

## HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

April 15, 2003 Hearing Room E  
1:00 PM Tapes 41 - 42

**MEMBERS PRESENT:**           Rep. Dan Doyle, Chair  
                                  Rep. Linda Flores, Vice-Chair  
                                  Rep. Laurie Monnes Anderson, Vice Chair  
                                  Rep. Vic Backlund  
                                  Rep. Phil Barnhart  
                                  Rep. Betsy L. Close  
                                  Rep. Joanne Verger

**STAFF PRESENT:**            Cara Filsinger, Administrator  
                                  Annetta Mullins, Committee Assistant

**MEASURE/ISSUES HEARD:** Speaker-approved drafting request – Work Session  
                                  HB 2813 – Work Session  
                                  HB 2444 – Public Hearing and Work Session  
                                  HB 2499 – Public Hearing and Work Session  
                                  HB 3446 – Public Hearing and Work Session  
                                  HB 3093 – Work Session  
                                  HB 3112 – Public Hearing

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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.

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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>Tape 41, A</b> 004	Chair Doyle	Calls meeting to order at 1:07 p.m., announces the order in which the measures will be considered, and opens a work session for the purpose of consideration of Speaker-approved drafting request.
<b><u>SPEAKER-APPROVED DRAFTING REQUEST</u></b>		
021	Rep. Flores	<b>MOTION: Moves that the committee approve drafting request (EXHIBIT A).</b>
028	Chair Doyle	<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Close</b> <b>Hearing no objection, declares the motion CARRIED.</b>
029	Chair Doyle	Closes the work session on drafting request and opens a work session on HB 2813.
<b><u>HB 2813 – WORK SESSION</u></b>		
032	Chair Doyle	Reviews history of the bill and explains that the county clerks have concerns because there is a potential fiscal impact on them.
039	Fred Neal	Elections Division, Secretary of State's Office. States that no fiscal impact statement has been prepared. Reports that the county clerks have discussed procedures that would be required of them and the effect of the legislation on their offices at a meeting this morning. Reminds committee that the Secretary of State Bill Bradbury is opposed to the bill due to the impediments it creates to voter registration. Explains concerns of their office

		and the county clerks.
084	Annette Newingham	Director of Elections for Lane County and Association of County Clerks. Explains procedures they anticipate would be needed, and the need for additional staff. Explains current procedures for verifying requirements at time of registrations.
100	Chair Doyle	Comments that the Help America Vote Act (HAVA) requires identification which will have costs; this is just requiring proof of citizenship, just as HAVA requires identification. Asks how they distinguish the two.
	Newingham	Explains differences between requirements of the federal act and Oregon law.
112	Neal	Explains verification of voter registrations in Oregon. The ballot is considered "provisional" pending receipt of verification of residency. Under this bill anyone trying to register the first time in Oregon would have to provide proof of citizenship.
150	Rep. Barnhart	Asks how many non-citizens have registered in Oregon in the last two years.
	Neal	Responds they have not received any complaints that someone has falsely sworn to their citizenship on their voter registration card.
160	Steve Drukenmiller	Linn County Clerk. Testifies in opposition to HB 2813. States he is in favor of the concept of ensuring that only citizens get to vote. The county clerks are the gate keepers. Everybody is concerned about this and believes he is considered the farthest to the right in their association. The concept would work but would require a number of changes in state government and cooperation with several agencies and laws. Explains how cooperation among agencies could work.
	Drukenmiller	States there is a vast difference between residency and citizenship. Thinks this would end up with more people not being able to vote who are legally entitled to vote than the number of people it would stop from voting. Does not believe the bill, as written, will work.
213	Rep. Close	Asks if he has a birth certificate, passport, or social security card.
	Drukenmiller	Responds he does not have any of the documents.
	Rep. Close	States if it is important enough to have the documents for passports, it should be important enough for voter registration.
	Drukenmiller	Comments that the difference is timing for people who want to register at the last minute.
	Rep. Close	Asks if the \$49 million that would come into Oregon could be used to implement this type of bill.
	Drukenmiller	Responds that having served on the HAVA committee, it could not.
244	Rep. Close	Notes that HAVA also addresses proof of who a person is.
	Drukenmiller	Responds the HAVA is for residency. A person could bring in a rent receipt or utility bill.
	Rep. Close	Comments that the election process is critical and we should safeguard that; the requirement of being a citizen is in the Constitution.
272	Chair Doyle	Asks the committee to stand at ease from 1:26 to 1:28 p.m.
	Chair Doyle	Reconvenes the meeting and announces that the committee will not act on the bill until more information is received on the fiscal impact.

