

SENATE COMMITTEE ON JUDICIARY

June 15, 1999 Hearing Room C

2:00 p.m. Tapes 235 - 238

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HB 3052 ñ Reconsideration and Work Session

HB 2383A ñ Public Hearing

HB 2932 ñ Public Hearing

HB 3245A ñ Public Hearing and Work Session

HB 3538B ñ Public Hearing

HB 2319A ñ Public Hearing and Work Session

HJR 2A ñ Public Hearing

HJR 52A ñ Public Hearing

TAPE/#	Speaker	Comments
TAPE 235, A		
003	Chair Bryant	Calls meeting to order at 2:06 p.m.
014	Sen. Bryant	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote which sent HB 3052B to the floor DO PASS.
		VOTE: 6-0 EXCUSED: 1 - Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
017	Sen. Bryant	MOTION: Moves to RECONSIDER the vote by which HB 3052B was sent to the floor with a DO PASS recommendation.
018	Chair Bryant	Indicates there is an error in the bill that needs to be corrected with the ñB6 amendments (EXHIBIT A).
		VOTE: 6-0 EXCUSED: 1 - Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
<u>HB 3052 WORK SESSION</u>		
028	Sen. Burdick	Indicates the error would be corrected by the ñB6 amendments that would change "medication" to "medical" on page 4, line 17 of the B-engrossed bill.
044	Sen. Burdick	MOTION: Moves to ADOPT HB 3052B-B6 amendments dated 6/8/99.
		VOTE: 7-0

	Chair Bryant	Hearing no objection, declares the motion CARRIED .
046	Sen. Burdick	MOTION: Moves HB 3052B to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED . SEN. BURDICK will lead discussion on the floor.
<u>HJR 2 and HJR 52 PUBLIC HEARING</u>		
105	Rep. Rob Patridge	State Representative, House District 50 Testifies in support of HJR 52 that would send a measure to the ballot regarding the zoning of sexually oriented businesses. Oregon is one of only two states that do not allow cities to regulate the zoning of adult businesses. Discusses the difficulties experienced in Medford with adult businesses and the history of drafting HJR 52.
157	Chair Bryant	Are there any grandfather provisions for existing businesses?
159	Rep. Patridge	Not specifically in this measure, but zoning laws make provision for this type of zoning.
169	Chair Bryant	Discusses the testimony received by the House Judiciary, Civil Law Committee in support of HJR 52 (EXHIBITS B & C).
174	Rep. Vic Backlund	State Representative, House District 33 Testifies in support of HJR 52. Discusses the history of the drafting of this measure.
182	Rep. Kevin Mannix	State Representative, House District 32 Testifies in support of HJR 2 and HJR 52. Discusses the history of ballot measures attempting to regulate adult oriented businesses to the extent allowed by the U.S. Constitution. HJR 52 would regulate the location of adult oriented businesses. HJR 2 would regulate nude dancing in public establishments. Both of these HJRs empower communities to make narrowly defined decisions for the good of their community.

280	Chair Bryant	Currently, under our Oregon Constitution, these businesses and activities cannot be regulated or zoned?
282	Rep. Mannix	The Oregon Supreme Court has determined that nude dancing in and of itself is a form of expression and cannot be regulated or zoned.
288	Sen. Brown	The A-engrossed version prohibits nudity in a public place entirely.
300	Rep. Mannix	If we just specified nude dancing then someone could still be a nude waitress.
312	Sen. Brown	No nude sunbathing or nudist colonies?
316	Rep. Mannix	If a community wanted, they could have these activities. Private property would not be regulated.
323	Sen. Brown	Discusses the country fair in Eugene.
330	Rep. Mannix	Indicates that HJR 2 addresses local control of public, not private property.
340	Sen. Brown	So you are supporting local control?
343	Rep. Mannix	Always, when it is appropriate.
345	Sen. Courtney	We have tried to regulate these businesses twice. There are groups that opposed this in the past who haven't voiced their opposition. Does that mean they support these HJRs?
353	Rep. Mannix	I do not want to make that representation to you however, this is a very limited bill. Those organizations apparently have not felt they had to object. Those groups would have been active I think if they objected. Spending money at the legislative level is more cost effective than fighting a ballot measure so I think we would have seen them by now.
369	Sen. Courtney	You're assuming that everything is okay.
373	Rep. Mannix	Continues discussing the history of these types of regulatory action.
418	Chair Bryant	This does not include print material, which was included the last time.
422	Rep. Mannix	That's correct.
429	Sen. Courtney	So, this bill does not cover videos or written materials? They could still have the

