

# HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

April 08, 2003 Hearing Room E  
1:00 PM Tapes 37 - 38

**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:** Introduction of Speaker-approved committee bills – Work Session  
HB 3601 – Work Session  
HJR 42 – Public Hearing and Work Session  
HB 2443 – 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.

---

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>Tape 37, A</b> 004	Chair Doyle	Calls meeting to order at 1:06 p.m. and welcomes back Rep. Barnhart.
	Chair Doyle	Opens work session on introduction of Speaker-approved committee bills.
<b><u>INTROUCTION OF SPEAKER-APPROVED COMMITTEE BILLS</u></b>		
022	Rep. Flores	<b>MOTION: Moves LCs: 3555, 3556, AND 3558 BE INTRODUCED as committee bills.</b>
		<b>VOTE: 5-0-2</b>
	Chair Doyle	<b>EXCUSED: 2 - Reps. Close and Verger</b> <b>Hearing no objection, declares the motion CARRIED.</b>
		NOTE: DRAFTING AND INTRODUCTION REQUESTS APPROVED BY SPEAKER ON APRIL 1, 2003 (SEE EXHIBIT B OF COMMITTEE MINUTES DATED APRIL 1, 2003).
023	Chair Doyle	Closes the work session on introduction of Speaker-approved bills and opens a work session on HB 3601.
<b><u>HB 3601 – WORK SESSION</u></b>		
	Rep. Patty Smith	District 52. Introduces herself.
	Col. Mike Caldwell	Deputy Director, Oregon Military Department. Recommends committee adopt the HB 3601-1 amendments ( <b>EXHIBIT A</b> ) and pass the bill.
047	Rep. Flores	<b>MOTION: Moves to ADOPT HB 3601-1 amendments dated 4/3/03.</b>
		<b>VOTE: 5-0-2</b>
		<b>EXCUSED: 2 - Reps. Close, Verger</b>
064	Chair Doyle	<b>Hearing no objection, declares the motion CARRIED.</b>

065 Rep. Flores **MOTION: Moves HB 3601 to the floor with a DO PASS AS AMENDED recommendation.**

070 **VOTE: 6-0-1 (SEE THIS TAPE AT 168)**  
**AYE: In a roll call vote, all members present vote Aye.**  
**EXCUSED: 1 - Rep. Close**  
**The motion CARRIES.**  
**REP. P. SMITH will lead discussion on the floor.**

Chair Doyle

Chair Doyle Closes the work session on HB 3601 and opens a public hearing on HJR 42.

**HJR 42 – PUBLIC HEARING**

Robert Neuberger Multnomah Bar Association. Testifies in opposition to HJR 42 **(EXHIBIT B).**

144 Chair Doyle Recesses the public hearing on HJR 42 and reopens the work session on HB 3601.

**HB 3601 – WORK SESSION**

167 Rep. Close Explains that she was testifying in another committee.

168 Chair Doyle **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. CLOSE to BE RECORDED as voting AYE on the motion to move HB 3601 to the floor with a DO PASS AS AMENDED recommendation.**

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

Chair Doyle  
Chair Doyle Asks that the committee stand at ease from 1:19 to 1: 21 p.m.  
Reconvenes the meeting and opens a public hearing on HB 2443.

**HB 2443 – PUBLIC HEARING**

171 Mike Dewey Oregon Cable Telecommunications Association (OCTA). Testifies in support of HB 2443. Explains that their members provide cable television service in Oregon, in many places high speed cable modem internet service, and local exchange service in Portland in competition with Verizon, Quest, and smaller telephone companies. Comments on the need to diversify their business to meet competition.

Dewey States that HB 2443 is a straightforward bill. It is not a prohibition for entities created by local government. Comments on legislation introduced last session.

Chair Doyle Recesses the public hearing on HB 2443 and reopens the public hearing on HJR 42.

**HJR 42 – PUBLIC HEARING**

Rep. Rob Patridge District 6. Submits the HJR 42-2 amendments **(EXHIBIT C)**. Explains there currently is no public process when a judge stands aside between elections. Believes it is important to have a public process, other than appointment by the Governor. The amendments would require Senate confirmation within 120-days; absent the confirmation within the 120 days, the appointee would be seated.

