

**HOUSE COMMITTEE ON AGENCY OVERSIGHT AND EFFICIENCY**

March 20, 1997 Hearing Room H-170

1:00 P.M. Tapes 27-28

**MEMBERS PRESENT:**

Rep. Jane Lokan, Chair

Rep. Richard Devlin, Vice-Chair

Rep. Ryan Deckert

Rep. Steve Harper

Rep. Eldon Johnson

Rep. Mike Lehman

**MEMBER EXCUSED:**

Rep. Tom Brian

**STAFF PRESENT:**

Judy Edstrom, Administrator

Valerie Luhr, Administrative Support

**MEASURE/ISSUES HEARD:**

SB 135 Work Session

HB 3048 Public Hearing

HB 2799 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 27, A</b>		
<b>003</b>	<b>Chair Lokan</b>	<b>Calls the meeting to order at 1:11 p.m.</b>
<b>016</b>	<b>Rep. Lehman</b>	<b>Expresses concern of constituent's lack of notice for meetings.</b>
<b>023</b>	<b>Chair Lokan</b>	

		<b>Announces changes in the day's agenda. Opens work session on SB 135.</b>
<b><u>SB 135 - WORK SESSION</u></b>		
<b>032</b>	<b>Chair Lokan</b>	<b>Calls a witness who is not present; asks for any other witnesses. Closes work session on SB 135.</b>
<b>045</b>	<b>Chair Lokan</b>	<b>Opens public hearing on HB 3048.</b>
<b><u>HB 3048 - PUBLIC HEARING</u></b>		
<b>050</b>	<b>Judy Edstrom</b>	<b>Committee Administrator, reviews the provisions of HB 3048.</b>
<b>056</b>	<b>Rep. Jim Hill</b>	<p><b>District 5, testifies on HB 3048.</b></p> <p><b>* Introduced HB 3048 when Tualatin Valley Fire and Rescue entered bidding for ambulance service for all of Washington County.</b></p> <p><b>* Private entity was serving other portions of the county in which Tualatin Valley Fire and Rescue also served, and Tualatin Fire and Rescue was seeking franchise for entire county out of their district boundaries.</b></p> <p><b>* While serving on Hillsboro City Council, the council had discouraged the Washington County Board of Commissioners to grant contract to Tualatin Valley Fire and Rescue. It would have ultimately put private entity out of business.</b></p> <p><b>* There are issues on how HB 3048 is worded.</b></p>
<b>087</b>	<b>Rep. Hill</b>	<p><b>* HB 3048 was intended to affect a public entity going out of their own district and outside of their legal jurisdiction.</b></p> <p><b>* The premise of HB 3048 is valid, and we should take a hard look at government entities competing against private sector.</b></p>
<b>115</b>	<b>Diane Cowan</b>	<p><b>Executive Director, Oregon People's Utility District Association.</b></p> <p><b>* People's Utility District (PUD) is a political subdivision of the state.</b></p> <p><b>* PUD has franchises, and are used in the right of way of the cities.</b></p> <p><b>* Opposes HB 3048.</b></p>
<b>131</b>	<b>Chair Lokan</b>	

		Asks Rep. Hill if the ambulance problem in Washington County is resolved.
132	Rep. Hill	Comments that Washington County granted the franchise to Metro West.
134	Rep. Harper	Asks if there are any suggested amendments to HB 3048.
136	Rep. Hill	States that he has no amendments, but would be happy to work with anyone on amendments to improve HB 3048.
148	Rep. Lehman	Asks if there is an amount of percent that would be inserted in Section 2, Subsection 4 of HB 3048.
151	Rep. Hill	States that he did not specifically request a percentage.
159	Rep. Lehman	Asks if this would cover educational service districts to provide special services.
162	Rep. Hill	Expresses that he has not thought of it in that context.
163	Rep. Lehman	States that this becomes a serious problem in rural areas, and asks if it is correct that there is a small area that is not covered by the ambulance service. Asks if some private company was willing to provide service there, then the public entity that surrounds it could not offer that contract service for any reason.
174	Rep. Hill	Explains that he does not believe HB 3048 would preclude them from doing that, and it would be a decision to be made by the governing body granting the franchise. He would not seek a strict prohibition.
194	Rep. Lehman	Comments that we currently give local boards control as to whether or not they contract with a public or private entity. Asks if we are taking away local control by doing this.
198	Rep. Hill	Responds No. The instance which he talked about was Tualatin Valley Fire and Rescue which serves the east part of the county and the Hillsboro area. Their fire agencies do not provide ambulance service. Tualatin Valley Fire and Rescue proposed to provide ambulance service for the entire county so they would be serving areas outside of their jurisdictional boundaries.
209	Vice-Chair Devlin	Asks what feelings would be on maintenance of roads and water systems with adjacent jurisdictions. Asks if it is correct for most cases except in law enforcement. If a private provider wanted to do road or water system maintenance planning, a private provider would have to be used.
227	Rep. Hill	Explains that it would not necessarily be bad. Other issues come into place as to whether someone would use another jurisdiction. * Government entity has advantage because of access to capital. * Government entities do not pay taxes as a private entity would.
253	Vice-Chair Devlin	Asks Rep. Hill if he believes legislation as drafted would not prevent such intergovernmental agreements.

