

HOUSE COMMITTEE ON COMMERCE

March 19, 1999 Hearing Room 350

1:00 p.m. Tapes 27 - 28

MEMBERS PRESENT: Rep. Jim Hill, Chair

Rep. Ryan Deckert, Vice-Chair

Rep. Al King

Rep. Jerry Krummel

Rep. Bob Montgomery

Rep. Anitra Rasmussen

Rep. Diane Rosenbaum

Rep. Mark Simmons

MEMBER EXCUSED: Rep. Bill Witt

STAFF PRESENT: Jason Cody, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD:

SB 297 ñ Work Session

HB 2728 ñ Public Hearing

HB 2160 ñ 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 27, A		

002	Chair Rep. Hill	Calls meeting to order at 1:08 p.m. and opens the work session on SB 297.
<u>SB 297 ñ WORK SESSION</u>		
016	Jason Cody	Administrator. Explains SB 297.
019	Rep. Rosenbaum	Informs members that SB 297 comes to the full committee from the Subcommittee on Trade and Economic Development. It expands eligibility for the Oregon Telephone Assistance Plan that provides assistance in paying telephone bill for low-income customers. Explains that the program eligibility is linked to the eligibility for the federal food stamp program. The bill creates a new definition of who is eligible.
036	Rep. Rosenbaum	MOTION: Moves SB 297 to the floor with a DO PASS recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 3 - Reps. Krummel, Simmons, Witt
	Chair Hill	The motion CARRIES.
045	Chair Hill	Opens a public hearing on HB 2728.
<u>HB 2728 ñ PUBLIC HEARING</u>		
048	Cody	Reviews HB 2728.
055	Rep. Ryan Deckert	Testifies in support of HB 2728 and proposes the HB 2728-1 amendments (EXHIBIT A).
100	Rep. Deckert	Continues statement.
127	Rep. King	Asks if this would apply to events at Western Oregon University.
128	Rep. Deckert	Responds it would apply if the event were held in the auditorium and they had contracted with one ticket vendor.

130	Rep. Rasmussen	Comments that promoters might be placing their profits into the service charges.
139	Rep. Deckert	Comments If taxpayers fund the buildings, they should not be charged again. Has found out that service charges and handling fees are not really service charges or handling fees, but often times include revenue for the promoter, revenue for the event venue, revenue for the entertainer and revenue to subsidize other events. As a consumer, would assume there is a direct relationship between the face value of the ticket and the cost of bringing the event.
159	Rep. Rasmussen	Comments that if the contract is being run between the venue owner and the ticket seller, their problems may be solved but no one is advocating for the end user.
190	Rep. Montgomery	Asks if there are more than two sellers of tickets in the Portland area.
183	Rep. Deckert	Responds that Ticketmaster is nationally the most prevalent. Fastixx also has exclusive relationships with venues to produce events.
200	Rep. Montgomery	Asks who determined the cost of the Pink Martini tickets and whether the show sold out.
200	Rep. Deckert	Explains how the ticket prices are negotiated.
208	Rep. Montgomery	Asks if the ticket would have \$14 or \$23 printed on the ticket
210	Rep. Deckert	Responds it would say \$14 and \$9 in service and handling fees.
223	Rep. Rasmussen	Asks if the full charge is listed in the advertising.
224	Rep. Deckert	Responds his experience has been that only the face value is listed in advertising.
222	Rusty Vernon	Director, Oregon State Fair. Comments he has problems with bill on many levels and also wants to correct some misassertions on the process. The problem is focusing on the ticket agent; they have the least to say about what a ticket will cost. The bill also affects the State Fair. Explains process of ticket pricing, sales and choosing ticket agents
270	Vernon	Continues presentation.
340	Vernon	Gives example of entertainer choosing his markets and the ticket sellers.
377	Chair Hill	Asks if Mr. Vernon is opposed to the bill.