273 Rep. Close Asks how many judges currently sitting on the Court of Appeals were appointed.

	Rep. Patridge.	Responds he does not know. Believes most of the judges are generally appointed.
	Rep. Close	Asks if it is easy to be elected after being appointed.
300	Rep. Patridge	Responds he thinks it does become easy to get elected and there is a chilling effect in the local Bar if anyone runs against a sitting judge.
	Rep. Monnes Anderson	Asks Rep. Patridge to respond to the politics of this.
	Rep. Patridge	Comments on confirmation process to allow both sides to have a say in who gets appointed to be judges.
378	Rep. Monnes Anderson	Comments on Multnomah Bar testimony ( <b>EXHIBIT B</b> ) and asks how Rep. Patridge feels about Oregon being the only state to require confirmation.
	Rep. Patridge	States he is only trying to insert public comment into a public process. States there are a dozen ways to do this.
410	Rep. Verger	Comments that Judge Gillette told the committee that 93-95 percent of elections had no opposition. Asks what happens if the Senate does not confirm what the voters have voted on.
	Rep. Patridge	Explains that the bill only requires confirmation if there is a mid-term appointment by the Governor.
<b>TAPE 38, A</b>		
016	Rep. Monnes Anderson	Comments on candidates for appointment to judge positions contacting people requesting a letter in their support. Asks if that is considered input.
	Rep. Patridge	Responds there is no public process. States that a letter may be requested, but if there is a problem in the person's background, or other issues in regard to the person, nothing occurs because negative incidents are not solicited.
040	Rep. Flores	Asks if Rep. Patridge's research tracks appointments versus elections over the years.
	Rep. Patridge	Responds they attempted to track that but found they would have to go back through every Voters' Pamphlet and every appointment.
	Rep. Flores	Asks if resigning at chosen times is gamesmanship on the part of the judges.
	Rep. Patridge	Responds that he thinks there is some degree of gamesmanship because there is no political process that occurs as a result of the appointment process.
069	Chair Doyle	Asks at what point the position is left open in the election cycle after a resignation is received.
	Chair Doyle	Notes that staff has pointed out it is 51 days prior to the election.
103	Rep. Backlund	Comments on his previous position on the bill and states that he will support the bill with the proposed amendments.
	Rep. Barnhart	Comments that every state has a different system for selecting judges. Oregon has a system that functions quite well. Comments on the need to raise campaign funds, competency of judges, difficulty finding judges to fill the positions, checks in the system, the requirement to run at the next election, and the Judicial Fitness Commission. Agrees that the system does work and will vote no.
		A statement submitted by Bob Oleson, Oregon State Bar, Judicial Administration Committee expressing their concerns and reservations is hereby made a part of these minutes ( <b>EXHIBIT</b>

Chair Doyle  
**HJR 42 – WORK SESSION**  
200 Rep. Close

**D).**  
Closes the public hearing and opens a work session on HJR 42.

**MOTION: Moves to ADOPT HJR 42-2 amendments dated 4/7/03.**

**VOTE: 7-0-0**

**Hearing no objection, declares the motion CARRIED.**

Chair Doyle  
206 Rep. Close

**MOTION: Moves HJR 42 be sent to the floor with a BE ADOPTED AS AMENDED recommendation.**

212 Rep. Monnes  
Anderson

Comments that she agrees the system does work.

223 Rep. Barnhart

States that allowing for a hearing before the Senate opens up the possibility of reducing the pool of competent lawyers to take the jobs, especially in areas where the number of lawyers may be smaller.

Rep. Close

Comments that the committee has had testimony that a problem does exist; Oregon judges should be either elected or appointed, not both. Believes that appointments should be used in a limited manner and not be the norm. Believes the public should be allowed to vote on this.

**VOTE: 4-3-0**

**AYE: 4 - Backlund, Close, Flores, Doyle**

**NAY: 3 - Barnhart, Monnes Anderson, Verger**

Chair Doyle

**The motion CARRIES.**

**REP. PATRIDGE will lead discussion on the floor.**

229 Chair Doyle

Closes the work session on HJR 42 and reopens the public hearing on HB 2443.

