

HOUSE COMMITTEE ON COMMERCE

April 12, 1999 Hearing Room 350

3:00 p.m. Tapes 35 - 37

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. Bill Witt

MEMBER EXCUSED: Rep. Mark Simmons

STAFF PRESENT: Jason Cody, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD:

HB 2806 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 35, A		
003	Chair Hill	Calls meeting to order at 3:08 p.m. and opens the public hearing on HB 2806.
<u>HB 2806 ñ PUBLIC HEARING</u>		

005	Jason Cody	Explains HB 2806 and the -1 (EXHIBIT A) and ñ4 amendments (EXHIBIT B).
015	Rep. Ryan Deckert	Presents a prepared statement in support of HB 2806 (EXHIBIT C) and the ñ2 (EXHIBIT D) and ñ3 amendments (EXHIBIT E).
026	Rep. Deckert	Explains that the ñ2 amendments (EXHIBIT D) narrowly define the measure to bars and taverns and gets to the intent of the bill which was to discuss whether we should have a statewide law for bars and taverns specifically. Adds that the ñ2 amendments specifically limit the bill to establishments with posted "No Minor" signs.
		Explains that the ñ3 amendments (EXHIBIT E) grandfather Corvallis into the bill and allows their ordinance to stand.
039	Rep. Witt	Asks if there is not a distinction between a place that is open to the public and where the public congregates as part of the nature of the business as opposed to a business that is more managerial, generally not open to the public.
048	Rep. Deckert	Responds he does see the distinction and that is why he has drafted the ñ2 amendments (EXHIBIT D). Adds that a bar or tavern would be the last place where someone would be able to have a cigarette or cigar and not be in violation of the law and subject to fine.
066	Bill Perry	Oregon Restaurant Association. Comments on the ñ2 amendments. They have discussed with Rep. Deckert and Rep. Gardner who want to make sure the establishments are posted "No Minors" and under the understanding this bill will not effect the Corvallis ordinance.
		<ul style="list-style-type: none"> • Bill states that if local governments are going to set guidelines that they exempt bars and taverns that are posted "No Minors".
		<ul style="list-style-type: none"> • Establishments can ban smoking themselves.
		<ul style="list-style-type: none"> • Discussions set competitive disadvantages for businesses because it allows one business to provide something to an adult consumer that someone across the street may not be able to provide.
		<ul style="list-style-type: none"> • Everyone needs to help prevent smoking by minors.
		<ul style="list-style-type: none"> • State of Washington has local preemption. Washingtonís anti-smoking councils have been able to work with local restaurant owners to post a sign that lays out the formal smoking policy of the establishment.
095		
101		<ul style="list-style-type: none"> • In Corvallis, video poker revenues have dropped 20 to 25 percent in these establishments since July compared to the previous year.

		<ul style="list-style-type: none"> Massachusetts has done studies on "severe smoking bans" that showed that labor in those establishments dropped 21 percent in the local job base. Restaurant sales went down 25 to 30 percent "with the impact closely tied to liquor sales in each establishment".
115	Rep. Dan Gardner	District 13. Testifies in support of HB 2806. Believes government is overreaching when it bans smoking in bars and taverns. Supports the Clean Air Act as it currently exists so there is no smoking in restaurants and public buildings. Supports the amendments leaving Corvallis the way it is now. Believes if small communities do this, people will move out to the outskirts. It is detrimental to business.
		Comments that when he worked in the industry most of the people who worked in the bar and restaurant industry were smokers. Adds that he works in the construction industry and wants notifications of the dangers and hazards.
142	Rep. Witt	Asks why they want to exclude Corvallis and deny the opportunity to other cities to enact similar ordinances.
149	Rep. Gardner	Responds in his view, the people of Corvallis have voted on this issue and he does not generally support overturning voters' choice.
152	Rep. Witt	Asks why not give the same option to the people of all cities if we are going to give it to the people of Corvallis.
155	Gardner	Responds that to him it would be moving the people who are smoking into the outlying communities. Does not believe we should piecemeal; we should have a policy statewide one way or the other.
164	Perry	Comments that when we look at issues of social significance across the state we should look at why a city needs to be different. Adds there is nothing to prevent other cities from coming to the legislature and saying they have a problem and ask for an exemption. Their association is attempting to let people statewide what the standards are in relation to things of social significance.
184	Rep. Witt	Asks if minors are allowed in bars in Oregon.
184	Perry	Responds it depends on the posting.
189	Rep. Witt	Asks if there are statutes that say when minors can go into bars.
192	Perry	Responds he believes it is a rule by the Oregon Liquor Control Commission (OLCC).
194	Chair Hill	Adds that he believes it depends on whether a bar or restaurant is serving food.

