

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

February 28, 2001
8:00 a.m.

Hearing Room 357
Tapes 24 - 26

MEMBERS PRESENT: **Rep. Cherryl Walker, Chair**
 Rep. Vic Backlund
 Rep. Kathy Lowe
 Rep. Charlie Ringo
 Rep. Lane Shetterly
 Rep. Max Williams

STAFF PRESENT: **Andrea Shartel, Counsel**
 Merrilee Harrell, Committee Extern
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2089 Public Hearing**
 HB 2710 Public Hearing
 HB 2609 Work Session
 HB 2371 Public Hearing
 HB 2493 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.

TAPE/#	Speaker	Comments
TAPE 24, A		
<u>HB 2089 PUBLIC HEARING</u>		
004	Chair Walker	Calls the meeting to order at 8:15 a.m.
006	Counsel Shartel	Introduces HB 2089 prohibiting person who is 18, 19 or 20 years of age from exhibiting nudity while present on premises licensed by Oregon Liquor Control Commission (OLCC).
008	Rep. Close	House District 36 Testifies in opposition to HB 2089 and submits testimony (EXHIBIT A) .
050	Rep. Lowe	Asks if her bill addresses nudist colonies.
068	Rep. Close	Says that her bill addresses OLCC regulated establishments only and states that her intent was to cover the nude dancing establishments.
097	Counsel Shartel	Informs the members that they have a copy of background information on the bill from the OLCC (EXHIBIT B) .
123	Chair Walker	Closes the public hearing on HB 2089 and opens a public hearing on HB 2710.
<u>HB 2710 PUBLIC HEARING</u>		
134	Counsel Shartel	Introduces HB 2710 relating to employment of minors at public dances.
155	Rep. Joanne Verger	House District 47 Testifies in support of HB 2710 and submits testimony (EXHIBIT C) .

170 Timothy Travis Oregon Judicial Department
 Testifies in support of HB 2710.

368 John Stubenvoll Communications Director, Oregon Liquor Control
 Commission (OLCC)
 Testifies on HB 2710. Says that if the judge was taken out of the
 loop then there could be some administrative problems with the
 liquor-licensed establishment if a minor was allowed in these
 establishments.

375 Rep. Verger States that Judge Baron was brought into this issue because the
 regulation in Coos County is very strict.

438 Chair Walker Closes the public hearing on HB 2710 and opens a work session
 on HB 2609.

TAPE 25, A

HB 2609 WORK SESSION

006 Counsel Chaimov Legislative Counsel
 Testifies on HB 2609 which makes technical changes in Oregon
 law and discusses –1 amendments (**EXHIBIT D**).

036 Rep. Shetterly **MOTION: Moves to ADOPT HB 2609-1 amendments dated
 02/27/01.**

036 Chair Walker **VOTE: 4-0-1**
EXCUSED: 1 - Backlund
Hearing no objection, declares the motion CARRIED.

040 Rep. Shetterly **MOTION: Moves HB 2609 to the floor with a DO PASS AS
 AMENDED recommendation.**

040 Chair Walker **VOTE: 4-0-1**
EXCUSED: 1 - Backlund
Hearing no objection, declares the motion CARRIED.

056 Chair Walker Closes the work session on HB 2609 and re-opens the public
 hearing on HB 2089.

HB 2089 PUBLIC HEARING

070 Rep. Jo Ann Bowman House District 19
 Testifies in support of HB 2089 with modifications. Says that
 she wants this bill to prohibit anyone under 21 from working in
 an establishment that sells alcohol.

084 Rep. Lowe Says that it is her understanding that most taverns and bars under
 OLCC regulation must serve food in addition to the libations so
 there always is a food service component.

089 Bowman Says that if that is true then it is her intent to not have anyone
 under 21 years work in those establishments.

096 Rep. Lowe Asks if that includes entertainers that might be working there.

104 Chair Walker Closes the public hearing on HB 2089 and opens a public
 hearing on HB 2371.

HB 2371 PUBLIC HEARING

120 Merrilee Harrell Committee Extern
 Introduces HB 2371 relating to de novo appeal of certain
 decisions made without hearing.

