?

440 JOHNSON: We did, and it does.

441 SMITH: The second point is that open meetings have historically been an effective tool for citizens in assuring ethics in Oregon Government. I believe what this proposal is trying to do is to separate the groundless from the grounded complaints in review before the public. When you publicize all of them, a public officials' reputation is forever tarnished whether or not it's grounded.

TAPE 4, SIDE B

024 JOHNSON: I agree with that and it is genuine concern, however the confidentiality provision does not prevent a complainant from going to the press with whatever information they want to anyway.

029 SMITH: I agree with that, but I also believe that most of the press is not along the same lines as the National Enquirer and will investigate it before printing it.

032 JOHNSON: I think you are correct, however there have been numerous occasions where we have been presented a complaint at the same time as the press. If we make it confidential all we're doing is taking our investigative materials out of the loop, and not solving the problem.

039 SMITH: I resent the statement that says that the media has long been effective in helping reassure the public that public officials act ethically. I don't agree with you that this provision would do harm to the idea that public officials are ethical.

048 JOHNSON: The press in this state has historically performed a very valuable watchdog function over the processes of government. We'd like to have the press continue that watchdog role.

057 BUNN: When the OGE testified earlier, one of the objections was the definition of "probable cause". Have you come up with an alternative definition?

060 JOHNSON: We have not, because we believe a definition here, does nothing to clarify approved proceedings. All it does is add another layer of terms which then need to be defined themselves.

069 BUNN: So what you're saying is basically that we have to have a completely subjective criteria for determining whether or not a case will be investigated?

072 JOHNSON: The law as it's written now does not provide that it should be subjective. What we do is try to review the evidence as it comes before us as an informal administrative body, and determine whether or not there's merit to go on to the next stage. Once we do that we then perform a more in depth investigation, and if necessary move toward a contested case hearing.

078 BUNN: So we have no objective criteria for determining whether or not something should be investigated?

080 JOHNSON: That's correct.

081 BUNN: How does the public evaluate your decision if there's no objective criteria?

087 JOHNSON: When a complaint comes in, we do the best we can to gather as much information about that complaint, including whether or not there are political over or undertones. We evaluate it the best we can based on the information we gather in a preliminary review. That includes talking to the people involved in the matter, both the respondent and the complainant, and anyone they may of named who may have information

regarding the alleged acts.

099 BUNN: How is legal counsel who hasn't been through this before supposed to know how to deal with this case when there is no objective criteria to deal with?

103 JOHNSON: I'm not sure what kind of objective criteria you would like in a preliminary review setting. All we try to do is gather as much evidence as we can to make an informed just decision on the evidence.

108 BUNN: Do you have a definition for "just"? The lack of criteria is very frustrating for attorneys handling cases. If you have "probable cause" defined in the statute they would have the definition and would know how to deal with that, and how to defend their client.

120 JOHNSON: We want to maintain the informal and open process of the OGE. There are levels of procedure that we go through, the first being this informal process to find the "probable cause". After that we go into more formal processes, and ultimately we are bound by the APA.

131 BUNN: You said you go through the informal part to decide "probable cause", but you don't have a definition of "probable cause". How do you find it if you don't know what it is?

134 JOHNSON: We don't feel using other language to define "probable cause" adds anything or simplifies the process. All it does is add objective and substantial evidence, so the next question would be, what is objective, what is substantial? We feel that "probable cause" provides a sufficient standard by which to determine whether or not we should proceed from a preliminary review.

145 BUNN: You go through an informal process until you find "probable cause", which is not the "probable cause" that is in the criminal statute, nor is there a definition. Have I summed it up right?

152 JOHNSON: What we have once we finish a preliminary review is a determination of whether or not we have "probable cause" to proceed to the next phase. That's not a defined term in our statute, and we don't feel that the more stringent requirements of the criminal code should apply to administrative and civil proceedings.