199	Rep. Deckert	Adds that having "No Minors" listed narrowly defines the establishment as a bar or tavern.
206	Chair Hill	Comments if there is smoking in a restaurant and he does not like it, he can choose not to go back again. Asks if that is effective.
212	Perry	Responds that 85 percent of restaurants in Corvallis were non-smoking when the ordinance was passed. Thinks the industry has adjusted to the market place. Thinks the ads by the anti-smoking groups are being effective. The restaurant industry is in competitive market and they will do what they need to do to attract customers. Comments that if the employees don't like it, they don't have to be there. There are a lot of job opportunities in the industry.
245	Rep. Montgomery	Asks if the people should be against ordinances saying no shoes, no shirt, no service
251	Perry	Responds he does not see that as an issue. Adds he thinks the no smoking is a market-driven issue. Asks if the no smoking ordinance will effect the opportunities in the establishments. Thinks these ordinances have proven that the ordinances affect business.
266	Rep. Montgomery	Comments that if a community comes up at a later date with something else, it will not be an issue to the Restaurant Association.
270	Perry	Responds that the restaurant industry opposes anything that creates competitive disadvantages for one business over another that could be directly across the street.
277	Rep. Rosenbaum	Asks if there are statistics on employees who work in these businesses that allow smoking. Asks what the distinction is about being exposed to second-hand smoke and why people should be required, as a condition of employment, to get exposed if they choose not to.
293	Perry	Responds that the EPA did a study on second-hand smoke and a Federal judge threw it out. The Congressional Research Service (CRS) also did a study in 1995 that said the chances of a non-smoker dying of second-hand smoke are about the same as from electrocution or drowning and that a person living with a smoker has a better chance of dying of a homicide than they do of second-hand smoke. Adds there is nothing at this point that has proven that these people are at any significant health risk. It is a small portion of the job opportunities Nobody is requiring employees to work in the smoking environments.
318	Chair Hill	Asks if there is information on the loss of revenues by the establishments.
328	Perry	Responds the two studies in relation to the ballot measure were on video poker receipts and tip income. The video poker revenues were down about 20 to 25 percent and tip income was down by \$5.00 per hour. Adds that employment has dropped by about 25 percent.

350	Rep. Rosenbaum	Asks if the Restaurant Association has a position on the Clean Air Act that requires restaurants to provide non-smoking areas.
355	Perry	Responds he doesn't think there is objection in their general membership to strengthen the Indoor Clean Air Act. The issue is the patchwork and confusion of customers at the local level and setting competitive boundaries. They believe a statewide policy is better for individual businesses to operate under.
367	Rep. Rosenbaum	Asks if the Restaurant Association opposed requiring restaurants to provide non-smoking accommodations.
369	Mike McCallum	Oregon Restaurant Association. Comments the Restaurant Association did not oppose the establishment of smoking and non-smoking sections in a restaurant facility. Adds they would oppose taking away the business owner's right to make a choice in places where minors are prohibited.
395	Rep. Barbara Ross	Corvallis. Submits prepared statement and speaks in opposition to HB 2806 (EXHIBIT F) .
TAPE 36, A		
026	Patrick Peters	President, Corvallis City Council. Reads prepared statement in opposition to HB 2806 (EXHIBIT G) .
055	Peters	Adds that the Corvallis City Council would be in opposition to HB 2806 even if the amendment to grandfather Corvallis were passed. Opposition is based on local control. Other communities should have the opportunity to pass legislation.
061	Peters	Comments on complaints from owners about the drop in business. Points out the population of Corvallis has declined by a couple of thousand people and jobs have also declined.
108	Rep. Deckert	Asks what they tell the individual bar owner in terms of individual liberties.
118	Peters	Responds it is a health issue to employees and patrons. Believes it is the responsibility of government to ensure the health, safety and welfare of its citizens. The question becomes whether the owner has the right to establish rules that regulate who uses the business. What you are saying by allowing the owners to make the decision, they are also deciding that the non-smokers, in some cases, cannot go to that bar or tavern. Adds that Corvallis has several bars and taverns and they are not all the same.
161	Rep. Deckert	Comments he is hearing that government would tell adults, for their health and who know the consequences of smoking, that government knows better and that government should tell them what choices they should have.
169	Peters	Responds this refers to closed public places. It is not a case of government trying