		adult entertainment stores.
452	Rep. Mannix	If the zoning piece passes, HJR 52, then adult businesses could be zoned out of the area.
483	Sen. Duncan	I have received a great deal of mail from nudist groups on this issue. They could not be restricted under HJR 52? But they could be under HJR 2?
500	Rep. Mannix	A private club is not covered. A publicly owned beach is, and the community would have to decide whether they would want to restrict it or not.
Tape 236, A		
047	Chair Bryant	Your definition of public establishment comes from case law?
056	Rep. Mannix	Yes, the only thing I would caution against is the sham organization that could pretend to have a private club. This must be established by case law.
062	Chair Bryant	Discusses the Texas club atmosphere where you needed to join a club to drink on Sunday.
068	Rep. Mannix	Sham private organizations will not be legal. Case law will establish this.
120	Marge Kafoury	City of Portland Submits written testimony and testifies in support of HJR 52 (EXHIBIT D).
160	Chair Bryant	The challenge is the distribution or display of representations of sexual activity? If HJR 52 passes then the City of Portland would define what sexual activity would be?
164	Madelyn Wessel	City of Portland Designing a constitutional amendment is a somewhat perplexing problem. It is important to have a narrow definition.
192	Sen. Courtney	Will Portland support this? The vote that defeated this earlier came from Portland.
200	Wessel	I think the substantial difference is that this bill is very narrow and only addresses zoning.

221	Sen. Duncan	Do you have a position on HJR 2?
222	Wessel	The City of Portland does not have a position. Clearly, HJR 2 is broader than HJR 52.
251	Sen. Duncan	If you were the attorney for a nudist group, would you be concerned?
253	Wessel	Yes, I would be.
257	Sen. Burdick	If HJR 52 passes, what are the protections that existing businesses would have?
273	Wessel	The city has a code that regulates non-conforming uses. As a general matter it applies to all businesses. Discusses possible amortization of existing businesses and the rules that would apply.
312	Sen. Burdick	If you were going to use amortization to move businesses, what sort of time schedule would you use?
317	Wessel	It is questionable whether an amortization period of less than a year would be viable. But there are many issues that come into play. My prediction would be that amortization would not be used very much. The City Counsel seems to be most interested in steering away adult businesses from schools and parks.
413	Sen. Marilyn Shannon	State Senate, District 15 Testifies in support of HJR 2 and HJR 52. Discusses the history of public nudity and the current law.
453	Jessica Ireland, Ashley Ciobanasiu, Kelli Collins	Three young girls from Midland Park School, Portland Consecutively testify in support of HJR 52.
Tape 235, B		
058	Linda Casey	Medford, Oregon Testifies in support of HJR 52. Indicates it is very frustrating to not be able to control such businesses. Local government needs to be able to site these businesses.
129	Claire Bennett	Bandon, Oregon Testifies in support of HJR 2 and HJR 52 (EXHIBIT E). Discusses an adult business close to the elementary school in Bandon.

175	James Crooker	Coos County, Oregon Testifies in support of HJR 52 (EXHIBIT F).
241	Rep. Floyd Prozanski	State Representative, House District 40 Submits written testimony and testifies in opposition to HJR 2 (EXHIBIT G). Testifies in opposition to HJR 52 as a ballot measure and indicates the issue should be addressed in statute.
<u>HB 3538B PUBLIC HEARING</u>		
410	Dale Mannon	Attorney, Elder Law Testifies by phone in support of HB 3538B (EXHIBITS H & I). Indicates the bill arose from a need identified in the elder law area. Many times a guardianship is required for the making of health care decisions. A process is needed to handle these issues for people who are in an institution who have no one to make these decisions for them. HB 3538B addresses the due process issues that arise.
Tape 236, B		
044	Mannon	Discusses the appeal process in HB 3538B and the safeguards built in to the procedures.
069	Sen. Nelson	How many people are we talking about?
073	Mannon	I do approximately six of these cases a year. In the four eastern Oregon counties we probably have three or four times that.
085	Sen. Nelson	Could you comment on how you tried to build in the due process requirements?
088	Mannon	Discusses the due process requirements that were built into the bill.
<u>HB 2319A WORK SESSION</u>		
130	John Minnis	Detective Sergeant, Portland Police Testifies in support of HB 2319A that deals with money laundering and is modeled after a federal statute. Oregon has no prohibition on money laundering.
146	Karen Immergut	Multnomah County District Attorney's Office Testifies in support of HB 2319A. Indicates that the bill is needed even though there is a federal money laundering statute because this bill targets the upper echelon people. There are also cases that can't be prosecuted federally because

