

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM
SUBCOMMITTEE ON REGULATORY REFORM

April 3, 1995 Hearing Room 357
1:15 P.M.

Tapes 23 - 24

MEMBERS PRESENT:

Rep. Ken Strobeck, Chair
Rep. Sharon Wylie, Vice-Chair
Rep. Jerry Grisham
Rep. Bryan Johnston
Rep. Charles Starr

STAFF PRESENT:

Greg Moore, Committee Counsel
Annetta Mullins, Committee Assistant

MEASURES HEARD:

HB 2582 - PUBLIC HEARING AND WORK SESSION
HB 2923 - PUBLIC HEARING
HB 3371 - PUBLIC HEARING
HB 2862 - WORK SESSION
HB 2861 - WORK SESSION

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

008 CHAIR STROBECK: Calls the meeting to order at 1:19 p.m. and turns the gavel over to Vice-Chair Wylie

VICE-CHAIR WYLIE: Opens the public hearing on HB 2582.

HB 2582 - PUBLIC HEARING

Witnesses: Rep. Ken Strobeck
Emily Cedarleaf, Multi-family Housing Council
police officer

Den

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT A)

018 REP. KEN STROBECK: The bill was introduced after having meetings with the Beaverton police officers about the issue of underage drinking and the problems that have occurred in Washington County and the Beaverton area specifically as far as having the police be able to control the parties that occur when there are no adults on the premises. When parents decide to

go away for the weekend, teenage children may see an opportunity to have a gathering where they decide to consume alcohol. That has an impact on drinking and driving and we recognize the establishment of habits of drug and alcohol abuse.

Law enforcement has found the laws are limiting as to what they can do. It

usually comes down to who supplied the alcohol and very often people are reluctant to admit they supplied the alcohol. They have minors in possession and they ask the kids to leave. But nobody is held responsible for that party occurring.

The bill proposes to hold the person who is responsible for the property, in control of the premises, to be the one responsible. That could be a 17 year old high school boy who invites his friends over for the evening when his parents are gone. He would be the one in charge of the premises and would be the one responsible. Under this bill, it would create a Class A misdemeanor for allowing under-age drinking if you are the person in control of the premises. The police in Beaverton have found this to be an effective tool because not only does it have the threat of having a child arrested, but also prevents parties from happening if a kid knows he could be the one who would be responsible and could have a police record.

It is not my intent to have this apply to public land or commercial property. I have heard from people in the Forestry Department, Parks, etc.

who are concerned that this would make the Parks Department responsible. Nor was it my intent to have this apply to commercial property owners if something is going on behind the building and the person in control of the premises is not aware of it. I proposes we add on page 1, line 11, language so it will read "(3) No person who exercises control over private real property shall knowingly allow any other person under the age of 21 years....". We would add the words "private" and "knowingly" to make it clear we are talking about private real property, homes, and not parks or commercial property. Then "knowingly" would say we are not expecting someone to know what is happening on every inch of their property if they are not aware of somebody being there.

079 REP. GRISHAM: Would you also exclude rental single family dwellings?

REP. STROBECK: In practicality, the way this has worked in Beaverton and in other jurisdictions is the definition of the person in control of the premises is actually the person who is at the site who is allowing this to occur. It is not the owner or the person who has signed the lease. It is whoever there at the time this is going on. The person who opened the door and said come on in is in control of the premises.

093 VICE-CHAIR WYLIE: Can a minor legally have that kind of control?

REP. STROBECK: Officer Marley can testify as to how decisions have ended up after arrest. It is my understanding that if a minor is the person who invites people over, opens the door and controls the premises, they are the ones that can be held responsible

101 EMILY CEDARLEAF, Executive Director, Multi-family Housing Council: We are a trade association for rental property owners with a membership of over 2,700 and over 320,000 rental units. As this bill is written, on line 16, it says the person who owns, leases or rents is in control of the property. Even with the additions we would have to oppose the bill because as it is written it would hold the landlord liable for that which is being done on the property. Under the Landlord-Tenant Act if a tenant violates a city ordinance or state statute or a rental agreement, we can give a 30-day

no-cause notice or a 30-day with-cause notice. That gives the tenant an opportunity to correct it in 14 days. We have the ability to give 24 hour notice for outrageous conduct but alcohol consumption has not been outrageous conduct. If this is to be at the site, then I recommend on line

