

Senate Government Operations January 28, 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.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

January 28, 1991Hearing Room "B" 3:00 p.m. Tapes 8 - 9

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

MEASURES CONSIDERED: SJR5 - Adopts Republic of Honduras,  
PH/WS SB 290 - Relating to Ethics, PH/WS SB 291 - Relating to Ethics,  
PH/WS SB 292 - Relating to Ethics, PH/WS SB 293 - Relating to Ethics,  
PH/WS SB 294 - Relating to Ethics, PH/WS SB 295 - Relating to Ethics,  
PH/WS SB 296 - Relating to Ethics, PH/WS SB 297 - Relating to Ethics,  
PH/WS

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TAPE 8, SIDE A

008 CHAIR OTTO: Called the meeting to order at 3:07 p.m.

012 RYDER: Discusses packet of bills for committee introduction, Exhibit A.

019 MOTION: SEN. GRENSKY MOVED THAT THE PACKET OF BILLS, EXHIBIT A, BE INTRODUCED AS COMMITTEE BILLS.

021 BUNN: I won't object to introduction of the bill packet, but I would not support LC Draft 185 5 when it reaches a vote.

026 VOTE: MOTION CARRIED, 5-0. (EXCUSED: SEN. CEASE, SEN. KITZHABER).

(Tape 8, SIDE A)

PUBLIC HEARING

SJR5 RELATING TO ADOPTION OF REPUBLIC OF HONDURAS AS SISTER STATE OF OREGON

Witnesses:Jacobco Hernandez, Republic of Honduras, Vice President Ron Grensky, Oregon State Senator, District 25

040 GRENSKY: Introduces Jacobco Hernandez, Vice President of the Republic of Honduras. He is here to speak to a measure I introduced, SJR5. This measure originated out of a program, The Gift of Christmas, begun by a National Guardsman. Honduras and Oregon have similar economies,

strongly reliant on timber and agriculture and a sister relationship could be mutually beneficial. Introduces other guests from Honduras.

067 JACOBO HERNANDEZ, REPUBLIC OF HONDURAS, VICE PRESIDENT: We consider this to be of great importance. A mutual relationship between the two states will be formed. Our Government and people thank the Senator and this Committee for the importance given to this Resolution.

085 SMITH: Are women offered the same rights as men, politically and economically in Honduras? Also, is abortion a legal activity in Honduras?

104 HERNANDEZ: In 1954 women were given the right to vote. The present government's constitution establishes equal rights. Women participate in public administration and political administration, as well. There is no discrimination against women.

122 SMITH: Do women have the ability to establish their own economic base and financial stability, independent of men?

126 HERNANDEZ: There are many business women that sustain themselves and are independent.

#### WORK SESSION

141 MOTION: SEN. SMITH MOVED SJR5 TO THE FLOOR WITH A DO PASS RECOMMENDATION. OBJECTIONS, HEARING NONE, SO ORDERED. SEN. GRENSKY WILL LEAD FLOOR DISCUSSION.

(TAPE 8, SIDE A)

#### PUBLIC HEARING

SB 290, SB 291, SB 292, SB 293, SB 294, SB 295, SB 296, SB 297 RELATING TO OREGON GOVERNMENT ETHICS COMMISSION

Witnesses:David Buchanan, Oregon Common Cause

163 DAVID BUCHANAN, OREGON COMMON CAUSE: Gives overview of Common Cause position on the substance of the bills. Common Cause feels the most important aspect of the Oregon Government Ethics Commission (OGEC) is that it be independent from any influence from the elected and public officials which they oversee. Common Cause does not support having one single appointing authority for the entire commission. As long as no one person appoints a majority, an influence cannot be held over the commission. We favor the current method of appointment.

214 BUCHANAN: It is important for the OGEC to make the final determination of its legislative counsel. The overriding factor to the Attorney General's (AG) arguments, is the ability for the OGEC to maintain its independence from an elected official, whose job falls under OGEC's jurisdiction.

