

# HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

April 11, 2001  
3:15 PM

Hearing Room 50  
Tapes 106 - 111

**MEMBERS PRESENT:**     **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**  
                                  **Patrick Brennan, Committee Assistant**  
                                  **Steve Kosiewicz, Committee Coordinator**  
                                  **Andrew Morris, Committee Assistant**  
                                  **Jennifer Simmons, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **HB 3277 Work Session**  
                                  **HB 2074 Work Session**  
                                  **HB 3874 Work Session**  
                                  **HB 2816 Work Session**  
                                  **HB 3007 Public Hearing**  
                                  **HB 3953 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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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 106, A</b>		
004	Chair Witt	Calls meeting to order at 3: p.m. Announces that HB 2244 will not be heard today. Opens a work session on HB 3277.
<b><u>HB 3277 WORK SESSION</u></b>		
026	Rep. Krummel	Explains the provisions of the proposed -1 amendments <b>(EXHIBIT A)</b> and -2 amendments <b>(EXHIBIT B)</b> .
054	Rep. Monnes-Anderson	Requests clarification regarding the funding source for the proposed amendments.
060	Rep. Krummel	Clarifies that the bill creates an exception value for the improvement of a piece of property, which takes five percent of the increased value of a piece of property, to be placed into a capital construction fund for schools.
070	Rep. Monnes-Anderson	Requests confirmation that the measure will reduce the amount of property tax revenue available to both state and local government.
074	Rep. Krummel	Assures that local governments will not lose any property tax revenue as a result of the bill.
080	Rep. Monnes-Anderson	Expresses concern about how the proposed amendments would affect her local school district.

087	Rep. Krummel	Describes the way in which HB 3277 will affect Rep. Monnes-Anderson's local school district: <ul style="list-style-type: none"> <li>• If there is growth in the district, \$5/1,000 of the increased assessed value will be sent to the school district for capital construction</li> <li>• 20 percent of the increased assessed value will go to the state school improvement fund</li> </ul>
109	Chair Witt	Concludes that the –2 amendments seek to share the wealth among all districts in the state.
117	Rep. Johnson	Asks how the state fund would be distributed.
122	Rep. Krummel	Responds that the Department of Revenue may have a role in determining where the money would be used.
133	Rep. Johnson	Wonders how equity will be assured for small schools in her district, especially those where population is declining.
140	Chair Witt	Replies that with regard to new construction requirements such districts do not have the same need for new construction, but those that do will have a pool of money from which to draw assistance.
150	Rep. Walker	Asks if the committee will get a chance to look at the fiscal and revenue impacts of the bill and the proposed amendments.
154	Chair Witt	Answers that the preliminary estimates are too sketchy to be reliable, adding that the House Committee on School Funding and Tax Fairness/Revenue (Revenue Committee) will be provided with accurate numbers.
156	Rep. Walker	Asks if any of the amendments address the concerns raised by the Oregon Education Association (OEA).
163	Rep. Krummel	Replies that he has not spoken to OEA representatives regarding the amendments. Says the education community's primary concern is that new dollars should be put into operation budgets.
181	Chair Witt	Notes that the 20 percent is a way to provide capital construction assistance for districts that need it.
187	Rep. Walker	Mentions that the League of Women Voters also had concerns with the bill that the Revenue Committee will need to address.
189	Rep. Devlin	Comments that the current system provides an equal amount of funding to districts. Acknowledges that there are concerns that reducing the amount of money that goes into the General Fund could hinder the state's ability to provide that assistance.
200	Chair Witt	Points out that the legislature created the local option property tax for schools, which many districts have not been able to take advantage of because of the need for bonding for new school construction. Asserts that HB 3277 will help school districts build new schools.
220	Rep. Devlin	Mentions that all school districts in his legislative district managed to pass local option levies despite also having school bonds on the ballot.
226	Rep. Krummel	Concludes this bill provides a method for school construction that does not require an increase in property taxes.
232	<b>Rep. Krummel</b>	<b>MOTION: Moves to ADOPT HB 3277-1 amendments dated 3/19/01.</b>
236		<b>VOTE: 11-0</b>
	<b>Chair Witt</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
237	<b>Rep. Krummel</b>	<b>MOTION: Moves to ADOPT HB 3277-2 amendments dated 3/22/01.</b>

248 **VOTE: 10-1**  
**AYE: 10 - Bates, Brown, Carlson, Devlin, Garrard, Johnson, Knopp, Krummel, Walker V, Witt**  
**NAY: 1 - Monnes Anderson**  
**The motion CARRIES.**

249 **Chair Witt**  
**Rep. Krummel** **MOTION: Moves HB 3277 to the floor with a DO PASS AS AMENDED recommendation.**

254 Rep. Carlson Explains she will support the motion, but may not support the bill when it comes to the House floor.

275 Rep. Walker Expresses opposition to the motion.

281 Rep. Brown States he will support the motion, but may not support the bill when it moves to floor consideration.

293 Rep. Krummel Comments that Washington and Deschutes County will not be the only areas to benefit from the bill as amended.

313 **VOTE: 8-3**  
**AYE: 8 - Bates, Brown, Carlson, Devlin, Garrard, Knopp, Krummel, Witt**  
**NAY: 3 - Johnson, Monnes Anderson, Walker V**  
**The motion CARRIES.**

314 **Chair Witt**  
Chair Witt Closes the work session on HB 3277 and opens a work session on HB 2074.

**HB 2074 WORK SESSION**

316 Dan Clem Committee Administrator. Reviews the provisions of HB 2074 and indicates some preliminary fiscal impact information he has received.