377	Vernon	Responds yes, but everyone needs to understand why they cannot attack the percentage and why that is not going to solve the problem. Suggests if issues are created in Oregon, the entertainment will go to Vancouver.
398	Vernon	Suggests if the issue is disclosure, then advertisements should include a statement that the service charge includes other costs. Adds that the State Fair nor any of its major competitors include any prices in their advertisements. Suggest another solution may be that there be a law in Oregon that says the face value of the ticket can only express the total charges.
430	Rep. Krummel	Asks if Mr. Vernon believes the 15 percent is too high.
437	Vernon	Responds it is not that the 15 percent is too high, it is State Fair money. Adds that the typical cost of sales in an amphitheater is about 103 percent. That means the average show loses three percent on ticket sales. They make money because they have service charges, because they are able to get sponsorships and they have parking and popcorn.
<u>TAPE 28, A</u>		
014	Rep. Deckert	Asks if the service charges and handling fees could be 15 percent of the cost of the ticket.
022	Vernon	Responds negatively. Explains the ticket agent the State Fair uses is getting 25 to 50 cents a ticket. Adds that the contract with the artist will control how the ticket breakout occurs.
035	Rep. Deckert	Advises he is open to a way the 15 percent would handle the service and handling fees.
040	Vernon	Comments he will let the ticket agents answer the questions. Adds that as a citizen, he finds it difficult to think government should tell any business how much they can make and what they can charge.
060	Tom Keenan	Managing Director, Fastixx. Agrees with Mr. Vernon's statement. There are four parts to the fee: the ticket company (Fastixx), the outlet (Fred Meyer), the promoter and the venue. It doesn't matter what it is. Convenience is an expensive factor. The rates to install by U S. West have never gone down. Until two years they did not pay to promoters and until three years they did not pay to venues. Today, in order to compete, they have to because they are in competition with Ticketmaster.
083	Chair Hill	Asks if a customer can go to the box office and bypass the service fee.
084	Keenan	Responds that applies only at some venues.
095	Rep. Simmons	Comments if the intent is to drive the customers out of Oregon, the legislature

		only needs to pass this bill.
098	Keenan	Comments that if part of Fastixx's contract is putting the full price of the ticket in the ads, it would get around the problem that promoters have with the artists.
109	Chair Rep. Hill	Asks if that would be a positive solution.
110	Keenan	Responds affirmatively.
121	John Brenneman	Representing himself. As a citizen of Oregon and satisfied customer of Fastixx and Ticketmaster testifies in opposition to HB 2728. Knows if he wants tickets he can stop at G.I. Joes and get some assistance and does not want to stand in line or mail in for tickets. Tickets were \$40 each and a charge of \$4 on each ticket. Felt the \$4 charge was reasonable.
146	Chair Rep. Hill	Closes the public hearing on HB 2728 and opens the public hearing on HB 2160.
<u>HB 2160 n PUBLIC HEARING</u>		
146	Cody	Reviews HB 2160
151	Paul Cleary	Director, Division of State Lands (DSL). Submits and reads a prepared statement (EXHIBIT B) .
216	Cleary	Reviews information in Table 1 (EXHIBIT B, page 4) .
233	Chair	Asks Cleary to explain "proprietary fee". Continues reading statement (EXHIBIT B, page 2) .
294	Cleary	Continues reading statement (EXHIBIT B, page 3, last paragraph) .
339	Rep. Terry Thompson	District 4. Comments on undersea cables and fiber optics. Provides background:
		<ul style="list-style-type: none"> Treaty was created in about 1850 for telecommunications and undersea cables that told the fishing industry they had no rights.
		<ul style="list-style-type: none"> It is customary in the fishing industry to keep fishermen one mile away from cables and if the fishermen make contact with the cable, the fishermen will be held liable.
		<ul style="list-style-type: none"> Companies owning the cables sometimes would reimburse for fishermen gear if the fishermen were found to have acted prudently. Northwest Cable