**HB 2443 – PUBLIC HEARING**  
250 Mike Dewey

Oregon Cable Telecommunications Association (OCTA). Continues testimony. States he is having amendments drafted. The bill requires that an entity of local government, before they commence the provision of telecommunications services at retail in competition with private providers, do a financial pro forma. There is possibility that city services would not be profitable. This allows the public to see if the financial pro forma is realistic. Comments on the process when Ashland set up their services.

271 Dewey

Comments on \$100,000 lottery money from Mid-Willamette Valley Council of Governments to the City of McMinnville, or an entity of the city, to study the feasibility of owning and operating a telecommunication system. The bill says they must have at least one public hearing and voters must approve the financial structure.

309 Dewey

Explains amendments he will be bringing forth.

325 Dewey

Comments on legislation last session to prohibit cross subsidization.

361 Dewey

States it is a policy question of local control versus the following: 1) should tax-subsidized municipal industries be allowed to compete directly against private companies providing telecommunication services, 2) should a local government enter a business that is highly competitive with the possibility of losing

money or going broke, 3) cities and counties are not very entrepreneurial and do not compete; competition will not go away.

**TAPE 37, B**

037	Dewey	Comments on the exemption for Cascade Locks.
050	Dewey	States that government agencies are much less efficient than private companies where there are valid comparisons, especially where advanced technology and innovation are part of it. Another question is, is it fair. Comments on local government franchises and the competitor being the regulator.
092	Dewey	Comments on costs of the Ashland system.
122	Dewey	Comments on evaluations of other companies.
	Dewey	Comments on argument of the counties saying if the private companies do not build a system, then there should not be any constraints. Agrees with argument for economic development but if one makes the assumption that private companies are not going to build a system, in most cases there will be a subsidy somewhere using taxpayer money.
148	Dewey	Speaks in support of the exemptions in HB 2443.
199	Rep. Monnes Anderson	Asks for details on the Ashland plan.
	Dewey	Comments on details of Ashland's and Medford's services.
255	Chair Doyle Bill Penhollow	Comments on time constraints of the committee. Association of Oregon Counties. Submits prepared statement in opposition to HB 2443 ( <b>EXHIBIT E</b> ) and asks that Rob Bovett, Lincoln County Council, be allowed to testify.
280	Helen Berg	Mayor, Corvallis, and Treasurer of the League of Oregon Cities (LOC). Introduces Lou Ogden, Mayor of Tualatin and immediate past president LOC, and Tom O'Conner, Oregon Municipal Electric Utilities. Testifies in opposition to HB 2443 because it impinges on the ability of the cities to set their own process. Comments on the importance of economic development and telecommunications to local governments. States that federal law expressly provides that no state or local government may prohibit or have the effect of prohibiting any entity from providing telecommunication services. Also, federal law prohibits local governments from doing anything that creates a barrier to entry and requires them to manage the public right-of-way on a competitively neutral and non-discriminatory basis.
363	Lou Ogden	Mayor, Tualatin, and immediate past president, League of Oregon Cities. Testifies in opposition to HB 2443. Asks what the problem is that HB 2443 is trying to solve. States that he appreciates the interests of the industry to make sure the cities are financially solvent. There is any number of services that cities, counties, and the state provide that could be done by the private sector.
450	Ogden	Makes analogy of city providing recreational facilities at a lesser costs when they have a private company doing the same thing. States it is because it is community value and the taxpayers are saying it is a good value for their tax dollars.

