

Senate Government Operations February 15, 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

February 15, 1991Hearing Room "B" 3:00 p.m. Tapes 23 - 24

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: SB 9 - Relating to Ethics, PH/WS SB 290 - Relating to Ethics, WS SB 292 - Relating to Ethics, WS SB 297 - Relating to Ethics, WS SB 296 - Relating to Ethics, WS

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TAPE 23, SIDE A

007 CHAIR OTTO: Called the meeting to order at 3:09 p.m.

(TAPE 23, SIDE A)

PUBLIC HEARING

SB 9 RELATING TO ETHICS

Witnesses:William Love, Housing, Education and Cultural Facilities Authority, Executive Director Michael Ryan, State Treasurer, Executive Assistant

020 WILLIAM LOVE, HOUSING, EDUCATION AND CULTURAL FACILITIES AUTHORITY, EXECUTIVE DIRECTOR: SB 9 is a corrective bill that would accomplish two things: 1. An exemption would be added under the conflict provisions, for authority members who are also volunteer members of one of the boards that may be involved in applying with the Housing, Education and Cultural Facilities Authority (HECFA). Cites an example where two of the five HECFA members were on the applicants board at Oregon Museum of Science and Industry (OMSI). That would mean all three of the other volunteer members would need to be present to take action, which can be difficult. 2. SB 9 would clarify whether HECFA people are subject to the reporting requirements under the ethics law.

047 BUNN: In your example, couldn't the other two have declared a conflict of interest and voted?

051 LOVE: No, this matter has been discussed with the Attorney Generals (AG) office and the provision, under the statute, is that, in essence, they were disqualified to participate. We hope with the passage of SB 9 they could declare the dual representation and proceed.

058 CEASE: The way SB 9 is worded it would not just apply to that board. This is a fairly large exemption for any board of directors that meets this definition.

064 LOVE: Correct, §1 is not limited to HECFA. I believe it was thought that this problem has a broader scope and thus the language.

074 CEASE: Why should we make exemptions for people and allow conflicts of interest? Legislators declare a conflict of interest so it is on the record.

078 LOVE: Presently, as it is interpreted, members can't declare a

conflict of interest and then participate, they must declare and then not participate.

085 CEASE: Perhaps people who cannot participate in meetings should not be on the board. You should have full participation on the board and you wouldn't have the problems.

087 LOVE: Representatives from the AG's office and the State Treasurer's office are present in the audience and could better respond to the overall problem to the state.

097 CEASE: I would prefer declaring a conflict of interest and then voting rather than listing exclusions.

108 MICHAEL RYAN, STATE TREASURE, EXECUTIVE ASSISTANT: SB 9 would have full disclosure of any potential conflict on a cross membership with the board. It would be on the record. These are all 501 C 3 non-profit entities that participate and vote in these discussions. In putting this bill together we did not know how many other instances might occur because we are so driven by volunteers. It is logical that it is probably occurring in other places. There is full disclosure, there are public meetings, there is no pecuniary interest of the membership and it is more for a smooth operation.

134 CEASE: I still have a problem with it. Is there any way to find out what other situations exist?

143 OTTO: We can delay action on the bill, but I don't know who we could find out from?

152 BUNN: Are you uncomfortable with putting the non-profit boards in the same position legislators are in as far as declaring a conflict or are you not sure that is what is being done?

154 CEASE: It has always been my preference to go the other way, to say they are going to have a conflict, but it won't hold up the operation.

159 BUNN: That is what I understand we would be doing. Right now those members cannot function. We would change it so the members could function once they declare a conflict.

162 CEASE: They would be able to vote even if there is a conflict? If that is what this means it is fine.

WORK SESSION

166 MOTION: SEN. BUNN MOVED SB 9 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

169 VOTE: MOTION CARRIED, 5-0. (EXCUSED: SEN. KITZHABER, SEN. SPRINGER). SEN. BUNN WILL LEAD THE FLOOR DISCUSSION.

173 CEASE: I voted yes, but if I find out it is broader I may change my mind on the floor.

(TAPE 23, SIDE A)

WORK SESSION

SB 's 290, 292, 296, 297 RELATING TO ETHICS

Witnesses: Patrick Hearn, Executive Director, Oregon Government Ethics Commission

181 RYDER: Do you want a repeat of what happened in the Democratic Caucus today?

182 OTTO: Yes.

187 RYDER: Distributes proposed hand-engrossed -3 amendments to SB 292 and SB 297, dated 02/15/91, Exhibit A. Mr. Hearn and I met earlier this week and came up with some compromises, that we loosely thought were what we heard from the members of the Committee and the Oregon Government Ethics Commission (OGEC). At the last meeting you requested that almost all of the concepts be brought into SB 292. The proposed amendments divide the issue between purely parliamentary or procedural issues and places them all in SB 292. Issues that have fiscal impact are removed and placed in SB 296 which has a subsequent referral to the Ways and Means Committee and relates to the OGEC. SB 296 would need to

be removed from the table and used for that purpose. Reviews proposed hand-engrossed -3 amendments to SB 292, Exhibit A section by section. In §2, Exhibit A "immediately notify" would mean a phone call, not written notice that comes four or five days later. This would allow the object of a complaint to hear as soon as possible that a complaint had been served.