283 Chair Doyle Enters into the record email from Ruth Bendl and Mike Balanesi, Co-Sponsors of HB 2813 (**EXHIBIT A**).  
Chair Doyle Closes the work session on HB 2813 and opens a public hearing on HB 2444

**HB 2444 – PUBLIC HEARING**

300 Mike Dewey Oregon Cable Telecommunications Association. Testifies in support of HB 2444. States that since 1987 the Oregon Boxing and Wrestling Commission has been primarily funded through a tax on cable television customers by a six percent gross receipts tax paid by the distributors for boxing and wrestling pay-per view events. Explains these wrestling events are not miner events but do not come along very often. This does not include subscription HBO or Showtime. Explains the tax and states that the tax has been challenged on constitutional grounds.  
Comments on appeal of a Tax Court decision. The six percent gate on live events would continue to be legal, and promoters should pay their fair share.

**TAPE 42, A**

021 Rep. Monnes Anderson Dewey Asks who the major competitors are.  
Rep. Monnes Anderson Dewey Responds the major competitor for cable companies is direct broadcast satellite companies, DirecTV and Echo Star and they do not pay the tax.  
Rep. Monnes Anderson Dewey Asks if the Blazer games are different.  
Rep. Barnhart Dewey Responds affirmative<sup>ly</sup>. The six percent that is collected by the distributor or the cable company and paid to the distributor funds a portion of the Boxing and Wrestling Commission.  
Rep. Verger Dewey Asks if the commission receives sufficient revenue from other sources to pay their bills.  
Chair Doyle Dewey Responds he has not looked at their budget.  
056 Rep. Verger Asks if this is talking about the same commission that was talked about in making boxing and wrestling matches entertainment.  
Dewey Responds the commission will not have authority over wrestling under other legislation passed by the House. .  
Chair Doyle Comments that boxing was not affected by the bill that passed the House.  
Dewey Comments he believes it is important to regulate the boxing activities.  
070 Chair Doyle Asks if HB 2813 has a fiscal impact.  
Dewey States the commission is not collecting the six percent because it is unconstitutional and there are no in-state events. The commission does not anticipate receiving any funds. This is merely taking something that is unconstitutional out of the statute.  
Rep. Monnes Anderson Dewey Asks why the previous governor vetoed this bill.  
Dewey Responds that he cannot answer that question. Speculates it could be because of the loss of revenue.  
101 Chair Doyle Closes the public hearing and opens a work session on HB 2444.  
**HB 2444 – WORK SESSION**  
114 Rep. Flores **MOTION: Moves HB 2444 to the floor with a DO PASS recommendation.**

119 Rep. Close Notes that the staff report says there may be a fiscal and revenue impact. Asks if the committee has received any information on the fiscal and revenue.

Chair Doyle Responds the committee has only the information from Mr. Dewey that the impact is negligible according to the people he has spoken to.

Dewey Reports that a member of the commission said they do not intend to collect the tax. Adds that the commission members said the commission does intend to regulate wrestling in the state, at least to some degree. They cannot collect the revenue because of a court decision.

133 Chair Doyle Advises members that the bill could be brought back to committee if a significant revenue or fiscal statement is issued.

136 **VOTE: 7-0-0**  
**AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**  
**REP. BACKLUND will lead discussion on the floor.**

Chair Doyle

Closes the work session on HB 2444 and opens a public hearing on HB 2499.

**HB 2499 – PUBLIC HEARING**

Rep. Donna Nelson District 24. Presents prepared statement in support of HB 2499 **(EXHIBIT C)**.

272 Rep. Monnes Asks Rep. Nelson if she has talked to the co-chairs of Ways and Anderson Means about this measure.

276 Rep. Nelson Comments on asking state agencies to prioritize the programs, and asking the citizens for their views of programs and budgeting. Believes the process in the measure causes the legislature to ask what can be done within our means to meet the most critical needs of our citizens and prevent liabilities.

331 Rep. Close Comments on efforts of Washington to do priority based budgeting.

Rep. Flores Comments that Washington Governor Gary Lock is involved in core function evaluation for their government which involves a priority listing after they determine the core function. States this is not an abstract concept; many states are starting the same drill.

345 Rep. Nelson Comments she thinks it is critical to move when needed. Asks committee to vote in favor of prioritizing state funding.

