

## SENATE COMMITTEE ON RULES AND ELECTIONS

**June 3, 1999 Hearing Room B**

**8:00 a.m. Tapes 74 ñ 75**

**MEMBERS PRESENT: Sen. Charles Starr, Chair**

**Sen. Lee Beyer**

**Sen. Peter Courtney**

**Sen. Neil Bryant**

**MEMBER EXCUSED: Sen. Randy Miller, Vice-Chair**

**STAFF PRESENT: Carol Rives, Administrator**

**Patrick Brennan, Administrative Support**

**Valerie Luhr, Administrative Support**

**MEASURE/ISSUES HEARD: HB 3241-A Public Hearing and Work Session**

**SB 855 Public Hearing**

**HB 2637 Public Hearing**

**HB 3455 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 74, A		
		Due to technical difficulties, the meeting recording begins, in its entirety, at tape count 147. The recording at the beginning of the tape is of another meeting and should be disregarded.
147	Chair Starr	Calls the meeting to order at 8:15 a.m. Explains that traffic difficulties are delaying the arrival of witnesses. Opens a public hearing on HB 3241-A.

**HB 3241-A PUBLIC HEARING**

170	Roger Hamilton	Commissioner, Public Utility Commission of Oregon (PUC). Testifies in opposition to HB 3241-A ( <b>EXHIBIT A</b> ). Explains that oversight of affiliated interests is necessary to prevent utilities from charging excess prices to raise profits. Says that affiliates can impede market entry when subsidized. Mentions that SB 1149 includes provisions to prohibit cross-subsidization. Asserts that the annual reporting requirement prevents abuse and provides important information to the commission. Recommends the committee place a period on page 3, line 4 of the bill, deleting the remainder of the line following "sole reporting obligations under ORS 759.385 and 759.390". Explains that the change would eliminate confusion, as PUC currently has the authority to conduct other types of investigations filed under other statutes, such as rate reviews.
244	Sen. Courtney	Asks if the change is related to reporting.
245	Hamilton	Replies that it is not.
248	Sen. Courtney	Requests clarification. Asks if PUC supports only the \$100,000 requirement.
252	Hamilton	Concurs with Sen. Courtney.
256	Mark Helman	Representative, PUC. Says the discussed change would avoid legal battles without changing the intent of the bill. States that the commission proposal would allow continued review through the deletion of section 3.
277	Chair Starr	Indicates that proponents of the bill have said that the bill will merely allow two reviews, rather than three. Wonders why two reviews would be insufficient.
284	Helman	Replies that PUC could perform cumbersome rate reviews, but that those would require seeking a refund in the event of wrongdoing. Says there are not many transactions between \$25,000 and \$100,000, meaning the requirement has not been burdensome. Acknowledges that utility companies do consider the requirement to be a burden. Indicates that there was one such contract in 1996, three in 1997, one in 1998, and none so far in 1999. Suggests that customers would be disadvantaged if disputes were solved in a rate case.
310	Chair Starr	Asserts that the number of contracts is so small that the change would be unlikely to disadvantage customers.
313	Helman	Argues that the number of contracts does not pose a serious problem to utilities, either. Says the potential for abuse necessitates the maintenance of the deterrent.
324	Shelley Jensen	Regulatory and Governmental Affairs Manager, GTE. Testifies in support of HB 3241. Explains that the current limit is \$25,000, meaning that any contract over that amount requires filing with PUC, although contracts between \$25,000 and \$100,000 are expedited. Says PUC is required to investigate all contracts over \$100,000. Clarifies that the bill merely eliminates the expedited process. Says the