16, the language would be "any person at the site who owns, leases, rents or otherwise..." so it excludes the private landlord. There are three cities in Oregon, Portland, Gresham and Salem that have chronic nuisance ordinances. Those ordinances say there is a whole laundry list, but alcohol consumption in public, loud parties, urinating in public, gang activity on the property--if the landlord gets notice there have been three police reports or police calls to the property in a 30-day period, then the landlord has to evict the tenant within 10 days. In Salem we have up to 30 days to evict the tenant. That is not only on the property but 400 feet from the property. It still means we have to give an eviction notice and start the process to evict them off.

141 DENNIS MARLEY, Beaverton Police Officer: I referred this to the City Attorney's office to become a city ordinance a couple of years ago.
> shares story of incident in Klamath Falls
> officers can seldom start citing very many people because it is unfair prosecution to cite one kid and let 50 go
> the ordinance was enforced again last Saturday night; there were 42 people left in a residence after 15 or 20 went over fences and ran from officers
> intent for wanting this to go statewide is if Beaverton cracks down, it will push the parties into Washington County and the areas that don't have the ordinance and put young people on the road with the potential of fatal accidents
> the judge in Beaverton is imposing sentences similar to DUIIs; in the 15 to 18 cases there have not been any repeat offenders
> it has never been the intent to hold accountable the manager of a large apartment or housing unit
> would be important to have Ms. Cedarleaf's proposed amendment in the bill
> Mothers Against Drunk Drivers and the Oregon Association of Chiefs of Police have endorsed the bill (EXHIBIT B)

182 REP. STROBECK: I have heard concerns of families who on holidays or special occasions allow their children or guests of their children in their household to consume a glass of champagne or something. Has this been a problem?

187 OFFICER MARLEY: It has not. In Beaverton we specifically cite two state statutes. One which allows a child to have a drink with the parent's permission and supervision and the other is the religious aspect.

189 REP. STROBECK: Isn't it the noise and disturbance that attracts the police?

197 OFFICER MARLEY: It is, and the fast acceleration out of the neighborhood that disturbs the homeowners.

REP. WYLIE: What about situations where young people have a party and they say they didn't invite any of the people.

203 OFFICER MARLEY: That was the initial defense of the 17-year old I cited Saturday night in Beaverton. When we asked the 18 people separately who had been drinking if anyone asked them to leave the property, they said no. We noted their names for the police report.

205 VICE-CHAIR WYLIE: Closes the public hearing on HB 2582 and opens a

public hearing on HB 2923.

208 HB 2923 - PUBLIC HEARING

Witnesses: Rep. Ken Strobeck
Gary Wilhelms, U. S. West Communications
Denise McPhail, Portland General Electric
Mike Dewey, Oregon Cable Telecommunications Association
Bill Penhallow, Association of Oregon Counties
Mike Maloney, Washington County
Ric McNal, Oregon State Homebuilders Association

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT C).

226 REP. STROBECK: I introduced HB 2923 after meeting with the Washington County Transportation Department. I put them down as a requester on this bill, but they did not specifically request I introduce the bill. It has been around for several sessions, but was one I felt had some merit. I am not a fan of new government fees, but I introduced this because of a problem in Washington County. It has to do with roads. Once a road is cut

for utility access, they are repaired so poorly or the original quality of the road surface is so seriously damaged that it makes what was once a smooth road into a bumpy, less drivable roadway that causes inconvenience and wrecks the road. It is particularly noticeable on high traffic concrete roads, and an example is in front of the new PARR Lumber location where a couple of squares are cut out. Also in a new section on Walker Road west of 217 in the westbound lanes a long trench has been cut and the

payment has been removed. The replaced blacktop is so rough it is hard to drive over. When I mentioned this to the transportation people, their response was that some companies who are authorized to make cuts don't do an adequate job of repairing them. Unless they are caught right away, the country has to make the repairs that should have been done in the first place. The intent of HB 2923 is to make it possible for counties and cities to recover the costs from those who did the cutting originally.