240 BUCHANAN: We favor SB 295, the manual should be a part of the OGEC budget.

257 BUCHANAN: The Board of Common Cause has not gone into detail on the operating structure of the OGEC, many are technical changes. A better compromise could be reached on some of the specifics the OGEC feels is feasible and what the bill authorizes, for example keeping a complaint closed until there is a finding of probable cause. The Common Cause Board feels a filed complaint could be held confidential, a copy of the complaint could be sent to the person the complaint is filed against and a time frame given for a response. At the time a response is received

the response and complaint would be released to the public. Both sides could be heard at the same time.

296 SMITH: What is your objection to keeping the complaint confidential until the OGEC determines there is reasonable cause to conduct an investigation?

303 BUCHANAN: It would cause the OGEC to operate in a closed meeting. The closed portion of the process would be completed before coming into a formal meeting allowing the meeting to be public and the decision made based on information from both sides.

311 SMITH: Is your concern that if the process is confidential until the OGEC makes an initial determination, in some cases a determination may never be made in regards to the evidence?

319 BUCHANAN: We assume the process of the OGEC is an open public process. It is not in the best interest of public knowledge and oversight to have portions of the meeting closed to the public.

342 OTTO: In grand jury action are charges made available at the time a charge is made or do they have a period of finding?

351 GRENSKY: They are confidential, they are not open to public scrutiny until an indictment is returned.

355 OTTO: How long does that usually take?

356 GRENSKY: The day the indictment is returned by the grand jury.

360 RYDER: But only if there is an indictment?

361 GRENSKY: Correct.

363 OTTO: Do you have a response to that?

365 BUCHANAN: In creating the OGEC we created a citizen process, not a criminal process. This needs to be a process separate from the criminal procedures. The OGEC was created for a citizen evaluation of public service.

404 SMITH: Citizens generally make decisions based on headlines, not on evidence presented to the OGEC. If we are trying to keep the public a part of the process of the OGEC, that is accomplished with public meetings during the investigatory process. Damage to an elected official is done when a complaint is filed, regardless of the outcome. I have a problem with this part of the process being open, if they are guilty we will all hear, if they are not why should it be open?

462 BUCHANAN: Many complaints are filed with the OGEC and handled judiciously, with the only interested party being the one filing the complaint.

TAPE 9, SIDE A

040 BUCHANAN: Rarely are there cases that generate press interest and the high level of interest provides an avenue for both sides, separate from the OGEC process. No matter what the OGEC's procedures are, that aspect could not be dealt with by the OGEC.

056 SMITH: I don't see where the public is better served in maintaining that window of time.

065 BUCHANAN: Common Cause takes the position of more public disclosure

rather than less.

070 BUNN: You did not support SB 290 or SB 291. You would accept a 10 day, but not a 60 day confidentiality period?

073 BUCHANAN: I would hope the process would continue as it does, but if a change is made I would like a compromise between what currently is and what is proposed.

079 BUNN: What was the Common Cause position on the other bills?

080 BUCHANAN: We favor the appropriations for a manual and we favor the independent choice of legal counsel.

083 BUNN: You were neutral on the others?

084 BUCHANAN: The Common Cause Board did not discuss a number of provisions. I do not feel there would be a problem with a statute of limitations or internal operating time lines.

092 BUNN: Did you take a position on confirmation by the Senate?

093 BUCHANAN: No, but I don't see a problem.

097 GRENSKY: You favor OGEC's ability to select legal counsel, could you briefly say why?

101 BUCHANAN: Because of the independence of the OGEC and they must, occasionally, pass judgement on every elected official in the state.

111 GRENSKY: Does your position change in knowing the Oregon State Bar requires any attorney representing a client to declare even potential conflicts of interest and they would remove themselves from the case?

118 BUCHANAN: That is why we feel it would be rare that the OGEC would require independent counsel, but should it occur the final call should be the OGEC's.

125 GRENSKY: What if the OGEC does not like the AG's advice and wants to hire a private firm, does that present a problem?

