



**Testimony of Becky Straus, Legislative Director  
In Opposition to HB 2595  
House Judiciary Committee  
March 4, 2013**

Chair Barker and Members of the Committee:

In 2000, SB 678 criminalized “interference with agricultural operations.” That bill passed and was codified at ORS 164.887 (“Ag Ops statute”), but was later struck down by the Oregon Court of Appeals as an unconstitutional infringement on the right to equal protection under the law.<sup>1</sup> HB 2595 revisits this crime, narrowing the scope to interference with “forest practice.” In part because of the lessons learned during the implementation of the Ag Ops statute and in part because of the policy arguments for moving forward with a bill that sets heightened penalties for almost exclusively non-violent acts, the ACLU is opposed to HB 2595. Thank you for the opportunity to provide testimony to explain further.

Current Law Provides Tools to Address Harms; Elements of New Crime are Unclear

If the intent of the bill’s proponent is to protect against harm to industry interests, there are many tools that already exist in current law. Laws against disorderly conduct, trespass, damage to property, and criminal mischief all provide a way to penalize someone who is significantly disrupting a forest practice.

Thus, HB 2595 is duplicative and is also problematic in that its vague terms do not provide fair notice of what activity might or might not be criminal and give unbridled discretion to a law enforcement officer if this bill is approved.

The bill would penalize a person who, “while on state forestland or on an access road, intentionally hinders, impairs or obstructs, or attempts to hinder, impair or obstruct, the performance of the forest practice.” Lawful protest activities are often attempts to “obstruct, impair or hinder” by drawing public attention to forest practices on government forest land. At times, these activities do actually succeed in causing obstruction, impairment, or hindrance by causing an employee to quit, slow down, or stop and think about quitting as a result of public pressure.

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<sup>1</sup> *State v. Borowski*, 231 Or.App. 511 (2009). Crucial to the Court’s ruling was an exception in the Ag Ops statute for labor protests and, because the Court found the law unconstitutional under the federal Equal Protection Amendment, it did not reach First Amendment issues. HB 2595 does not contain this same exception, so it is unclear how the court would rule on the constitutionality of HB 2595.

Thus, HB 2595 raises many questions: At what point are agricultural operations impaired, obstructed or hindered? Could an otherwise lawful action, speech, or picket critical of an logging operation become a crime if that activity results in reduced output of timber? Many citizens protesting a government action may intend to “attempt” to change the government’s decision or plan of action. Are such outcomes sufficient to prosecute someone simply because the subject of the protest happens to have a negative view of a forest operation? Would using a cell phone on public lands to call an attorney to seek an injunction against the operation be a crime because the call demonstrates an attempt to impair or hinder the operation? If a person holds a picket sign on public lands expressing opposition to the forest operation, must that person fear whether the sign convinces an employee to quit, or even stop for ten minutes to think about quitting? If the sign does not convince an employee to quit, but the picketer hopes for that outcome, has the person “attempted” to impair, obstruct or hinder? The statute’s language, on its face, does not answer these questions.

#### Vague Standard Could Lead to Disparate Enforcement

In the roughly seven years between the enactment of SB 678 and the suit challenging the law, 88 persons were charged with “interfering with agricultural operations.” Despite the frequent occurrence of criminal activity on agricultural lands – involving larceny, vandalism, disorderly conduct, criminal mischief and/or arson – 87 of the 88 persons charged under the Ag Op statute were forest protestors.

HB 2595 addresses only activity on state forest land, but we are concerned that the bill invites the same type of disparate enforcement and will be used only against persons whose views about forest management differs from that of the industry or a law enforcement officer on the scene. We appreciate the opportunity to caution against enacting a law that’s enforcement may be dependent on the content of speech of those it covers.

#### Enhanced Penalties

The ACLU is also opposed the mandatory minimum penalties included in Section 2 of HB 2595. Elevating the offense to a Class C Felony subject to a mandatory minimum sentence of 13 months – or five years if the person has a previous conviction – is clearly disproportionate to other similar offenses. We believe that this section of the bill raises serious questions of constitutionality under Article I, section 16 of the Oregon Constitution as well as Article I, section 20.

Given all of these issues with HB 2595, we respectfully urge you to refrain from moving it forward. Thank you for your consideration and please feel free to contact me at any time with comments or questions.