332 **Rep. Knopp** **MOTION: Moves HB 2074 to the floor with a DO PASS recommendation and BE REFERRED to the Committee on School Funding and Tax Fairness/Revenue by prior reference.**

338 Rep. Walker Indicates she opposes the motion.

361 Rep. Knopp Voices support for the motion.

373 Chair Witt Remarks that it will be difficult to gauge the revenue impact of the bill.

383 Rep. Bates Comments in support of the motion.

**TAPE 107, A**

001 Rep. Krummel Speaks up in support of the motion.

020 Rep. Monnes-Anderson Announces she will be voting against the motion.

034 Rep. Carlson States she will support the motion, but may not support the bill when it moves to the House floor.

044 Rep. Devlin Comments that there are many issues at play with regard to the bill. Agrees it will be difficult to determine a revenue impact for the measure. Notes that the previous tax did not seem to be an impediment to sales. Concludes that the issue may not be about the tax at all, considering that the internet allows avoidance of all user taxes.

068 Rep. Knopp Says he does not believe that the measure will result in increased tobacco consumption, adding that it could very likely increase sales receipts for local tobacco retailers. Submits that it makes sense to lower the tax sufficiently to bring in internet tobacco

		retailers interested in taking advantage of the lack of a sales tax in Oregon.
089	Rep. Bates	Mentions that some of the money raised goes to smoke suppression programs. Disagrees that smoking should be eradicated.
096	Chair Witt	Remarks that the tremendous growth in internet commerce is all the more reason to lower the tax to allow local retailers to remain competitive. Says the question is not whether people will smoke, but where those who do smoke will purchase them.
		Differentiates between cigar and cigarette smokers.
109		<b>VOTE: 8-3</b>
		<b>AYE: 8 - Bates, Brown, Carlson, Garrard, Johnson, Knopp, Krummel, Witt</b>
		<b>NAY: 3 - Devlin, Monnes Anderson, Walker V</b>
	<b>Chair Witt</b>	<b>The motion CARRIES.</b>
113	Chair Witt	Closes the work session on HB 2074 and opens a work session on HB 3874.
		<b><u>HB 3874 WORK SESSION</u></b>
115	Chair Witt	Indicates that there is insufficient information necessary to work the bill at this time. Expresses concern that the Oregon Health Department (OHD) makes tobacco education money contingent upon counties having programs for lobbying for anti-smoking ordinances. Indicates that he will ask the committee to approve a subpoena to require OHD to provide both the information requested and also any documents that may be related to requirements regarding lobbying for anti-smoking ordinances.
133	Dan Clem	Committee Administrator. Reads the prepared subpoena.
151	Rep. Walker	Mentions that the committee has been provided with copies of the -1 amendments ( <b>EXHIBIT C</b> ).
156	Clem	Asks whether OHD representatives were asked to be present at the hearing on the appointed date.
		Replies that OHD was contacted, but the legislative liaison, Katie King, was not spoken to directly before the meeting. Says he has spoken to Ms. King since, and that she indicated she had decided not to attend that meeting for reasons unknown.
167	Rep. Walker	Requests clarification whether OHD representatives were invited to attend the meeting or merely informed that there would be a meeting.
171	Clem	Answers that they were invited.
175	Rep. Walker	Asserts that the liaison should have attended the meeting.
182	Rep. Devlin	Opines that the bill places a superfluous imposition on OHD. Asks whether there was communication with the Division Director prior to the meeting.
185	Clem	Replies negatively.
188	Rep. Devlin	Comments that OHD representatives have indicated they will attend meetings when requested to do so. Mentions that he will not support the measure.
198	Chair Witt	Remarks that it is insulting when an agency does not attend and provide information when a legislative committee is considering legislation that affects large segments of the agency's budget.
220	Rep. Carlson	Requests that Ms. King speak to this issue.
228	Grant Higginson	Director, OHD, Department of Human Services (DHS). Indicates he received no contact from committee staff regarding

		the hearing in question, nor, to his knowledge, was anyone contacted with a request to come testify or provide information. Takes full responsibility for the decision made not to come speak the bill until specifically directed by committee staff to do so.
255	Rep. Carlson	Presumes the episode can be explained as a miscommunication. Presumes that committee staff may not have been privy to the same information as the members who wanted the testimony.
263	Chair Witt	Doubts that Mr. Higginson would knowingly avoid lobbying for a bill that has such a significant financial impact on OHD programs.
275	Higginson	Says the agency decided not to testify until it had something valuable to add to the discussion.
280	Chair Witt	Wonders why Mr. Higginson would not want to have an agency representative present to answer any questions the committee might have.
285	Higginson	Agrees it may have been a bad decision not to attend the meeting. Stresses that he has always come to testify when it was known that legislators wanted him to do so.
295	Chair Witt	Asks whether Mr. Higginson is prepared to provide the information requested by the subpoena.
302	Higginson	Indicates he intends to comply with the request. Offers to provide information at this time if the committee so desires.
314	Rep. Walker	Reiterates her objection to issuing the subpoena.
318	Rep. Knopp	Notes that the legislature is directed to pay for the records requested. Expresses a desire to ensure that all documents will be provided and says he is willing to wait and see if documents are provided without the need for subpoena.
332	Chair Witt	Agrees. Clarifies that the committee is interested in policies that require or cajole local governments to pass local smoking ordinances.
348	Higginson	Offers to provide the materials ahead of time to verify that the information is complete. Offers to testify at the hearing on April 16 <sup>th</sup> .
361	Rep. Garrard	Expresses belief that the matter was one of miscommunication.
365	Rep. Carlson	Requests documentation regarding any communications with Linn County.
377	Chair Witt	Mentions that Washington County turned down grants due to the requirements that came with them.
383	Rep. Knopp	Asks that staff ensure that the testimony be arranged in the future.
389	Rep. Devlin	Says that Mr. Higginson and his staff have historically been very willing to provide information in a timely manner.
412	Rep. Walker	Indicates that there are others who should be asked to testify regarding the bill as well.