		annual reporting requirement is in administrative rule rather than in statute. Describes the annual reporting requirements, and adds that any changes called for still require a rate proceeding.
388	Sen. Bryant	Inquires as to the reason the annual reporting requirement was enacted in the first place.
390	Jensen	Replies that there are legitimate reasons for oversight of transactions, as corporations could unfairly advantage certain affiliates. Reasserts that the bill would not eliminate the ability of PUC to review contracts or, if necessary, perform a rate proceeding.
403	Sen. Bryant	Wonders why the statute was passed in the first place, given all the other reporting requirements.
408	Jensen	Clarifies that the annual reporting requirement is not in statute, but is instead an administrative rule.
414	Sen. Bryant	Asks if the rule existed prior to the statute requiring other reporting requirements.
415	Jensen	Replies she believes the rule was based upon the statute and enacted later.
<b>TAPE 75, A</b>		
002	Chair Starr	Closes the public hearing on HB 3241-A and opens a work session on HB 3241-A.
<b><u>HB 3241-A WORK SESSION</u></b>		
006	Sen. Courtney	Requests a description of the ñA2 amendments <b>(EXHIBIT B)</b> .
008	Jensen	Indicates that the version of the bill that passed the House did not reflect an interpretation that all subsequent contracts would need to be filed once the \$100,000 threshold is reached. Says the amendments clarify that each transaction will be considered separately.
022	Sen. Courtney	Inquires whether PUC supports the ñA2 amendments.
027	Hamilton	Says PUC does not interpret the requirements that way and does not support the ñA2 amendments.
031	Jensen	Clarifies that the amendments do not eliminate the annual reporting requirement

		for transactions over \$100,000. Expresses concern that the bill, in its current form, would need to be amended in the future.
040	Hamilton	Interprets the bill to mean that any additional contracts would need to be filed only if they were over \$25,000 or related to an existing contract of over \$25,000. Mentions that the alternative interpretation had not occurred to PUC.
045	Sen. Courtney	Asks if PUC testified in front of the House committee on HB 3241.
050	Hamilton	Replies that he testified on a different bill to the House committee, but not on HB 3241 or the ñA2 amendments.
052	Sen. Courtney	Inquires whether Mr. Hamilton testified in regard to section 3.
053	Hamilton	Replies that he did not testify on section 3.
055	Helman	Mentions that he testified in opposition to the elimination of the annual reporting requirement.
058	Sen. Courtney	Requests clarification that PUC would prefer to have section 3 removed.
059	Helman	Clarifies that his testimony suggested that either section 3 be removed or that reporting should be biennial, but that it was made clear that reporting requirements must remain in order to prevent potential abuses.
061	Sen. Courtney	Asks if PUC submitted amendments to the bill in the House committee.
062	Helman	Responds that he does not believe so.
065	Sen. Courtney	Asserts that the goal of the committee is to bring the two sides together on the bill.
067	Jensen	Submits that such an effort has been made, but that the annual reporting requirement has been a "sticking point."
069	Helman	Agrees that PUC has discussed the matter with GTE and that an agreement could not be reached.
072	Hamilton	Reiterates that PUC would support raising the limit to \$100,000, so long as the annual reporting requirement was retained.
076	Sen. Beyer	Requests clarification that the current system requires PUC approval of any

		contract over \$25,000.
080	Hamilton	Replies that is the case, adding that if PUC takes no action within 90 days the contract is automatically approved.
084	Sen. Beyer	Asks for confirmation that there is an annual reporting requirement in addition to the filing requirement.
085	Hamilton	Confirms Sen. Beyer's statement. Indicates that PUC has used the system to return to consumers "millions of dollars of inflated interest transaction abuses."
091	Sen. Beyer	Clarifies that the bill would both increase the level of contracts to be filed to \$100,000 and eliminate the annual reporting requirement. Wonders if such a change would leave PUC with no knowledge of transactions under \$100,000.
098	Hamilton	Replies that PUC would have no knowledge of those transactions until such time as a general rate review was performed. Mentions that GTE has recently received its first general rate review in "six or seven years."
101	Jensen	Indicates that GTE had reduced its rates by \$25 million as of its recent rate review and that less than \$200,000 of its total transactions was related to affiliate transaction issues.
106	Sen. Beyer	Asks what is done with the reports once they are filed.
110	Hamilton	Replies that PUC uses the information within the rate review process. Argues that the reporting requirement acts as a deterrent, although it would be difficult to demonstrate that it prevents abuse.
121	Sen. Beyer	Submits that the dollar amount would seem to be "rather insignificant" for a rate review case.
125	Hamilton	Indicates that most applicable contracts are related to real estate or data processing. Says that GTE had only three contracts valuing between \$25,000-\$100,000 in 1997, meaning that the total could have been as much as \$300,000. States that other examples, such as the leasing of space by U.S. West, saw much more significant amounts. Says the only reason PUC has information regarding abuses is due to the reporting requirement.
141	Sen. Beyer	Summarizes that the only alternative to the reporting requirement would be for PUC to initiate a rate review. Adds that rate reviews are not performed frequently.
146	Hamilton	Concurs, adding that they are expensive for all parties.

