

HOUSE COMMITTEE ON WATER

April 20, 2005 Hearing Room 357

1:00 P.M. Tapes 70 - 72

MEMBERS PRESENT: Rep. Bob Jenson, Chair

Rep. Jackie Dingfelder, Vice-Chair

Rep. Jerry Krummel, Vice-Chair

Rep. Phil Barnhart

Rep. Alan Brown

Rep. Carolyn Tomei

MEMBER EXCUSED: Rep. Billy Dalto

STAFF PRESENT: Sandy Thiele-Cirka, Committee Administrator

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

HB 3430 – Public Hearing

HB 2779 – Work Session

HB 2130 – Work Session

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 70, A		
002	Chair Jenson	Calls the meeting to order at 1:20 p.m. Opens a public hearing on HB 3430.

HB 3430 – PUBLIC HEARING

018	Sandy Thiele-Cirka	Administrator. Mentions testimony submitted by Lane Shetterly, Director, Department of Land Conservation and Development (LCD) (EXHIBIT A), Judy Mammano (EXHIBIT B), and Les Helgeson, Policy Coordinator, Native Fish Society (EXHIBIT C).
022	Rep. Deborah Boone	House District 32. Provides background for HB 3430 and testifies in support of the bill.
040	Tilda Chadwick Jones	Tillamook Bay Habitat & Estuary Improvement District (TBHEID). Submits written testimony (EXHIBIT D). Introduces Clarence Boquist and Lance Barnett.
055	Rep. Brian Boquist	House District 23. Testifies in support of HB 3430.
082	Jones	Describes the need for HB 3430.
135	Chair Jenson	Questions whether this issue was presented in 2003.
136	Jones	Believes that this is the first time TBHEID has presented this issue.
141	C. Boquist	Dairyman, Tillamook County. Testifies in support of HB 3430. Recalls that TBHEID did support similar bill in 2003.
169	Chair Jenson	Questions why TBHEID needs a permit, and who issues them.
173	Jones	Describes the project TBHEID needs that requires permits. Relates who issues the permits, and the difficulties obtaining them.
198	Chair Jenson	Inquires if TBHEID's legal counsel is present.

200	Jones	Responds negatively.
202	Lance Barnett	Clatsop County Diking Improvement Company Number 9. Testifies in support of HB 3430.
256	Jones	Mentions and describes last section of testimony (EXHIBIT D).
265	Dale Buck	Tillamook County. Submits written testimony (EXHIBIT E) and testifies in support of HB 3430.
300	Rep. Tomei	Questions if the Army Corps of Engineers (ACOE) needs permits to repair their dikes.
309	Buck	Believes they do not need permits, but does not know for sure.
321	Barry Mammano	Tillamook County. Testifies in support of HB 3430.
334	Chair Jenson	Questions whether a similar bill has been introduced in previous sessions, as he has heard this issue before.
360	Dave Kelsy	Small Scale Miner. Explains the process the ACOE must go through to work on their dikes. Testifies in support of HB 3430.
380	John Lilly	Assistant Director, Department of State Lands (DSL). Submits written testimony (EXHIBIT F) and testifies in opposition to HB 3430. Speaks to the requirements for the ACOE. Describes repairs that are allowed without permits, or with expedited permits.

TAPE 71, A

050	Lilly	Continues testimony on permitting.
080	Rep. Barnhart	Questions whether emergency repairs on dikes require permits.
086	Lilly	Responds that emergency repairs do not require permits.
088	Rep. Tomei	Inquires about the ACOE's role in protecting water. Questions whether one of the roles of the ACOE is to protect the farmers.

093	Lilly	Describes the role of the ACOE in protecting aquatic habitat, water quality, and free passage of traffic and commerce. Responds that the ACOE provides flood control, and builds dikes for various purposes.
131	Rep. Krummel	Inquires about the length of the permitting process.
145	Lilly	Responds that some activities are damaging to fish and habitat, and DSL regulates projects that could cause damage.
184	Rep. Krummel	Inquires about the proponent's permit request, and if the applicant asked for the permit deadline to be extended.
194	Lilly	Believes the TBHEID has been issued a permit by DSL, and explains why it was delayed. States that DSL is required to make a decision within 90 days of receiving a completed application.
219	Rep. Krummel	Questions whether the Legislature has given DSL clear direction.
230	Lilly	Responds that DSL believes clear direction has been given.
235	Rep. Krummel	Inquires how long the elongated process took.
238	Lilly	Admits that the applicants may have been working for a long time prior to being issued the permit.
243	Rep. Krummel	Inquires if HB 3430 would allow the proponents to do what they want without a permit. Expresses desire that proponents are able to protect their investment.
260	Lilly	Admits that he does not know if the project will serve their purposes. Responds that the DSL permit alone will not allow them to begin the project. Suggests that DSL and ACOE permit processes be merged.
288	Rep. Krummel	Questions if there is anything in state law that prohibits DSL and ACOE from having a common application and permitting process.
305	Lilly	Responds that DSL currently has a joint application with ACOE. Explains why agency processes prohibit some consolidation ideas.
345	Rep. Barnhart	