276 We are not looking for anything punitive, not trying to raise revenues or collect fees; we are only trying to get the repairs done properly and make sure those are not paid for twice by the taxpayers.

305 REP. GRISHAM: Does Washington County charge a street opening fee or permit fee?

REP. STROBECK: I don't know. I know they have the process where they issue a permit for that.

333 GARY WILHELMS, U. S. West Communications: My comments aren't so much opposed to this issue as much as they are in support of a bigger project this legislature should undertake. Make no mistake about the opposition of

our company to this type of fee, but we know there is a problem. We believe this problem is part of a larger matter. That is the issue of utilities and others working in the public road rights of way. Great inequities exist in state law. My company pays cities \$10 million annually to work in road rights of way through franchise and privilege taxes and pays counties zero. The solution is terribly complicated, very political, very emotional, and does create some economic upheaval in the way cash flows to cities from utilities.

I would like to put on the record some things to be considered for legislation:

- > pursue a bill that would repeal franchise and privilege taxes
- > statutes regulating how telecommunication companies and other utilities, if they choose, should operate in the public road rights of way should be enacted at the state level
- > franchise and privilege tax should be imposed at the state level; it should be at a uniform rate
- > revenues from the tax should be distributed to cities and counties on the

basis of population

- > the tax should be 100 percent pass-through to the end user
- > the tax should be clearly shown on the customers' bills
- > legislation must recognize the blurring of lines, in the case of telecommunication companies, between information, communications and entertainment services
- > tax should be administered uniformly across the broadest possible base, which should include all telecommunication providers that utilize public road rights of way for their facilities
- > carriers should pay only once for their facilities; not once as a television provider and again as a telephone provider
- > new definitions will need to be put into the statutes; some sections will

have to be amended and some will have to be repealed and there will have to

be a very closely coordinated effective date

- > would expect such a bill to be large, complex and controversial
- > a lot of questions would have to be answered, there would be objections to the new tax, cities would object to the loss of local control and some utilities might not share U. S. West's point of view on this issue

TAPE 24, A

004 REP. STROBECK: I would be interested in getting a copy of your proposal.

011 DENISE MCPHAIL, Portland General Electric: Submits and reads a prepared statement in opposition to HB 2923 (EXHIBIT D). Section 3 provides for

the 45 days notice by the counties to utilities. Does that mean if you showed up at an appointed time, the fees would be forgiven, or does it mean

you are supposed to send in your check when you get the notice. I don't know how it relates to the rest of the bill.

049 CHAIR STROBECK: Do you know if counties have a fee for opening up the roadway?

MS. MCPHAIL: I do not know. It should be noted that in some instances we do work in the roadway to serve a new customer. The damage fees in the bill would be paid by the customer.

057 CHAIR STROBECK: To what standards do you expect to repair the road?

MS. MCPHAIL: The expectation is that we make it as good as it was when we cut into it. I don't know what precludes a county from demanding that be the standard.

060 MIKE DEWEY, Oregon Cable Telecommunications Association: Cable companies are not included in HB 2923. I just want to explain the fees we pay. Gary Wilhelms is correct. There are inequities and inconsistencies in permit fees, franchise fees, the right of doing business, the privilege of doing business and they are all a little different. For cable companies, the 1984 Cable Act provides that a city, county or franchising authority can excise up to five percent and most do for a franchise fees. That is five percent of gross revenues. Mr. Wilhelms is correct, you must have some sort of overall approach to dealing with inequities.

> what is the five percent for? The right to do business and the privilege of having a franchise and for the use of the right of way
> above that there are permit fees; we make application for a fee of \$100 to \$200 per application
> moneys also go to the regulation of the cable company and the vast amount go to the general fund; moneys are available for oversight and there should

be a pot of money to take care of the problems that exist
> cable companies, if the work is not done right, should come back and do it correctly

120 RIC MCNAL, Oregon State Homebuilders Association: Testifies in opposition to HB 2923.

> bill has an unjustly broad definition of damage, if there is a definition of damage in it
> there is no opportunity in the bill for the person who did the damage to repair that damage
> does have a mandatory fee scheduled for damage; feels those fees and damage are not in correlation with each other
> gives example of damage to asphalt when the curb is cut to build a new home, the damage would carry a \$1,000 fee and it is typically something the

contractor repairs on his own
> there are strict standards in city limits for repairing road surfaces; inspections are performed by the jurisdictions
> bill does not talk about who does the inspections of road surface damage
> laws are already on the books for damaging public property and we don't need another law to do the same thing.