		charged a boat \$1.2 million dollars for incident off Pacific City.
		<ul style="list-style-type: none">• Agreement was negotiated with WCI out of Tillamook to bury a cable up to three feet and allow fishermen to fish over it and if the fishermen made contact with the cable, they would call the cable company, cut their gear free, and be reimbursed for the gear.
		<ul style="list-style-type: none">• Another two cables, owned by AT&T, were proposed for the Bandon location. The fishermen and AT&T have been in negotiations. Believes negotiations have broken down.
		<ul style="list-style-type: none">• Fishermen do not want to interfere with fiber optics coming in but do not want to lose fishing areas.
		<ul style="list-style-type: none">• Fishing industry is important and is a renewable resource to the state of Oregon.
<u>TAPE 27, B</u>		
025	Rep. Montgomery	Asks how far out in the water does DSL has control.
026	Rep. Thompson	Responds it is three miles.
	Rep. Thompson	Comment that the new language on page 3, lines 2 and 3, gives the companies the right to charge fees. The new wording in lines 5 and 6 says "to interfere with navigation". Would prefer that the language read "to interfere with navigation or fishing".
050	Thompson	Submits map showing cables (EXHIBIT C). Explains that the dotted lines are proposed and the solid lines are existing. Comments that the fishing industry does not like the idea of anybody being charged for the open ocean.
072	Rep. Simmons	Asks if Rep. Thompson is proposing an amendment to the bill.
073	Rep. Thompson	Responds he would like to propose an amendment to the bill.
080	Laura Imeson	AT&T. Testifies in opposition to HB 2160. Comments AT&T does use state's rights of way, including the territorial sea. AT&T already has what they want in statutory franchise for easements. They do need a permit from DSL when exercising their right for an easement. They are willing to talk and negotiate. HB 2160 is a disincentive to extend infrastructure into rural areas. It will increase cost of service. AT&T is willing to talk about the department recovering their administrative costs for issuing the permits.

103	Bruce Shaull	Sprint. Comments Sprint is part of the project with AT&T at Bandon. Eleven companies are involved. Sprint's position is the same as AT&T's. Any cost of crossing the three miles of territorial sea will be passed on to the customers by higher rates. Would agree to have the administrative costs for the permits recovered by the agency.
121	Chair Hill	Asks if there are right of way fees in Washington and California for crossing the beaches.
129	Shaull	Respond he does not know.
129	Imeson	Responds that is true according to research by the department.
134	Rep. Montgomery	Notes that on page 6 of Mr. Cleary's chart, California has no fee and Washington has a \$25 fee.
137	Cleary	Explains Washington has an application fee of \$25 and they appraise and negotiate the consideration payment. The last cable paid around \$400,000 for the right of way. California has about the same process as Oregon. They are not pursuing statutory changes. A California attorney general opinion is looking at their requirement to charge for easements as part of their public trust obligation.
145	Cleary	Comments that a number of states are looking at the issue. The proposed cable routes have caught a number of states off guard.
173	Rep. Simmons	Comments he is concerned about AT&T using the desire to encourage build out rural infrastructure as a reason to be opposed to this bill.
176	Chair	Asks what the opportunities are for local access as the cables are coming across the beach.
184	Imeson	Explains projects in Bandon and the comments on the lack of point of presence in eastern Oregon.
203	Rep. Simmons	Comments he does not see why Oregon should not charge for the right of way if a company wants to run from Portland to Utah and is not willing to provide access along the way.
214	Rep. Rasmussen	Asks what kind of economic development happens when the cables show up.
220	Imeson	Explains investment in facilities in Bandon involving local contractors and local employees
238	Chair Hill	Asks how many employees are at the Bandon facility

239	Imeson	Responds there are six employees currently.
234	Rep. Rasmussen	Asks what the level of jobs is and what the pay range is.
236	Imeson	Comments she does not know but will provide information.
249	Rep. King	Asks what the cost is to provide a point of presence.
256	Imeson	Responds it depends on the carrier and where the facility is located.
260	Rep. King	Comments on the opportunity for business to locate in Bandon.
277	Imeson	Comments they will be contacting Oregon Economic Development for assistance in trying to attract other businesses.
285	Rep. King	Comments on loss of resource base for fishermen. Asks what AT&T's position is.
289	Imeson	Explains AT&T has been in discussion with fishermen on a number of things. Explains issues contained in the agreement with the fishermen.
314	Imeson	Displays piece of cable. Comments that the only time they can tell the fishermen not to fish there is when the cable is being installed. Adds that they have not come to a conclusion on indemnification.
330	Rep. King	Comments if the cable is buried there should not be an issue with use of the resource. Asks what kind of compensation there should be to the fishing industry.
333	Imeson	Responds that they have not discussed compensation for loss of fishing grounds.
366	Imeson	Comments there is an international law that gives them the right to lay the cable. They would like to find a way to co-exist.
355	Rep. Rasmussen	Asks Imeson to talk about the selection of the jump off points.
386	Imeson	Comments on locating cable and facility in Bandon.
443	Rep. Thompson	Comments on installation of cables off the coast.
470	Chair Hill	Asks if Rep. Thompson feels it would be a benefit to formalize the relationship between the cable companies and the fishermen so that they will always have a