**TAPE 106, B**

015	Chair Witt	Closes the work session on HB 3874 and opens a work session on HB 2816.
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**HB 2816 WORK SESSION**

020	Dan Clem	Committee Administrator. Provides a description of the bill and indicates that amendments have been provided previously for the committee's consideration. Distributes copies of the bill's fiscal impact statement.
055	Rep. Devlin	Presumes that the amendments will not have a fiscal impact

		significantly different from that of the original bill. Asks who put forth the –7 amendments.
080	Clem	Replies that the –7 amendments were submitted by Sen. George. Explains that the –7 amendments deal with two primary issues: <ul style="list-style-type: none"> <li>• Studying the impact of recycling products containing mercury</li> <li>• Creating an exchange/return program by adding a charge on such products</li> </ul>
100	<b>Rep. Devlin</b>	<b>MOTION: Moves to ADOPT HB 2816-5 amendments.</b>
104	Rep. Monnes-Anderson	Asks how the bill addresses thermostats.
107	Rep. Devlin	Discusses the efforts of the work group to reach consensus on all areas and says that thermostats were the one area where consensus was not accomplished. Indicates that the –5 amendments prohibit the installation of thermostats containing mercury after January 1 <sup>st</sup> , 2003.
115	Rep. Walker	Requests an explanation of the difference between the two types of toxin.
120	Rep. Bates	Explains the difference between bioaccumulative toxins and neurotoxins: <ul style="list-style-type: none"> <li>• Neurotoxins attack the brain or peripheral nervous system, sometimes resulting in death or long-term debilitation</li> <li>• Bioaccumulative toxins build up in the body through repeated consumption of items containing the toxin</li> </ul> Mentions that mercury is known to be both a neurotoxin and a bioaccumulative toxin.
133	Rep. Walker	Notes that the –5 amendments refer to mercury only as a neurotoxin.
135	Rep. Devlin	Assures that the work group discussed virtually every word in the bill at length. Reiterates that the work group agreed on every issue, save for thermostats.
175	Rep. Jeff Merkley	House District 16. Testifies in support of HB 2816 and the –5 amendments. Applauds the work group for making strides toward compromise on many issues. Comments that mercury is a “background element” present in virtually everything, which makes it important to discern where it has been concentrated by human action. Says the system proposed protects retailers by providing a complaint-driven mechanism. Indicates that retailers will be subject to penalty only if they are found to be selling a product after having been informed that it contains unacceptable levels of mercury.
205	Rep. Johnson	Requests a list of the organizations represented in the work group.
210	Rep. Devlin	Describes the groups represented in the work group.
217	Rep. Johnson	Indicates she has heard two versions regarding whether significant concessions were offered by the Oregon Environmental Council (OEC) and asks Rep. Merkley for his assessment.
227	Rep. Merkley	Responds that the two specific issues he worked with were novelties and thermostats, though he did review other compromises made and assures both sides made concessions on

all issues. Says there is a recycling program, used by 14 other states, consisting of taking mercury devices back to the distributor for safe disposal. Laments that there is no accurate way to tell how many thermostats are actually recycled, though it is likely that the number is relatively small, considering the lack of incentive to do so. Mentions that OEC would prefer an outright ban to a recycling program.

281 Rep. Johnson Asks if there was discussion of a phased ban.

284 Rep. Merkley Replies that he is unaware of any such discussion.

287 Rep. Devlin Recalls discussion to phase in a potential ban, adding that the proposal was unacceptable to the manufacturers. Reiterates that parties met several times to work out differences, but that the two sides are so far apart that the committee will need to make a choice between proposals.

288 Rep. Knopp Wonders why the thermostat issue is problematic, as there does not appear to be an economic impact.

320 Brian Boe Honeywell Corporation. States that the bill requires a product stewardship program, the likes of which have become popular and effective in other parts of the United States. Indicates that when such programs are successful they often lead to a ban on the affected products. Says that recovery programs are relatively new and no data is available as to what percentage of the products is recovered.

346 Rep. Knopp Asks whether thermostats containing mercury are banned by any other states.

350 Boe Replies that programs in other states vary in scope, though none have banned the products entirely. Says HB 2816 was based on the Minnesota model, which is believed to be the most effective available, but does not contain a critical element that the installers who remove mercury devices properly dispose of them at a recycling facility. Concludes that the mechanism will not be effective, as there is no front-end control.

380 Laura Weiss OEC. Expresses belief that compliance will follow if the program is implemented. Says that data from other states show that recycling programs are effective only to a limited extent, which is why it makes more sense to phase out such products in favor of cost-effective alternatives that do not contain mercury.

**TAPE 107, B**

003 Rep. Knopp Asks whether OEC is opposed to the option of recycling and disposal.

006 Weiss Replies that OEC is open to the option.

008 Rep. Carlson Indicates she is pleased to see that the two sides are so close on the issue. Expresses hope that consensus might be reached. Notes that lines 9-17 of the -5 amendments refer to the collection of thermostats. Refers to page 10, discussing the ban.

026 Boe Comments on the enforcement mandate.

033 Rep. Carlson Asks whether the language in question accomplishes the front-end piece

038 Boe Agrees that accomplishes part of the front-end piece, specifically the requirement that the thermostats be labeled, but that there is also a need to ensure that installers handle the equipment properly,

043 Rep. Carlson Asks whether the Department of Consumer and Business Services (DCBS) accomplish that through administrative rule.

044	Boe	Replies that the DCBS Director would likely not deviate into that area unless directed to do so by statute.
048	Rep. Carlson	Says one of her concerns was to avoid imposing an unnecessary burden on the industry. Asks whether the parties agreed upon the 2002 implementation date.
057	Weiss	Explains that the 2002 date is for implementation of the labeling requirement, while the ban is located in section 5. Notes that the –5 amendments do not ban the sale of thermostats containing mercury, but instead ban their installation.
069	Rep. Carlson	Acknowledges that the rules must go into effect by that date and asks whether a ban could be phased in over a longer period of time.
072	Weiss	Replies that may be possible, but says there are already viable alternative products on the market.
078	Rep. Merkley	Mentions that section 6 requires that any rules adopted via section 5 take effect after the aforementioned date.
083	Rep. Devlin	Says he made the recommendation to put in just the ban and not the other parts, which was unacceptable to the other parties. Says that the –5 amendments address several positions related to the measure and replace much of it as a result. Suggests that action be taken on the amendment so that further action can occur later.
101	Rep. Knopp	Mentions that a mercury additive to some vaccines is still being used, and an amendment to the additive has been submitted that would ban such additives. Suggests the committee take action on the –5 amendments.
117	Chair Witt	Recognizes that a good faith effort has been made to address the views and objections of all parties. Acknowledges that this is a serious subject, especially considering the enormous health consequences.
131	Rep. Krummel	Says he will support the motion to adopt the –5 amendments. States the importance of continuing to provide mercury to chemistry classrooms.
165		<b>VOTE: 11-0</b>
	<b>Chair Witt</b>	<b>AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.</b>
177	Chair Witt	Closes the work session on HB 2816 and opens a public hearing on HB 3007.