158 CHAIR STROBECK: Do your contractors go back out to look at the repairs to make sure they are not sinking?

158 MR. MCNAL: No. When you get a permit to cut or open a road, then the repairs are inspected by the city inspectors and they come back in a year. There is usually a one-year bond and the bond is not released until it is inspected by a city crew. I have never done any work in county roads, but maybe the counties need to do what the cities have been doing.

169 BILL PENHOLLOW, Association of Oregon Counties (AOC): Submits the AOC Policy: Use of Rights-of-Way by Utilities (EXHIBIT E) and testifies in support of HB 2923.

> counties do not have the authority to establish franchise fees for utilities within the county and do not have the authority to charge simple permit fees as other users who share the county road rights of way.
> this bill and another would put counties on an even playing field with cities and permit counties by local ordinance to adopt this bill, restoration fees, and the other bills would allow counties to impose permit

fees for utility's use of rights of way
231 > would like to attempt to work out the problems

225 MIKE MALONEY, Washington County, Department of Land Use and Transportation: Testifies in support of HB 2923.
> county has insufficient road funds to meet the existing road system
> regardless of how well the utility cut is patched, the roadway is permanently damaged
> believes cost should be captured in the price of delivering service of utility
> each cut is not inspected and the county does not have the ability to capture fees for the costs of inspections

275 CHAIR STROBECK: How many cases do you find where there have been cuts that have not been done repaired poorly?

283 MR. MALONEY: I did not come prepared to give a specific number. The preponderance of the work done by utilities is done correctly; the pavement is properly patched, but that does not mitigate the fact the pavement is also permanently damaged and its life is shortened. Washington County

issues thousands of permits per year for utilities to make cuts in county roads. I don't have a number on how many are substandard, but many are, and we are asking utilities to come back or the utility's contractor, to come back and make remedial repairs to the repairs they have already made.

293 CHAIR STROBECK: Is that generally successful?

MR. MALONEY: We generally are successful in getting them to make the repairs to the trench, not to the adjacent pavements which were damaged by the installation of the utility.

303 CHAIR STROBECK: Closes the public hearing on HB 2923 and opens the public hearing on HB 3371.

HB 3371 - PUBLIC HEARING

Witnesses: Jane Cease, Oregon Department of Transportation
Kelly Taylor, Oregon Department of Transportation

302 GREG MOORE, Committee Counsel: Reviews the Preliminary Staff Measure Summary (EXHIBIT F).

326 JANE CEASE, Manager, DMV Branch, Oregon Department of Transportation: Submits and reviews information in a prepared statement (EXHIBIT G).

375 MS. CEASE: Continues her presentation.

410 CHAIR STROBECK: Do you get a response rate of 65 to 70 percent return on your surveys?

412 MS. CEASE: That is because we do follow up.

TAPE 23, B

006 MS. CEASE: Continues her statement relating to Section 3 of HB 3371.

045 CHAIR STROBECK: Do you have a written plan for overhauling your business plan that we could get a copy of?

049 MS. CEASE: We do. We can give the committee copies of the schedule, where the branch is in the schedule and what happens in each piece.

053 REP. STROBECK: A summary of your goals and timelines would be helpful.

Are your managers evaluated on customer friendliness, responsiveness, etc.?

057 MS. CEASE: Yes. We have used various kinds of things for training, including retail customer service policies. We have a system of performance planning and management. The customer service goals are performance measures and are part of that.

066 MR. MOORE: Summarizes a customer service test given to applicants for Committee Administrators and suggests it might be a tool the branch could use or perhaps could develop something similar.

086 REP. GRISHAM: How do customers rate efficiency?

MS. CEASE: We have not included in the information the specific words of the question. We will send the exact wording to you.