234 CEASE: Does "notified" mean leaving a message or does it mean actual contact?

236 RYDER: The OGEC has asked that we put some language in that says they attempt to immediately notify. This would cover them if they tried to call and someone was vacationing, in either case a follow-up letter or notice, as is currently the procedure, would occur.

246 CEASE: What kinds of things would we consider in terms of the wording there?

250 RYDER: Kathleen Beaufait, Legislative Counsel has some ideas of how that would work. She told me there were no legal problems the Committee should be aware of regarding this proposal.

253 CEASE: We need to make a decision about whether to leave "shall be notified immediately" or whether have the "attempt" language?

256 RYDER: Concurr.

257 OTTO: Is Ms. Beaufait going to be here today?

258 RYDER: No. We are removing the language Mr. DiLorenzo requested in §2, pg. 3, lns. 8- 10, Exhibit A. That is directly related to confidentiality which comes out later. Continues with discussion of proposed hand-engrossed -3 amendments to SB 292, pg. 3, lns. 27-28, Exhibit A.

271 GRENSKY: What is meant at the top of pg. 4, Exhibit A?

272 RYDER: They must make a decision, they cannot sit on it.

275 GRENSKY: What decision?

276 RYDER: A decision of either "probable cause" or "cause".

277 BUNN: What does "cause" mean?

278 GRENSKY: I thought we went over this bill in a lot of detail. This does not look anything like what we talked about.

279 RYDER: That is right.

280 GRENSKY: What happened, did some one decide to do this without consulting the committee or is that what this is?

282 RYDER: That is what this is. Continues with discussion of "probable cause", Exhibit A. During the interim the committee wanted a definition for "probable cause". We asked a number of sources and the only definition they could come up with was the criminal definition, which was used. It was suggested this morning that perhaps a better way to proceed would be to have "probable cause" changed to "cause" and the definition would read as seen on pg. 6, (14), lns. 26-28, Exhibit A.

296 BUNN: Where are we reading from?

297 RYDER: The bottom of pg. 6, Exhibit A. It does not have the strength of the criminal definition of "probable cause".

302 CEASE: I think the intent was whether there is "cause" for an investigation. "Probable cause" is something a jury looks at when they are really going to find someone guilty of something, right?

311 BUNN: No.

312 SMITH: Grand juries look at it when they are determining whether or not to hand down an indictment.

319 BUNN: I see no logic in saying there is a "substantial, objective basis for believing that the offense . . . has been committed" and deleting "more likely than not". The key is in "and the person to be

investigated has committed the offense or violation.", pg. 6, Exhibit A.

The logic of saying there is a violation, but leaving out that the person we are investigating is the one that committed it, makes absolutely no sense. The only thing that I can determine is the definition of "probable cause" works, but since we don't want to use that definition we are playing with it. The result is the same, all it says is something happened so anybody can be charged for it, because we do not specify it has to be the person we are charging that committed it.

337 CEASE: The other aspect from which I have discussed this is seen in the old "probable cause" language on pg. 3, Exhibit A. There was one suggestion that the Commission, instead of finding "probable cause", would make a finding that allegations have been made that deserve an investigation. I want the discussion to reflect all of the different angles from which I have heard this discussed.

351 BUNN: With that in mind, the wording allows the Commission to investigate anyone when any charge says that a violation may have occurred. It does not say they must have even been involved in the violation and that is nonsense.

356 SMITH: I agree with Sen. Bunn to a point. I believe the deletion on pg. 6, lns. 28-29, Exhibit A should be left in. It needs to be tied to the person they are investigating, not just whether or not an offense may have been committed. Other than that I am comfortable with the new definition.

370 BUNN: The only thing distinguishing between the two is "more likely than not", if you can't even determine that it is "more likely than not" the person has done something, why subject them to an investigation. If you can't get that level of evidence do you have something to go forward with?

383 SPRINGER: Discusses the practicality of an investigation here. The initial information received would be from a person making a complaint and there would be some reason for the investigator or staff to obtain such additional information as may be available to satisfy them that the information is correct and not motivated. At that point is it appropriate for the OGEC staff to talk to the person against whom the complaint has been filed and then weight the evidence before deciding whether there is sufficient evidence to proceed? I don't know how this would affect their ability to conduct an initial investigation and whether we would want to impose on them a burden to contact both sides or weigh evidence from several parties, as opposed to just reviewing the allegations themselves.

