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**House Committee on Business and Labor**

**Public Hearing -- House Bill 3060**

**Testimony of Michael Wood, Administrator**

**Occupational Safety & Health Division, Department of Consumer & Business Services**

**March 11, 2015**

Chair Holvey, members of the committee. For the record, my name is Michael Wood and I am the administrator of the Occupational Safety & Health Division of the Department of Consumer & Business Services, which we generally refer to simply as "Oregon OSHA." Although the department has taken no position on the proposed House Bill 3060, I have been asked to provide some background regarding our ability to address workplace safety and health issues in the entertainment industry under existing law. I will provide a brief overview and then respond to any questions that you might have.

The Oregon Safe Employment Act applies, with very few exceptions, to all Oregon employers. Whenever an Oregon employee is exposed to a hazard, or a potential hazard, we are at least theoretically able to address the issue. The methods we will use and the degree to which we can resolve problems depends upon whether we have specific standards addressing the issue, whether another agency or organization has such standards if we do not, and the apparent severity of the hazards involved.

At its most basic level, our jurisdiction starts with the employer-employee relationship. If no employees are exposed to a hazard, we have no authority. However, as is true of most workplace regulatory agencies, that determination is not based simply on the paperwork that is filed or the way the relationship is described to us by the employer. We focus on the economic reality of the relationship. Frequently, that becomes a matter of assessing the direction and control exercised over the worker. If a worker is told what to do, when to do it, and how to do it, then he or she is likely to be considered a worker. We frequently face "independent contractors" in industries such as construction, for example, that we determine to be employees for the purposes of Oregon OSHA.

Because our enforcement resources are limited, and consistent with both good practice and legislative direction, we focus them on those activities that present the greatest risk of workplace injury, illness or death. In addition, we respond to complaints from workers and from others who are alleging worker exposure to hazards. In a relatively low-risk industry such as this one, almost all of our enforcement activity will be driven by such complaints, rather than our other enforcement scheduling systems.

If we receive a complaint describing potential exposure to a person who is or who may be an employee, we may respond with either an inquiry or an unannounced inspection. This decision is based on the severity of the hazard, how systemic it is, and to some degree the wishes of the person making the complaint. We also protect the confidentiality of complainants who ask for such protection. We do accept anonymous complaints, where even we do not know the identity of the complainant, although such anonymity may limit our ability to respond effectively.

When we conduct an inspection and identify violations to which employees are (or could be) exposed, we classify those violations as either serious or other than serious. Serious violations suggest that there is a risk of serious injury, illness or death, and when we cite such violations we also must assess a penalty. Our average penalty for a first-time serious violation is approximately $350, although they can range anywhere between $100 and $7,000. For repeat violations, or violations that are not corrected as required, the penalties are higher (sometimes much higher). In addition, if we determine that a violation represents a willful violation the penalty will normally be multiplied by 25, with a minimum penalty for a single willful violation of $5,000 and a maximum penalty of $70,000.

Whenever we cite violations, we ask the employer to confirm that it has been corrected. We conduct inspections to verify correction in roughly five percent of our citations. We also are likely to hear from the same person who filed the original complaint if it is not corrected.

With regard to the entertainment industry itself, we do not have specific standards – although some of our rules regarding such things as basic housekeeping, structural integrity and electrical safety may come into play. If we identify a serious hazard and we determine that the employer should have known about it *and* could have taken effective steps to fix it but did not do so, we can issue what is referred to as a "general duty" violation. This comes from the general duty every employer has under the law to provide a safe and healthful working environment. If we identify such a violation, we cite it exactly the same way we cite a serious violation of any of our codes.

With this background, I would be happy to answer any questions that you may have.