		to step in but government does have an obligation to step in.
178	David Kliever, M.D.	Medical Oncologist (Retired). Submits a prepared statement and testifies in opposition to HB 2806 (EXHIBIT H).
300	Alice Smith	Corvallis resident. Testifies in opposition to HB 2806 (EXHIBIT I).
350	Smith	Continues presentation.
392	Bruce E. Thomson, M.D.	Corvallis. Testifies in opposition to HB 2806 (EXHIBIT J).
TAPE 35, B		
020	Thomson	Continues presentation.
091	Rep. Krummel	Asks Ms. Smith if she noticed a reduction in her tip income.
095	Smith	Responds no.
106	Rep. Krummel	Asks if they have noticed a drop in receipts.
112	Smith	Responds she does not have much to compare it to. Thinks they are getting the same regulars and does not believe it has affected them.
122	Rep. Krummel	Asks if they have noticed any loitering activity.
	Smith	Responds they have no problem.
154	Rep. Deckert	Asks if it is correct that bars could have been smoke free before the ban.
157	Thomson	Responds affirmatively.
179	Rep. Deckert	Comments he agrees we should do everything possible to dramatically go after the tobacco companies.
182	Rep. Rosenbaum	Asks if there has been research on the effect of second hand smoke on women who are pregnant or nursing.
187	Thomson	Responds affirmatively. Explains that newborns are the classic example of people affected by second hand smoke. Adds there have been studies about

		premature births. The incidents of sudden infant death syndrome to children who live in homes of smokers is two to three times that of those children who do not live in homes of smokers.
199	Rep. Rosenbaum	Comments she was asking about women who might be working in these establishments who themselves do not smoke.
200	Thomson	Responds they are not aware of any studies.
212	Bill Smith	Representing American Lung Association, the Heart Association and Cancer Society. Testifies in opposition to HB 2806.
		<ul style="list-style-type: none"> Comments on studies relating to second hand smoke and statements by the judge on the validity of the studies.
		<ul style="list-style-type: none"> There is proof that everyone is at risk if exposed to second hand smoke.
		<ul style="list-style-type: none"> Heart, Lung and Cancer (associations) could not agree more that a statewide law that would take care of smoking in the workplace would be the best.
		<ul style="list-style-type: none"> Heart, Lung and Cancer (associations) feel the local municipalities should have the right to have a local ordinance to decide for themselves what they want.
		<ul style="list-style-type: none"> In response to a drop in revenues reported by the studies, comments there was a drop in revenues in the state, not just in Benton County or Corvallis.
		<ul style="list-style-type: none"> Urges no vote.
263	Wendy Bjornson	Project Director, Tobacco Free Coalition of Oregon. Submits prepared statement and testifies in opposition to HB 2806 (EXHIBIT J).
310	Bjornson	Continues presentation.
377	Marshall Goldberg, M.D.	Testifies in opposition to HB 2806. Comments health care costs are skyrocketing, premiums are going up, HMOs are having trouble delivering care for a reasonable price. Does not want to see more people working in work places that are not safe and who cannot change their workplace and are being subjected to the illnesses and disabilities that come with exposure to second hand smoke. Many are worried about the exposure of the unborn. Feels people have the right to work in a safe place and asks that the committee oppose HB 2806.
TAPE 36, B		

013	Rep. Krummel	Asks Ms. Bjornson how many people were in her study
016	Bjornson	Responds there were about 700 people. Agrees to provide information on studies.
026	Chair Krummel	Asks Ms. Bjornson to provide information on the 81 studies that have been done on the effect on revenues.
029	Bjornson	Agrees to provide information on the studies.
032	Hardy Myers	Attorney General. The Oregon Department of Justice (ODJ) took Oregon into litigation two years ago. The national settlement that ensued from that litigation, if we look at the regulatory part, really focuses on efforts to constrain marketing choices in a way that will make smoking less attractive to young people. The provisions of the agreement by which the national industry agrees to withdraw from the political process and not seek to influence legislation are focused on youth access fees. The attorney generals sought but did not get into the agreement provisions by which the industry would agree to withdraw its lobbying power with respect to preemption and issues of indoor clean air.
		Adds there is no law that guides the Assembly in determining the outcome of the question; there is law that defines the boundaries of home rule with respect to what the Assembly may not do and when it may act preemptively. Does not believe there is any constitutional issue in this bill.
092	Myers	Would hope that the Assembly will conclude that weighing the tradeoffs in relation to the kind of public health issue we are talking about is appropriately one that individual communities should make.
100	Chair Hill	Asks if a community should debate whether persons could not smoke in their home if they had minors.
104	Myers	Responds affirmatively.
103	Rep. Witt	Asks if there is not an enormous distinction between not allowing smoking in a public place and in the home.
112	Myers	Responds he does see a fact distinction. Thinks the outcome would be much harder to win as a matter of local lawmaking. Thinks the legislature could validly conclude that it would let local communities make that judgment as well.
122		Discussion continues on decision-making on prohibited activities.
138	Chair Hill	Asks if the issue of this bill is covered under the Master Settlement Agreement.