410 BUNN: If we use the term "may" instead of "more likely than not" virtually anyone "may" have done something. Until there is proof someone did or didn't do something of course they "may" have done it.

440 SMITH: Since this is not a criminal proceeding I think we could be more flexible in our language. We need to give the OGEC the opportunity to work within these rules and not hamstring them to the point where they cannot function. I am comfortable with the language without the words "more likely than not" and with the word "may" for that reason.

464 OTTO: What is the feeling of the committee, do you want to take action on it now or wait?

469 CEASE: I wouldn't mind taking action on it point by point and giving direction at the time we are thinking about it.

473 General concurrence from Committee members.

473 RYDER: Returns to the beginning of the hand-engrossed -3 amendments to SB 292, Exhibit A. Do you want to remove "knowledge or intent" in §1?

TAPE 24, SIDE A

028 SPRINGER: I know that the staff has devoted a great deal of time to this. The Committee, through staff, has visited with the OGEC to understand their concerns. It is my understanding that these amendments reflect the result of that very time consuming and careful process of trying to weigh all of the comments.

038 MOTION: SEN. SPRINGER MOVED TO DELETE §1, AS SHOWN IN THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A.

MOTION CARRIED BY ACCLAMATION.

041 RYDER: Continues with review of hand-engrossed -3 amendments to SB 292, pg. 3, §2, Exhibit A, which would remove lns. 3-4.

044 CEASE: I have no problem with the language set out in this draft. The question "shall be notified immediately" or "attempt to notify" remains.

049 SMITH: Sen. Cease, in terms of perjury language you have no problem with deleting those?

051 CEASE: I have no problems deleting §2, pg. 3, lns. 3-4, or lns. 8-10, Exhibit A. The question is what comfort level we have with notification.

063 SPRINGER: In (a), Exhibit A I think we should include language that says an "attempt to notify as appropriate".

064 CEASE: Agrees.

065 OTTO: Are there objections to that?

066 CEASE: No objection.

067 RYDER: As well as a follow-up letter or notice?

067 SPRINGER: Yes.

068 OTTO: So ordered.

068 RYDER: Would you rather deal with "probable cause" now or later?

069 SMITH: I have no problem making a decision and then moving on since it has been discussed at length.

071 RYDER: Refers to pg. 6 (14), of the hand-engrossed -3 amendments to SB 292, Exhibit A which would change "probable cause" to "cause".

073 CEASE: And pg. 3, Exhibit A?

074 RYDER: All of the other places where it says "probable cause" would be changed to "cause".

075 MOTION: SEN. SMITH MOVED THAT ON PG 6, OF THE HAND-ENGROSSED - 3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A, LN. 26 DELETE "PROBABLE", LN. 27 DELETE "MORE LIKELY THAN NOT", LN. 28 DELETE "HAS" AND INSERT "MAY HAVE" AND ON LNS. 28-30 REINSERT "AND THE PERSON TO BE INVESTIGATED MAY HAVE COMMITTED THE OFFENSE OR VIOLATION".

082 OTTO: You would move to exclude that?

083 SMITH: No, I move to include that.

084 CEASE: Could Sen. Smith please restate that?

084 SMITH: On pg. 6, beginning with ln. 26, Exhibit A I would have the motion read: "As used in this section, 'cause' means that there is a substantial, objective basis for believing that an offense or violation may have been committed and the person to be investigated may have committed the offense or violation."

095 VOTE: MOTION CARRIED BY ACCLAMATION.

097 RYDER: May I assume that every place in the statute where it refers to "probable cause", relating to the OGEC, would read "cause"?

099 General concurrence.

103 RYDER: Continues with review of the hand-engrossed -3 amendments to SB 292, pg. 3, Exhibit A and notices. We have not dealt with the second notification, pg. 3, lns. 27-30 and pg. 4, lns. 1-6, Exhibit A.

121 MOTION: SEN. SMITH MOVED THE AMENDMENTS OUTLINED IN THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, PG. 3, LNS. 27-30 AND PG. 4, LNS. 1-6, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

117 RYDER: Continues with review, of the hand-engrossed -3 amendments SB 292, pg. 4, lns. 11-13, Exhibit A which deals with subpoena timing.

The OGEc already has subpoena authority, this clarifies at what point in the process they would be allowed to use it.

125 OTTO: Is there any discussion or objections? Adopted by acclamation.

127 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 4, ln. 30 and pg. 5, lns. 1-4, Exhibit A which deals with confidentiality. The OGEc is requesting the confidentiality language be deleted from the bill and, as long as they are allowed to operate in the public and not have a closed meeting, they would be willing to do an administrative rule speaking to ex parte comment and dismissal of a member or staff person for abuse of that administrative rule. This draft removes that language from the bill and makes a policy issue of whether or not the Committee would like to ask the Commission to adopt such an administrative rule.