093 REP. GRISHAM: What can be done to eliminate the endless waiting that goes on?

099 MS. CEASE: Sometimes it is hard to keep enough staff in the office for the peak periods. We are setting up our system so we can do work on the electronic system. The branch has not been staffed for any workload increases since before the 1989-91 biennium because of the new system that will make a lot of efficiencies.

138 REP. GRISHAM and MS. CEASE: Discuss the technology update for the DMV Branch

156 REP. GRISHAM: Wouldn't it make more sense to provide an incentive to do

this by mail?

Is it cheaper to do business by mail than for someone to walk in?

MS. CEASE: I don't think there is a differential right now. It has been discussed in previous session. About one-half of our business is by mail and many more people could do business by mail.

167 KELLY TAYLOR, DMV Branch, Oregon Department of Transportation: If I were to compare renewing a driver's license at a field office versus renewing by mail, it is less expensive to do it by mail. The renewal cards

and checks that come in the mail can be read optically by a machine and the

person who staffs the machine is at a lower classification than the person at the field office. I don't have, but can get you the costs.

186 CHAIR STROBECK: Closes the public hearing on HB 3371 and declares the meeting in recess at 2:23 p.m. until 2:40 p.m.

190 CHAIR STROBECK: Reconvenes the meeting and opens a work session on HB 2582.

HB 2582 - WORK SESSION

196 CHAIR STROBECK: States conceptual amendments and requests Committee Counsel have an amendment prepared in accordance with his statement during

testimony: page 1, line 11, amend the language to read "(3) No person who exercises control over private real property shall knowingly allow any other person under the age of 21 years....". We would add the words "private" and "knowingly" and in line 16 add, after person, add "at the site at the time of consumption".

210 MOTION: REP. JOHNSTON moves that the conceptual amendments as stated by Chair Strobeck BE ADOPTED.

VOTE: CHAIR STROBECK, hearing no objection to the motion, declares the motion PASSED.

212 MOTION: REP. WYLIE moves that HB 2582, as conceptually amended, be sent to the Full Committee with a DO PASS RECOMMENDATION.

214 VOTE: In a roll call vote all members are present and vote AYE.

218 CHAIR STROBECK: Declares the motion PASSED.

220 CHAIR STROBECK: Opens the work session on HB 2862.

HB 2862 - WORK SESSION

223 MR. MOORE: Reviews the HB 2862 Preliminary Staff Measure Summary and the HB 2862-2 and HB 2862-2 amendments (EXHIBIT H).
> the -2 amendment is offered by Rep. Schoon
> the -1 and -2 amendments both amend subsection 9 and those will need to be coordinated

251 REP. JOHNSTON: Rep. Lokan's bill was designed to institute a zero-based budget. Do the -1 amendments accomplish that?

254 REP. STROBECK: It does not. These are two different approaches to formatting the Governor's budget. It is my belief Rep. Schoon's amendment accomplishes the intent to be able to review line by line and have every item included in those lines broken out. The part of the other bill that I wanted to have included was the source of the funding for the programs. That is what the -1 amendments accomplish, but by definition, this is not the zero based budget concept.

275 REP. WYLIE: Under personnel expenses it excludes cost of services contracted out. Is there a way of listing that?

278 CHAIR STROBECK: I believe it says they shall be included.

323 REP. WYLIE: How would you see the cost of items allocated to the mission and functions of the organization?

333 REP. SCHOON: I think it is obvious that it is difficult to deal with a budget in the amount of time we have to deal with it. Ways and Means can look at the budget, but they can only act on the packages. I think the real problem is we don't know very basically what we are doing with the moneys. I have learned that in "inflation" are the merit increases. The merit increases which are supposed to be the pay system, which is no longer the pay system but a longevity increase for being on the job, was hidden in the figure and we and the public were believing we were holding pay static. I don't want to say the pay system is good the way it is now because I think it needs to be changed. An article in the paper said state employees have not had a pay increase in two or four years. Looking at the budgets, you would say that is true, but it is not true. Some people have reached the top of their range because of what they have bargained with management.

The pay system remains in place. This is a small step to have facts presented to get away from the continuing service budget.

392 I think we need to go beyond where we are now and start the other bill where we can get in and try to find out ourselves what is going on in an agency and whether they are even doing the same mission they were created for.

