

HOUSE COMMITTEE ON COMMERCE
SUBCOMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

April 21, 1999 Hearing Room 350

1:00 p.m. Tapes 41 - 42

MEMBERS PRESENT: Rep. Jerry Krummel, Chair

Rep. Ryan Deckert

Rep. Bob Montgomery

Rep. Rosenbaum

STAFF PRESENT: Jason Cody, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD: HB 2248 ñ Work Session

HB 3083 ñ Public Hearing

HB 2274 ñ Public Hearing and Work Session

HB 2924 ñ Public Hearing and Work Session

HB 2093 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 |
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| TAPE 41, A | | |
| 004 | Chair Krummel | Calls meeting to order at 1:25 p.m. and opens the work session on HB 2248. |
| <u>HB 2248 ñ WORK SESSION</u> | | |
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| 007 | Chair Krummel | Comments that the HB 2248-7 (EXHIBIT M) and the HB 2248-8 amendments (EXHIBIT A) are very similar. |
| 015 | John Powell | Nucor Corp. Explains that they have agreed to the HB 2248-8 amendments (EXHIBIT A). Comments that the laws passed last session are affected by HB 2248. Wants to make sure that the law still applies in the same manner to the Nucor project and nothing is changed by the amendments. The HB 2248-8 amendments have been written in a way that the only real change is that Nucor will have to make an application to the department prior to the effective date of this bill. By doing that, it means they will come under the standards of the agreement they made with the legislature. Nucor does not want anyone to think the changes were at the direction of Nucor. |
| 036 | Powell | Explains that the HB 2248-8 amendments include the HB 2248-7 amendments with one minor change. |
| 043 | Rep. Montgomery | MOTION: Moves to ADOPT HB 2248-8 amendments dated 04/16/99. |
| 047 | | VOTE: 4-0-0 |
| | Chair Krummel | Hearing no objection, declares the motion CARRIED. |
| 052 | Rep. Montgomery | MOTION: Moves HB 2248 to the full committee with a DO PASS AS AMENDED recommendation and BE REFERRED TO COMMITTEE ON REVENUE. |
| | | VOTE: 4-0-0 AYE: In a roll call vote, all members present vote Aye. |
| | Chair Krummel | The motion CARRIES. |
| 070 | Chair Krummel | Opens a public hearing on HB 3083. |
| <u>HB 3083 ñ PUBLIC HEARING</u> | | |
| 069 | Jason Cody | Administrator. Explains HB 3083 and the HB 3083ñ1 amendments (EXHIBIT B). |
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| 085 | Steve Vincent | Avista Corp. Submits and paraphrases a prepared statement in support of HB 3083 (EXHIBIT C) . |
| 120 | Vincent | Continues presentation. |
| 143 | Vincent | Refers members to letter from Camas Prairie RailNet, Inc. (EXHIBIT C, page 5) and points out the increase in rental fee from \$7.50 to \$690. Explains that these are crossings where no activity has occurred. |
| 157 | Rep. Montgomery | Asks if \$7.50 is not rather cheap. |
| 164 | Laura Isaak | Real Estate Department, Avista Corporation. Agrees the \$7.50 is inexpensive. Comment that it is an aerial crossing conductor over the railroad with no impact to operations. Adds that the increase to \$690 is unjustified because there has been no change in the impact or facility. |
| 175 | Vincent | Explains that historically the fees have been to cover administrative costs for record keeping of the crossing. Adds that they recognize most of the fee increases are in other states, Avista sees HB 3083 as a preventative measure. They are seeing a trend in other states and they do not want to see the trend in Oregon. |
| 195 | Vincent | Explains that the customers will bear the cost. Explains that Section 3 of the bill and 4 of the amendments are an attempt to resolve the disputes. The railroads have asked that Avista utilize their full rights of condemnation before going to arbitration. Condemnation is an expensive process and would like to find a less litigious forum to resolve the disputes. It is not a competitive market. There is no alternative route around the railroad line. Asks that the committee look at the issue as a consumer protection matter. |
| 242 | Vincent | Asks that the committee support adoption of the HB 3083-1 amendment (EXHIBIT B) and support passage of the bill. Adds that Section 3 of the bill and Section 4 of the amendments are the most important to Avista. |
| 246 | Vincent | Explains Sections 3 of the bill and Section 4 of the amendments. |
| 257 | Rep. Montgomery | Asks if they negotiate the fee with the railroads. |
| 259 | Vincent | Responds they are asked to pay a new fee. |
| 267 | Rep. Montgomery | Asks why this applies only to railroads, why not include other property owners. |
| 273 | Vincent | Responds with private owners they have a way around if the property is not too wide or too large. Comments that an alternative is if the private property owners will allow an easement for a cheaper price. |