140 CEASE: You are talking about the language on pg. 4, ln. 30 and pg. 5, lns. 1-4, Exhibit A?

143 RYDER: Yes, to remove that from the bill and instruct the OGEc to adopt an administrative rule.

147 OTTO: Is there any discussion or objections? Adopted by acclamation.

149 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 5, (6), Exhibit A. The boxed areas have fiscal impact. The intent was to place all of the language that is not boxed in (6), lns. 5-8 and lns. 24-26 in SB 292 as purely procedural questions. Also all of that, plus the language regarding time lines would be placed in SB 296, which has a subsequent referral to the Ways and Means Committee. The time lines directly impact finances. In SB 292 you would have purely the procedure put in place and SB 296 would have the procedure and time line both put in place. The OGEc has agreed to a 90 day period from the complaint being filed until a finding of cause or dismissal of a complaint, and a 120 day period to the end of the investigatory phase. Another policy issue regards whether or not the executive director would make a recommendation to the Commission.

173 CEASE: Maybe a motion to separate those out and put them into SB 296 would be helpful.

175 RYDER: Then you would need a motion to remove SB 296 from the table.

176 MOTION: SEN. CEASE MOVED THAT SB 296 BE REMOVED FROM THE TABLE.

177 VOTE: MOTION CARRIED, 4-0. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

185 MOTION: SEN. CEASE MOVED THAT THE EXISTING LANGUAGE IN SB 296 BE DELETED AND PLACE THE TIME LINES INTO SB 296. MOTION CARRIED BY ACCLAMATION.

196 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 5, (6), lns. 13-15, Exhibit A. The OGEc has asked that it read "reviewed by counsel to the commission". This draft was formed before the independent counsel bill was tabled. That would also go into SB 296 because of fiscal impact.

207 CEASE: Isn't that also on pg. 7?

208 RYDER: Yes, but that is a different issue.

209 SMITH: Requests that be repeated?

209 RYDER: The language on pg. 5, (6), lns. 13-15, Exhibit A says that the presentation to the Commission by the executive director should be reviewed by counsel for the Commission, prior to making that statement. This has fiscal impact because it would be utilizing the time of the Attorney General (AG).

214 SMITH: They are counsel for the Commission?

215 RYDER: That is what Mr. Hearn has indicated, rather than a member of the Oregon State Bar. The original language anticipated a possibility of independent counsel.

219 MOTION: SEN. CEASE MOVED THE LANGUAGE ON PG. 5, (6), LNS. 13-15 IN

THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A WITH THE APPROPRIATE CHANGE IN LANGUAGE REGARDING COUNSEL BE MOVED TO SB 296. MOTION CARRIED BY ACCLAMATION.

226 RYDER: There is a policy issue regarding whether or not the executive director should be allowed to make a recommendation. The remainder of this discusses a menu of action and the Commission agrees that they should, in fact, make a decision based on a menu of action. The question is whether or not you want the executive director to be allowed to make a recommendation. The OGEC would like that recommendation to be allowed.

235 CEASE: If we put into the law something that says the director can't make a recommendation, then in discussing it, even with a list of actions, the person who is probably the most familiar with it would not be able to respond to a question from the director about what seems most advisable. Is that correct?

242 RYDER: They could not make an official recommendation on which of those actions to take.

243 CEASE: Would they be able to respond to a question?

244 RYDER: It would be difficult with the language.

246 SMITH: Is it possible to draft language that would allow the director to advise, but not make official recommendations?

250 OTTO: It would be possible.

252 CEASE: The other option is to be silent on it and say that the director could make a statement, including the list of actions.

255 RYDER: According to Legislative Counsel it does not speak to that. The Commission would act from a list of actions and this menu of actions would be the choices they would have.

259 CEASE: That would be my preference.

261 SMITH: I would be more comfortable with language allowing the director to respond to questions, but not make formal recommendation for action. That is not the place of the director and it allows the Commission to shirk the responsibility for that decision.

274 SPRINGER: I don't think I can support language that says the director shall not make a recommendation. I don't think we can realistically manage that part of the relationship.

287 CEASE: Concurr.

290 MOTION: SEN. SPRINGER MOVED THE LANGUAGE ON PG. 5, (6), LNS. 15- 17, EXHIBIT A BE DELETED.

294 CEASE: Then Legislative Counsel's suggestion that the Commission would take action from a list would remain?

297 SPRINGER: At this point, yes.

298 CEASE: It would need to be redrafted.

299 SPRINGER: Adds "redrafted accordingly" to the motion.

302 VOTE: CARRIED BY ACCLAMATION.

305 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 5, (8), Exhibit A. This is a policy issue regarding access to information. It directly relates to whether you want the proceedings to be similar to grand jury proceedings or not. Currently, prior to a finding of probable cause, a public official and/or counsel are not entitled to that information. With this language the public official and/or counsel would be provided access to all related materials at every phase of the preliminary review and/or investigation.