160 GRENSKY: This issue of "probable cause" concerns me substantially because you use terms like fair, open and more relaxed. I don't think that someone who has been accused of one of these things views this process in that way at all. Those things that complicate, or add unnecessary layers for you to interpret, are exactly the kinds of things that add safeguards to those being accused. You said you don't know what substantial and objective means, well lawyers do. If you're confused over that, then that's exactly why you should be supporting some statutory definitions of this kind of language, because if you can't tell this committee what it means, how is an accused supposed to know what it means when they're sitting before you? Are you a lawyer?

180 JOHNSON: Yes I am.

181 GRENSKY: Are you aware that you can look those things up?

183 JOHNSON: Yes.

186 GRENSKY: Then explain to me why you think it's a problem to use those two terms in the definition that we included in this bill.

188 JOHNSON: I think it's a problem, because you're taking elements of the criminal law and the criminal code and applying them to the civil arena. Those three areas of law have distinct procedures and have distinct case laws attached to them. If you start taking parts of the criminal law and applying them to the civil law you're going to be all bundled up. We don't think we should take the strict requirements of the criminal law and apply it in an administrative setting.

200 GRENSKY: What I'm hearing is that you really don't believe that a public official is afforded the same rights as someone who has been accused of a crime, and you don't want those standards in this proceeding.



207 JOHNSON: I said that a public official does have due process protection which is afforded by our statute and by the APA.

212 GRENSKY: By the time you get to the contested case status, but what about this driveling along for two years until you get to this point. Are you saying that the APA protects the accused during those steps of the proceedings.

216 JOHNSON: No I'm not.

217 GRENSKY: The people we've been talking about ran up thousands and thousands of dollars in attorney fees during those steps, and never even got to the contested case status. These bills don't address the contested case status either. So don't tell us about constitutional protection that most people don't even get to. We're concerned about what happens from day one when that complaint gets filed. "We want to protect the public interest, but there's no reason a public official should be treated like he's from a Communist country just because he served in public office." When it comes time for his rights to be protected he or she should have rights as well. That's what these bills are designed to do.

227 JOHNSON: We treat everyone who comes before us with the utmost respect and politeness. We have never treated anyone like they come from a Communist country. Further we do everything that we can to allow anyone who comes before us to state their piece in the most open, friendly, familiar surroundings. That hardly seems like a grand inquisition.

238 GRENSKY: Maybe you should talk to some of the people who went before that committee then, because they didn't view it that way.

239 CEASE: I would just like to say that I do take exception to designating the Ethics Commission as operating like a Communist country. I want that on the record.

244 BUNN: When did the requirement that you use "probable cause" become a part of statute for you? Was that a result of the 1989 session?

249 JOHNSON: I believe it was.

250 BUNN: At that time we didn't redefine it, we just said "probable cause". Is that correct?

251 JOHNSON: That is correct.

252 BUNN: The only definition of "probable cause" dealt with criminal "probable cause". When we said use "probable cause", you chose not to accept the existing definition, but you didn't adopt another one. Is that correct?

255 JOHNSON: We chose not to apply criminal standards to administrative proceedings.

258 BUNN: Did you try to ascertain the legislative intent by what was meant by the term "probable cause"?

260 JOHNSON: Yes the staff at the time did, and we tried to do our best in implementing the legislation that came down from the legislative branch.

264 BUNN: Was there any discussion of alternative definitions that you chose not to except.

266 JOHNSON: No there was not.

269 OTTO: You people have proposed administrative rules over a period of time. I have some problems with administrative rules. My problem is that some of the affective agencies, when they adopted administrative, rules didn't follow the intent of the legislature and came out with something entirely different in their administrative rules. What I'd like to do, and see this committee do, is to put all these things into the statute. Your executive director on Friday indicated that we can take care of that by administrative rules. I agree there are some

things that could probably be taken care of by administrative rules. But I also know that administrative rules don't always reflect the intent of the legislature.

300 JOHNSON: I have always thought that administrative rules were necessitated by the legislative branch shirking it's responsibility, so I'm heartened to hear that you're fully intending to put everything that you want the Ethics Commission to do into statute.

310 OTTO: It would be my intent that we don't leave anything to administrative rules, rather write it into law. That way you people are clear on what your job is and what we expect of you.