**TAPE 38, B**

025	Tom O'Conner	Oregon Municipal Electric Utilities and City of Ashland. Submits prepared statement in opposition to HB 2443
-----	--------------	--

		<b>(EXHIBIT F)</b> . Comments on services provided by Ashland. Notes letter from Ashland Chamber of Commerce <b>(EXHIBIT G)</b> and the list of requirements for cities <b>(EXHIBIT F, pages 2 and 3)</b> .
102	Rep. Barnhart O’Conner	Ask what services are provided by Ashland. Responds that Ashland Fiber Network provides cable, internet access, and data transfer to businesses and residences.
109	Rep. Monnes Anderson O’Conner	Asks how the bonds are repaid.  Responds that the bonds are retired through revenues from the system.
110	John McArdle	Mayor, Independence. Comments on the efforts of Independence to have a private company provide services. Explains the combined efforts of the cities of Independence and Monmouth and Western Oregon University. States that HB 2443 would stifle what cities can do to provide services. It is an intrusion into local government authority.
167	McArdle	Submits copies of article from <i>The Business Journal</i> , April 4, 2003 about internet services <b>(EXHIBIT H)</b> . Comments on article. Submits letter from Mid. Willamette Valley Mayors Coalition in opposition to HB 2443 <b>(EXHIBIT I)</b> .
166	Larry Dalton	Mayor, Monmouth. Testifies in opposition to HB 2443. The bill is bad for rural communities. Comments on the need for economic development and quality of life.
	Rob Bovett	Assistant County Council, Lincoln County. Submits and summarizes statement in opposition to HB 2443 <b>(EXHIBIT J)</b> . Comments on costs and services being provided by CoastNet, and court case about CoastNet.
218	Elaine Stewart	President, Monmouth-Independence Chamber of Commerce. Testifies in opposition to HB 2443. Comments on goal of the Chamber of Commerce to provide economic development and the efforts of the total community to get broadband service.
245	Scott Lazenby	City Manager, City of Sandy. Presents statement for Linda Malone, Mayor, City of Sandy, in opposition to HB 2443 <b>(EXHIBIT K)</b> . Explains services provided by the city.
	Bob Willoughby	City Administrator, Cascade Locks. Testifies in opposition to HB 2443. States he agrees with previous comments in opposition to HB 2443. Comments on their efforts to obtain services from private providers and the services the city has been providing. States a provision exists in the Constitution that allows anyone who wants to question a decision by a city to file an initiative petition and require an election any time they like.
330	Rob Meyer	Representing Gilliam, Sherman and Wheeler Counties, Frontier Learning Center, and Eastern Oregon Rural Alliance. Presents resolution in opposition to HB 2443 <b>(EXHIBIT L)</b> .
	Roger Bennett	City Manager, Florence. Testifies in opposition to HB 2443. States that cities do not exist to provide competition for the private industry; they exist to provide essential services to the community and the expectation of their citizens. Comments on fiber optic services now available in Florence. The following statements in opposition to HB 2443 were submitted to the committee and are hereby made a part of these minutes:

Councilor Norman Thomas, City of Troutdale (**EXHIBIT M**);  
Eugene Water and Electric Board (EWEB) (**EXHIBIT N**);  
Robin Freeman, Executive Director, Oregon People's Utility  
District Association (OPUDA) (**EXHIBIT O**).  
Closes the public hearing on HB 2443 and adjourns meeting at  
3:00 p.m.

### **EXHIBIT SUMMARY**

- A – HB 3601, HB 3601-1 amendments, Rep. P. Smith, Mike Caldwell, 1 p**
- B – HJR 42, prepared statement, Robert Neuberger, 8 pp**
- C – HJR 42, HJR 42-2 amendments, Rep. Patridge, 1 p**
- D – HJR 42, prepared statement, Bob Oleson, 1 p**
- E – HB 2443, prepared statement, Bill Penhollow, 1 p**
- F – HB 2443, prepared statement, Tom O'Connor, 3 pp**
- G – HB 2443, letters in opposition, Tom O'Connor, 3 pp**
- H – HB 2443, news articles, John McArdle, 5 pp**
- I – HB 2443, prepared statement, John McArdle, 1 p**
- J – HB 2443, prepared statement, Rob Bovett, 2 pp**
- K – HB 2443, prepared statement, Scott Lazenby, 2 pp**
- L – HB 2443, resolution in opposition, Bob Meyer, 3 pp**
- M – HB 2443, prepared statement, Norman Thomas, 4 pp**
- N – HB 2443, prepared statement, EWEB, 1 p**
- O – HB 2443, prepared statement, Robin Freeman, 7 pp**