338 SPRINGER: I think all of the material should be discoverable anyway and the person or their attorney should have access to it.

343 RYDER: For the record the OGEC disagrees with this language.

347 CEASE: I am not sure I am comfortable with this language.

351 PATRICK HEARN, OREGON GOVERNMENT ETHICS COMMISSION, EXECUTIVE DIRECTOR: The OGEC's main point of concern relates to access during the preliminary review phase. The preliminary review phase is just that, very preliminary, and strictly to determine whether or not a formal proceeding should be initiated. The way I read the proposed language it would permit the respondent and their counsel to have access to internal information, such as conversations between the investigator and the executive director in helping to prepare a recommendation for the Commission. Once a finding is made and a formal proceeding initiated any and all materials would certainly be available to the respondent of the complaint and counsel.

373 SMITH: Has staff consulted with Legislative Counsel whether or not the Commission's interpretation is accurate? Would there be access to conversations between the investigator and the executive director with this language?

383 RYDER: No, I have not asked that specific question.

384 SMITH: Mr. Hearn have you asked that question, have you received a legal opinion?

385 HEARN: No I have not.

386 RYDER: I believe the record says "related materials", it would imply written materials.

389 SMITH: And your feeling is that would include interoffice memorandums?

389 HEARN: Yes.

392 SPRINGER: Aren't those internal office memorandums public records now?

395 HEARN: It is my understanding in instances where the investigator needed to report on a certain aspect of the case, and the executive director was not physically present for a discussion, a handwritten note might be given.

410 SMITH: If the language means written material I believe Sen. Springer is correct, that all interoffice memorandums are a matter of public record already. I would have a problem with disclosure of verbal conversations, but if that is not what this language means I would have no problem with it.

418 CEASE: We took out the other part that made anything confidential and if this is all public record why do we even need this?

425 RYDER: I believe it was a concern of Mr. DiLorenzo and attorneys that have represented clients before the OGEC. They want to be provided with as much information as possible so they are prepared to respond to questions at the first meeting when a finding of cause or dismissal would occur.

443 CEASE: My question is should they have been getting them, are those records public? If those records are public and we have already taken out the other part of the confidentiality stuff, then why do we need this section?

448 RYDER: You may need an interpretation from Legislative Counsel on that.

449 SMITH: Requests an interpretation from Legislative Counsel as to whether or not written correspondence between public employees of the OGEC are, in fact, public record. If they are I see no need for the language at all.

459 OTTO: Are there objections to that? Instructs Ms. Ryder to make that request.

463 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 6, (9), Exhibit A. This deals with preponderance of evidence. Provides Committee with the AG's Administrative Law manual, pg. 55, regarding level of evidence, Exhibit B.

470 CEASE: Those sections are not necessary because there is already preponderance of the evidence?

TAPE 23, SIDE B

021 HEARN: The existing standard of proof at the agency level in Administrative Procedures was already preponderance. Mr. Russell, Department of Justice researched this for me and he responded that it did appear that preponderance of evidence already was the standard at the agency level. Under Oregon Appellate reviews the Appellate Court reviews the matter to see if the agency had substantial evidence upon which to base its finding by a preponderance. With that in mind it would appear the legislation is not necessary, by case law it already exists.

036 CEASE: We don't need (9) and (10)?

037 RYDER: Sworn statements are duplicated in another section that you have already removed, so it needs to be removed again.

038 MOTION: SEN. CEASE MOVED TO DELETE PG. 6, (9) AND (10), OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

043 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 6, (11), Exhibit A. This deals with the statute of limitations and we have a tentative agreement with the OGEC of four years. That is what the bill reads also.

046 MOTION: SEN. CEASE MOVED TO ADOPT PG. 6, (11), OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

050 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 6, (12- 13), Exhibit A. This is a policy issue that returns to the question of confidentiality being removed and administrative rule used instead. This would be regarding ex parte comment and grounds for dismissal for abuse of ex parte comment.

055 CEASE: We made that decision already.

056 RYDER: You removed it from the bill, this is another location where it would need to be removed. A decision still has not been made regarding whether there should be an administrative rule.

058 MOTION: SEN. CEASE MOVED TO DELETE PG. 6, (12) AND (13) OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A.

059 RYDER: Do you want the motion to remove the language from lns. 12-25, pg. 6, Exhibit A and recommend to the Commission that they place that information in administrative rule.

061 SMITH: I would like to hear more about exactly what we would be directing the OGEC to set in administrative rule. If it is something we have decided not to put in statute because we don't think it is a good idea why would we direct the OGEC to do it in rule making?