392 Don Schellenberg Oregon Farm Bureau. Testifies in support of HB 2499. Reads statement from the Oregon Farm Bureau policy relating to state budget reflecting a fiscal attitude. Asks committee to support the bill if it does what he believes it does.

421 Rep. Verger Comments she thinks there is a lot of idealism in the bill and there is nothing wrong with that. Believes people come to the legislature with a sense of fairness and hope to rid the process of things that are not right or are unfair, or are pork. Believes the lack of funds emphasize the need for prioritizing.

**TAPE 41, B**

004 Rep. Barnhart Asks if the word “law” in line 10 of HB 2499 includes the laws and Constitution, or if it is narrower than that.

Greg Chaimov Legislative Counsel. Responds affirmatively. In this context “law” would also include a constitutionally imposed obligation.

Chair Doyle Notes the bill has a subsequent referral to Ways and Means,

**HB 2499 – WORK SESSION**

023

Rep. Flores

closes the public hearing, and opens a work session on HB 2499.

**MOTION: Moves HB 2499 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.**

Rep. Barnhart

Explains that the reason he asks the question was to find out whether the legislature's obligation under the Constitution to fund schools adequately would be a law and it sounds like it is. Believes it is important for the committee to think about it if we are to be serious about complying with obligations under law and contract. It would significantly change the priorities, as he thinks they are now, in the budgetary process.

**VOTE: 7-0-0**

Chair Doyle

**AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**

044

Chair Doyle

Closes the work session on HB 2499 and opens a public hearing on HB 3446.

**HB 3446 – PUBLIC HEARING**

047

Chair Doyle

Advises the committee that a Legislative Fiscal Statement is before the committee on HB 3446 (**EXHIBIT D**).

Greg Chaimov

Legislative Counsel. Explains the reason for the bill is the allotment lawsuit. The previous governor, when faced with a shortfall in General Fund revenues, had the Department of Administrative Services (DAS) adopt a rule that made specific budget cuts changing the spending priorities that the Legislative Assembly had made. At the direction of the Legislative Counsel Committee, the office of Legislative Counsel participated in a lawsuit to challenge the validity of the DAS rules contending that the statute that permitted the budget cuts did not permit the governor and DAS to make specific budget cuts, but were cuts that had to follow the Legislative Assembly's spending priorities. States that the case was dismissed as moot.

Chaimov

However, given that there may still be a dispute over what the allotment statute says, part of HB 3446 is to make it clear (page 2, lines 5-10) that when the governor is having DAS cut budgets when there is a shortfall, the governor and DAS need to be following the priorities set by the Legislative Assembly and not setting the governor's or DAS' own priorities.

States that in the course of the lawsuit, the attorney general's office made the argument that when the Legislative Assembly provides funds to an agency to operate a program, the agency in its discretion decides not to spend the money provided by the Legislative Assembly. On page 1, lines 14-17, is the direction to agencies that says if the agencies go to the legislature asking for money and they receive it, they will use the money for the purpose the legislature gave the money except if they can achieve the purposes of the money for some savings. That would prevent an agency from getting an appropriation and as a result of some dispute over the underlying policy, decline to spend the money provided.