		they don't involve more than one state.
195	Sen. Tarno	Will this help us prosecute RICO cases?
198	Immergut	Yes, with caveats.
205	Minnis	There is a fiscal statement that requires HB 2319A be sent to Ways and Means.
<u>HB 2319 WORK SESSION</u>		
227	Sen. Courtney	MOTION: Moves HB 2319A to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means.
		VOTE: 4-0 EXCUSED: 3 - Brown, Burdick, Bryant
Chair Courtney		Hearing no objection, declares the motion CARRIED.
<u>HJR 2 and HJR 52 PUBLIC HEARING</u>		
243	Susan Jacobs	Scappoose, Oregon Testifies in support of HJR 2 and HJR 52. Discusses the history of problems with adult businesses in Nyssa and Scappoose, Oregon (EXHIBIT J).
280	Sen. Duncan	Did I understand the Nyssa group was coming tomorrow?
289	Jacobs	It is a very long trip and they thought it was tomorrow. I don't imagine they will come.
293	Sen. Duncan	Is there some way we can arrange that they be heard?
311	Jacobs	I don't know if they are on the way. I do know they would be happy to know what has been said here today.
316	Beth Vargas	League of Oregon Cities

	Duncan	Testifies in support of HJR 52.
321	David Fidanque	American Civil Liberties Union of Oregon (ACLU) Testifies in opposition to HJR 2 and HJR 52. Indicates that he believes the major reason prior ballot measures on these issues failed were because they tied the definition of free expression to the federal constitution. Discusses SB 1142 from this legislative session that takes a different approach toward controlling adult businesses. Nuisance ordinances are a better way to approach these problems.
486	Sen. Courtney	Discusses SB 1142 and asks if the ACLU will "guarantee" that SB 1142 would be found constitutional.
510	Fidanque	Discusses the language in SB 1142 and his belief that this type of wording would be constitutional.
Tape 237, A		
074	Fidanque	Continues discussing the provisions of SB 1142. Indicates that if the committee might approve HJR 2 or HJR 52 he would have some specific language suggestions.
112	Sen. Burdick	I'm not familiar with the approach taken by SB 1142 and the Grant's Pass ordinance. What controls on adult businesses are available?
120	Fidanque	Discusses current statutes that disallow certain activities for minors.
140	Chair Bryant	Asks if the approach supported by the ACLU is appropriate and workable.
144	Madelyn Wessel	City of Portland Indicates that if the approach recommended by the ACLU was appropriate and viable, local municipalities would be following that approach. Portland has worked very hard to handle these problems within constitutional boundaries.
176	Sen. Nelson	States that Legislative Counsel has indicated that few pictures of nudity would be obscene.
190	Steve Kafoury	Representative of American Association for Nude Recreation Testifies in opposition to HJR 2. Indicates the measure is too broad, since nudity is not defined in the bill. Further, believes Oregonians should not give up their bill of rights and rely solely on the federal bill of rights.
221	Pat Brown	American Association for Nude Recreation (AANR)

		Testifies in opposition to HJR 2.
279	Shirley Gothier	Springfield, Oregon Testifies in opposition to HJR 2. Indicates she and her husband are nudists. Believes these potential ballot measures could catch innocent people unaware that they were breaking the law.
353	Sharon Bower	Citizen of Oregon Testifies in opposition to HJR 2. Believes that HJR 2 would unnecessarily intrude on her way of life.
373	Kafoury	Indicates that HJR 2 would make unwarranted changes to the First Amendment.
392	Sen. Courtney	Are you in support of HJR 52?
395	Kafoury	My clients are neutral, they have no formal position.
435	Mike Cargill	Citizen of SE Portland Submits written testimony and testifies in support of HJR 52 (EXHIBIT L).
Tape 238, A		
046	Greg Olson	SIEGE Testifies in support of HJR 52 (EXHIBIT M). Indicates that SIEGE is an organization in SW Portland composed of representatives from four neighborhood associations, parent-teacher associations and businesses who are concerned about adult establishments in their neighborhood.
075	Dave Kanner	SIEGE Testifies in support of HJR 52.
119	Georgeana Ireland	Artist, Mother Testifies in support of HJR 52. Indicates passage of HJR 52 will make neighborhoods safer for children.
<u>HB 3245A PUBLIC HEARING</u>		
167	Jim Craven	American Electronics Association Testifies in support of HB 3245A as amended with the ñA5 amendments

