

HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

February 19, 2001
3:30 PM

Hearing Room 50
Tapes 36 – 38

MEMBERS PRESENT: Rep. Rep. Bill Witt, Chair
Rep. Betsy Johnson, Vice-Chair
Rep. Tim Knopp, Vice-Chair
Rep. Alan Bates
Rep. Alan Brown
Rep. Janet Carlson
Rep. Richard Devlin
Rep. Bill Garrard
Rep. Jerry Krummel
Rep. Laurie Monnes-Anderson
Rep. Vicki Walker

STAFF PRESENT: Daniel Clem, Committee Administrator
Renee' Lunsford, Committee Assistant

MEASURE/ISSUES HEARD: HB 2557 Public Hearing and Work Session
HB 2456 Public Hearing
HB 2535 Work Session
HB 2572 Public Hearing and Work Session
HB 2630 Public Hearing and Work Session
Introduction of Committee Bills

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>
TAPE 36, A		
005	Chair Witt	Calls the committee to order at 3:25 p.m. and opens a public hearing on HB 2557.
<u>HB 2557 PUBLIC HEARING</u>		
007	Dan Clem	Committee Administrator. Reads preliminary staff summary for HB 2557.
035	Rep. Tom Butler	House District 60. Testifies in favor of HB 2557.
102	Chair Witt	Asks if any of the companies would be in eastern Oregon.
111	Rep. Butler	Lists the phone companies that this bill will affect.
129	Brant Wolf	Executive Director, Oregon Telecommunications Association. Submits written material (EXHIBIT A) and testifies in favor of HB 2557.
153	Rep. Witt	Asks if these companies got caught up in legislation last session in SB 622.
157	Wolf	Responds affirmatively.
159	Jeffry Smith	Consulting Manager, G.V.N.W. Consulting, on behalf of Oregon Telecommunications Association. Submits written material (EXHIBIT B) and testifies in favor of HB 2557.
186	Rep. Krummel	Asks for clarification that it costs \$50,000 to \$75,000 per switch.
192	Smith	Responds that the cost estimates vary based on the size of the company and pending on the number of service centers.

209	Rep. Carlson	Notes that two of these companies are located in Marion County.
214	Rep. Bates	Asks what the purpose of SB 622 (1999) was.
216	Chair Witt	Refers the question to the representative from the Public Utility Commission (PUC).
224	Phil Nyegaard	Telecommunication Division Administrator, Public Utility Commission. States that PUC is not opposed to exempting smaller companies from this specific performance reporting.
251	Rep. Walker	Asks for clarification of Mr. Nyegaard's statement that PUC didn't feel they could exempt these companies because it was in statute.
254	Nyegaard	States that these changes are to apply to all companies. Notes that large companies do not oppose granting waivers to these companies but do oppose waivers to competitive carriers.
292	Rep. Walker	Asks if PUC could step in if these companies have a problem in the future.
299	Nyegaard	Responds that the law would have to be changed to give back that authority.
308	Chair Witt	Closes the public hearing and opens a work session on HB 2557.
<u>HB 2557 WORK SESSION</u>		
316	Rep. Devlin	MOTION: Moves HB 2557 to the floor with a DO PASS recommendation.
319	Rep. Walker	Expresses concern that if the smaller companies did have a problem, they would have to return.
333	Chair Witt	Notes that small business tends to be close to the customer and they respond more quickly.
358	Chair Witt	VOTE: 11-0 Hearing no objection declares the motion CARRIED. REP. BUTLER will lead discussion on the floor.
360	Chair Witt	Closes the work session on HB 2557 and opens a public hearing on HB 2456.
<u>HB 2456 PUBLIC HEARING</u>		
368	Clem	Reads preliminary staff summary of HB 2456.
390	Rep. Alan Brown	House District 4. Testifies in favor of HB 2456.
429	Terry Thompson	Testifies in favor of HB 2456.
TAPE 37, A		
027	Valerie Musso	Owner, Italian Riviera Restaurant. Gives background of restaurant's noise complaints.
055	Rep. Krummel	Asks if the person making the complaint was ever evicted from the restaurant.
057	Musso	Responds affirmatively.
065	Mike Reed	Attorney for Valerie Musso. Addresses the Liquor Control Act history. States that the Oregon Liquor Control Commission (OLCC) has been referring to statute that it's illegal to maintain a noisy establishment.
108	Rep. Krummel	Asks if the RV park is in close proximity to the restaurant.
113	Musso	Responds that the RV park is located next door, with a street between them, and that the closest RV is approximately forty feet away.
118	Rep. Krummel	Asks how many complaints have been filed against the restaurant.
122	Musso	Responds that the police have been out about 25 times.
136	Rep. Johnson	Asks if they have employed all available techniques to bring the neighbors to the bargaining table.