112

Rep. Monnes

Asks if this means that if the governor does not want to reduce

	Anderson	funding for K-12 he could ask the Oregon University System or the community colleges to reduce their budgets.
	Chaimov	Responds that in their view the law already prevents the governor from doing that; the law does not give the governor that authority. The previous governor took the position that the statute did authorize him to do that. The purpose of HB 3446 is to make it completely clear, not subject to having to go back to court to get the question decided, that the governor does not have that authority.
128	Rep. Barnhart	Comments there have been a number of bills in the Revenue Committee to fix things from last time. One was a credit for child care. Asks if this language poses a problem because the language seems to say the agency has to spend the money. Asks if that is a potential problem that relates to this bill, or is there something else that would save the agency.
143	Chaimov	Responds that it would seem if there is a separate legal impediment to an agency's authority to spend the money, this would not override that. The purpose of the bill is not to prevent the fixing of the problems but to prevent the agencies from disagreeing with the legislature's decisions.
159	Chair Doyle	Closes the public hearing on HB 3446 and asks the committee to stand at ease from 2:19 to 2:20 p.m.
	Chair Doyle	Reconvenes the meeting and opens a work session on HB 3446.
<b><u>HB 3446 WORK SESSION</u></b>		
179	<b>Rep. Flores</b>	<b>MOTION: Moves HB 3446 to the floor with a DO PASS recommendation.</b>
	Chair Doyle	Advises members that this bill would codify the position of the Legislative Assembly and provides a little more substantiation. Also advises that Legislative Fiscal suggests that the bill be referred to Ways and Means. States he would like to move the bill on the House side and let the Senate make the decision on referral to Ways and Means.
	Rep. Barnhart	Comments that he agrees with Chair Doyle. Suggests the Senate might change the word "need" on page 1 in line 19, to "may."
	Rep. Monnes Anderson	States that her yes vote will be on the basis that on the surface this bill it sounds okay, but she is not sure of the ramifications. Adds that it would have helped to have the governor's input, also.
193	Rep. Verger Rep. Close	Comments that she is not comfortable with the bill. Comments that the statute being repealed talks about DAS being able to readjust the budget with the approval of the governor.
	Chair Doyle	Advises members that the statute being deleted is indicated on the staff measure summary.
	Rep. Barnhart	Comments that the statute that Rep. Close points out appears to give DAS the authority to reduce the amount allotted to an agency's budget so as to prevent a deficit, with the approval of the governor.
220	Chaimov	Comments that the statute that HB 3446 repeals is the statute that was at issue in the lawsuit. States it is Legislative Counsel's view that the statute cannot be read the way Rep. Barnhart reads it; one must link the deficit to the particular source of income. Gives example that if the gas tax revenues come up short, the Oregon Department of Transportation's budget could be reduced,

		but not other agencies. But when there are non-prioritized General Fund shortfalls, it covers all agencies. By repealing the statute and replacing it with HB 3446, it prohibits the governor from being able to pick and choose between generally funded agencies when there is an overall shortfall.
	Rep. Barnhart	Asks if there is another provision in HB 3446 to deal with the deficit that may result from a specialized fund coming up short.
251	Chaimov	Responds that Section 2 of the bill still allows that to happen. It keeps the shortfall and specific fund part but requires essentially an across-the-board reduction if there is no other prioritization by the legislature in General Fund appropriations.
280	Rep. Backlund	States he supports the bill because it maintains the philosophy of the separation of powers.
270	Rep. Barnhart	Asks if the legislature could still set the priorities without a statute.
	Chaimov	Responds that this bill assumes that in the event the legislature has set the priorities, the governor and DAS will follow.
288	Rep. Monnes Anderson	Asks if the legislature would need to be called into session to figure out how to make a last payment or two if the revenues do not come in.
305	Chaimov	Responds he does not think HB 3446 affects the situation Rep. Monnes-Anderson is describing. Gives scenario if there is another shortfall in May 2004 and there is not enough money for the General Fund appropriations, under this bill and the current law, they believe the governor and DAS would have to follow the legislature's spending priorities.
341	Rep. Verger	Asks if the legislature would not have had to come back into special session if HB 3446 had been in effect in 2001.
	Chaimov	Responds that had HB 3446 been in effect during the special sessions, it would not have created any different response than what they think the law already reads. It only prevents the governor from killing one general fund program to save another when the legislature has funded both.
439		<b>VOTE: 6-1-0</b> <b>AYE: 6 - Backlund, Barnhart, Close, Flores, Monnes Anderson, Doyle</b> <b>NAY: 1 - Verger</b> <b>The motion CARRIES.</b> <b>REP. DOYLE will lead discussion on the floor.</b>
	<b>Chair Doyle</b>	
452	Chair Doyle	Closes the work session on HB 3446.
<b>TAPE 42, B</b>		
005	Chair Doyle	Opens a work session on HB 3093.
<b><u>HB 3093 – WORK SESSION</u></b>		
	Chair Doyle	Explains the HB 3093-3 amendments ( <b>EXHIBIT E</b> ). Also explains that the HB 3093-2 amendments ( <b>EXHIBIT F</b> ) were an attempt by the Oregon University System (OUS) to clarify some drafting issues but are too broad. Asks that the committee act on the HB 3093-3 amendments today and advises that he bill will be rescheduled for Thursday when the OUS amendments are received.
047	Rep. Flores	<b>MOTION: Moves to ADOPT HB 3093-3 amendments dated 4/15/03.</b>