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| 281 | Isaak | Comments that Avista does cross public lands and generally works with permits with federal agencies. Their fees have been minimal and they can work with the federal agencies provisions. Many railroads require that they purchase their railroad protective liability insurance that costs \$1,000 per crossing in addition to their permit fee. Avista obtains only a temporary right, terminable upon 30 days notice. |
| 306 | Rep. Deckert | Asks if there is a complaint process available with the Public Utility Commission (PUC). |
| 311 | Isaak | Responds she is not aware of any in Oregon. |
| 306 | Vincent | Explains they did discuss this with the PUC late last year there was no mention of an appeals process. |
| 324 | Vincent | Comments that some states have asked their commissions to resolve the dispute by determining what just compensation is. Adds that the problem is not great enough in Oregon to justify going to the PUC yet, however, if the bill does not pass and the thousands of percents are seen in Oregon, today's proponents of this bill may be quick to support taking the issue to the PUC. |
| 349 | Rep. Montgomery | Asks if a railroad track can run over a gas line. |
| 356 | Isaak | Responds she has never had the situation occur. Other utilities do cross Avista lines. They do not charge a fee and only ask for a review. Other utilities do the same. |
| 368 | Chair Krummel | Comments he is failing to see why the proponents would not want to go to the PUC but would come to the legislature. |
| 375 | Vincent | Responds they do not have a mechanism to go to the PUC with this dispute currently. They are asking the legislature for the opportunity to go to arbitration before condemnation. The bill requires the dispute to go to arbitration. |
| 399 | Chair Krummel | Asks if the \$100 fee for each water customer is excessive. |
| 400 | Vincent | Explains the impact of allowing the railroads to charge anything they choose. Suggest the committee consider the impact on the consumers, especially those who have to ask for new services, especially when one customer has to bear the cost of the permit. |
| 447 | Isaak | Comments that a lot of small towns grow up around the railroads and may have total annual revenues of \$3,000 to \$6,000. Three crossings would wipe out the community's annual revenue. |
| 459 | Chair Krummel | Asks if the railroads have the right of condemnation. |
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| 460 | Isaak | Responds they do. |
| TAPE 42, A | | |
| 021 | Rep. Rosenbaum. | Comments that Section 3 of the original bill does not seem to address who would be doing the arbitration and who would bear the costs. |
| 022 | Vincent | Responds there are some statutes in Section 30 that deal with identifying rules and conduct of arbitration. Believes American Arbitration Standards and Practices would take precedent on how arbitration would occur. Has heard that the Department of Transportation has expressed some concern that they would become the arbitrator. Does not think that would be the case. Believes the parties decide who the arbitrator is. They would probably choose someone who is registered with the American Arbitration Association. Cannot address the cost. Adds that condemnation costs \$5,000 per day in court. They are trying to achieve a less expensive way to resolve the concerns and disputes. |
| 038 | Rosenbaum | Asks what reason there is to believe that these matters would get resolved quicker in arbitration. |
| 047 | Vincent | Comments it would give them another opportunity to try to negotiate with the railroad. |
| 056 | Cindy Finlayson | Portland General Electric (PGE). Introduces Bruce Carroll, PGE Properties Department. Submits and reads a prepared statement in support of HB 3083 (EXHIBIT D) . |
| 097 | Rep. Montgomery | Asks if they tried to negotiate the fee. |
| 102 | Bruce Carroll | Portland General Electric. Responds that he talked with the management company that sets Burlington Northern and Santa Fe rates and was told that with the merger of the companies all rates had been increased. |
| 115 | Rep. Montgomery | Comments the rates had to have been published someplace. |
| 117 | Carroll | Responds it was not shared with PGE. |
| 120 | Finlayson | Comments that railroads have third parties managing their properties so the third party has an incentive to increase the fees because they get a portion of the fees. |
| 133 | Terry Flores | PacifiCorp. Comments they support the bill and the amendments to it. It deals with issues PacifiCorp has also experienced with railroads over fees and abandonment. |
| 138 | Carl Barnett | Property Manager, PacifiCorp. Testifies that PacifiCorp supports HB 3083 and |