259	Rep. Hill	States that is correct.
263	Vice-Chair Devlin	Asks, now if reason this bill was drafted has been resolved, does Rep. Hill have any great deal of interest in pursuing its passage.
268	Rep. Hill	Responds that his issue has been resolved.
276	Chair Lokan	Asks if he is considering amendments at this time.
278	Rep. Hill	Comments that he is open to any suggested amendments.
280	Chair Lokan	Asks for witnesses from longer distances to be heard first.
305	Jim Cannici	<p>Fire Chief, Oak Lodge Fire District, Clackamas County. President, Oregon Fire Chief's Association.</p> <p>* Opposes HB 3048.</p> <p>* Materials and services budget is roughly \$680,000 per year. \$580,000 of that goes back to private sector in form of various contracts, materials, and services. Remainder goes toward 911 dispatching contract with public agency.</p> <p>* Currently involved in \$2.8 million capital improvement project for new fire station, which provides approximately 100 private sector jobs.</p>
363	Rep. Lehman	Asks Cannici if he could offer amendments to better the bill.
373	Cannici	States that he cannot.
377	Rob Carnahan	Assistant Chief, Clackamas County Fire District #1, submits and presents testimony (EXHIBIT A) in opposition to HB 3048.
TAPE 28, A		
002	Rob Carnahan	Continues testimony. Fire district provides better and more efficient service than in the past. At least 10 less fire agencies in Clackamas County which benefits public. The committee should address abuses individually rather than system as a whole.
038	Rep. Harper	Compliments on the efficiency of reducing number of fire agencies. Asks how good it will be when there is only one.
040	Carnahan	Responds that fire services in Portland metro area could probably be provided by one agency. Politically, doubts he will see that in his lifetime.
049	Chair Lokan	Asks if any witnesses would like to provide amendments. Asks if committee agrees to close public hearing on HB 3048. States that the author of this bill is not interested in pursuing it.
069	Burton Weast	Special Districts Association of Oregon, states that if committee's intent is to not continue, then it is not worth testifying.
074	Chair Lokan	Asks those on witness registration sheet if they would like to testify. States that it is the Chair's decision not to pursue this bill. Closes public hearing on HB 3048.
098	Chair Lokan	Opens public hearing on HB 2799.