135 Chris Crean Oregon State Bar, Real Estate and Land Use Section
 Testifies in support of HB 2371 and submits testimony
(EXHIBIT E).
 Explains that they added information to ORS 215.416 and ORS

195	Rep. Shetterly	227.175 that specifically spells out what they mean by “de novo”, including that any interested person or party can present testimony, arguments and evidence on any issue and that the hearing has to be held and any relevant evidence heard.
232	Crean	Says that he always understood de novo to refer to the taking of evidence, not necessarily the expansion of issues.
260	Rep. Shetterly	States that what Rep. Shetterly points out is that the limitations on the issues discussed are inherent in the nature of the process and that is certainly true in land use proceedings.
300	Crean	Feels that there is too much wide openness with this bill.
348	Rep. Ringo	Says that sometimes this can be a problem.
368	Crean	States that it seems to him that you wouldn’t want to allow the planning staff to narrow the issues in a way that would preclude the public from raising other issues. Wonders if there is a mechanism to preclude “surprise” in these hearings.
		Answers that in ORS 197.763, ORS 215.416 and ORS 227.175 it says that a notice of a public hearing on a land use application has to set forth all of the applicable approval criteria. Adds that in addition at the beginning of the hearing the person conducting the hearing has to list what the applicable approval criteria are and nobody is allowed to broaden the issues. Says that the criteria are set out in the notice of the hearing and re-stated at the opening of the hearing so that everyone knows what the rules are.

TAPE 24, B

008	Crean	Continues testimony on HB 2371.
030	Chair Walker	Says that she was an administrative law hearing commissioner for 9 years and a planning commissioner for four years and explains about burden of proof and the administrative process.
133	Rep. Lowe	Comments that she is well acquainted with this process and says that if they are going to error in this process then they should error on the side of allowing broad citizen input.
164	Chair Walker	Closes the public hearing on HB 2371 and re-opens the public hearing on HB 2089.

HB 2089 PUBLIC HEARING

195	Steven Kafoury	Represents National Association for Nude Recreation (NANR) Testifies in opposition to HB 2089. Says that this bill would make their events illegal.
256	David Fidanque	Executive Director, American Civil Liberties Union of Oregon (ACLUOR) Testifies in opposition to HB 2089.
330	Rep. Ringo	Asks if 16 year olds can perform at nude clubs and do we limit that form of speech.
392	Fidanque	Says there are statutes on the books that prohibit displaying nudity or obscene materials to minors. Answers that you cannot restrict expression and that is what this bill does. Suggests that the legislator might want to restrict minors from being or working in nude club.

TAPE 25, B

003	Rep. Shetterly	Questions how HB 2089 addresses expression.
026	Fidanque	Asks if he is suggesting that this bill will not get to entertainers.
033	Rep. Shetterly	Says that the bill doesn’t single out entertainment or expression.

047 Fidanque Thinks that this bill may be broader than he thought and unconstitutional and listened to Mr. Kafoury's testimony with great interest.

105 Rep. Ringo Feels that this bill is directed at expression and is not constitutional as written.

112 Chair Walker Closes the public hearing on HB 2089 and opens a public hearing on HB 2493.

HB 2493 PUBLIC HEARING

130 Counsel Shartel Introduces HB 2493 relating to electric utilities, providing that electric utilities are immune from civil liability for cutting or removing vegetation under specified circumstances.

148 **Randy Miller**
Chief Forester, PacifiCorp
Testifies in support of HB 2493 and submits testimony **(EXHIBITS F & G)**.

320 **Shawn Miller**
PacifiCorp
Testifies in support of HB 2493 and discusses the –1 amendments **(EXHIBIT H)**.

345 Rep. Ringo Asks if they have any figures as to how many lawsuits they've had over the past few years.

350 R. Miller Says that he doesn't know, but they are ongoing and many lawsuits are settled out of court.

362 Rep. Ringo Says that it would help him to have some figures and responds that he's reluctant to grant immunities unless he thinks there's a big problem. Asks about the current standard for liability.

375 R. Miller Answers that the current standard for liability is that if they remove a tree without permission from the property owner that they can be subject to the value of the timber.

381 Rep. Ringo Asks if that applies if the tree is touching a wire.

382 R. Miller Says yes.

390 S. Miller States that the threat of litigation, slows their crews down, and causes problems to the public and their safety.

395 Rep. Ringo Asks if there is a tree up against a wire and the property owner doesn't want it cut, can they not cut it.