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| | | the amendments and agrees with the previous testimony. There are three issues. One is the time to get permits is a problem. Explains problems in delays of getting permits from railroads. |
| 175 | Barnett | Explains that the first payment is capitalized. All others are charged to the ratepayers. Feels going to arbitration would stymie some of the costs. PacifiCorp would like to have railroad crossing agreements that are treated like other easements with private individuals, that they would be perpetual and recordable with one-time up-front payments. |
| 191 | Sandy Flicker | Representing the 17 members of Oregon Rural Electric Cooperative Association. Testifies in support of HB 3083 and the amendments. Supports PGEis, PacifiCorpis and Avista's comments. Introduces Cliff Stewart, General Manager, Oregon Trail Electric Cooperative, Baker City. Explains that Mr. Stewart has had experience with a railroad right of way and an increase of a fee from \$100 per year to \$12,500 per year without prior notice. Oregon Trail is concerned because the costs must be passed on to the consumer owners. Explains that the first time the fee is on the back of the consumer owner who is getting the service. When the fee is up for renewal, then it is passed on to all the consumer-owners. They do not have the opportunity for easements. The railroads have the ability to require the utility to relocate their facilities for any reason in the judgment of the railroad with a pending notice at the utility's expense. The railroads have the rights to terminate agreements at any time with a 30-day notice and the utility is not entitled to any relocation costs or refund of fees that were paid in advance. Abandonment of railroad lines becomes exposure to utilities and is becoming commonplace. Submits letter from Oregon Trail Electric Cooperative to Union Pacific Railroad (EXHIBIT E). |
| 256 | Flicker | Believes HB 3083 provides an opportunity to save their customers money. |
| 290 | Everett Cutter | Manager, Oregon Railroad Association. Introduces James O'Neil and Wes Greavu, Burlington Northern and Santa Fe Railway and David Fischer, Union Pacific Railroad. |
| 308 | Cutter | Paraphrases prepared statement in opposition to HB 3083 (EXHIBIT F). |
| 364 | Cutter | Comments that they have checked with the PUC regarding electric and natural gas rate increases during the last few years. There is nothing to indicate that railroad permitting fees or easements have anything to do with rate increases. The largest increase granted to Avista, then WP Natural Gas, was in 1993 of 10.66 percent attributable to an increase in the wholesale price of their product. Cannot agree with the consumer protection arguments. |
| 373 | James O'Neil | Burlington Northern and Santa Fe Railway. Paraphrases a prepared statement in opposition to HB 3083 (EXHIBIT G). |
| 420 | O'Neil | Continues presentation of statement. |
| TAPE 41, B | | |
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| 031 | O'Neil | Comments he was able to get a copy of the spreadsheet presented by the utilities. There are few issues in Oregon listed, but more importantly these are not plain crossing permits. Probably 40 or 50 percent of the crossings represent longitudinal crossing. They are not 20-foot wide crossing and 100 feet long. Some are two and three miles long and one-half mile wide. That encumbers the property pretty dramatically and they feel it justifies a higher cost. Although they feel the charges are reasonable, their doors have always been open and will continue to be open to discuss these and other concerns with the utilities. |
| 042 | O'Neil | Continues presentation of statement (EXHIBIT G, page 2). |
| 058 | O'Neil | Comments that Section 3 relates to abandonment of rail lines. They are very concerned that utilities are asking the railroads to pay for their facilities located on railroad properties, which they had a permit to do. The railroads are always willing and open to negotiate easements if they have to but they do not feel the facilities belong to the railroads and if a railroad sells or abandons a line they do not feel they should be responsible for relocating the facilities to serve the utility customers. |
| 068 | David Fischer | Union Pacific Railroad. Comments he works with state governments in the 23 states in their system. The issue involves two entities and both have power of condemnation. To add the additional remedy of binding arbitration is something that may exist in other states but he has never seen it. The power to condemn property is the power to take property from someone who is not a willing seller. It is a strong negotiating tool. Union Pacific Railroad property managers are not aware of any problems they are having with Avista or anyone else. It is particularly unusual to see binding arbitration suggested as necessary when that entity already has the power to condemn. |
| 102 | Claudia Howells | Manager, Oregon Department of Transportation (ODOT), Rail Division. Comments ODOT is not taking a position on the bill. Asks if amendments have been proposed to the bill. |
| 110 | Chair Krummel | Advises that amendments have been introduced (EXHIBIT B). |
| 115 | Howells | Comments that the provision of this bill would be within Chapter 824, the provisions relating to ODOT's responsibilities relating to railroads. Does not think ODOT wants to be involved in arbitrating or be involved in the issue. Wonders if there is a better placement for the statute. Suggests that committee staff check out the issue of federal preemption. Comments that railroad abandonment is under the jurisdiction of the federal government. Thinks the utilities are more interested in the conveyance of the property. Abandonment usually applies to the withdrawal of obligation by the federal government of a railroad's common carrier obligation and does not have much to do with the property itself. |
| 140 | Howells | Explains another issue is the "interim trail use condition". The title to the property may be conveyed to a local government for trail use. While the railroad may have the right to come back in as a rail carrier, does not hold title to the property. There is an issue about who owns the property of a line that is abandoned. |
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| 148 | Howells | Adds that the State of Oregon owns 175 miles of right of way. The railroad owns the track structure and the operating rights. If the railroad abandons the line, ODOT still owns the right of way. Is not sure what HB 3083 obligates ODOT to because the railroad never owned the property to begin with. ODOT does not have the ability to charge utilities, but if they had that right, there seems to be something here that would apply to ODOT. |
| 158 | Howells | Explains that three railroads in Oregon are owned by public entities: the Port of Tillamook Bay, Lake County, and City of Prineville. They are defined in the statutes as railroads. Railroads are not necessarily privately owned. |
| 168 | Howells | Comments she would prefer that the statute be placed elsewhere. Adds there are statutes relating to railroad property. |
| 174 | Rep. Deckert | Asks how many miles are abandoned in Oregon. |
| 180 | Howells | Responds that railroads have been abandoning lines within 10 years of when they were opened. Some were abandoned in the 30s and 40s and 50s. Cannot give a number. Adds that there probably isn't any abandonment on the horizon. Most of the Class 1 railroads have spun off their less profitable lines to short lines. |
| 190 | Howells | Adds another issue is that Oregon has short lines that are the common carrier that are certified by the Surface Transportation Board to operate the railroad. Another railroad may own the underlying property. That raises a concern of who is responsible. |
| 189 | Chair Krummel | Comments he believes the bill has a constitutional problem and it is not going anywhere at this time. Comments that he believes as a transportation utility and as an infrastructure utility, they have the responsibility to work with each other and to work with other utilities. Adds that this is a business to business issue that needs to be worked out. |
| 239 | Rep. Montgomery | Comments he believes the information in the Oregon Tail Electric letter dated in 1993 needs to be checked (EXHIBIT E). |
| 247 | Chair Krummel | Closes the public hearing on HB 3083. |
| 257 | Chair Krummel | Opens the public hearing on HB 2774. |
| <u>HB 2274 n PUBLIC HEARING</u> | | |
| 251 | Cody | Explains HB 2774, the HB 2774-6 amendments (EXHIBIT I) and the HB 2774-5 amendments (EXHIBIT O). |
| 262 | Charles Stern | Yamhill County Clerk. Introduces Charles Pierson, Oregon Association of County Surveyors. Comments the HB 2774-5 amendments (EXHIBIT O) were |