**HB 3007 PUBLIC HEARING**

181	Dan Clem	Committee Administrator. Gives a brief description of the bill. Indicates that the –2 amendments ( <b>EXHIBIT D</b> ), -3 amendments ( <b>EXHIBIT E</b> ), and –4 amendments ( <b>EXHIBIT F</b> ) have been submitted for the committee’s consideration.
233	Chair Witt	Indicates that he is the sponsor of the bill. States that the –3 amendments should be the primary focus of the committee’s attention.
241	Robert Goldberg	General Counsel, Business Technology Association (BTA). Testifies in support of HB 3007. Provides a history of the BTA and describes its membership.
290	Goldberg	Describes the provisions of the Model Dealer Agreement: <ul style="list-style-type: none"> <li>• Establishes the standard of interpretation for the agreement and the fair relationship between parties</li> <li>• Addresses sales quotas imposed upon dealer resellers, to be</li> </ul>



based upon a recognized index

- Establishes that the term of the agreement should remain open (“evergreen”) to prevent termination of relationship for convenience

- Provides for mediation and arbitration of disputes

340 Goldberg

Asserts that the bill allows an orderly process and preserves competition in the marketplace. Requests that the committee consider deleting language that encourages arbitration of disputes due to the high cost to dealer/resellers. Concludes that HB 3007 would greatly benefit the business equipment and systems industry and encourages passage.

395 Rep. Carlson

Wonders why these types of things be negotiated by businesses and entered into binding contracts.

402 Goldberg

Answers that would be the way it should work, but in reality those with excessive market power can dictate one-sided terms and conditions to dealers.

**TAPE 108, A**

012 Rep. Carlson

Asks if HB 3007 would inhibit the process of offering dealer discounts.

015 Goldberg

Replies that he does not believe the bill would prohibit such agreements, so long as they are made in good faith and adhered to. Reiterates that the bill only protects dealers who uphold agreements.

026 Rep. Johnson

Says she has observed that most manufacturers desire to keep qualified dealers of their product. Asks whether the state should regulate private business transactions.

041 Goldberg

Responds that in his industry there are dealers that do not have the economic leverage.

054 Darrell Fuller

Oregon Auto Dealers Association (OADA). Testifies in support of HB 3007. Explains the difference between a franchise agreement and a negotiated contract. Says that state law provides an automobile dealer’s only protection against being pushed around by manufacturers. Describes how the dealer-manufacturer relationship impacts customers.

105 Fuller

Provides examples of how manufacturers sometimes seek to influence even minor details of a dealer’s business. Draws an analogy with the regulation of credit card companies.

123 Rep. Johnson

Disagrees with the credit card analogy, as no one forces a person to own a credit card.

140 Chair Witt

Offers an example of a dealer that enters into an agreement with a manufacturer, who four years later cancels the agreement in favor of becoming a direct distributor. Says in such a case the dealer has invested heavily and in good faith and has become reliant on the agreement. Emphasizes that big manufacturers have the ability, and oftentimes the motivation, to discard dealers who no longer serve their purposes.

166 Fuller

Mentions that there are automobile dealers in Oregon that are third-generation Chevrolet dealers, for example, whose business has become tied inextricably with the brand name they work with. Provides an example of “dualled” dealers in rural Oregon, offering two product lines (such as Toyota and Subaru), and says many were forced to offer stand-alone dealerships or face the potential loss of one of the manufacturers.

202	Chair Witt	Comments that the amendments address cases where ongoing maintenance and parts are part of the essential business relationship between dealers and customers. Indicates there are occasions when a dealer loses access to parts that are essential for its continued existence.
210	Rep. Garrard	Asks how many other states have laws similar to HB 3007.
212	Goldberg	Clarifies that franchise laws do not apply and says there are no states that have passed this type of legislation as yet.
218	Chair Witt	Asks if there are other fields where virtually all contracts contain standard provisions that are used by virtually all the manufacturers in the field.
223	Goldberg	Responds affirmatively.
230	Chair Witt	Requests comment regarding the types of investments a dealer makes when taking on a new product line.
232	Goldberg	Describes the process by which a dealer establishes a new product line: <ul style="list-style-type: none"> <li>• Advertising for the products</li> <li>• Training sales people on the full product line</li> <li>• Training a technician for each model</li> <li>• Inventory products and parts</li> </ul> Estimates that taking on a new product line, such as photocopiers, costs in excess of \$200,000.
244	Chair Witt	Inquires as to the typical balance of power between dealers and manufacturers.
247	Goldberg	Responds the dealers have little power over the manufacturers, although it would be much less without dealer organizations.
258	Chair Witt	Asks about the role that parts and technical support play in the equation.
261	Goldberg	Asserts that without access to parts it is impossible for dealers to fulfill their service obligations. Emphasizes that when a product fails it is the dealer to whom the consumer turns most often.
267	Chair Witt	Requests a response to the assertion that HB 3007 represents an intrusion on the freedom of contract.
268	Goldberg	Disputes the assertion, as the current environment does not allow for negotiated contracts, but instead offers only “take-it-or-leave-it contracts.”
294	Julie Brandis	Associated Oregon Industries (AOI). Testifies in opposition to HB 3007. Acknowledges that the –3 amendments address some concerns with the bill. Mentions that many contracts are short because the economy changes so rapidly.
309	Jim Craven	American Electronics Association (AEA). Testifies in opposition to HB 3007 ( <b>EXHIBIT G</b> ). States that many manufacturers use “channel distribution” to get their products to customers. Recognizes that there are instances where one party feels they have been treated unfairly but disputes that the strategies employed by the bill are the right way to approach the problem.
344	Carlos Cardoso	Public Affairs Manager, Hewlett-Packard. Testifies in opposition to HB 3007 ( <b>EXHIBIT H</b> ). Asserts that the bill would restrict the ability of manufacturers to ensure dealers carry through the contracts they have willingly signed. Asserts that the bill would negatively affect consumers.