067 RYDER: Perhaps we could separate the issue. One would be to remove this language and then talk about the administrative rule.

068 CEASE: I would change the motion to removing the language.

069 VOTE: MOTION CARRIED BY ACCLAMATION.

074 RYDER: Continues with discussion requesting the OGEC have an administrative rule regarding ex parte comment. Effectively that would mean there would be no closed meetings. The Committee has requested a legal opinion regarding whether there are closed documents during that period of time. The OGEC would be effectively barred from making any comment regarding the case, other than to say that they had received a complaint, until there is a finding of cause or dismissal of the complaint. At that point in time they could comment. Abuse of that administrative rule would be grounds for removal by the appointing authority if someone were to abuse that, as seen in the language on pg. 6, (13), Exhibit A.

085 SMITH: Isn't it inappropriate for the OGEC and staff to discuss a complaint until a finding of cause has been determined? That is a separate issue from the confidentiality issue. I would have no problem with that language set in statute. Why is it better to put it in rule?

093 HEARN: The OGEC agrees that ex parte comments are inappropriate and

should not be made until cause has been determined. It was simply a suggestion from the OGEC that it need not be legislated, the OGEC would be willing to incorporate it into administrative rule. It is not unlike many behavioral or policy issues done at the agency level and adequately enforced at that level.

102 SMITH: I believe ex parte contact is legislated in other arenas. If the language would be the same it would seem more cost effective to deal with this now rather than go through a separate rule making process.

112 MOTION: SEN. SMITH MOVED THE LANGUAGE ON PG. 6, (12) (b), OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A BE RESTORED.

117 RYDER: It would be removing the language on pg. 6, (12) (a) and leaving all of the rest.

119 SMITH: I thought we had already deleted pg. 6, (12), Exhibit A.

119 RYDER: You already have, but if you want just ex parte comment it would be pg. 6, lns. 12- 14. If you want a penalty lns. 17-25, Exhibit A. It effectively removes pg. 6, (a), Exhibit A.

122 SMITH: I would revise my motion that to state all of pg. 6, (12) be restored with the exception of (a) and restore (13).

126 OTTO: Asked that the motion be restated by Ms. Ryder.

128 RYDER: The motion would, on pg. 6, between lns. 12-25, restore all of the language with the exception of lns. 15-16, Exhibit A.

131 SPRINGER: I will oppose the motion. I think, if for no other reason, it would be good therapy for the OGEC to go through the administrative rule making process and discuss these issues themselves.

143 OTTO: Mr. Hearn, we have had others say they will put it in administrative rules and then when the time comes to do it they have a hesitancy. As a result we have heard promises, but seen no fulfillment of those promises.

149 HEARN: I understand that, all I can do is give you my 100% assurance that I would urge the OGEC to do this as quickly as possible. In response to Sen. Springer's comments, I too would look forward to the administrative rule making process.

156 CEASE: I don't have quite the discomfort as Sen. Springer nor quite the desire as Sen. Smith. To me pg. 6, (13), Exhibit A does seem to be internal management that I don't feel comfortable with.

163 VOTE: MOTION FAILED, 1-5. VOTING NO: SEN. BUNN, SEN. CEASE, SEN. GRENSKY, SEN. SPRINGER, CHAIR OTTO. (EXCUSED: SEN. KITZHABER).

168 RYDER: You now have before you pg. 6, from lns. 12-25, Exhibit A have all been removed. It would revert back to the prior motion. You have already dealt with the section on probable cause, pg. 6, (14), Exhibit A. Continues with review, of the hand-engrossed -3 amendments to SB 292, pgs. 6-7, §3, Exhibit A. This section again refers to preponderance of evidence, you would need to remove that, as you did before.

175 MOTION: SEN. CEASE MOVED TO DELETE §3 OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A.

179 BUNN: You have gone through a number of motions and asked for objections and I have not stated any. I would like to state for the record, I intend to support a minority report. I am trying not to interfere with what your caucus has decided to do. The fact that I have not made objections does not mean that I support those amendments.

186 VOTE: MOTION CARRIED BY ACCLAMATION.

188 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pg. 7, §4, Exhibit A. There is a fiscal impact on §4 because it requires that when an advisory opinion of a precedential nature is before the OGEC, it would be amended to read "legal counsel review".

193 CEASE: "Counsel to the commission" was the way you phrased it.

193 RYDER: Yes, "counsel to the commission". This would need to be

moved to SB 296.

197 MOTION: SEN. CEASE MOVED THE LANGUAGE IN §4, LN. 22, OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, DATED 02/15/91, EXHIBIT A BE MADE THE SAME LANGUAGE AS WE PREVIOUSLY CHANGED IT TO AND THE ENTIRETY OF §4 AND §6 BE MOVED TO SB 296.