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| | | discussed at the last meeting. Explains that the surveyors raised a question about one of the amendment lines. The HB 2774-6 amendments include the HB 2774-5 amendments and one change that dealt with marking the plats. |
| 292 | Chair Krummel | Closes the public hearing and opens a work session on HB 2774. |
| <u>HB 2774 n WORK SESSION</u> | | |
| 293 | Rep. Montgomery | MOTION: Moves to ADOPT HB 2774-6 amendments dated 04/21/99. |
| 297 | | VOTE: 3-0-1 EXCUSED: 1 - Rep. Rosenbaum |
| | Chair Krummel | Hearing no objection, declares the motion CARRIED. |
| 299 | Rep. Montgomery | MOTION: Moves HB 2774 to the full committee with a DO PASS AS AMENDED recommendation. |
| 304 | | VOTE: 3-0-1 EXCUSED: 1 - Rep. Rosenbaum |
| | Chair Krummel | Hearing no objection, declares the motion CARRIED. REP. ROSENBAUM will lead discussion in full committee. |
| 312 | Chair Krummel | Opens a public hearing on HB 2924. |
| <u>HB 2924 n PUBLIC HEARING</u> | | |
| 316 | Cody | Explains HB 2924 and the HB 2924-2 amendments (EXHIBIT J). |
| 331 | Charles Stern | Yamhill County Clerk. Comments at the last meeting the HB 2924-1 amendments (EXHIBIT O) that dealt with electronic filing were discussed. The |