400 R. Miller Answers that is correct and they cannot remove the tree unless they have a right of way to remove it. Says that if they don't clear the lines to make them safe then they will get into trouble, but people threaten to sue them over their trees.

435 Rep. Ringo Responds that the solution he would like to see is a statutory fix that allows them to feel comfortable in getting their work done.

465 R. Miller Says that that is their intent.

488 Chair Walker Comments that she has to leave and Rep. Lowe is going to take over as chair.

TAPE 26, A

069 **Charlie Stone**
State Forester's Office, Department of Forestry
Testifies in support of HB 2493 and submits testimony **(EXHIBIT I)**.

99 Rep. Ringo Asks if the problem is that there are difficulties in being able to clear hazardous trees and shrubs.

110 Stone Answers that he agrees with the principle and the most appropriate remedy is that the electric utilities have the authority and responsibility to maintain the electric lines and remove trees when necessary.

123	Rep. Lowe	Understands that they would like the –1 amendments not to go forward, but instead go with new amendments that would refer to ORS 477.064 through ORS 477.120.
133	Peter Nokkeveck	Legal Services Coordinator for Fire Program, Department of Forestry Testifies in support of HB 2493. Says that ORS 758.010 refers to the authority to construct lines and maintain them.
167	Libby Henry	Eugene Water & Electric Board (EWEB) Testifies in support of HB 2493 and submits testimony (EXHIBIT J) .
183	Greg Gardner	EWEB Testifies in support of HB 2493. States that they want new language in the bill.
227	Susan Schneider	Government Relations Officer, City of Portland Testifies on HB 2493. States that she thinks the amendments proposed from Pacificorp will address the City’s concerns and says that an electric utility should not be relieved of liability for pruning or removing trees negligently.
253	Brian McNerny	City Forester, City of Portland Testifies on HB 2493.
257	Rep. Shetterly	Comments that he appreciates the direction of the proposed –2 amendments.
269	Rep. Ringo	Asks EWEB people to what extent have they had lawsuits threatened against them.
275	Gardner	Answers that to his knowledge they have not ended up in court.
290	Brad Higbee	Emerald Public Utilities District Testifies on HB 2493 and submits testimony (EXHIBIT K) .
310	John Brenneman	Idaho Power Testifies in support of HB 2493 and submits testimony (EXHIBIT L) .
328	Rep. Lowe	Asks if they think there should be an emergency clause on this bill.
334	Stone	Says that would probably be a good idea.
340	Tom O’Connor	Oregon Municipal Electric Utilities Testifies in support of HB 2493.
371	Rep. Lowe	Closes the public hearing on HB 2493 and adjourns the meeting at 10:25 a.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

A – HB 2089, written testimony submitted by Rep. Betsy Close, dated 2/28/2001, 3 pgs.
B – HB 2710, written testimony of Jon Stubenvoll, OLCC, submitted by staff, dated 2/20/01, 10 pgs.

C – HB 2710, written testimony of Nancy Miller, submitted by Rep. Verger, dated 2/28/01, 2 pgs.
D – HB 2609, -1 amendment, submitted by staff, dated 2/27/01, 1 p.
E – HB 2371, written testimony submitted by Chris Crean, dated 2/28/01, 3 pgs.
F – HB 2493, written testimony submitted by Shawn Miller and Randy Miller, PacifiCorp, dated 2/28/01, 3 pgs.
G – HB 2493, American National Standards Institute, submitted by the PacificCorp, 15 pgs. and Specification Manual on Transmission & Distribution Vegetation Management Program, 52 pgs.
H – HB 2493, -1 amendments, submitted by staff, dated 2/15/01, 1 p.
I – HB 2493, written testimony submitted by Charlie Stone, State Forester’s Office, Department of Forestry, dated 2/27/01, 3 pgs.
J – HB 2493, written testimony submitted by Libby Henry, EWEB, 2 pgs.
K – HB 2493, written testimony of the Emerald People’s Utility District, submitted by Brad Higbee, dated 2/28/01, 1 p.
L – HB 2493, written testimony of Christopher Hopper, submitted by John Brenneman of Idaho Power Company, dated 1/3/01, 2 pgs.
M – HB 2493, written testimony of Oregon Rural Electric Cooperative Association, dated 2/26/01, 2 pgs.
N – HB 2493, written testimony of Oregon People’s Utility District Association, dated 2/27/01, 2 pgs.