	Rep. Close	Asks why the new amendment is being proposed when the bill deals with email addresses.
	Chair Doyle	Explains that the relating clause says public records and this provided an opportunity for the amendment.
	Rep. Barnhart	Comments he assumes the intent of the amendment is for efficiency.
059	Lee Beyer	Oregon Public Utility Commissioner. Explains purpose of the amendment.
	Chair Doyle	Announces that the expectation is that OUS will have their amendment to the committee by Thursday.
<b>085</b>	<b>Chair Doyle</b>	<b>VOTE: 7-0-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
085	Chair Doyle	Closes the work session on HB 3093 and opens a public hearing on HB 3112.
	<b><u>HB 3112 – PUBLIC HEARING</u></b>	
	Chair Doyle	Enters into the record a letter from the Department of Human Services in support of the concept of HB 3112 but stating concerns <b>(EXHIBIT G)</b> .
093	Rep. Betsy Close	Presents prepared statement in support of HB 3112 <b>(EXHIBIT H)</b> .
	Rep. Close	Responds to concerns listed in the DHS letter.
151	Rep. Verger	Asks what the difference would be because they can now do drug tests.
	Rep. Closer	States this gives them the authority in the statute to do the testing.
	Rep. Close	Comments that the State of Virginia has just passed student drug testing. States that states are beginning to move on student drug testing and thinks it is only fair that those who work with students be under the same requirements.
179	Chair Doyle	Comments that a concern in the DHS letter <b>(EXHIBIT H)</b> is the expense of drug testing in letter. Asks what the cost of testing is versus the cost of safety of the children.
	Rep. Close	Responds that testing is not mandated, and there is protection in the bill to hold them harmless if they do drug testing. It is very limited in scope and would assume they would check with their attorney before doing the drug testing..
	Rep. Barnhart	Asks if Section 3 (2) refers to court cases about reasonable suspicion, and asks if there is a routine fitness test for duty or routine medical examinations required for people who have contact with children.
	Rep. Close	Responds she does not know, she did not request that language, and would be willing to remove (3).
	Rep. Barnhart	Asks if the follow-up testing in (4) refers to someone who has been caught up in drugs and this is to determine if they are now drug free.
203	Rep. Close	Responds she asked for a last-chance agreement clause. If someone has signed a drug-free agreement, the employer has the right to affirm the person is drug free. Adds that she had intended that an accident during work time would be a cause of action, and would be willing to make that clearer.
228	Lauri Wimmer	Oregon Education Association (OEA). Testifies in opposition to HB 3112. They believe the bill is unconstitutional, unnecessary



		and expensive. Comments on issues. Comments on the Chandler decision in the State of Georgia.
	Chair Doyle	Asks if there is a distinction between public and private sector employees in the constitutional argument.
	Wimmer	Responds that courts made the distinction. Comments on New York law requiring testing of teachers that was overturned.
	Wimmer	Comments on invasion of privacy and the penalty section which superimposes a set of penalties over the contracts in 198 school districts and other places that handle how individual districts and their employees mitigate the issues when there is a problem.
	Wimmer	States there is no need for the law. School districts are doing pre-employment screening and it is a financial burden on school districts.
315	Andrea Meyer	Legislative Director, ACLU. Testifies in opposition to HB 3112. States that the Fourth Amendment covers government, not private industry. Explains the Fourth Amendment, and notes the Chandler case.
353	Rep. Close	Asks if there have been lawsuits brought against Florida's Drug-Free Workplace Act.
	Meyer	Responds she is not familiar with that law.
	Rep. Close	Asks if the ACLU will be challenging the Virginia act.
	Meyer	Responds it would be up to ACLU of Virginia.
	Rep. Close	Asks if Meyer knows whether any court cases against Florida, Georgia, or Arizona.
	Meyer	Responds she does not know.
389	Meyer	Adds that testing would include blood tests which does not tell if a person is under the influence and would reveal very personal information about people, which is why the courts have protected this.
399	Chair Doyle	Announces that HB 3112 will be discussed at a later time. Closes the public hearing on HB 3112 and adjourns meeting at 3:04 p.m.

## **EXHIBIT SUMMARY**

- A – Drafting Request, letter and attachments, staff, 3 pp**
- B – HB 2813, email, Ruth Bendl and Mike Balanesi, 1 p**
- C – HB 2499, prepared statement, Rep. D. Nelson, 2 pp**
- D – HB 3446, Legislative Fiscal Statement, staff, 1 p**
- E – HB 3093, HB 3093-3 amendments, Lee Beyer, 2 pp**
- F – HB 3093, HB 3093-2 amendments, Grattan Kerans, 2 pp**
- G – HB 3112, prepared statement, Clyde Saiki and Georgena Carrow, 2 pp**
- H – HB 3112, prepared statement, Rep. Close, 2 pp**