

## **HOUSE COMMITTEE ON ENVIRONMENT**

**March 31, 2005 Hearing Room D**

**1:00 P.M. Tapes 27 - 28**

**MEMBERS PRESENT: Rep. Gordon Anderson, Chair**

**Rep. Bob Jenson, Vice-Chair**

**Rep. Mary Nolan, Vice-Chair**

**Rep. Phil Barnhart**

**Rep. Bill Garrard**

**Rep. John Lim**

**Rep. Diane Rosenbaum**

**STAFF PRESENT: John Houser, Committee Administrator**

**Mike Reiley, Committee Assistant**

### **MEASURES/ISSUES HEARD:**

**HB 2948 – Public Hearing**

**HB 2943 – Public Hearing**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
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**TAPE 27, A**

003	Chair Anderson	Calls the meeting to order at 1:18 p.m. Opens a public hearing on HB 2948.
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**HB 2948 – PUBLIC HEARING**

011	Rep. Jeff Kropf	House District 17. Testifies in support of HB 2948.
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025	Jim Evans	Attorney. Submits and summarizes prepared testimony in support of HB 2948 ( <b>EXHIBIT A</b> ). Cites the Department of Environmental Quality's (DEQ) testimony and disagrees with their cost assessment.
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185	Rep. Garrard	Expresses concern with Mr. Evans referring to amendments the committee has not received.
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190	Evans	Concludes his testimony.
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195	Rep. Kropf	Thanks the DEQ for their work on HB 2948. Explains the economic and justice considerations in court appeals. Notes that there is a cheaper option for landowners before going before the Court of Appeals.
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227	Chair Anderson	Comments on the need for justice.
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233	Rep. Garrard	Notes that Measure 37 appeals are going to the Circuit Court rather than an appeals court.
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240	Evans	States why it is important to have that step available.
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250	Rep. Barnhart	Asks if the appeal process should be available to other agencies.
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260	Evans	Answers that he has only examined DEQ.
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268	Rep. Barnhart	Asks for an explanation of an appeal to a Circuit Court versus a Court of Appeals and how money would be saved.
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273	Evans	Explains that a trial de novo would give a new trial with new evidence in a circuit court, but court of appeals would have the record of the case to allow a different conclusion and finding of law.
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294	Rep. Barnhart	
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Asks if a litigant should be allowed to have a new hearing and “re-open” a hearing to ultimately have two hearings.

303	Evans	Answers, yes. Explains that in his case, the administrative law judge was arbitrary and capricious.
319	Rep. Barnhart	Asks Evans about uncontested cases.
328	Evans	Answers.
338	Rep. Barnhart	Asks if a court can stay an order without considerations.
355	Evans	Explains that a lien can be placed on the property to economically hinder.
372	Rep. Barnhart	Asks if it would apply to desist and cease orders.
380	Rep. Jenson	Comments that people are often at a disadvantage before administrative law judges. Explains delays and caseloads in criminal and civil proceedings. Expresses concern about placing more cases before circuit court judges.

**TAPE 28, A**

019	Evans	Notes that he has practiced law for 14 years and explains that the delays are not due to judicial time, but for the parties to develop the record and bring the cases.
037	Rep. Rosenbaum	Asks about the rulings of an administrative law judge (ALJ) versus a circuit court judge.
046	Evans	Answers that judges are more responsive when there is oversight.
055	Rep. Rosenbaum	Asks if ALJ’s report to an appointing authority.
060	Evans	Answers.
071	John Houser	Committee Administrator. Asks how costs could be reduced if a new record is created.

082	Evans	Answers that there are more attorneys that are familiar with circuit court.
100	Larry Knudsen	Assistant Attorney General, Department of Justice. Submits and summarizes prepared testimony regarding HB 2948 <b>(EXHIBIT B)</b> .
140	Chair Anderson	Asks where the issue of contesting cases is addressed in the bill.
142	Knudsen	Answers that it is not addressed in bill. Advises that amendments address the issue.
200	Les Carlough	Senior Policy Advisor, Office of Compliance and Enforcement, Department of Environmental Quality (DEQ). Submits and presents prepared testimony in opposition to HB 2948 <b>(EXHIBIT C)</b> .
252	Eric Moore	Office of Administrative Hearings. Submits and summarizes prepared information entitled, "Operational Indicators" <b>(EXHIBIT D)</b> .
308	Chair Anderson	Closes the public hearing on HB 2948. Opens a public hearing on HB 2943.

### **HB 2943 – PUBLIC HEARING**

327	Kitty Piercy	Mayor, City of Eugene, Oregon Testifies in support of HB 2943.
370	Betty Taylor	Councilor, City of Eugene, Oregon. Testifies in support of HB 2943.