382	Rep. Knopp	Recalls testimony that the contracts that were “willingly signed” are instead take-it-or-leave-it contracts. Asks whether contracts are commonly negotiated in the industry.
400	Janet McAllister	Contracts and Compliance Manager, Channel Alliances and Partner Organizations, Hewlett-Packard. Responds that Hewlett-Packard does negotiate contracts, both at inception and at renewal.
408	Rep. Knopp	Asks if there are actual changes in provisions based upon the negotiations.
415	McAllister	Confirms that changes are made to contracts when appropriate.
420	Chair Witt	Asks how the bill could possibly infringe on the manufacturer’s ability to ensure that dealers comply with contracts, considering that the bill has a right-to-cancel provision in cases where dealers are not compliant with the contract.
429	McAllister	Answers that contracts are explicit but are open for negotiation on an annual basis. States that either party can cancel the contract and relationship at any time.
454	Chair Witt	Repeats the previous question.
461	McAllister	Says that depending on the product, some retailers agree to engage in specific activities or behaviors in return for discounts. Submits that when there is significant misbehavior the manufacturer must have the ability to terminate an agreement.

**TAPE 109, A**

040	Chair Witt	Comments that he is being told that manufacturers do not terminate contracts often at the same time he is also being told that it is vital that manufacturers have the ability to terminate contracts.
045	McAllister	Remarks that she has terminated 10 accounts (out of over 20,000) during the last 10 months.
052	Charles Williamson	Valley Wine Company. Testifies in support of the –3 amendments to HB 3007.
067	Chair Witt	Closes the public hearing on HB 3007 and opens a public hearing on HB 3953.

**HB 3953 PUBLIC HEARING**

080	Dan Clem	Committee Administrator. Gives a brief description of the bill.
100	Rep. Phil Barnhart	House District 40. Testifies in opposition to HB 3953. Discusses the Eugene ordinance and relates a personal anecdote. Comments on the benefits of local control. Describes the possible effects of the bill.
187	Rep. Kelley Wirth	House District 35. Testifies in opposition to HB 3953 <b>(EXHIBIT I)</b> . Discusses the Corvallis ordinance. Asserts that the measure is an attempt to overturn more restrictive local smoking ordinances. Emphasizes the need for local control
237	Rep. Johnson	Asks whether disparities between ordinances in various cities present a problem for those travelling through the state.
240	Rep. Wirth	Replies that local ordinances are very clear and are posted for patrons to see in establishments.
257	Rep. Johnson	Asks whether independent jurisdiction is appropriate.
264	Rep. Wirth	Responds affirmatively. Clarifies that her opposition has no relation to the Corvallis ordinance.
286	Rep. Knopp	Comments on ordinances dating back to the early 1990s regarding homosexuals that were overturned by the legislature. Asks whether those ordinances should have been allowed to stand.

292	Rep. Wirth	Replies that ordinances against homosexuals are discriminatory and therefore not a local issue.
300	Rep. Devlin	Opines that preemption bills are problematic because of the differences between communities throughout the state. Remarks that there are places where enforcement might be difficult. Asks if it might be possible to clarify what types of businesses are affected by particular ordinances.
355	Rep. Wirth	Comments that local authority is accompanied by the responsibility of notifying businesses that may be affected. Disagrees that patrons would be unclear as to whether smoking is allowed, as signage would make matters clear.
375	Rep. Garrard	States support for the measure, as communities should not be able to outlaw behaviors they deem to be distasteful. Supposes a community in the future may decide to ban eating meat.
385	Rep. Wirth	Counters that it is the bill that is proscriptive and says that is the reason for her opposition.
406	Rep. Bill Morrisette	House District 42. Testifies in opposition to HB 3953.
<b>TAPE 108, B</b> 002	Rep. Devlin	Mentions that the Oregon legislature passed a law nullifying local ordinances that run counter to state law.
013	Rep. Morrisette	Mentions HJR 37, a constitutional amendment that declares a general civil law may not restrict the right of chartered communities to legislate on matters of predominantly local concern under the scope of the charter. Says if there is disagreement as to whether the ordinance in question is a local concern the courts should decide. Argues that smoking is an issue of local concern. Remarks that it is easier for opponents of smoking ordinances to oppose them in the legislature than it is for them to oppose them at the local level.
056	Rep. Diane Rosenbaum	House District 14. Testifies in opposition to HB 3953 <b>(EXHIBIT J)</b> . Discusses the issues work safety and the effects of secondhand smoke. Submits a letter <b>(EXHIBIT K)</b> from a constituent regarding smoking ordinances. Describes existing local laws.
159	Chair Witt	Asks whether Rep. Rosenbaum would oppose the measure if it was a California-style ban on all smoking in restaurants, bars, and other work places.
166	Rep. Rosenbaum	Replies that she would not oppose such a ban.
170	Chair Witt	Concludes that Rep. Rosenbaum would not oppose the bill if it created the policy goal that she seeks to achieve, whether or not it trumped local control.
172	Rep. Wirth	Replies that she would oppose such a bill if it overturned existing ordinances or proscribed new ones.
178	Chair Witt	Asks if either Rep. Wirth or Rep. Rosenbaum is aware of any place where an employee is required to work where there is secondhand smoke.
181	Rep. Rosenbaum	Answers that no one is forced into employment into a place where smoking is allowed, but says that not all Oregonians have the same employment opportunities, meaning that some of them are compelled to do so for economic reasons.
191	Chair Witt	Asks if the same is true for the majority of restaurants in Oregon.
194	Rep. Rosenbaum	Comments that waitresses who work at a nonsmoking restaurant attached to a bar that allows smoking are often required to go into the smoke-filled bar to fill drink orders from restaurant