140	Musso	Responds they have been to mediation with OLCC, but the next day the residents broke their agreement.
145	Rep. Johnson	Asks if Ms. Musso's facility had been a restaurant or bar before residences were built.
154	Musso	Responds that they constructed the building in 1997 with a piano bar in mind, and listed precautions used for noise.
165	Rep. Johnson	Asks if there had been any complaints prior to the time that the principle complainants were asked to leave.
167	Musso	Replies that there wasn't any history.
168	Rep. Johnson	Notes that the bill applies to more rural areas and asks if it would be applicable to an urban area.
176	Thompson	Responds that there isn't any difference and that any noise ordinances are better off controlled at the local level.
191	Rep. Garrard	Asks if any citations have been issued, and if so how many.
196	Musso	Responds that she was issued a citation once.
199	Rep. Garrard	Asks if it was by the city.
200	Musso	Replies it was by the county and it was dismissed because they did not have the proper equipment when they issued the citation.
210	Rep. Carlson	Asks what are the penalties that could apply.
218	Reed	Responds that fines can be imposed and eventually the business could be declared a nuisance.
224	Rep. Carlson	Asks what the fines would have been if the citation hadn't been dismissed.
225	Musso	Responds that after a citation for a third offense, the county can confiscate all equipment.
236	Thompson	Uses fishing industry as an example of different ordinances for different communities. States that this is an issue that should be resolved on the local level.
257	Rep. Devlin	Notes that nothing in the bill prohibits a city or county from listing a violation of local noise ordinance as a basis for requesting a denial of an application.
266	Reed	States that under current statute, OLCC could use a violation of a local noise ordinance to fine, suspend, or cancel a license.
275	Rep. Devlin	Explains that a local government entity can regulate on the basis of a noise ordinance and that this could be a potential reason for denial.
284	Reed	Notes that if there was not a statutory basis for the OLCC to deny a license based on the local ordinances, they could not honor that local governing body recommendation.
290	Rep. Johnson	States that in looking at the statute it appears that there is an obligation of the complainant to participate in litigation. Asks how this worked out in Ms. Musso's situation and why the burdens aren't falling on the establishment.
300	Reed	Explains that when using the serious and persistent problem statute, the OLCC has to look at factors, but the noisy establishment statute doesn't have any protection or mandates. Notes that the bill says excessive noise, but he would like sound vibration to be included.
338	Bill Perry	Director of Government Relations, Oregon Restaurant Association. Testifies in favor of HB 2456.
385	Chair Witt	Asks Mr. Perry if he is saying that there would be no problem with OLCC taking into consideration the fact that a restaurant or facility had violated a local ordinance.
397	Perry	Responds affirmatively.

410	Rep. Krummel	Asks if OLCC selectively enforces their laws and rules.
413	Perry	Answers that OLCC has rulings that he agrees and disagrees with, but he doesn't believe their motives are dishonest.
422	Rep. Carlson	Asks if ORS 471.329 is repealed, will OLCC still be allowed to take a conviction into consideration.
416	Perry	Responds that the will get back to the committee on this.
TAPE 36, B		
008	Paul Romaine	Attorney for Oregon Beer and Wine Distributors Association. Stresses the need for clear standards.
077	Chair Witt	Asks whether the bill allows OLCC to consider local infractions of a noise-related nature.
082	Romaine	States that what his organization really wants is for there to be set standards and local conviction.
103	Jon Stubenvoll	Communications Director, Oregon Liquor Control Commission. Submits written testimony (EXHIBIT C) and testifies in opposition to HB 2456.
168	Rep. Krummel	Asks if the OLCC selectively enforces their laws and rules.
170	Linda Ignowski	Regulatory Program Director, Oregon Liquor Control Commission. Responds no.
177	Rep. Krummel	Asks if the complaints were from one individual or from numerous people.
179	Ignowski	Responds that they were from numerous people.
201	Rep. Krummel	Asks if Ms. Musso's business is in danger of losing its liquor license.
204	Ignowski	Responds that it is not.
207	Rep. Krummel	Asks if OLCC does a better job and is more responsive to local government concerns about a business than six to eight years ago.
211	Ignowski	Responds that it has been OLCC's commitment to be responsive to all concerns.
220	Rep. Krummel	Asks if OLCC is pretty even handed when keeping licensees informed.
227	Ignowski	Responds that they try to be fair.
236	Rep. Devlin	Asks how OLCC can differentiate between valid and invalid complaints.
249	Ignowski	Responds that OLCC conducts an investigation and never bases a violation on hearsay.
262	Rep. Devlin	Asks if only actual violations are counted.
269	Ignowski	Responds that it has to be an actual violation in order to determine the penalty.
282	Rep. Johnson	Asks if the complainant has continued to complain since the mediation failed.
284	Ignowski	Responds that there has been a couple of phone calls.
290	Rep. Johnson	Asks if OLCC was part of the mediation.
292	Ignowski	Responds that she does not believe it was a full mediation.
300	Rep. Johnson	States that an agreement had been reached and then violated. Questions what qualifies as mediation.
307	Ignowski	Explains that there are many ways to get licensees and complainants to resolve problems. States that there was a settlement for a previous charge and this may have been what was violated.
321	Rep. Garrard	Asks how OLCC disciplines a business that is in non-compliance.