149	Sen. Beyer	Submits that the reporting requirements do not do much, besides taking up file space. Acknowledges PUC's role as a "protector of the public interest." Wonders if both the filing of contracts and the annual reports are really necessary.
160	Jensen	Asserts that it is not necessary to have both.
163	Sen. Beyer	Asks why GTE wishes to be relieved of both requirements. Suggests that the real issue may be that GTE does not wish to attain prior approval.
165	Jensen	Indicates that prior approval is not the issue. Says that PUC does not disapprove contracts, but instead disallows the amount of a particular contract from becoming part of the rate base.
172	Helman	Indicates that PUC would not approve contracts if they were found to be unreasonable, but would instead request that changes be made.
176	Jensen	Asserts that the contract would be allowed, but that the terms of the contract would be disallowed from calculations of customer rates.
184	Hamilton	Recalls that PUC has previously disapproved contracts on the basis of filings.
191	Sen. Beyer	Asks if PUC will retain aggregate annual reporting of contracts prior to performing a rate review.
195	Jensen	Replies that only contracts for amounts over \$100,000 will be filed and investigated.
199	Sen. Beyer	Requests confirmation that the bill eliminates the annual reporting requirement within administrative rule.
201	Jensen	Responds that section 3 of HB 3241-A eliminates that requirement.
208	Hamilton	Summarizes that if the bill passes, PUC would have no idea what was happening until a general rate review was performed.
213	Sen. Beyer	Indicates he has no quarrel with increasing the filing requirement to \$100,000. Expresses concern regarding the elimination the annual reporting requirements.
220	Jensen	<p>States that PUC currently receives the following information:</p> <ul style="list-style-type: none"> <li>• Copies of all contracts over \$25,000</li> <li>• Organization charts for all affiliates</li> <li>• Balance sheets and income statements for all affiliates</li> <li>• Description of the types of business each affiliate provides</li> <li>• Lists of directors for all affiliates</li> </ul>

		<ul style="list-style-type: none"> <li>• Lists of contracts already filed with PUC</li> </ul> <p>Clarifies that the amended bill would raise the contract level for the first requirement to \$100,000, while eliminating the other requirements.</p>
237	Sen. Beyer	Argues that PUC needs to have information about contracts to regulate the industry. Says that he is agreeable to the elimination of approval authority for contracts under \$100,000, but cannot accept the removal of the commission's ability to review contract information.
248	Jensen	Says that contracts over \$100,000 would still be filed, but that the annual report that basically duplicates those filings would be eliminated.
259	Sen. Beyer	Takes issue with the elimination of filing and review requirements for contracts under \$100,000.
262	Jensen	Reiterates that the process that would be eliminated is an expedited one.
267	Chair Starr	Closes the work session on HB 3241-A and opens a public hearing on SB 855.
<b><u>SB 855 PUBLIC HEARING</u></b>		
290	Joe Willis	Legal Representative, AK Media. Testifies in support of SB 855. Says that the Oregon Constitution probably prohibits portions of ORS Chapter 377, an opinion that is currently being deliberated by the Oregon Supreme Court. Says the industry in general, and AK Media in particular, believed it was appropriate that the law be "fixed," so as to maintain existing regulatory authority in a lawful, constitutional manner. States that the key to maintaining lawful authority is to eliminate definitional sections of Chapter 377 that relate to content-based controls. Mentions that the original statute was passed in 1971, while the decisions upon which the constitutional challenge is based were made in 1982. Asserts that change must be made now, while the legislature is still in session.
360	Willis	<p>States there are three concerns addressed by the bill:</p> <ul style="list-style-type: none"> <li>• The definition of visibility. Discusses the variation in opinion regarding what is or is not visible from the highway.</li> <li>• Certain technological advances in signage. Describes "tri-vision" signs, which have been approved by over 30 states and improve efficiency, but are currently not allowed in Oregon.</li> <li>• The definition of interchanges. Describes examples of frontage road "interchanges" that can extend for miles, disallowing signs vital for businesses.</li> </ul>
430	Terry Sandblast	Governmental Affairs Manager, AK Media; President, Oregon Outdoor Advertising Association (OOAA). Testifies in support of SB 855. States that the Oregon Outdoor Motorists Information Act (OMIA), adopted in 1971, has worked well for three decades, with only a handful of technical concerns being raised since its inception. Says that only about 500 signs have been removed