144	Myers	Responds that the agreement made no headway in contributing to the likelihood of easing the way for progress for either preemption or indoor clean air.
160	Rep. Krummel	Asks if there is a constitutional issue from the standpoint of use of the property for a person's own enjoyment.
157	Myers	Responds he does not believe a restriction on the ability for patrons to smoke on the premises would be the kind of regulation of property use that would create a state or federal constitutional issue.
170	Myers	Reviews the challenge to the Corvallis ordinance.
201	Connie Ramaekers	Tobacco-Free Coalition of Washington County. Testifies in opposition to HB 2806 (EXHIBIT K) .
259	Bob Speaker	Benton County Commissioner. Testifies in opposition to HB 2806. Support statements of health professionals. Concern is issue of local control. There are 36 counties and over 250 incorporated cities in Oregon. Local control gives the counties and cities the control to make local choices of what is best for each community. In August 1997, Benton County passed an ordinance that prohibits smoking in all public places except for bars. Benton County has 77,000 citizens and six political jurisdictions. Corvallis chose to include bars, Benton County chose not to. The other four political bodies have chosen not to take any measures. Local control on this issue has been tested and does work.
287	Speaker	Adds that prior to adoption of the ordinance in Corvallis, all the restaurants had gone smoke free voluntarily. One went smoke free about a month before the ordinance passed and one bar was voluntarily smoke free. Benton County had significant valid survey information that showed between 92 and 97 percent of citizens supported prohibiting smoking in places of public assembly including restaurants, but only about 50 percent supported restricting smoking in bars.
297	Speaker	Presents statement for AOC (EXHIBIT L)
316	Speaker	Reads statement for Tillamook County Commissioner Cameron in opposition to HB 2806 based on survey information that showed 75 percent indicate they want the decisions made at the local level. Adds that as a public health professional Ms. Cameron also opposes HB 2806. She feels it is her responsibility to provide services that protect the public health including protecting them from secondhand smoke, especially pregnant women.
339	Donald Austin, M.D., MPH	Testifies in opposition to HB 2806 (EXHIBIT N) .
370	Austin	Continues presentation.
TAPE 37, A		

017	Rep. Deckert	Asks which special interest brought this bill to the legislature.
018	Austin	Responds there is one apparent special interest group, the Restaurant Association, and one behind the scenes, the tobacco industry that has sponsored legislation in almost every state they can.
022	Rep. Deckert	Comments he sponsored the legislation and did not talk to one member of the tobacco industry. Adds he would not want to take tobacco money for political efforts and believes he was scored poorly by the Restaurant Association.
033	Austin	Responds he respects Rep. Deckert's comment that he has not talked to anyone in the tobacco industry about this bill. Adds that it has been a tobacco industry high priority for almost every state.
037	Rep. Montgomery	Comments that it is not fair for the witness to say legislators do not listen.
041	Rep. Krummel	Asks if Dr. Austin can provide the source of statistics in his statement.
046	Austin	Responds the source was the same survey that was part of the State Health Division's statewide survey. Explains that the survey was over sampled in the metro area.
063	Rep. Krummel	Asks if Dr. Austin knows the number sampled.
066	Austin	Apologizes to members if they were offended by his remarks. Responds he does not know the number surveyed. Adds that the survey was done by Congress and national politicians.
073	Rep. Witt	Comments the legislators listen to lobbyists from the Oregon Medical Association, the Restaurant Association, and he listens to lobbyists who represent tobacco companies from time to time. Would point out there is nothing inappropriate about that. Comments the purpose of the hearing is to allow all members of the public to give testimony about the bill. Adds that this bill is not about the evil tobacco industry and it is not about special interest politicians. Suggest Dr. Austin would do his cause a lot of good if he would speak to the bill and talk about the public health considerations and the appropriateness of the statute.
087	Mary Christian	Corvallis resident. Testifies in opposition to HB 2806 (EXHIBIT O).
125	Christian	Continues presentation.
165	Dr. David Fleming	State Epidemiologist, Oregon Health Division. Submits survey results on local control and secondhand smoke, letter from Elinor Hall, MPH, Administrator, Health Division, and articles from medical journals on secondhand smoke. Testifies in opposition to HB 2806.