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| | | concern was that the amendment mandated that the Secretary of State accept the filings. The HB 2924-2 amendments (EXHIBIT J) make it permissive. The clerks association has no problem with the amendments. |
| 342 | Tom Wrosch | Office of Secretary of State, Corporation Division. Submits a prepared statement in support of HB 2924 with the HB 2924-2 amendments (EXHIBIT K). Comments they are supportive of the HB 2924-2 amendments. The ñ2 amendments make it permissive to accept electronic filings of financing statements. Their office does not want electronic filing to be the only way people may file financing statement in their office. |
| 360 | Chair Krummel | Closes the public hearing and opens a work session on HB 2924. |
| <u>HB 2924 ñ WORK SESSION</u> | | |
| 363 | Rep. Deckert | MOTION: Moves to ADOPT HB 2924-2 amendments dated 04/20/99. |
| 367 | | VOTE: 4-0-0 |
| | Chair Krummel | Hearing no objection, declares the motion CARRIED. |
| 369 | Rep. Deckert | MOTION: Moves HB 2924 to the full committee with a DO PASS AS AMENDED recommendation. |
| 374 | | VOTE: 4-0-0 |
| | Chair Krummel | Hearing no objection, declares the motion CARRIED. REP. DECKERT will lead discussion in full committee. |
| 374 | Chair Krummel | Closes the work session on HB 2924. |
| 387 | Chair Krummel | Opens a public hearing on HB 2093. |
| <u>HB 2093 ñ PUBLIC HEARING</u> | | |

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| 398 | Mike Miller | Executive Vice President, Associated Oregon Loggers. Comments he has a couple of loggers with him today and they will not be able to present their testimony in two minutes. Suggest that if they are unable to return next week, he will present their testimony. |
| 423 | Miller | Summarizes a prepared statement in support of HB 2093 (EXHIBIT L). |
| TAPE 42, B | | |
| 020 | Miller | Continues presentation. |
| 050 | Gary Betts | President of Associated Oregon Loggers. Submits and reads a prepared statement in support of HB 2093 (EXHIBIT P). |
| 089 | Greg Gaston | Huffman and Wright Logging, Canyonville. Testifies in support of HB 2093 and the HB 2093-1 proposed amendments (EXHIBIT Q). Explains success of their business. Reviews history of payment of taxes and states that Huffman and Wright would continue to pay its share of property taxes if HB 2093 is passed. Comments on purchases of equipment and states that at 15 percent tax on a \$350,000 piece of equipment, the tax is about \$5,250 per year whether they make money or not or whether the equipment is used. Comments that there is less damage with mechanical equipment. Making logging equipment exempt from personal property taxes will eliminate a current disincentive to invest in the updated environmentally sensitive equipment. |
| 126 | Chair Krummel | Requests that representatives from the Association of Oregon Counties and League of Oregon Cities appear at the next hearing on the bill. |
| 137 | Chair Krummel | Closes the public hearing on HB 2093 and adjourns meeting at 2:55 p.m. |

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2248, HB 2248-8 amendments, John Powell, 8 pp

B ñ HB 3083, HB 3083-1 amendments, Steve Vincent, 1 p

C ñ HB 3083, prepared statement, Steve Vincent, 11 pp

D ñ HB 3083, prepared statement, Cindy Finlayson, 2 pp

E ñ HB 3083, letter from Oregon Trail Electric, Sandy Flicker, 2 pp

F ñ HB 3083, prepared statement, Everett Cutter, 3 pp

G ñ HB 3083, prepared statement, Jim OiNeil, 2 pp

H ñ HB 3083, Electric Tracking Rate Changes chart, Jim OiNeil, 2 pp

I ñ HB 2774, HB 2774-6 amendments, Charles Stern, 12 pp

J ñ HB 2924, HB 2924-2 amendments, Charles Stern, 2 pp

K ñ HB 2924, prepared statement, Tom Wrosch, 1 p

L ñ HB 2093, prepared statement, Mike Miller, 8 pp

M ñ HB 2248, HB 2248-7 amendments, staff, 8 pp

N ñ HB 2774, HB 2774-5 amendments, Charles Stern, 8 pp

O ñ HB 2924, HB 2924-1 amendments, Charles Stern, 2 pp

P ñ HB 2093, prepared statement, Gary Betts, 1 p

Q ñ HB 2093, HB 2093-1 amendments, Greg Gaston, 3 pp