		over the years. Describes "tri-vision" signs as low-tech and unrelated to the television signs that have recently caused problems.
<b>TAPE 74, B</b>		
017	Sandblast	Opines that local permits should be considered sufficient documentation for the acquisition of state permits. Suggests that the current permit life of 120 days be extended to 180 days and that the fees be doubled. Mentions that stronger penalties have also been proposed.
042	Sen. Beyer	Mentions that the committee has received the ñ2 amendments ( <b>EXHIBIT C</b> ), which are essentially a "gut and stuff." Asks where the state and local permit information is located within the amendments.
046	Sandblast	Replies that the material in question is located in section 4, on page 8 of the amendments.
053	Willis	Adds that cities have refused to sign agreements in the past, a problem that would be circumvented by section 4.
065	Sen. Beyer	Recalls that city signage ordinances must be in compliance with state law for signs located near state highways.
071	Willis	Concurs with Sen. Beyer.
076	Sen. Beyer	Assumes that the Oregon Department of Transportation (ODOT) reviews local ordinances to insure compliance.
077	Willis	Replies that he is unsure about the existence of a review process, other than the requirement to file an affidavit declaring compliance.
079	Sen. Beyer	Submits there could be a situation where a sign meets general state requirements but fails to comply with city ordinances.
083	Willis	Concurs with Sen. Beyer, but adds that no city official would sign the affidavit in such a situation. Asserts the affidavit is sufficient proof of compliance with local laws.
089	Sen. Beyer	Summarizes that the bill would simply eliminate the duplication of compliance processes.
091	Willis	Argues that there is no better demonstration of compliance with local codes than a permit issued by the administrator of those codes.



095	Sen. Bryant	Requests confirmation that Mr. Willis supports the ñ2 amendments.
098	Willis	Indicates that he supports the ñ2 amendments to SB 855.
106	Ted Hughes	Representative, Outdoor Systems Advertising. Testifies in support of the ñ2 amendments to SB 855.
113	Al Lightner	Manager, Right-of-Way Project Administration, ODOT. Testifies to a position of neutrality on the ñ2 amendments to SB 855 ( <b>EXHIBIT D</b> ). Asserts that tri-vision signs raise safety issues related to driver distraction. Says the amendments allow signs to be visible from multiple highways and to be installed in areas where they are currently prohibited. Expresses doubt that the OMIA will be found unconstitutional, mentioning several courts that have upheld it previously. Speculates that only certain parts of the act would be invalidated.
155	Lightner	Argues that the change in definitions of visibility and interchanges and the introduction of rotating signs are "fundamental shifts" in state policy. Suggests that a more appropriate method for making changes would be to bring them to the Transportation Commission, which could investigate them further. Agrees that the act has worked well over the years, adding that the amendments attempt to adjust the act without determining what changes would be acceptable.
180	Sen. Bryant	Presumes the Federal Highway Commission would send a letter to the state, notifying that compliance was not being met, prior to any reduction in funding.
187	Lightner	Concurs with Sen. Bryant.
188	Sen. Bryant	Says that federal agencies recognize when state legislatures are out of session and would likely not cut off funding immediately. Requests confirmation that the case has already been heard by the Oregon Supreme Court and is currently awaiting decision.
204	Lightner	Recalls that the case was heard in November of 1998.
205	Sen. Bryant	Mentions that there is no deadline for the court to issue its decision. States that Oregon has a broader free speech provision than even the federal government, making substantial changes unlikely. Requests a description of what would result if ORS Chapter 377 were declared unconstitutional.
218	Lightner	Replies that he cannot say.
221	Sen. Bryant	Asks if federal highway funds would be jeopardized.
222	Lightner	Replies that would be the case. Says he has learned that the federal government would probably act quickly should such a decision be made.

