

## SENATE COMMITTEE ON ENVIRONMENT & LAND USE

January 24, 2005  
3:00 P.M.

Hearing Room B  
Tapes 6 – 7

Revised 03/04/2005

**MEMBERS PRESENT:** Sen. Charlie Ringo, Chair  
Sen. Jason Atkinson, Vice-Chair  
Sen. Roger Beyer  
Sen. Ginny Burdick  
Sen. Frank Shields

**STAFF PRESENT:** Matt Shields, Committee Administrator  
Katie Lowry, Committee Assistant

**MEASURES/ISSUES HEARD:**  
SB 179 – Public Hearing and Work Session  
SB 185 – Public Hearing  
SB 170 – Public Hearing

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 6, A</b>		
005	Chair Ringo	Calls committee to order at 3:06 p.m. Makes opening comments. States that SB 125 is now taken off the agenda. Opens public hearing on SB 179.
<b><u>SB 179 – PUBLIC HEARING</u></b>		
020	Matt Shields	Committee Administrator. Explains the bill.
025	Phil Ward	Director, Oregon Water Resources Department (OWRD). Makes opening remarks.
030	Adam Sussman	Legislative Coordinator, OWRD. Introduces himself. Submits written testimony in support of SB 179 ( <b>EXHIBIT A</b> ). Discusses the advantage of having information provided in a digital format.
045	Chair Ringo	Remarks that this bill is about efficiency.
048	Sussman	Confirms this.
050	Chair Ringo	Hearing no opposition, closes public hearing on SB 179 and opens work session on SB 179.
<b><u>SB 179 – WORK SESSION</u></b>		
056	Sen. Atkinson	<b>MOTION: Moves SB 179 to the floor with a DO PASS recommendation.</b>
057	Chair Ringo	<b>VOTE: 4-0-1</b>
		<b>EXCUSED: 1 - Burdick</b>
058	Chair Ringo	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. ATKINSON will lead discussion on the floor.</b>
059	Chair Ringo	Closes work session on SB 179 and opens public hearing on SB 185.
<b><u>SB 185 – PUBLIC HEARING</u></b>		
060	Phil Ward	Director, Oregon Water Resources Department (OWRD). Introduces himself.
062	Adam Sussman	Legislative Coordinator, OWRD. Submits written testimony

075	Sen. Shields	<b>(EXHIBIT B).</b> Discusses water rights, and explains SB 185.
080	Sussman	Asks if there is variance in state regions.
085	Sen. Shields	States that there is not.
090	Sen. Beyer	Clarification.
		Points out a lack of emergency clause and inquires when it would take effect.
095	Ward	Confirms when the bill would take effect.
097	Sen. Beyer	Asks if this would affect water rights currently.
100	Ward	Offers to add emergency clause and offers to pass amendment in House.
105	Sen. Beyer	Discusses importance of adding an emergency clause.
110	Chair Ringo	Asks Sen. Beyer if he would prefer to hold the bill.
115	Sen. Beyer	Defers to Chair for decision.
120	Chair Ringo	Asks staff to get an amendment for bill.
125	Anita Winkler	Executive Director, Oregon Water Resources Congress. States support for bill. Explains it is unclear if bill is necessary but sees it as a good preventative measure.
130	Chair Ringo	Closes public hearing on SB 185 and opens public hearing on SB 170.

#### **SB 170 – PUBLIC HEARING**

140	Ann Hanus	Director, Department of State Lands (DSL). Submits written testimony in support of SB 170 <b>(EXHIBIT C)</b> . Makes opening remarks regarding removal fill law. Gives reasoning for bill. Offers to work collaboratively with those who want amendments on the bill to resolve any differences.
180	John Lilly	Assistant Director, DSL. Makes opening comments. Submits and highlights written testimony <b>(EXHIBIT D)</b> . States that reason for bill is an attempt to bring state law closer to federal law. Gives history of Oregon's removal fill law. Talks about specifics of SB 170.
250	Chair Ringo	Asks about specifications and whether those are in the bill itself or in rules that the bill brings in.
258	Lilly	Clarifies that these specifications are in the bill itself.
260	Lilly	Talks about permits.
285	Lilly	Makes closing remarks.
290	Sen. Atkinson	Asks about buying a ranch with a pasture that's been fallow for seven years and whether that means that the pasture has been abandoned according to this bill.
295	Lilly	Explains when a permit would be necessary.
300	Sen. Atkinson	Inquires whether it would be considered abandoned if there was a cow on it.
305	Lilly	Confirms that it would not be considered abandoned.
307	Sen. Atkinson	States that with this scenario there would be several citizens in White City that would be in violation of the law.
310	Lilly	Asks to know more about the specific circumstances.
315	Sen. Atkinson	Asks how this is policed.
320	Lilly	States that it is policed by compliance monitoring by staff in the field and complaints from community.
325	Sen. Atkinson	States that if he didn't like his neighbor, he could complain to DSL.
327	Lilly	Discusses how they receive and evaluate complaints.
330	Sen. Atkinson	Asserts that someone would need to pay the lawyer's bills.