		<p>(EXHIBIT N). HB 3245A establishes the rules for civil</p> <p>action arising out of computer date failures. Indicates that the ñA5 amendments remove section 7 of the A-engrossed bill. It was agreed that this section was not needed.</p>
283	Rep. Max Williams	<p>State Representative, House District 9</p> <p>Testifies in support of HB 3245A as amended with the ñA5 amendments. Discusses the provisions of HB 3245 A.</p>
299	Craven	I would like to call to your attention that the vote in the House was 55-4 in support of HB 3245A.
322	Sen. Nelson	On page two, what is meant by providing the business with at least 3 months to cure the failure?
331	Craven	The plaintiff must allow at least 3 months before filing a suit.
<u>HB 3245 A WORK SESSION</u>		
344	Sen. Bryant	MOTION: Moves to ADOPT HB 3245A-A5 amendments dated 6/8/99.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
346	Sen. Bryant	MOTION: Moves HB 3245A to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 ñ Brown</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED.

		SEN. NELSON will lead discussion on the floor.
<u>HB 3538B PUBLIC HEARING</u>		
350	Tina Kitchen	Office of Development Disability Services Submits written testimony and testifies in support of HB 3538B (EXHIBIT O). HB 3538B would allow the formation of individual health care representative teams for certain incapable individuals who are receiving services from the Department of Human Resources.
400	Sen. Nelson	Asks a question regarding due process for individuals defined as "incapable."
405	Kitchen	Discusses the definition of "incapable" under the statute.
415	Sen. Tarno	Is there a fiscal statement involved?
436	Kitchen	No, we don't think so.
Tape 237, B		
021	Jennifer Wright	Director, Clinical Law Program, Willamette University Submits written testimony and testifies in opposition to HB 3538B (EXHIBIT P). Indicates that all the necessary elements of due process are missing in 3538B for the most vulnerable people in our society.
075	Chair Bryant	Did you testify against this bill on the house side?
076	Wright	No, we didn't know about it until it had already passed the House.
079	Sen. Nelson	Prior testimony indicated that this bill would effect very few people. How many people do you think would be effected?
080	Wright	I don't know. Discusses possible abuse of elders with this statute.
122	Meredith Cote	Alzheimer's Association Testifies in opposition to HB 3538B. Believes the elderly are not protected in the process outlined by HB 3538B.
166	May Dasch	Oregon Chapter of the Alzheimer Association Submits written testimony and testifies in opposition to HB 3538B (EXHIBIT

		Q). Discusses the conflict of interest inherent in the bill.
218	Bob Joondeph	Oregon Advocacy Center Submits written testimony and testifies in opposition to HB 3538B (EXHIBIT R).
241	David Nebel	Oregon Law Center Submit written testimony and testifies in opposition to HB 3538B (EXHIBIT S).
271	Terri Kraemer	Oregon Alliance of Senior and Health Services Testifies in opposition to HB 3538B. Discusses the difficulties she finds with the bill as it is currently written.
<u>HB 2932 PUBLIC HEARING</u>		
318	Rep. Prozanski	State Representative, House District 40 Testifies in support of HB 2932. Indicates Lane County law enforcement has asked that this bill be heard. It would provide a method for notifying possible property purchasers of potential drug contaminants from a former owner's use of the property. Discusses provisions of the bill.
399	Chair Bryant	Do you have any objection to adding that there would be no private cause of action for failure to give the notice?
401	Rep. Prozanski	Please clarify this for me. No private cause of action on whose part?
406	Chair Bryant	If a director from the Department of Business and Consumer Affairs (is required to give this notice)
408	Rep. Prozanski	Yes, I agree, they shouldn't be sued.
424	Sen. Duncan	Was there any opposition to HB 2932 in the House?
428	Rep. Prozanski	No organized opposition.
437	Sen. Burdick	Would the certification of contamination and clean up remain with the property?
444	Rep. Prozanski	It would stay with the property.
Tape 238, B		