204 RYDER: Would you like an explanation of §6?

206 General concurrence.

208 RYDER: Reviews the hand-engrossed -3 amendments to SB 292, pg. 7, §6, Exhibit A. This section would require the computer systems to be upgraded to a current level regarding advisory opinions. It is already part of current law, but it has not been kept up because of past finances. This would require that be completed within the next two years.

214 VOTE: MOTION CARRIED BY ACCLAMATION.

215 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 292 , pgs. 7-8, §7, Exhibit A. This is a grandfather clause.

226 MOTION: SEN. SPRINGER MOVED ADOPTION OF §7 OF THE HAND- ENGROSSED -3 AMENDMENTS TO SB 292, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

229 RYDER: Discusses hand-engrossed -3 amendments to SB 297, Exhibit A. This bill has a subsequent referral to Ways and Means. Pg. 9, lns. 21-23 would need to be deleted because they are a part of SB 292.

234 MOTION: SEN. SPRINGER MOVED THE LANGUAGE BE DELETED ON PG. 9, LNS. 21-23 OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 297, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

238 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 297 , pgs. 10- 11, Exhibit A. The remainder of SB 297 discusses whether attorneys fees "shall" be awarded or "may" be awarded. This draft would have them be allowed at the discretion of the court.

241 MOTION: SEN. SPRINGER MOVED SB 297 ALLOW ATTORNEY FEES AT THE DISCRETION OF THE COURT. MOTION CARRIED BY ACCLAMATION.

251 RYDER: Continues with review, of the hand-engrossed -3 amendments to SB 297 , pg. 11, (d) Exhibit A.

254 SMITH: I think that if the OGEC puts a person through this process and does not prevail perhaps they should pay their attorney fees? I am not sure I want that to come out of the general fund.

273 SPRINGER: I would prefer that attorney fees be paid out of the general fund. Anything that would subtly deter or negatively affect the OGEC's consideration or decision to proceed, if they otherwise think there is sufficient basis, makes me uncomfortable.

281 SMITH: Do you think the requirement that the OGEC pay attorney fees if they don't prevail might cause them not to pursue a case in the first place?

286 SPRINGER: It might have that effect. The attorney fees issue is a close call for me, I can argue it both ways. I would support that it come out of the general fund or the emergency fund, through a special request to the emergency board from executive, not from the OGEC budget.

294 MOTION: SEN. SPRINGER MOVED ADOPTION OF PG. 11, (d) OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 297, EXHIBIT A.

298 CEASE: I won't be supporting that motion.

300 VOTE: MOTION FAILED, 3-3. VOTING NO: SEN. BUNN, SEN. CEASE, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

310 SMITH: Since the attorney fees won't come out of the general fund do we need to say in statute where they would come from?

312 OTTO: They would come from the OGEC budget I would assume.

314 SMITH: Should there be language in the statute that says attorney fees will come out of the OGEC budget?

322 CEASE: I don't care where they come from I am not supporting paying them.

337 MOTION: SEN. SPRINGER MOVED THE DISCRETIONARY LANGUAGE "MAY BE" TO SB 297 BE ADOPTED.

347 CEASE: I think I object.

348 VOTE: MOTION FAILED, 3-3. VOTING NO: SEN. BUNN, SEN. CEASE, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

355 SMITH: Point of clarification, now the language in the bill says that attorney fees shall be awarded?

361 RYDER: Yes.

364 CEASE: The point is I don't support any form of this. I guess I would be more interested in "may" then "shall", but I am not sure what your order of doing things is.

378 SMITH: Since we have eliminated "may" as the language I am not comfortable telling the courts that they "shall" award attorneys fees.

382 MOTION: SEN. SMITH MOVED THE DELETION OF (6), PG. 10 OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 297, EXHIBIT A.

386 CEASE: If we remove 6 what is there in SB 297.

388 RYDER: There is nothing.

389 CEASE: That was my point, that is the only thing in here. I am not supportive of it and I wouldn't vote to send the bill out.

397 MOTION WITHDRAWN BY SEN. SMITH.

398 MOTION: SEN. SMITH MOVED TO TABLE SB 297.

399 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

408 RYDER: Discusses SB 290, pg. 11, Exhibit A regarding appointment by the Governor. As I understand it there was a suggestion by the minority caucus regarding that bill.

413 OTTO: Sen. Brenneman suggested that the Majority and Minority Leaders of each chamber should make a listing of recommendations to the Governor that would be non-binding.

425 CEASE: Is there anything in the statute, as this proposed change is, that prevents that?

428 OTTO: No, not that I know of.

435 MOTION: SEN. SPRINGER MOVED THAT THE MINORITY AND MAJORITY LEADERS OF EACH CHAMBER SHALL MAKE NON-BINDING RECOMMENDATIONS TO THE GOVERNOR.