### **TAPE 27, B**

014	Glen Potter	City of Eugene. Testifies in support of HB 2943 and submits prepared testimony in support of HB 2943 from Pamela Dickey, Administrator, Purakal <b>(EXHIBIT E)</b> and Dean Bautz, Quality Control Manager <b>(EXHIBIT F)</b> .
030	Rep. Garrard	Asks what the average fee would be for businesses if the bill were to pass. Asks what would happen with any excess money.
039	Potter	Responds.
052	Taylor	

Clarifies that the intent of the bill is not to receive more money, but to collect fees more fairly and so the same amount of money will be collected.

055	Piercy	States that they do not receive excess money.
058	Potter	Clarifies that excess money is received, but is applied to the next fiscal year.
061	Rep. Barnhart	Asks if the intent is to raise more money, or make the fees more equitable.
070	Piercy	Answers that the intent is to reduce the impact on small business.
074	Rep. Garrard	Asks why the fees are charged per full-time equivalency (FTE).
076	Potter	Answers that statute prohibits from charging for quantity.
085	Chair Anderson	Asks if the toxicity of the chemicals affects the fees.
088	Potter	Answers no.
090	Rep. Lim	Asks if the business leaders in Eugene support the idea.
097	Piercy	Answers that they spoke with businesses and it is the best way to create fairness.
104	Rep. Jenson	Asks for a listing and breakdown of fees assessed.
135	Lisa Arkin	Oregon Toxics Alliance. Submits and reads prepared testimony in support of HB 2943 ( <b>EXHIBIT G</b> ) and submits prepared testimony from Lynne Fessenden, Staff Scientist, Science & Environmental Health Network in support of HB 2943 ( <b>EXHIBIT H</b> ).
170	David Monk	Chair, Eugene Right to Know Board. Testifies in support of HB 2943.
230	Rep. Garrard	Asks about the duplication of hazardous materials.
238	Monk	Answers question.

273	Rep. Garrard	Asks for an explanation of the judge's ruling in a case regarding the state fire marshal regulations.
278	Monk	Explains the case.
283	Rep. Lim	Asks how many companies would pay over \$10,000.
289	Monk	Answers that only one company paid over \$10,000.
302	Rep. Lim	Asks if the fee increase would discourage businesses from operating in the City of Eugene.
314	Monk	Testifies that he does not believe businesses would stay away, but would locate there based on quality of life issues. Clarifies that it is not five-fold increase, but would raise based on equality.
346	Rep. Lim	States that he stands corrected regarding the fee increase.
350	Rep. Nolan	Asks if the fee cap was raised, would it remain revenue neutral.
360	Monk	Answers that small business fees would be decreased by 50% or more if the fee cap was eliminated.
390	Jim Craven	American Electronics Association. Testifies in opposition to HB 2943. Highlights the difference between the state fire marshal reporting list and the new one. Notes the legislative history of toxics reporting.

#### **TAPE 28, B**

076	John Ledger	Associated Oregon Industries (AOI). Testifies in opposition to HB 2943. Addresses the need for consistency. Explains the new water quality standards that AOI supported. Offers suggestions for reducing costs.
130	Terry Connolly	Eugene Chamber of Commerce. Submits and reads prepared testimony in opposition to HB 2943 ( <b>EXHIBIT I</b> ).
201	Terry Witt	Executive Director, Oregonians for Food and Shelter. Testifies in opposition to HB 2943. Provides a history of the toxics use reporting.

Argues that the state fire marshal has done a good job at keeping costs low. Questions the need for a cap and “fee creep”. Explains language changes.

059	Chair Anderson	Closes the public hearing on HB 2943. Adjourns the meeting at 3:04 p.m.
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### **EXHIBIT SUMMARY**

- A. **HB 2948, prepared testimony, Jim Evans, 1 p**
- B. **HB 2948, prepared testimony, Larry Knudsen, 3 pp**
- C. **HB 2948, prepared testimony, Les Carlough, 2 pp**
- D. **HB 2948, prepared information, Eric Moore, 1 p**
- E. **HB 2943, prepared testimony of Pamela Dickey, Glen Potter, 1 p**
- F. **HB 2943, prepared testimony of Dean Bautz, Glen Potter, 1 p**
- G. **HB 2943, prepared testimony, Lisa Arkin, 1 p**
- H. **HB 2943, prepared testimony of Lynne Fessenden, Lisa Arkin, 1 p**
- I. **HB 2943, prepared testimony and information, Terry Connolly, 4 pp**