		patrons.
201	Chair Witt	Asks how the bill would affect Multnomah County's ordinance.
207	Rep. Rosenbaum	Concludes that the measure is similar to the Multnomah County ordinance.
213	Rep. Devlin	Notes that the bill amends existing state law, specifically the Indoor Clean Air Act. Asks whether they would support local control if the local government wished to have a lesser standard than the one adopted by the state.
235	Rep. Wirth	Responds that state law supercedes local ordinances.
248	Rep. Devlin	Asks whether local control should be given preference in this area.
251	Rep. Rosenbaum	Opines that there is a difference between comprehensive laws that can be exceeded by local governments and those that could be lessened by local governments.
297	Chair Witt	Asks Rep. Wirth about her opinion of current state laws affecting smoking that may also interfere with local control on the issue.
304	Rep. Wirth	Clarifies that she believes that a comprehensive state law, where one exists, should provide only a floor, not a ceiling.
315	Rep. Johnson	Asks if Rep. Wirth believes that banning smoking in public places, including restaurants, is good public policy.
323	Rep. Wirth	Responds affirmatively, presuming that local government retains the ability to move above and beyond the statewide standard.
341	Rep. Rosenbaum	Comments that she appreciates that the bill seeks to extend protection but disagrees with the need for the bill to then take away the ability of local governments to move beyond it and place additional restrictions.
361	Bill Perry	Oregon Restaurant Association (ORA). Testifies in support of HB 3953 ( <b>EXHIBIT L</b> ). States the bill in its current form would not affect existing ordinances. Comments on local control.
<b>TAPE 109, B</b>		
001	Perry	Refers to customer counts in the study of the Corvallis ordinance and notes that 27 percent of customers are from outside Corvallis.
009	Rep. Monnes-Anderson	Asks what percentage of bar patrons frequented the establishments prior to the passage of the ordinance.
015	Perry	Replies he does not. Asserts that the anecdotal evidence is clear that the ordinance has been bad for bars and taverns in Corvallis, as sales, tip income, and video poker receipts have declined by margins as high as 30 percent since the ordinance went into effect. Notes that customer counts have also dropped, as has monthly income for bars and taverns. Elaborates on the statistics demonstrating the depressive effect of the Corvallis ordinance.
060	Perry	States that there is no evidence whatsoever that anti-smoking ordinances have any economic benefit to bars or taverns. Asserts that pushing bar patrons who wish to smoke outside leads to new problems, such as noise pollution, that can disturb surrounding businesses. Suggests that the smoking ban may contribute to increased instances of driving under the influence of intoxicants as patrons choose taverns in other cities to frequent. Comments that local jurisdictions have already been overruled, as Multnomah County superceded Portland's ordinance. Remarks that most of the affected establishments are already regulated by state agencies.
092	Connie Hunt	Restaurant Owner, Portland. Testifies in support of HB 3953.

		Agrees with Mr. Perry that banning smoking in bars will displace patrons into streets and sidewalks. Declares that crowds of smokers milling on sidewalks from nearby bars could hurt business at her smoke-free restaurant.
150	Rep. Monnes Anderson	Asks Ms. Hunt if she would be amenable to amending the bill so that it sets the floor for state smoking ordinances, rather than the ceiling.
160	Hunt	Responds negatively. Comments on local jurisdictions.
171	Perry	Assures that ORA does not support smoking. Emphasizes the need to try to address the concerns of communities as best as possible.
192	Rep. Devlin	Asks if ORA might support an amendment to change the bill so that it affects only stand-alone establishments.
203	Perry	Responds that such amendments would negatively affect consumers.
221	Rep. Devlin	Asks if there is any way to cover bingo game events as exemptions under current law.
240	Perry	Clarifies that the intent was to include bingo halls, which is why he requested that Legislative Counsel include the language in question. Emphasizes the need for a statewide standard.
290	Rep. Devlin	Asks whether preemption is necessary.
294	Perry	Acknowledges that ORA members fear anti-smoking ordinances and says preemption is necessary. Remarks that restaurants are one of the few industries where the product is consumed onsite.
336	John Hellen	Charitable Gaming Association. Testifies in support of HB 3953 ( <b>EXHIBIT M</b> ). States that because of competition from tribal casinos and bingo gaming in Washington State, Oregon's bingo entrepreneurs need all the attractions they can offer. Asserts that local smoking bans threaten the livelihood of many of the state's charitable organizations.
400	John Nichols	Disabled American Veterans Bingo Hall, Northeast Portland. Testifies in support of HB 3953 ( <b>EXHIBIT N</b> ). Asserts that no one forces people to attend bingo parlors, adding that 90 percent of the players and virtually all of the employees at his establishment are smokers.
<b>TAPE 110, A</b>		
000	Nichols	Relates a personal anecdote.
037	Clark Hansen	Eugene Bingo Manager, ARC of Oregon. Testifies in support of HB 3953. States that bingo revenues represent a large portion of the ARC budget, which is currently threatened by Eugene's anti-smoking ordinance. Notes that between 70-80 percent of his customers smoke, as do the vast majority of the employees.
062	Chair Witt	Inquires whether the employees who work at ARC have an economic dependence on their job that prevents them from seeking alternative employment.
075	Hansen	Responds that most bingo workers are former bingo players and that the employment is part-time only.
085	Hellen	Argues that the incentive of tip wages to work in bars and taverns is probably greater than the disincentive to work in an environment where smoking is allowed.
098	Greg Hitchcock	Attorney. Testifies in support of HB 3953 ( <b>EXHIBIT O</b> ). Describes the negative impact the Eugene ordinance will have on bingo parlor revenues there. Asserts that anti-smoking