		forum.
482	Rep. Thompson	Comments the cable companies have brought in their lawyers and maybe it is time to formalize it.
<u>TAPE 28, B</u>		
037	Cleary	Reads letter dated March 17 on breakdown of negotiations. Comments the issue will be dumped into his lap on the removal-fill permit and the easement and very likely, regardless of the decision on the easement, they will be in some form of administrative appeal or litigation.
065	Chair Hill	Asks if DSL entered into an agreement with someone on fiber coming from Tillamook going down a railroad track and a payment was made with the agreement that they would not come to the legislature.
070	Cleary	Explains that once they discovered the problems in the current statutes on easements DSL agreed, with the State Land Board approval, to insert a governing statute provision in the easements. Should this law change during this session or in subsequent sessions, DSL would recover consideration payments for easements that had that provision in them. Adds that when an easement expires, it is an opportunity to modify the terms and conditions. Explains the easement process for the Alaskan Northstar Cable and Tillamook Bay.
097	Cleary	States that DSL does not make side agreements. Everything they do is in a public setting and on the public record.
092	Rep. King	Asks what other countries do when a cable wants to come in.
103	Cleary	Responds that DSL has some information from British Columbia. Adds that the division will be happy to expand the search.
113	Rep. King	Asks if a lease rate takes into account the loss of a resource base.
114	Cleary	Responds that DSL looks at that from different perspectives. They would want to recover payment for any damages and would be interested in hearing concepts on how to do that.
141	Rep. King	Asks if the fishermen would identify the loss of the resource base as a perpetual damage.
141	Rep. Thompson	Responds affirmatively.
149	Brian Boe	Portland General Electric (PGE). Submits and reads a prepared statement in opposition to HB 2160 (EXHIBIT D).

170	John Brenneman	Idaho Power. Submits and reads a prepared statement in opposition to HB 2160 (EXHIBIT E) .
187	Ron Yochim	Grant County and Oregon Cranberry Farmers. Comments that a group of irrigators throughout Grant County have access to the river, and water rights, that may or may not be navigable. The navigability determination went up to Service Creek, but discussions are on going to expand navigability throughout most of Grant County. That would bring a lot of small farmers into the lease agreements provision. Grant County does not like to see new forms of government imposed on folks. With the lease agreement the state would have the ability to say they do not want to allow access to the water. Adds that the Grant County Court asked him to raise their concerns and issues.
206	Yochim	Comments that a similar situation comes up for the cranberry growers on the coast. They have to access the water and the creeks and in doing so have to cross state-owned lands whenever there is a navigability determination. Comments that they would like to work on the bill.
	Claudia Howells	Manager, ODOT, Rail Division. Submits and paraphrases a prepared statement (EXHIBIT F) .
307	Howells	Reviews status of leases (EXHIBIT F, pages 2-5) .
337	Howells	Continues presentation of prepared statement (EXHIBIT F, page 1) .
352	Gary Bauer	Oregon Telecommunications Association. Testifies in opposition to HB 2160. Comments that the bill is broad sweeping and applies to all types of telecommunications services. Comments that if a telecommunications line goes along a state highway, there could be a charge to reach the person who is two or three miles down the road. As written, the bill would also allow the state to order telephone service and then turn around and charge the telephone provider for putting the facilities on state property.
370	Chair Hill	Comments that the representatives of the counties are not present. Notes that the bill would allow counties to charge franchise fees.
280	Rep. King	Comments it doesn't seem reasonable to say that the cost will go to the customers.
404	Bauer	Comments on long distance cables coming across the ocean. States that HB 2160 applies to those facilities and all other types of utility facilities.
461	Chair Hill	Comments that the vast majority of the use of rights of way would be local use. Adds that we found that we cannot charge import fees for trash; we could not put the cost off on interstate commerce.
460	Chair Hill	Closes the public hearing on HB 2160 and adjourns meeting at 2:58 p. m.

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2728, prepared statement, Rep. Deckert, 3 pp

B ñ HB 2160, prepared statement, Paul Cleary, 6 pp

C ñ HB 2160, maps showing ocean cables, Rep. Thompson 2 pp

D ñ HB 2160, prepared statement, Brian Boe, 1 p

E ñ HB 2160, prepared statement, John Brenneman, 1 p

F ñ HB 2160, prepared statement, Claudia Howells, 5 pp