331	Ignowski	Responds that the main disciplines used are fines or suspension of a license for a period of time. Notes that it takes several violations to get to a proposed cancellation.
357	Daniel Anderson	Testifies in opposition to HB 2456.
TAPE 37, B		
006	Deborah Hong	Board Member, Old Town/China Town Neighborhood Association. Testifies in opposition to HB 2456.
035	Rep. Krummel	Asks if OLCC responds quickly with enforcement of statutes.
040	Anderson	Responds no.
042	Rep. Krummel	Asks Mr. Anderson if noise enforcement should be at the local or state level.
048	Anderson	Responds that it is appropriate to have enforcement at both levels.
051	Rep. Bates	Asks Mr. Anderson if he would find the bill more acceptable if it stated that OLCC could take into consideration a licensed premises' conviction for violating a local ordinance.
061	Anderson	Responds that it is an imbalance between demand and capacity to suggest the only standard to consider is successful prosecution under a local ordinance.
076	Chair Witt	Closes the public hearing on HB 2456 and opens a work session on HB 2535.

HB 2535 WORK SESSION

100	Clem	Reads preliminary staff summary for HB 2535.
113	Rep. Krummel	MOTION: Moves HB 2535 to the floor with a DO PASS recommendation.
117	Rep. Walker	Notes that the testimony from PUC indicated that these sorts of subsidies have been upheld in court.
125	Chair Witt	States that these subsidies are not unlawful, but it is unlawful for PUC to input these revenues into the regulated rate proceedings.
130	Rep. Bates	Notes that the bill is letting phone providers compete and drive down rates.
137	Chair Witt	Comments that it is unlawful for PUC to input revenues from the directory business, which is a non-regulated business, into its determination in setting regulated rates of the phone company. VOTE: 10-1 AYE: 10 - Bates, Brown, Carlson, Devlin, Garrard, Johnson, Knopp, Krummel, Monnes Anderson, Witt NAY: 1 - Walker V
149	Chair Witt	The motion CARRIES. REP. KRUMMEL will lead discussion on the floor.
159	Chair Witt	Closes the work session on 2535 and opens a public hearing on HB 2572.

HB 2572 PUBLIC HEARING

170	Clem	Reads staff preliminary summary for HB 2572.
188	Shelly Jensen	Verizon. Testifies in favor of HB 2572.
220	Chair Witt	Asks if there was discussion with PUC.
222	Jensen	Responds affirmatively.
228	Chair Witt	Closes the public hearing and opens a work session on HB 2572.

HB 2572 WORK SESSION

229	Rep. Devlin	MOTION: Moves HB 2572 to the floor with a DO PASS recommendation. VOTE: 11-0 AYE: In a roll call vote, all members present vote Aye.
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234	Chair Witt	The motion CARRIES.
244	Chair Witt	REP. JOHNSON will lead discussion on the floor. Closes the work session on HB 2572 and opens a public hearing on HB 2630.
<u>HB 2630 PUBLIC HEARING</u>		
246	Clem	Reads preliminary staff summary on HB 2630.
266	Shawn Miller	PacifiCorp. Testifies in favor of HB 2630 and the proposed –1 amendment.
287	Rep. Krummel	Asks if PUC could require a utility to file twice a year.
294	Miller	Responds that PUC will probably need the information to use for rate cases.
320	Chair Witt	Closes the public hearing and opens a work session on HB 2630.
<u>HB 2630 WORK SESSION</u>		
321	Chair Witt	MOTION: Moves to ADOPT HB 2630-1 amendments dated 2/16/01.
		VOTE: 11-0
324	Chair Witt	Hearing no objection, declares the motion CARRIED.
326	Rep. Devlin	MOTION: Moves HB 2630 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 11-0
		AYE: In a roll call vote, all members present vote Aye.
335	Chair Witt	The motion CARRIES.
		REP. BATES will lead discussion on the floor.
343	Chair Witt	Closes the work session on HB 2630 and opens a work session for the purpose of introducing committee bills.
<u>INTRODUCTION OF COMMITTEE BILLS</u>		
359	Clem	Gives brief summary of LC drafts.
383	Rep. Krummel	MOTION: Moves LC 3127, 3342, 4027 BE INTRODUCED as committee bills.
393	Rep. Walker	Asks who requested the LC drafts.
396	Chair Witt	Responds that they are his bill drafts.
		VOTE: 11-0
400	Chair Witt	Hearing no objection declares the motion CARRIED.
402	Chair Witt	Closes the work session. Comments on the upcoming meeting schedule and the committee bill introduction deadline.
422	Rep. Knopp	Asks if Monday would be the last day for committee bill introductions.
424	Chair Witt	Responds affirmatively.
444	Chair Witt	Asks if the “slamming” bill will be heard Wednesday.
451	Clem	Responds that HB 2821 will be heard.
455	Chair Witt	Comments further on the upcoming meeting schedule. Adjourns the committee at 5:25 p.m.

Submitted By,

Reviewed By,

Renee' Lunsford,
Committee Assistant

Daniel Clem,
Committee Administrator

EXHIBIT SUMMARY

- A – HB 2557, written material, Brant Wolf, 10 pp.**
- B – HB 2557, written material, Jeffrey Smith, 9 pp.**
- C – HB 2456, written testimony, Jon Stubenvoll, 4 pp.**