		ordinances do not protect bingo parlor workers, who themselves are usually smokers. Mentions that many bingo establishments now offer separately ventilated non-smoking rooms.
134	Corey Fisher	Board Member, Mt. Hood Ski Foundation. Testifies in support of HB 3953. States that her foundation raises over \$1 million for athletic charities, which are threatened by smoking ordinances.
145	Tammi Cole	Manager, Willamette Valley Track and Field of Eugene Bingo Mania. Testifies in support of HB 3953. Mentions that most of her customers and employees are smokers. Describes the effect Eugene's ordinance will have on her organization, possibly forcing them to move outside of the ordinances affected area. Asserts that adults should have choices as to social gathering places and that bingo parlors should be allowed to offer an alternative where patrons are allowed to smoke.
200	Robert Becker	Benton County Tobacco Free Coalition. Testifies in opposition to HB 3953 ( <b>EXHIBIT P</b> ). States that smoking is the single preventable cause of heart disease. Describes the health effects of secondhand smoke. Opposes preemption of local smoking ordinances.
270	Chair Witt	Notes that the bill imposes a smoking ban on restaurants in many cities where no such ban currently exists. Asks at what point personal choice should be given priority.
282	Becker	Concedes that this is a difficult issue. Asserts that all workers should be protected from secondhand smoke. Says his coalition does its best to educate people about the dangers of smoking and concurrently work to advance legislation to that effect.
291	Chair Witt	Requests response to the earlier comments that bar patrons will simply go out onto sidewalks and streets in order to smoke.
294	Becker	Expresses hope that there would be some way to provide an outside area where smokers could congregate.
302	Rep. Johnson	Requests additional information about the Benton County Tobacco Free Coalition.
308	Becker	Describes the makeup and goal of the coalition.
333	Melvin Kohn	Oregon Health Division (OHD), Department of Human Services (DHS). Testifies in opposition to HB 3953 ( <b>EXHIBIT Q</b> ). Discusses the effects of secondhand smoke and says local ordinances now protect 30 percent of Oregon employees from those effects. Objects to state preemption of local smoking ordinances. Mentions that public opinion favors bans against smoking in the workplace.
<b>TAPE 111, A</b>		
001	Chair Witt	Asks if there is a study documenting the statistics Mr. Kohn has quoted regarding secondhand smoke.
005	Kohn	Replies that the estimates are based upon cases of certain diseases in Oregon and evidence of how secondhand smoke contributes to or exacerbates those conditions.
007	Chair Witt	Requests documentation be presented to the committee at a later time to verify these assertions.
014	Kohn	Differentiates between the preemption imposed by HB 3953 with that imposed by the Multnomah County ordinance.
023	Chair Witt	Asks why Mr. Kohn is basing his conclusion regarding the bill on a political conclusion, as opposed to a public health conclusion.

028	Kohn	Responds that the division’s conclusion is based upon what is in the best interest of the advancement of public health in the State of Oregon.
037	Chair Witt	Asks whether Mr. Kohn is concerned about the possibility of smokers simply taking to streets and sidewalks to smoke cigarettes.
042	Kohn	Acknowledges that is an issue that local businesses will need to grapple with.
047	Chair Witt	Requests confirmation that the objection to the bill is that it would interfere with the ability of local communities to decide what they will do.
050	Kohn	Concedes that is one of the objections the division has to the bill.
053	Chair Witt	Concludes that Mr. Kohn is interested in local control only insofar as it advances the policy decisions that he supports.
057	Kohn	Disagrees, pointing out that many local governments do not have bans on smoking.
064	John Chism	American Heart Association (AHA). Testifies in opposition to HB 3953. Says AHA does not accept government funds, adding that it operates solely on contributions.
069	Jerry Spegman	American Cancer Society (ACS). Testifies in opposition to HB 3953.
075	Warden Minor	American Lung Association (ALA). Testifies in opposition to HB 3953 ( <b>EXHIBIT R</b> ). Pronounces the bill to be “a public health disaster.” Asserts that the bill is a “Trojan horse” designed to defeat in Salem numerous local anti-smoking ordinances that could not be defeated at the local level.
120	Rep. Johnson	Asks how the money from Ballot Measure 44 is spent.
133	Minor	Describes the use of Ballot Measure 44 funds and describes ALA as a “pass through” for the funds.
139	Rep. Johnson	Asks about the relationship between the Portland Opera and the American Cancer Society.
141	Minor	Assures that the program in question had no relation to anti-smoking ordinances and says it is no longer in operation. Remarks that only a fraction of the \$17 million is used to fund local coalitions.
158	Chair Witt	Asks why Washington County turned down the funds.
160	Minor	Replies that he is unaware of the particulars of that case.
165	Chair Witt	Disputes the use of the speed zone analogy, as different speed limits do not have negative effects on local businesses or the economy. Comments that the bill bans smoking in all restaurants and taverns that are not posted “no minors allowed,” and asks how such a measure can be considered to be a “public health disaster.”
173	Spegman	Answers that the bill allows the designation of a cocktail lounge as a smoking area within the establishment. Notes that over 80 percent of restaurants in Oregon are already smoke free, meaning that the bill only codifies what the marketplace is already delivering, but also halts the groundswell of bans on smoking where the industry has not taken action on its own.
203	Chair Witt	Responds that 30 percent of the state has restrictive ordinances relative to restaurants and taverns. States that if the measure passes the remaining 70 percent of the state will be subject to restrictions more stringent than what they are currently under.
210	Spegman	Agrees with the accuracy of the numbers but reiterates that the



problem is that it does not ban smoking in places where the market has failed to do so. Says that the ordinances in Multnomah and Benton Counties and in the Cities of Eugene and Corvallis cover a wide range of work places, while HB 3953 deals only with restaurants and some taverns.