133 BUCHANAN: Members of OGEC would need to accept responsibility for their judgements.

142 GRENSKY: You support SB 296, as it now stands?

144 BUCHANAN: Yes.

145 GRENSKY: That is based on the potential conflict theory and the accountability of the OGEC?

147 BUCHANAN: Yes.

148 GRENSKY: It does not bother you that they could shop for attorneys?

149 BUCHANAN: I think if that were done, different appointments would be made to the OGEC.

(TAPE 9, SIDE A)

PUBLIC HEARING

SB 295 RELATING TO ETHICS

Witnesses:Sandra Arp, League of Oregon Cities

160 SANDRA ARP, LEAGUE OF OREGON CITIES: Speaks in support of SB 295. This will promote better understanding and result in less errors and better ethic compliance. If a manual were available we would actively publicize its existence and strongly recommend its usage by all government officials and employees.

(TAPE 9, SIDE A)

WORK SESSION

SB 290 RELATING TO ETHICS

193 MOTION: SEN. BUNN MOVED THAT THE BOLD LANGUAGE ON PG. 1, LNS. 25-28 OF SB 290 BE DELETED.

201 OTTO: That would remove the Executive Director from the appointment process?

203 BUNN: Yes, the Executive Director would serve at the pleasure of the Commission, but the Commission is still confirmed by the Senate.

205 OTTO: There would be no time limit on the time of service?

207 BUNN: It is meaningless if the Senate does not confirm, they would be serving at the pleasure of the Commission.

217 RYDER: The effect would be to delete \$2 from the bill?

218 BUNN: I am concerned about not having a term limit, but I am more uncomfortable with someone whose livelihood depends upon Senate confirmation, and in turn that person investigates Senate members.

223 VOTE: HEARING NO OBJECTION, SO ORDERED.

(TAPE 9, SIDE A)

WORK SESSION

SB 291 RELATING TO ETHICS

230 RYDER: Kathleen Beaufait, Legislative Counsel, is of the opinion that there is no need to make further changes in public meetings law, it is all inclusive in this bill. Distributes amendments from John DiLorenzo, SB 291-1, Exhibit B. The first two lines are actually Sen. Bunn's amendments, which would clarify that either at the finding of probable cause or at a dismissal of a complaint the information would become public. On pg. 2, ln. 7 of SB 291 there is no clarification that the information would become public, regardless of what the determination was.

261 BUNN: There are only two options once a complaint has been filed. Within 60 days of filing a complaint there is a finding of probable cause or the complaint is dismissed?

270 RYDER: Correct.

272 BUNN: The amendments do meet the condition?

273 RYDER: Yes.

274 MOTION: SEN. BUNN MOVED THE SB 291-1 AMENDMENTS, EXHIBIT B, TO SB 291.

274 RYDER: All of the amendments?

275 BUNN: Yes.

282 SMITH: Is the 60 day time line in SB 291?

283 BUNN: No.

285 SMITH: What if SB 291 passes and SB 292 fails, can the two be tied together, so if a time line does not pass, this would not pass?

297 RYDER: We discussed the option of combining several bills once we decide what we want in each bill separately.

330 VOTE: OBJECTION, HEARING NONE, SO ORDERED.

(TAPE 9, SIDE A)

WORK SESSION

SB 292 RELATING TO ETHICS

343 RYDER: Distributes SB 292-1 amendments from John Dilorenzo, Exhibit C and a fiscal impact statement, Exhibit D.

364 MOTION: SEN. BUNN MOVED THE SB 292-1 AMENDMENTS TO SB 292. OBJECTIONS, HEARING NONE, SO ORDERED.

(TAPE 9, SIDE A)

WORK SESSION

SB 293 RELATING TO ETHICS

379 BUNN: You don't wish for any of these to go to the floor today?

382 OTTO: No.

384 RYDER: I believe both caucuses would like to discuss the bills before they come out of committee. There are no amendments to SB 293.

391 SMITH: I am not prepared to support any of the bills at this time. By my silence I am only reflecting that I am not offering amendments.

(TAPE 9, SIDE A)

WORK SESSION

SB 294 RELATING TO ETHICS

404 RYDER: There are no amendments submitted to SB 294. However at the January 21, 1991 meeting a bill was introduced by the Committee on behalf of Rep. Hosticka which would expand this particular bill. That bill has not been printed or referred at this time. It could be by Friday and if it is referred we will hear it on Friday.