<b><u>HB 2799 - PUBLIC HEARING</u></b>		
112	Judy Edstrom	Committee Administrator, reviews the provisions of HB 2799.
119	Rep. Liz VanLeeuwen	District 37, submits and presents testimony (EXHIBIT B) in support of HB 2799. Cost of implementing rules versus the benefit. Hard to predict impact of implementation on agricultural and small businesses.
157	Rep. Deckert	Asks if there are any examples where administrative rules were brought beyond the intent of legislation.
159	Rep. VanLeeuwen	Responds yes. There are recent examples.
172	Chair Lokan	Look up statutes of past legislatures to find examples.
176	Rep. VanLeeuwen	States that she knows of an example. A few years ago, the Fire Marshal's office took the authority of putting in a rule that every commercial building built needed to install extensive sprinkler systems.
201	Rep. Harper	Asks what the enforcement mechanism is.
206	Rep. VanLeeuwen	States that she has no answer. Staff can check on it.
209	Chair Lokan	Perhaps that is something that would need to be added.
211	Rep. VanLeeuwen	Maybe that is something in the Oregon Revised Statutes (ORS). There are several other bills which are closely related to this one.
216	Chair Lokan	We can look at other bills in connection to this one.
221	Rep. VanLeeuwen	I will be willing to help look for other examples if committee decides to continue with this subject.
224	Vice-Chair Devlin	Refers to section 2, subsection f, and asks if there are reasonable cases in which state standards should exceed federal standards, in her opinion.
233	Rep. VanLeeuwen	States that there are a number of Oregon laws that exceed federal standards.
241	Vice-Chair Devlin	Wants clarification of standard. He knows there have been differing regulations in the past.
253	Rep. VanLeeuwen	Intent of law should not be exceeded by agencies.
260	Vice-Chair Devlin	States that if we proceed with HB 2799, we need a revenue impact statement.
268	Rep. VanLeeuwen	States that we are just asking agencies to do what they are supposed to in the first place.
271	Chair Lokan	Confirms what she is saying in that when a law is enacted, it is the obligation of the agencies to enact that law according to the intent of the law.

286	David Schuman	Deputy Attorney General. * Opposes HB 2799.
306	Schuman	Continues testimony. * HB 2799 imposes on state agencies an enormous unfunded mandate which is going to burden Department of Justice when it is providing legal advice to state agencies. * costly provision
346	Schuman	Continues testimony. * Whenever a rule is made and there is a party that disagrees that party can go to the Court of Appeals and seek judicial review. * adds new layer of bureaucracy to government
383	Pat O'Sullivan	Department of Administrative Services, Statewide Legislative Manager. Says there are 10 pieces of legislation dealing with the administrative rule making. This bill duplicates SB 316. Wants opportunity to meet with members of both the Senate and the House.
417	Chair Lokan	Asks if O'Sullivan has talked with any representatives.
419	O'Sullivan	No.
TAPE 27, B		
002	Chair Lokan	Are you speaking to all bills, or just to these 10?
003	O'Sullivan	All 10 of these bills deal with the Administrative Procedures Act (APA).
008	Chair Lokan	Good ideas; would simplify process.
011	O'Sullivan	Continues testimony. * no enforcement * expensive for agencies * APA current requirements * benefits versus probable costs * line 12 (section 2, subsection d) and line 15(section 2 subsection f) conflict with each other within the bill * definition of reasonable person not in bill
043	Chair Lokan	Is there a definition of "reasonable person" in the law?

045	O'Sullivan	No. If there is, this bill does not have it.
056	Rep. Harper	What is my recourse, if I sponsor a bill and I do not agree with the rules once I get home.
061	O'Sullivan	Interim committee could bring the agency forward or file an appeal with the court to challenge a violation of Constitutional provision, exceeding statutory authority, or non-compliance with rule adoption process.
071	Rep. Harper	Can I do this?
073	O'Sullivan	Yes, you can.
076	Rep. Harper	Are they bound by my rule?
077	O'Sullivan	No. Explains what could happen.
080	Schuman	Agencies have rule making authority, because legislature does not have time to enact all aspects. Judicial review can take place. If not relief in court, the legislature can enact more specific rules.
096	Chair Lokan	Asks about the way a rule will be written to achieve what is needed.
104	Schuman	Agencies try to establish statutory goals in the least burdensome way.
115	O'Sullivan	Explains the process agencies must follow prior to adopting a rule. <ul style="list-style-type: none"> <li>* must use advisory committee</li> <li>* give notice prior to rule going into effect</li> <li>* must have need for rule</li> <li>* fiscal impact statement</li> <li>* if hearing is requested, must have more notice</li> <li>* Legislative Counsel identifies if agency has statutory authority</li> </ul>
160	Rep. Lehman	Is there a process where someone determines authority?
163	O'Sullivan	Legislative Counsel.
164	Rep. Lehman	Is that legislative intent?
166	O'Sullivan	Comments on legislative intent.
172	Rep. Lehman	Is there a process for sponsoring legislation given notice for the bill?
176	O'Sullivan	Different from agency to agency. There are no mandates.
178	Rep. Lehman	Any problems to do so?
181	O'Sullivan	Statute says you can be put on list to receive notification.
185	Rep. Lehman	Maybe this could be done.