014	Sen. Burdick	Discusses the half-life of contaminants and the perception of a buyer even if the property was completely clean. Discusses expungement of the record for land that has been cleaned up.
024	Rep. Prozanski	We received no testimony on this issue.
041	Charles Stern	Yamhill County Clerk Testifies that he is neutral on HB 2932. Indicates that the certificate required places an additional obligation on the County Clerks offices. They would like the requirement to mirror requirements for other land records. Discusses the ñl amendments, which they submitted, but indicates that they don't address the concerns they have in full (EXHIBIT V). Indicates that land records are historical and expungements are not a usual process. Discusses the difficulty of removing an action from the land record.
072	Craig Chisholm	Oregon Land Title Association, Oregon State Bar, Real Estate Section Testifies in opposition to HB2932. Placing this information into deed records is technically and conceptually wrong. Notifying potential buyers in another way is appropriate.
105	Chair Bryant	Mortgage funding could be denied, or be more difficult to obtain, whether or not the certificate had been satisfied and was no longer a risk.
108	Chisholm	The solution is to list these contaminated properties and have it available to potential buyers. Then these properties can be taken off the list when they have been cleaned up. These lists can be posted on the government web site. Deed records are not the place for this information.
145	Rep. Prozanski	The lists would still leave the buyer without a sure way to connect contamination with a piece of property. We have a health risk and need to find a solution.
176	Counsel Taylor	If it is not on the title, does this mean a buyer would have a cause of action against the seller or the realtor?
180	Chisholm	Possibly. I apologize for not addressing this sooner in the legislative process. I was unaware of the legislation. We need to find a way to do this without placing it in the deed record.
<u>HB 2383A PUBLIC HEARING</u>		
208	Justin Burns	Cunningham Sheep Company Testifies in support of HB 2383A that prohibits transfer of real property by claim of adverse possession in specified situations. Indicates support for the ñA10 amendments (EXHIBIT V). Indicates a claim for adverse possession was made

		on 240 acres of their property due to grazing taking place.
237	Raymond Godfrey	Church member Testifies in support of HB 2383A. Discusses adverse possession and how his church was impacted.
283	Sen. Duncan	Arenit there legal ways to assure that adverse possession wonit apply?
286	Sen. Courtney	There are ways to demonstrate to the court that you are doing certain things to assure the property is not available through adverse possession.
294	Counsel Taylor	Quotes from ORS 105.620, which specifies how title can be obtained through adverse possession.
317	Geraldine Stoller	Elmer Stoller Farms, Rickreall, Oregon Testifies in support of HB 2383A. Discusses her experience with adverse possession. Believes a change must be made.
355	Godfrey	The judges need some guidance on this issue. The decisions being made are not uniform.
382	Chair Courtney	Adjourns the hearing at 5:45 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HB 3052B, -B6 amendments dated 6/8/99, 1 pp

B ñ HJR 52, written testimony from Madelyn Wessel, 4 pp

C ñ HJR 52, written testimony submitted by staff, 4 pp

D ñ HJR 52, written testimony submitted by Vera Katz, 2 pp

E ñ HJR 52, written testimony submitted by Claire Bennett, 1 pp

F ñ HJR 52, written testimony submitted by J. Crooker, 3 pp

G ñ HJR 52, written testimony from Legislative Counsel submitted by Rep. Prozanski, 2 pp

H ñ HB 3538B, written testimony from Teresa Smith-Dixon, 1 pp

I ñ HB 3538B, written testimony from Suzanne Madden, 1 pp

J ñ HJR 2 & HJR 52, written testimony from S. Jacobs, 2 pp

K ñ HJR 2, written testimony from Patrick McLaughlin, 1 pp

L ñ HJR 52, written testimony from Mike Cargill, 2 pp

M ñ HJR 52, written testimony from SIEGE, 4 pp

N ñ HB 3245A, -A5 amendments dated 6/8/99, 1 pp

O ñ HB 3538B, written testimony submitted by Tina Kitchin, 3 pp

P ñ HB 3538B, written testimony from Jennifer Wright, 1 pp

Q ñ HB 3538B, written testimony from May Dasch, 1 pp

R ñ HB 3538B, written testimony from David Nebel, 2 pp

S ñ HB 3538B, written testimony from Bob Joondeph, 2 pp

T ñ HB 2932, -1 amendments dated 6/2/99, 1 pp

U ñ HB 2932, written testimony from Ronald Hall, 3 pp

V ñ HB 2383A, -A10 amendments dated 5/28/99, 1 pp