439 CEASE: I would just as soon keep it as non-political as possible, I object.

442 VOTE: MOTION FAILED, 2-4. VOTING NO: SEN. BUNN, SEN. CEASE, SEN. GRENSKY, SEN. SMITH. (EXCUSED: SEN. KITZHABER).

452 RYDER: What you have before you is a decision of whether to send this to the floor. If you were to send SB 292 to the floor you do not have an interpretation regarding the public record portions of this.

459 OTTO: When could it be back to the Committee?

462 SPRINGER: I am ready to make the motion to send this to the floor. I am reasonably confident these things are public record. If we learn otherwise, and need to bring it back that is fine, but I would like to see this move.

467 RYDER: You would need to remove (8) on pgs. 5-6, Exhibit A, if you believe they are public records.

468 MOTION: SEN. SMITH MOVED TO DELETE (8) ON PGS. 5-6 OF THE HAND-ENGROSSED -3 AMENDMENTS TO SB 292, EXHIBIT A. MOTION CARRIED BY ACCLAMATION.

483 MOTION: SEN. SPRINGER MOVED SB 292 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

TAPE 24, SIDE B

031 GRENSKY: "This is not the first session for me, but it is still early in my legislative career. I am dumbfounded by the procedure through which this bill finds itself in this Committee. With all due respect to the Chair and the members this Committee spent a year and a half, at considerable taxpayer expense, going over these bills. I was not a member of that Committee, however I assume that a lot of testimony was taken, Committee members appeared to take a very considered look at this whole situation and what I did see when I sat on that Committee was some revisions that needed to be made based on what we heard at that time and from the feelings of the Committee. What I see before me now was a decision, apparently made, by people who are not members of this Committee. It was done by a partisan caucus, specifically the Democrats. The Republican caucus, as far as I know was never consulted.

Neither of the two members on this Committee was ever asked to take this issue before their caucus and come back with proposed revisions or amendments. I have a concern as to what the real function of this Committee is, if in fact it is to suggest ideas which are then to be passed on by the Democratic caucus, then I am wondering why the Republican members are even on the Committee, or even why this Committee exists, or further why it existed during the interim, because we could save money doing that. I have a real problem with what is left of this bill, it isn't anything like what we saw last time. I thought we were fine tuning it then, but this is a whole other creature and so I think it makes a facade out of this whole Committee to now have this bill before us. It was revised in a closed door session, the public was not invited, I wasn't privy to it, as a member of the Committee. Now in a matter of an hour and a half all of the work that was done during the interim is going down the drain so that this unbelievably amended bill can be voted on. I am not holding anyone personally responsible on the Committee and I don't want to cast aspersions in that regard, but I have a real problem with the process that has occurred here today and I do want to voice that I will be voting no, and will state for the record at this time a possible intent to file a minority report."

061 CEASE: "I would hope that Sen. Grensky is not impugning the Chair or the staff of the Committee."

062 GRENSKY: "I thought I made that clear."

063 CEASE: "I hope that we can have disagreements, which we obviously do, and leave it at that."

067 BUNN: "Mr. Chair, as one who can count I think it is pretty clear that we were delivered a done deal that was cut behind closed doors. Without impugning motives I understand that with a caucus of ten we are not going to get together and make a decision. But I am not use to serving on an Interim Committee that put in a great deal of time and then being told that based upon one morning meeting that is all out the door. I share the frustration and I intend to support a minority report, whatever good that does."

074 OTTO: "You certainly can support a minority bill, if that is your desire. Any other comments? Sen. Springer has a motion on the floor to send SB 292 to the floor as amended with a do pass recommendation."

079 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

080 BUNN: Gives notice of a possible minority report.

081 GRENSKY: Joins Sen. Bunn in the request for a minority report.

084 RYDER: You still need to vote on SB 290 and SB 296.

088 CEASE: Has this bill been amended with the -1 amendments?

089 RYDER: There would be no need to amend this bill any further, it has been amended.

090 MOTION: SEN. CEASE MOVED SB 290 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

094 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY.

(EXCUSED: SEN. KITZHABER).

094 BUNN: Gives notice of a possible minority report.

096 GRENSKY: Joins Sen. Bunn in the request for a minority report.

099 MOTION: SEN. CEASE MOVED SB 296 TO THE WAYS AND MEANS COMMITTEE BY
SUBSEQUENT REFERRAL WITH A DO PASS AS AMENDED RECOMMENDATION.

106 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN AND SEN. GRENSKY.
(EXCUSED: SEN. KITZHABER).

112 Meeting adjourned at 4:45 p.m.

Submitted By:

Reviewed By:

Joan Green
Assistant
Administrator

Gail Ryder
Senior

EXHIBIT LOG

A - Hand-engrossed amendments, Staff, 11 pgs. B - Handout, Staff, 1 pg.