193	O'Sullivan	I think you are right.
196	Chair Lokan	Comments on keeping up with the paperwork. How could it be implemented?
201	O'Sullivan	When we look at the 10 bills, we will try to determine the process.
215	Rep. Harper	This is one of the fixes we have.
223	O'Sullivan	It would be easy to do.
225	Rep. Markham	Comments on the administrative rule process, and having recourse for public.
260	Schuman	When legislature enacts statutes and delegates authority to agencies, legislature retains authority to pass legislation which is more explicit.
266	Rep. Markham	Comments about his bill and meeting every two years.
285	Rep. Harper	Are there other ideas for fixing rules?
298	Chair	Are any of the bills referrals?
302	O'Sullivan	3 House, 4 Referral, 3 Senate.
305	Rep. Markham	Separation of Executive and Legislative branches will not allow for easy solutions.
314	O'Sullivan	Not a completely fair statement. You do have recourse.
317	Rep. Markham	What about land use issues? Give legislature back a handle for this process.
330	Rep. Deckert	Include notifying committee when work is being done on one of its bills.
336	O'Sullivan	I would be happy to let each sponsor or committee know.
339	Peter De Luca	Administrator, Oregon Occupational Safety and Health Division (OR-OSHA), submits and presents testimony(EXHIBIT C) in opposition to HB 2799. OR-OSHA adopts a great number of rules which set standards for workplace.
<b>TAPE 28, B</b>		
001	De Luca	Continues testimony. Federal government oversees agency; must adopt their standards or those equal to federal guidelines. OR-OSHA is scrutinized by workers, employees, and legislators.
046	De Luca	Encourages legislature to not pass the bill. Comments on the agency's willingness to work with the legislature on rule making. No problem with oversight.
059	Chair Lokan	If you were looking at legislation for rule making, is there a tendency to go beyond federal rules?
068	De Luca	The answer is very situational. Sometimes we are more stringent than the federal government; sometimes we are more relaxed.
091	Rep. Markham	Comments on OR-OSHA being dictated to by the federal government.
096	De Luca	



		Comments on not being more effective than the federal government.
104	Rep. Lehman	Comments on an audit done by OR-OSHA.
118	De Luca	OR-OSHA's goal is to make every inspection a positive experience.
123	Rep. Markham	How far behind are you?
125	De Luca	Says they are further behind than usual. Depends on the time of year and type of consultation needed.
138	Chair Lokan	Authors of bills have some points.
158	Rep. Harper	Will we put the bill on hold until we find out what is going on with the other bills.
161	Chair Lokan	Will hold the bill until we find out. Closes public hearing on HJR 29 and HB 2799. Opens work session on SB 135.
<b><u>SB 135 - WORK SESSION</u></b>		
170	Judy Edstrom	Reviews provisions of the bill.
180	Katy Coba	Director of Executive Appointments, Governor's Office. Bill is proposed by the Governor.
188	Vice-Chair Devlin	Comments on amendment proposed by the Governor. Says he will still vote no on the bill. Never funded Habitation Conservation Trust Fund. Some similarities to the salmon plan.
219	Coba	Explains provision of SB 135, and the Governor's office supports the bill as it is.
232	Rep. LEHMAN:	<b>MOTION:</b> Moves SB 135 be sent to the floor with a DO PASS recommendation.
234		<b>VOTE: 4-1</b> <b>AYE: 4 - Deckert, Harper, Lehman, Lokan</b> <b>NAY: 1 - Devlin</b> <b>EXCUSED: 2 - Brian, Johnson</b>
	Chair Lokan	The motion <b>CARRIES</b> . <b>REP. HARPER</b> will lead discussion on the floor.
249	Chair Lokan	Closes work session. Declares the meeting adjourned at 2:50 p.m.

Submitted by, Reviewed by,

**Valerie Luhr Judy Edstrom**

**Administratiave Support Specialist Administrator**

**Transcribed by,**

**Gina Cross**

**Committee Clerk**

**EXHIBIT SUMMARY**

**A - HB 3048, written testimony, Robert Carnahan, 3 pp.**

**B - HB 2799, written materials, Rep. Liz VanLeeuwen, 1 p.**

**C - HB 2799, written testimony, Peter De Luca, 4 pp.**

**D - HB 3048, written materials, staff, 2 pp.**