225 Chair Witt Inquires about the use of tax dollars to promote passage of anti-smoking ordinances.

235 Spegman Responds that tax money is not being used for that, describing the Lake Oswego effort. Assures that county coalitions are extremely careful as to how the public funds are used.

255 Rep. Devlin Concludes that AHA, ACS, and ALA would prefer a total ban on smoking in all public work places. Asks whether the organizations would support a comprehensive statewide ban on smoking in all public places.

274 Wendy Watson Bartender, Eugene. Testifies in opposition to HB 3953. Emphasizes the need for workplace protection from carcinogens. Compares her exposure to secondhand smoke to that of office workers exposed to asbestos. Says many bar employees in the Eugene area were threatened with termination if they were to get involved with the effort to pass an anti-smoking ordinance.

302 Richard Lee Restaurant Manager, Eugene. Testifies in opposition to HB 3953. Says he has three employees who are smokers who still support the local smoking ban. Mentions one employee who was forced for economic reasons to work through her entire pregnancy and expose herself and her unborn child to secondhand smoke.

337 Gary Oxman Physician, Multnomah County. Testifies in opposition to HB 3953 (**EXHIBIT S**). Discusses the adverse health effects of secondhand smoke. Disagrees that HB 3953 is similar to the Multnomah County ordinance. Asserts that the bill increases the number of businesses that are exempt from many of the local anti-smoking ordinances.

**TAPE 110, B**

001 Chair Witt Explains the intent of HB 3953 is to prevent bans on smoking in places where minors are not permitted.

006 Oxman Disagrees with the chair's interpretation, stating that the bill would overturn other provisions of the Multnomah County ordinance.

012 Chair Witt Offers to confirm his perspective with the bill's proponents and amend the language of the measure accordingly if necessary.

031 Rep. Devlin Comments that the exemptions in section four would seem to be overly broad and have the effect that Mr. Oxman suggests.

037 Chair Witt Agrees and says it will be addressed.

044 Lee Mentions his establishment has an outside area that is being converted for use during winter months. Opines that the issue should be one of local concern.

084 Chair Witt Asks whether those employed in establishments that allow smoking have alternatives for employment.

085 Watson Responds that asking a bartender to choose another profession because of the dangers of secondhand smoke is akin to asking an office worker to choose another career to avoid asbestos in the walls of their office building.

115 Stevie Burden Mayor, Wheeler, Oregon. Testifies in opposition to HB 3953 (**EXHIBIT T**). Comments on Wheeler's efforts to reduce youth

203	Chair Witt	access to tobacco products. Asserts that one of the tobacco industry's common tactics is to pass pre-emptive legislation. Remarks that the bill will prevent local governments from protecting some of their most vulnerable citizens. Asks whether the bill's passage would lead to restaurants choosing not to post "no minors allowed" signs in order to continue prohibiting smoking.
215	Burden	Responds doubtfully. States that the issue is not just about being fair to minors, but is also about fairness to employees.
242	Bonny Bettman	Eugene City Council Member. Testifies in opposition of HB 3953. Provides background information regarding the Eugene ordinance.
295	Bettman	Recalls testimony from employees in bars and taverns who feared they would lose their jobs if it was discovered they were supportive of the ordinance. Submits that employees do not always have options as to where to work.
341	Pete Shepard	Department of Justice (DOJ). Testifies in opposition to HB 3953. Indicates that Attorney General Hardy Myers is strongly opposed to the bill and will work to defeat it. Comments regarding issues of local control.
<b>TAPE 111, B</b>		
015	Christy Monson	League of Oregon Cities (LOC). Testifies in opposition to HB 3953 ( <b>EXHIBIT U</b> ). Declares the bill is not about smoking but about local decision-making. Asserts there is no statewide interest in preventing local communities from banning smoking in public places.
063	Hellen Berg	Mayor, Corvallis. Testifies in opposition to HB 3953. Relates an anecdote relating to Corvallis.
121	Rep. Johnson	Asks who paid for the studies performed in Corvallis.
125	Berg	Answers that the city paid for the studies with local money.
130	Ken Hector	Mayor, Silverton. Testifies in opposition to HB 3953. Emphasizes the need to allow for local control.
195	Chair Witt	Closes the public hearing on HB 3953 and adjourns the meeting at 8:53 p.m.

Submitted By,

Reviewed By,

Patrick Brennan,  
Committee Assistant

Daniel Clem,  
Committee Administrator

**EXHIBIT SUMMARY**

- A – HB 3277, -1 amendments, staff, 1 p.**
- B – HB 3277, -2 amendments, staff, 3 pp.**
- C – HB 3874, -1 amendments, staff, 2 pp.**
- D – HB 3007, -2 amendments, staff, 1 p.**
- E – HB 3007, -3 amendments, staff, 3 pp.**
- F – HB 3007, -4 amendments, staff, 1 p.**
- G – HB 3007, testimony, Jim Craven, 1 p.**
- H – HB 3007, testimony, Carlos Cardozo, 1 p.**

**I – HB 3953, testimony, Rep. Kelley Wirth, 1 p.**  
**J – HB 3953, testimony, Rep. Diane Rosenbaum, 1 p.**  
**K – HB 3953, testimony, Darryl Joannides, 1 p.**  
**L – HB 3953, testimony and informational materials, Bill Perry, 16 pp.**  
**M – HB 3953, testimony, John Hellen, 1 p.**  
**N – HB 3953, testimony, John Nichols, 1 p.**  
**O – HB 3953, testimony, Greg Hitchcock, 3 pp.**  
**P – HB 3953, testimony, Robert Becker, 1 p.**  
**Q – HB 3953, testimony, Melvin Kohn, 2 pp.**  
**R – HB 3953, testimony and informational materials, Warden Minor, 3 pp.**  
**S – HB 3953, testimony and informational materials, Gary Oxman, 9 pp.**  
**T – HB 3953, testimony, Stevie Burden, 2 pp.**  
**U – HB 3953, testimony, Christy Monson, 2 pp.**