Comments on the complexity of the issues being addressed.
Questions whether the Legislature is doing everything it can to make the process simpler for all parties involved.

369 Lilly Addresses attempts to balance use of resources while attempting regulatory streamlining.

415 Rep. Barnhart Inquires if Congress can change federal rules to make Oregon's state work easier.

TAPE 70, B

006 Rep. Barnhart Questions whether we are doing an adequate job of helping citizens understand the rules and help DSL accomplish goals.

018 Lilly Responds that DSL's ability to influence federal issues is limited. Addresses resources for technical assistance.

047 Chair Jenson Comments that Tillamook should be recognized as a unique area. Expresses concern that permit was obtained only after the constituents contacted their government representation.

120 Chair Jenson Questions if there is a Memorandum of Understanding (MOU) with the federal agency, and when it will become available. States that the committee may not want to move until it is received.

124 Lilly Responds that we do not have a MOU, but hopes to have it before 2007.

138 Chair Jenson Mentions a letter from the LCD (**EXHIBIT A**). Closes public hearing on HB 3430. Opens a work session on HB 2779.

HB 2779 – WORK SESSION

165 Sandy Thiele-Cirka Administrator. Reviews issues related to HB 2779. Introduces the -1 amendments (**EXHIBIT G**) and -2 amendments (**EXHIBIT H**).

186 Chair Jenson States that he will not accept a motion on the -2 amendments.

197 Joe Rohleder

Government Affairs Advisor, Oregon Aquaculture Association.
Describes the -1 amendments. Mentions the -3 amendments
(EXHIBIT I).

- 219 Rep. Krummel Questions the proponents of the -2 amendments.
- 222 Chair Jenson States that the -2 amendments will be left to the discretion of Ways and Means. Responds that Mr. Rohleder requested the -2 amendments.
- 233 Rohleder Explains why the sunset clause in the -2 amendments is being introduced to the bill and why more public input is needed.
- 264 Chair Jenson Addresses the possible \$1 fee increase to the general license.
- 272 Rohleder Relates discussion about the \$1 increase to the general license fee.
- 296 Rep. Krummel MOTION: Moves to ADOPT HB 2779-1 amendments dated 3/16/05.**
- VOTE: 6-0-1**
- EXCUSED: 1 - Dalto**
- 302 Chair Jenson Hearing no objection, declares the motion CARRIED.**
- 304 Rep. Krummel MOTION: Moves to ADOPT HB 2779-3 amendments dated 4/18/05.**
- VOTE: 6-0-1**
- EXCUSED: 1 - Dalto**
- 309 Chair Jenson Hearing no objection, declares the motion CARRIED.**
- 317 Chair Jenson Questions whether HB 2779 with amendments is acceptable with the Department of Fish and Wildlife (ODFW).
- 327 Roy Elicker

Deputy Director, ODFW. Expresses that ODFW is comfortable with continued discussion in Ways and Means, but does not currently support HB 2779.

- 350 Rep. Brown Questions the form the bill will be in after it goes to Ways and Means. States that his support for the bill will depend on the sunset clause.
- 360 Chair Jenson Explains that further deliberation will occur in Ways and Means.
- 374 Rep. Dingfelder Questions how the -3 amendments will be integrated with the Native Fish Conservation Policy. Addresses concerns from the Native Fish Society. Inquires if funds would go to biologists on warm water issues.

TAPE 71, B

- 011 Elicker States that it is premature to specify where funds from the tag would be allocated. Believes that the -3 amendments will fit in with the Native Fish Conservation Policy.
- 033 Rep. Dingfelder Expresses concern that the plan was written before Native Fish Conservation Policies.
- 041 Rep. Brown Questions whether the tag would affect marine species.
- 043 Elicker Responds that the tag would not affect marine species.
- 048 Rep. Dingfelder Inquires about the timeline for when the plan will be updated.
- 053 Elicker States that ODFW supports offering a timeline.
- 066 Ed Johnson Lincoln County. Testifies in opposition to HB 3430.
- 093 Rep. Krummel **MOTION: Moves HB 2779 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means by prior reference.****
- 104 Rep. Brown States that he will vote to send HB 2779 to Ways and Means, but his vote on the floor will depend on the adoption of the -2 amendments.