428 REP. SCHOON: I thought the total number of employees is something that should be addressed. It is something I had forgotten about. Maybe we can get away from the 4,000 vacancies and it will tell us what is and is not filled.

427 MOTION: REP. WYLIE moves that the HB 2862-1 and -2 amendments BE ADOPTED.

454 REP. JOHNSON: Is it with the understanding that they be worked out so they both don't say "(9)"?

457 REP. STROBECK: Yes.

VOTE: CHAIR STROBECK, hearing no objection, declares the motion PASSED.

MOTION: REP. JOHNSON moves that HB 2862, as conceptually amended, be sent to the Full Committee with a DO PASS RECOMMENDATION.

467 REP. GRISHAM: Was Rep. Johnston interested in Rep. Lokan's bill?

470 REP. JOHNSTON: I don't see the bills as incompatible, but they are very
different theoretical approaches. I intend to vote for this bill and to
see if the chair has any interest in pursuing Rep. Lokan's bill.

480 VOTE: In a roll call vote, all members are present and vote AYE.

485 CHAIR STROBECK: Declares the motion PASSED.

TAPE 24, B

029 CHAIR STROBECK: Opens the work session on HB 2861.

HB 2861 - WORK SESSION

031 MR. MOORE: Reviews the Preliminary Staff Measure Summary on HB 2861,
the -1 amendments and explains testimony the committee has heard.
> amendments have been reviewed by the Secretary of State's office and
supports them

060 CHAIR STROBECK: I had a conversation with the Secretary of State and
items contained in the amendments are as described by Mr. Moore. The
Secretary of State said much of their work is already done by outside
contractors, depending on the workload of their department.

077 REP. WYLIE: This requires that an auditor perform a financial or
performance audit. What are the credentials for a performance auditor?

081 MIKE GREENFIELD, Deputy Secretary of State: For purposes of this
legislation and to my knowledge, I don't believe there are credentials
such as those for a CPA license. I think performance auditing is something

that is beginning to appear more and more in the "yellow book" which is the
bible of auditors and is the standards against which all auditors are
measured. I think it is an emerging skill and I don't know any specific
qualifications.

094 REP. WYLIE: It could be someone who knows a lot about the functional
area from a management system standpoint, even though they wouldn't be an
auditor.

MR. GREENFIELD: That is correct. We may want someone who can do cost
benefit analysis or, as in the case of Children's Services Division, get
someone who is an expert in taking a look at substitute care.

110 REP. SCHOON: I think the amendments are good and speak to the committee
system where we have critical analysis, review and comments.

114 MOTION: REP. WYLIE moves that the HB 2861-1 amendments BE ADOPTED.

117 VOTE: CHAIR STROBECK, hearing no objection, declares the motion PASSED.

All members are present.

119 MOTION: REP. WYLIE moves that HB 2861, as amended, be sent to the Full
Committee with a DO PASS RECOMMENDATION.

121 VOTE: In a roll call vote, all members are present and vote AYE.

125 CHAIR STROBECK: Declares the motion PASSED.

127 CHAIR STROBECK: Declares the meeting adjourned at 3:05 p.m.

Respectfully Submitted,

Reviewed by,

Annetta Mullins
Committee Assistant

Gregory C. Moore
Committee Counsel

EXHIBIT SUMMARY

A - HB 2582, Preliminary Staff Measure Summary, staff, 1 p
B - HB 2582, letters from Oregon Association Chiefs of Police and MADD,
Dennis Marley, 2 pp
C - HB 2923, Preliminary Staff Measure Summary, staff, 1 p
D - HB 2923, prepared statement, Denise McPhail, 1 p
E - HB 2923, AOC Policy: Use of Rights-of-Way by Utilities, Bill Penhallow,
1 p
F - HB 3371, Preliminary Staff Measure Summary, staff, 1 p
G - HB 3371, prepared statement, Jane Cease, 13 pp
H - HB 2862, Preliminary Staff Measure Summary, HB 2862-1 and HB 2862-2
amendments, staff, 3 pp
I - HB 2861, Preliminary Staff Measure Summary and HB 2861-1 amendments,
staff, 3 pp