230	Sen. Bryant	Asks if the federal government has accepted provisions similar to those proposed by the ñ2 amendments in other states.
234	Lightner	Replies that each state has different agreements with the federal government, making such a comparison difficult.
246	Sen. Courtney	Inquires what section of the amendments allows more signs to be erected.
252	Lightner	Replies that provision is made on page 2, line 28, through the definition of interchange. Explains that altering the definition of interchange would allow erection of signs where they are not currently permitted.
265	Sen. Courtney	Asks what section allows for erection of tri-vision signs.
267	Lightner	Replies that provision is made on page 5, line 31, through the introduction of the definition of tri-vision as a sign.
272	Sen. Courtney	Indicates that he sent a copy of the ñ2 amendments to Deputy Attorney General Dave Schuman, who determined that the OMIA would be made more neutral by the bill, and that the changes would prevent certain constitutional challenges. Asks if ODOT objects to sections 2 and 3 of the amendments.
298	Lightner	Replies that the objection is not to constitutional infirmity but rather to the peripheral issues.
305	Sen. Courtney	Says his understanding is that sections 2 and 3 relate solely to the constitutional issue. Acknowledges Mr. Lightner's assessment of peripheral sections.
321	Sen. Beyer	Concurs with Sen. Courtney that there should be separation of the issues related to constitutionality and those that create new policy choices. Suggests that a staff analysis of the amendments would be helpful for discerning between the two.
341	Sen. Bryant	Suggests that Mr. Schuman should testify to the committee regarding the comments he made to Sen. Courtney, as well as the constitutional issue.
347	Sen. Beyer	Mentions that sign codes are difficult to deal with.
350	Sen. Courtney	Reiterates that the two sections of the amendments would address the constitutional issue.
360	Keith Claycomb	Representative, Oregon Roadside Council. Testifies in opposition to the ñ2 amendments to SB 855 ( <b>EXHIBIT E</b> ). Acknowledges the bill has some beneficial pieces, but should nonetheless be considered with caution.

405	Claycomb	Says that he was a member of a task force appointed to study the issue of signage, specifically to provide input regarding the administration of sign regulation. Indicates that the task force focused primarily on the issue of constitutionality and could not reach consensus. States that Mr. Sandblast had proposed changes to the task force. Expresses strong opposition to provisions that allow use of moving signs, such as the tri-vision signs mentioned in the amendments, as they pose a danger due to distraction.
<b>TAPE 75, B</b>		
044	Chair Starr	Closes the public hearing on SB 855 and opens a public hearing on HB 2637.
<b><u>HB 2637 PUBLIC HEARING</u></b>		
057	Rick Hohnbaum	Interim Manager, city of Scappoose. Testifies in support of HB 2637 ( <b>EXHIBIT F</b> ). Asserts that Scappoose should receive the same exemption from the Department of Environmental Quality (DEQ) testing program as Newberg, Dundee, Aurora, and Marquam. Explains that although a smaller number of Scappoose residents commute to the Portland airshed than from the exempted communities, the percentage of Scappoose residents that do commute requires all residents to participate in the testing program. Mentions that the testing station located near Scappoose has closed, requiring residents to travel through Cornelius Pass. Indicates that the state has suggested the city provide a building for a testing facility, but adds that no appropriate buildings are available. Says he supports HB 2637 as "a minimum" in addressing the needs of the community.
097	Glenn Dorschler	Mayor, City of Scappoose. Testifies in support of HB 2637 ( <b>EXHIBIT G</b> ). Says that the bill is merely the latest in a long list of steps taken to address the problem imposed by DEQ testing requirements. Submits that DEQ requirements should be limited to vehicles contributing to air quality problems in the Portland airshed. Indicates that a similar bill was passed in 1997, but was not signed by the Governor, who instead suggested that DEQ review hardship and fairness issues. Mentions that the Governor offered to support future legislation in the event that the review revealed hardship. Urges support of the bill to provide relief for the non-commuters and retirees of Scappoose.
122	Chair Starr	Clarifies that the bill exempts vehicles certified as not for use to commute to the Portland airshed. Closes the public hearing on HB 2637 and opens a public hearing on HB 3455.
<b><u>HB 3455 PUBLIC HEARING</u></b>		
140	Rep. Jane Lokan	House District 25. Testifies in support of HB 3455. States that residents of the Portland Metropolitan area must submit their vehicles to automobile emissions testing every two years. Mentions that such tests involve long waits, as the operating hours of testing stations are limited. Asserts that the test center hours are not user friendly. Says the bill would lengthen testing hours to better accommodate citizens. Argues that previous efforts to make testing centers more user-friendly have not been successful.