413 BUNN: Although the other bill is parallel and makes sense, this one deals just with Ethics. Would it be more appropriate if we consider amending a number of bills together to deal with this separately?

422 OTTO: We could.

(TAPE 9, SIDE A)

WORK SESSION

SB 295 RELATING TO ETHICS

426 RYDER: Distributes fiscal impact statement, Exhibit E. There are no amendments submitted. This bill has a subsequent referral to the Ways and Means Committee.

440 OTTO: Are there other bills with subsequent referrals?

441 RYDER: The final three bills all have subsequent referral to the Ways and Means Committee.

(TAPE 9, SIDE A)

WORK SESSION

SB 296 RELATING TO ETHICS

447 RYDER: There are no amendments. There is a subsequent referral to the Ways and Means Committee.

452 BUNN: I, tentatively, don't support this one.

456 GRENSKY: Concur.

(TAPE 9, SIDE A)

WORK SESSION

SB 297 RELATING TO ETHICS

477 RYDER: Distributes SB 297-1 amendments from John DiLorenzo, Exhibit F, ln. 13 should read "award" instead of "reward". Distributes fiscal impact statement, Exhibit G.

491 OTTO: What do the amendments do?

497 RYDER: Mr. DiLorenzo's amendments deal with awarding the prevailing party reasonable attorney fees. His amendments make that language a "shall" rather than "may".

TAPE 8, SIDE B

035 GRENSKY: It appears the attorney fees would accrue, as outlined in (b) and (c), SB 297-1 amendments, Exhibit F. It appears Mr. DiLorenzo has moved it back a notch from the original bill, to prevail on the hearing, is that correct?

044 RYDER: Mr. DiLorenzo presented an explanation of the SB 297-1 amendments, Exhibit F at the January 21, 1991 hearing. He stated, "The printed bill recognizes the need for the award of attorneys' fees to prevailing public officials should the matter reach a contested case, however the present printed language only allows for an award of attorneys' fees upon appeal to the Court of Appeals from a decision of the Commission. In the case where a public official prevails at a hearings level, the public official would have no interest in filing an appeal with the Court of Appeals and would therefore have no vehicle available for seeking the attorneys' fees." Does that answer your question?

055 GRENSKY: Yes.

057 BUNN: Does he move it back from the original version, or does the clock just start ticking at a different point, or is it just the ending point is different for beginning the process of collection? His statement does not agree with the idea that the time line has been moved back. If you have a right to collect attorneys' fees you should be able to collect them without having to appeal the victory to receive them. If we have, in fact, moved the time back when the fees begin, that is a separate issue.

067 SMITH: In reading §8, pg. 3 of SB 297, it indicates the attorneys' fees would commence at the hearing before the commission. This amendment doesn't include anything that is not included in the original bill, only that you do not need to appeal in order to receive them.

076 RYDER: I will ask Mr. DiLorenzo for a clarification of the SB 297-1 amendments to be presented at the meeting on Friday, February, 1, 1991.

078 GRENSKY: In essence I agree with Sen. Smith. The bill as drafted, unless you go to the Court of Appeals, would not allow receipt of your attorney fees.

093 MOTION: SEN. BUNN MOVED THE SB 297-1 AMENDMENTS, EXHIBIT F, TO SB 297.

096 RYDER: Does that include the handwritten change on ln. 13?

098 BUNN: Yes.

099 VOTE: OBJECTIONS? HEARING NONE, SO ORDERED.

101 MOTION: SEN. SMITH MOVED §1 OF SB 297 BE DELETED.

103 SMITH: It is the responsibility of a public official to know what the ethic laws of this state require of that public official. I don't think ignorance of the law should be a defense, and it is difficult to prove what someone does or doesn't know.

115 GRENSKY: I am concerned that you could be involved in something where you are unaware of a connection and you could be held liable, under a strict liability standard, without knowledge that you are breaking the law.

134 SMITH: Using your example, this section would not apply. This section deals with gain for the public official.

143 GRENSKY: If a client benefits from a lobbyist or attorney or whatever, and the attorney gets something back in the form of compensation, that is personal gain.