		<ul style="list-style-type: none"> Evidence regarding the health hazards of secondhand smoke is incontrovertible.
		<ul style="list-style-type: none"> Calls attention to the article from the <u>Journal of American Medical Association</u> (EXHIBIT P, pages 5-8).
		<ul style="list-style-type: none"> Opposition is not to tobacco; opposition is to issue of local preemption.
		<ul style="list-style-type: none"> There is overwhelming evidence that when these ordinances have been implemented in other parts of the country there is no effect on restaurant revenues.
		<ul style="list-style-type: none"> Calls attention to an editorial from the University of California (EXHIBIT P, pages 9-12).
216	Rep. Deckert	Asks if the article is about bars and taverns, which HB 2806 contemplates, not restaurants.
218	Fleming	Responds that many of the restaurants would qualify as bars and taverns. Adds that the economics relating to bars and taverns have not been as well studied.
232	Fleming	Comments that the survey information (EXHIBIT P, page 1) is for the state as a whole but also localized in individual counties. Reviews statistics.
239	Chair Hill	Asks why the Health Division is asking whether there should be a ban on smoking in restaurants.
240	Fleming	Responds one of the things their department does is coordinate and sponsor the statewide tobacco prevention program where they work with communities around the state. One of the things people want to know at the local level is whether ordinances are appropriate and whether they should be moving in that direction. His department's message to local communities is they need to assess their local values and decide what is right for each community.
263	Fleming	Comments that HB 2806 would really ignore Oregon's long-held value of working out decisions at the local level and flies in the face of the evidence of the hazards of secondhand smoke.
251	Ellen Lowe	Ecumenical Ministries of Oregon and Chair, Tobacco Free Communities of Oregon. Testifies in opposition to HB 2806.
		Speaks of activities in church to remove ashtrays from the dinner tables. Asks that the committee respect the rights of the voters in other communities as they look at what is best for their area and give them the right to make choices.

319	Chair Hill	Thanks those who came to testify. Explains why the bill was scheduled.
341	Chair Hill	Closes the public hearing and adjourns the meeting at 5:19 p.m.
		Statements received but not presented in opposition to HB 2806 are hereby made a part of these minutes: Paula Krane and Liz Frenkel, League of Women Voters of Oregon (EXHIBIT R); Dana Kaye (EXHIBIT S)

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2806, HB 2806-1 amendments, unknown, 1 p

B ñ HB 2806, HB 2806-4 amendments, unknown, 1 p

C ñ HB 2806, prepared statement, Rep. Ryan Deckert, 1 p

D ñ HB 2806, HB 2806-2 amendments, Rep. Deckert, 1 p

E ñ HB 2806, HB 2806-3 amendments, Rep. Deckert, 1 p

F ñ HB 2806, prepared statement, Rep. Barbara Ross, 1 p

G ñ HB 2806, prepared statement, Patrick Peters, 2 pp

H ñ HB 2806, prepared statement, David D. Kliewer, M.D., 2 pp

I ñ HB 2806, prepared statement, Alice Smith, 2 pp

J ñ HB 2806, prepared statement, Bruce E. Thomson, M.D., 19 pp

K ñ HB 2806, prepared statement, Connie Ramaekers, 1 p

L ñ HB 2806, prepared statement for AOC, Bob Speaker

M ñ NOT USED

N ñ HB 2806, prepared statement, Donald Austin, M.D., 1 p

O ñ HB 2806, prepared statement, Mary Christian, 1 p

P ñ HB 2806, survey information, letter, and journal articles, David Fleming, M. D., 12 pp

Q ñ HB 2806, prepared statement, Wendy Bjornson, 1 p

R ñ HB 2806, prepared statement, Paula Krane and Liz Frenkel, 1 p

S ñ HB 2806, prepared statement, Dana Kaye, 1 p