186	Roberta LiEsperance	Legislative Aide, Rep. Jane Lokan; Resident, City of Portland. Testifies in support of HB 3455 ( <b>EXHIBIT H</b> ). Lists the counties in which DEQ tests are required. Says the test stations are currently operated during "bankeris hours," which does not reflect the lifestyle of most Oregonians. Offers an account of her personal experience having her vehicle tested, which involved taking time off work and returning for subsequent tests. Submits that the process would be easier if the testing schedule were more user-friendly. Predicts that the bill will therefore receive widespread support from both citizens and employers.
260	Sen. Beyer	Wonders how many employees are on duty at a testing station during operating hours.
263	Rep. Lokan	Replies that most stations have a number of bays. Explains that the enhanced test has increased testing time. Mentions that DEQ has been advised to use flex hours to lessen the fiscal impact of the bill and that the department has begun developing a plan.
287	Chair Starr	Closes the public hearing on HB 3455 and reopens the public hearing on HB 2637.
<b><u>HB 2637 PUBLIC HEARING</u></b>		
291	Rep. Leslie Lewis	House District 29. Testifies in support of HB 2637. Indicates that the legislature formulated an ozone maintenance plan for the Portland Metro area in 1993, based partially on the assumption that emissions strategies would need to react to a growing population. Mentions that Columbia and Yamhill counties were considered by the legislature for testing at that time, due largely to mathematical considerations, and that testing was extended into those areas by administrative rule.
330	Rep. Lewis	States that the legislature worked towards a comprehensive bill to address pollution, which included the elimination of testing requirements in Yamhill and Columbia County, but that the bill was vetoed. Acknowledges that DEQ reduced requirements for testing in the two counties, but some communities nonetheless still meet the stipulations for testing to be required. Asserts that many residents must travel to Portland for the sole reason of having their vehicle tested. Says the bill merely adds a check box on DEQ forms that allow individuals to be exempted from testing requirements. Mentions that residents in Yamhill and Columbia County represent only .25 percent of the total population of the testing area.
398	Sen. Gary George	Senate District 2. Testifies in support of HB 2637. Discusses the production of ground level ozone by motor vehicles. Explains that "clean" automobiles are being developed that will reduce auto emissions. Mentions that legislation recently passed by the Oregon Senate will reduce the sulfur content in gasoline. Expresses disdain that Yamhill and Columbia County were added to the pollution base for the sole reason of allowing increased emissions in other areas.
455	Chair Starr	Closes the public hearing on HB 2637 and adjourns the meeting at 9:48 a.m.

Submitted By, Reviewed By,

Patrick Brennan, Carol Rives,

Administrative Support Administrator

-

**EXHIBIT SUMMARY**

**A ñ HB 3241, testimony, Roger Hamilton, 2 pp.**

**B ñ HB 3241, -A2 amendments, staff, 1 p.**

**C ñ SB 855, -2 amendments, staff, 21 pp.**

**D ñ SB 855, testimony, Al Lightner, 1 p.**

**E ñ SB 855, testimony, Keith Claycomb, 1 p.**

**F ñ HB 2637, testimony, Rick Hohnbaum, 1 p.**

**G ñ HB 2637, testimony, Glenn Dorschler, 1 p.**

**H ñ HB 3455, testimony, Roberta LiEsperance, 5 pp.**