160 SMITH: I would be interested in what the interim members have to say about the intent of this word.

173 RYDER: I understood the interim committee wished to establish intent to obtain financial gain. Legislative Counsel chose this word to show intent to obtain financial gain, rather than knowledge of the law.

181 SMITH: How would intent be proven in a commission proceeding?

183 BUNN: The standard that SB 297 is establishing is preponderance of evidence. I believe this came out of a case regarding a billing, if someone didn't know they had been billed and didn't pay the bill did you benefit and violate ethic laws? I think it is trying to determine what the purpose of Oregon's ethic laws are, and ethic laws are a knowing violation.



198 RYDER: This particular suggestion came from a former commission chairman and it was a suggestion from a former investigator, who is an attorney. They cited that it used to be the case that intentional abuse of the law was taken into consideration by the commission. Only recently have they used a more literal interpretation of the law and this was a suggestion to return to the old practice.

213 VOTE: MOTION FAILED, 1-4. (VOTING NO: SEN. BUNN, SEN. GRENSKY, SEN. SPRINGER, CHAIR OTTO. EXCUSED: SEN. CEASE, SEN. KITZHABER).

225 RYDER: Three of the measures have subsequent referrals to Ways and Means. If it all went into one bill it would all be referred to Ways and Means.

234 GRENSKY: What is the feeling on SB 296? One bill could be a problem, if some are going to fly and some are not.

239 General concurrence.

242 RYDER: Suggests the following groupings: SB 295, SB 296 and SB 297 go to Ways and Means. It was suggested the manual remain an independent bill, independent counsel remain a separate bill and that in SB 297 all of the language be moved to the omnibus bill with the exception of the attorneys' fees, which would remain separate in SB 297 to go to Ways and Means. Everything else, with the exception of SB 290 and SB 291, would be placed in SB 292 .

257 SMITH: SB 290 and SB 291 would not go into SB 292?

258 RYDER: They would be separate. The confidentiality section and the appointment process are controversial. That is why those were separated.

265 SMITH: How would we procedurally address my concern of confidentiality being tied to the time line in SB 292?

269 RYDER: You could duplicate it so that portion would stand alone in both bills. Do you want to put the controversial confidentiality statutes in the omnibus bill?

281 SMITH: My concern is passing the confidentiality requirements, but not the time line in the omnibus bill. If the omnibus bill fails and SB 291 passes then we have a confidentiality requirement that could go on for years. I would like to see them somehow tied together.

288 RYDER: The time line could be put in both SB 292 and SB 291 and just the confidentiality statute in SB 291.

292 SMITH: Agrees to that proposal.

293 OTTO: Is that agreeable to others members of the committee?

294 No dissent heard.

296 RYDER: Do you want SB 290 to be separate, that is the appointment process?

298 General concurrence.

299 RYDER: And the three to Ways and Means, do you want to leave the attorneys' fees in SB 297 and move the rest to the omnibus?

302 General concurrence.

303 RYDER: Do you want to place SB 294 in the omnibus?

306 SMITH: I would like to hold off on that until we receive Rep. Hosticka's bill.

316 GRENSKY: When will we get that?

317 RYDER: It was turned in to desk Friday, it should be referred shortly. It was introduced by this committee at the request of Rep. Hosticka because it related to SB 294 , he had hoped originally to make it an amendment to SB 294, but the relating clause was not broad enough.

323 GRENSKY: Agrees we should wait until the bill is referred.

326 Meeting adjourned at 4:25 p.m.

Submitted By:

Reviewed By:

Joan Green  
Assistant

Jayne Hamilton  
Assistant

#### EXHIBIT LOG

A - Packet of LC Drafts for committee introduction, Staff, 14 pgs. B - SB 291-1 amendments, DiLorenzo, 1 pg. C - SB 292-1 amendments, DiLorenzo, 1 pg. D - Fiscal impact statement, Staff, 1 pg. E - Fiscal impact statement, Staff, 1 pg. F - SB 297-1 amendments, DiLorenzo, 1 pg. G - Fiscal impact statement, Staff, 1 pg.