114 Chair Jenson The motion CARRIES.

Materials submitted for the record without public testimony:

Les Helgeson Native Fish Society. Written testimony in opposition to HB 2779 (EXHIBIT J).

121 Chair Jenson Closes work session on HB 2779. Opens a work session on HB 2130.

HB 2130 – WORK SESSION

129 Jim McCauley Department of Environmental Quality (DEQ), Water Quality Division. Comments on the proposed -3 amendments (EXHIBIT K).

140 Chair Jenson Comments on the effects of the -3 amendments.

149 Rep. Tomei Questions the effects of the amendments.

154 Chair Jenson Explains that ORS 196.840 is repealed because it is outdated. States that the -3 amendments begin in Section 2 and Section 3.

174 McCauley Provides background on HB 2130 -3 amendments.

195 Chair Jenson Comments on language acceptable to DEQ and the miners.

213 Rep. Barnhart Questions whether HB 2130 does anything to DEQ's authority to establish fees. Seeks clarification that DEQ currently lacks authority to establish a fee of this type.

218 Holly Schroeder Administrator, Water Quality Division, DEQ. Explains how HB 2130 affects DEQ's authority to set fees. Clarifies that DEQ does have the authority to establish this type of fee, and describes the issues with the current fee schedule.

261 Rep. Barnhart Questions how the new permit is distinguished from the larger permit.

266 Schroeder Addresses the circumstances under which this permit and fee will be used.

301	Rep. Gordon Anderson	House District 3. Relates discussion of work group with the mining community and DEQ.
372	Rep. Krummel	Inquires about the one-time application fee, and the yearly renewal fee and what happens if one does not renew annually.
387	Schroeder	Responds that one would have to pay the application fee again if the permit lapsed.
404	Rep. Dingfelder	Questions whether people are currently paying the fee, if it is new, or if HB 2130 is only moving the fee into statute. Inquires how many fee schedules are currently in statute.
416	Schroeder	States that this fee is new, and explains why DEQ decided to include it in statute. States that it is an exception to common practice to put a fee in statute.

TAPE 72, A

011	Rep. Anderson	Comments on concerns regarding previous permitting requirements.
017	Rep. Barnhart	Comments on public input and considerations for rulemaking. Expresses concerns with how administrative rules are adopted.
038	Chair Jenson	Inquires who approached Rep. Anderson with this issue.
040	Rep. Anderson	States that the miners came to him to address the issue.
050	Chair Jenson	Addresses the reason that this bill is being considered.
057	Rep. Barnhart	Suggests that the rule be put into effect through the rulemaking process rather than statute.
069	Schroeder	Comments that there are extenuating circumstances in this instance to issue permits and give options to the miners for the 2005 mining season. Believes the rulemaking process would cause delays.
089	Rep. Barnhart	Questions whether DEQ lacks temporary rulemaking authority.

093	Schroeder	Responds that DEQ can adopt temporary rules.
097	Rep. Barnhart	Suggests putting this fee into temporary rule.
100	Schroeder	Responds that it will still need fee ratification in the 2007 session.
101	Chair Jenson	States that HB 2130 and HB 2265 will be held over to Monday, April 25, 2005. Closes the work session on HB 2130. Adjourns the meeting at 3:15 p.m.

EXHIBIT SUMMARY

- A. **HB 3430, written testimony of Lane Shetterly, staff, 2 pp**
- B. **HB 3430, written testimony of Judy Mammano, staff, 1 p**
- C. **HB 3430, written testimony of Les Helgeson, staff, 1 p**
- D. **HB 3430, written testimony, Tilda Chadwick Jones, 18 pp**
- E. **HB 3430, written testimony, Dale Buck, 1 p**
- F. **HB 3430, written testimony, John Lilly, 3 pp**
- G. **HB 2779, -1 amendments, staff, 1 p**
- H. **HB 2779, -2 amendments, staff, 9 pp**
- I. **HB 2779, -3 amendments, staff, 1 p**
- J. **HB 2779, written materials submitted without public testimony, Les Helgeson, 1 p**
- K. **HB 2130, -3 amendments, staff, 2 pp**