(TAPE 4, SIDE B)

PUBLIC HEARING

SB 291 RELATING TO ETHICS

Witness: Les Zaitz, Publisher and owner of Salem newspapers.

324 LES ZAITZ, PUBLISHER AND OWNER OF TWO SALEM NEWSPAPERS: There was previous testimony concerning the proposals. Our concern is now as it has been before on the confidentiality provisions embodied in SB 291. This type of legislation is one more move to draw the curtain of secrecy across the operations of government. Oregon law, Federal law and Constitutional law all operate under the premise that in this country the government operates best when it operates in the open. We believe it is important to the public, the public official, and to the Oregon Government Ethics Commission (OGEC), that the process not be closed off as proposed here. There are several benefits to the public and to the to allowing this to remain public as it has in the past seventeen years in the operation of the OGEC. Public disclosure that a complaint has been filed, that an investigation is under way can, and often does prompt information to come forward to the proper authorities that may be to the benefit of the person who is subject to the investigation. It may also facilitate the s ability to find all the facts to make a prudent decision in the case, by keeping the process open it allows the public to monitor the investigation as well, which is particularly important when we are talking about the public conduct of public officials who have had complaints against them concerning their public responsibilities. We are dealing with public conduct here, not private conduct. The other reason it needs to stay open is because it inspires confidence in the system. If we draw this veil of secrecy if we allow the Ethics Commission to conduct secret investigations that will see a retreat of confidence, not an increase of confidence in public officials. The other part of this proposed statute would close off some meeting of the Ethics Commission. The history of the OGEC does not show a compelling reason why these types of sessions ought to be closed off to public access.

422 SMITH: It seems that we run a real risk of allowing someone to use this process to destroy another's career and reputation. Included in an issue brief put together by the committee office it indicates that this draft legislation is patterned after the Federal Election Commission. (FEC) If that's true it seems to work fine on the Federal level why would it not work on the State level?

447 ZAITZ: I'm not terribly familiar with the FEC regulations. I know that they are terribly cumbersome and they do force a considerable public disclosure. Another point would be, I don't think in Oregon that we want to start patterning everything we do after what is done on the federal level or we're all going to be in trouble.

459 SMITH: How would you address my concern that the Commission could be used under the current structure by a third party to destroy the career of a public official, by merely throwing out accusations about that person?

467 ZAITZ: The point made earlier that by merely closing off the ability to disclose the complaint after it's been filed, will somehow hold public officials immune from those kinds of public accusations is unfounded. There are a number of diverse ways to attack a public official. The Ethics Commission is simply one of them. We need to remind ourselves that we are talking about public conduct of public

officials.

TAPE 5 SIDE A

026 OTTO: You talk about integrity, I think there's times when the news media hasn't practiced integrity to it's highest. Maybe you should be pointing your finger at yourself.

034 BUNN: Assuming that we take care of the amendments so that SB 291 does allow the disclosure once we've disposed of a case, that would leave a 60 day window when the information would not be available for the public under SB 292. Would that take care of the majority of your concern knowing that the public would have access to that information eventually?

039 ZAITZ: I think not. Disclosure of that information early on is an asset to an investigation. It's important for the public to know, so that information can be forth coming.

049 BUNN: I believe that the 60 day window is the preliminary review phase, and then you get to the investigatory phase, and at that point you have not locked out the public input.

051 ZAITZ: We should not retreat from the concept of openness in government.

061 RYDER: Distributes written hand out from Common Cause. Exhibit E.

065 Meeting adjourned at 5:15

Submitted By:

Reviewed By:

Jayne Hamilton  
Assistant

Joan Green

Assistant

EXHIBIT LOG

A - LC Draft 2553, Hosticka, 4 pages B - Proposed Amendments to Senate Bills 291, 292, and 297, Dilorenzo, 9 pages. C - Written testimony, Johnson, 4 pages D - Position of OGEC on Legislative Reforms, Hearn, 7 pages E - Written hand out for Common Cause, 4 pages