331	Lilly	Confirms that they would need to represent themselves or retain counsel.
332	Sen. Atkinson	Asks if he would like to comment on the case that is in the Court of Appeals that could be related to this bill.
335	Hanus	States that it would not be appropriate because they are in litigation.
340	Sen. Shields	Verifies that this is an illustrative list and not a comprehensive list, refers to <b>(EXHIBIT D, Page 3)</b> . Asks what the process would look like. Asks how this new law is different from the old law.
360	Lilly	Talks specifically about regulated activities and importance of differentiating between the impact on an undisturbed wetland and a list of activities that would not require a permit.
390	Sen. Beyer	Asks what the problem is that this law would fix.
395	Lilly	Clarifies that there are some changes in current practices.
415	Sen. Beyer	Contends that what can and cannot be regulated on agricultural land is up for dispute and that is why they are in court. Specifies the issue of agriculture exemption.
425	Lilly	States that DSL is in a dispute because of a difference of opinion about what is permissible under law. Sees this bill as a chance to clear up the uncertainty.
435	Sen. Beyer	Expresses that agriculture exemptions are pretty clear for farmers as they are but states that this new law seems much less clear. Comments that this new law would delete the specifics that are required to be reported and make the report to the Legislature much more general.
<b>TAPE 7, A</b>		
035	Lilly	States that all the pertinent aspects of the program would be reported on, refers specifically to permits.
050	Sen. Beyer	Asks how SB 170 ties into the 404 process and bill that was passed in SB 172 (2001).
055	Lilly	Speaks regarding SB 172 (2001) and how current bill ties into 404 process.
085	Sen. Betsy Johnson	District 16. Makes opening comments and introduces Dale Buck.
095	Dale Buck	Retired Tillamook County dairy farmer. Introduces himself and states opposition to SB 170. Submits written testimony <b>(EXHIBIT E)</b> . Clarifies specific points of opposition to bill.
155	Buck	Talks about “changing crops.” Expresses uncertainty about the language of the bill and urges committee to form work group and choose people who can work out some of these uncertainties. Makes closing remarks.
180	Sen. Johnson	Introduces herself. Offers to work with the work group. Remarks about language ambiguities. Requests to have someone from Tillamook County to sit with the work group who is knowledgeable about the effects on the environment.
205	Lynne Vanderlinden	Farmer, Southern Oregon. Introduces herself. Submits written testimony in opposition to SB 170 <b>(EXHIBIT F)</b> .
250	Vanderlinden	Talks about DSL practices. Compares farmers making decisions and DSL making decisions. States that farmers are already regulated by federal government. Expresses concern about DSL’s “micromanagement” and rising fees. Speaks about specific language ambiguities in bill. Makes closing remarks.
300	Chair Ringo	Asks if witness is dissatisfied with current law.
305	Vanderlinden	Clarifies that she is upset with the way that DSL interprets the

		law, but not the actual law.
310	Chair Ringo	Asks if witness would be fine if committee killed the bill. Refers to testimony from Lilly. Asks if it is a good goal to try to expedite the permit process.
315	Vanderlinden	States that all the same agencies would still be involved in the permit process.
320	Chair Ringo	Asks if witness thinks they should kill the bill or have a work group.
325	Vanderlinden	Thinks a work group would not be beneficial.
350	Robert Kerivan	Farmer, Cave Junction, Oregon. Submits and reads written testimony in opposition to SB 170 <b>(EXHIBIT G)</b> .
<b>TAPE 6, B</b>		
055	Kerivan	Speaks about three trials and states that all three were ruled in favor of the farmers. DSL is attempting to appeal these court orders. Refers to examples given at end of testimony <b>(EXHIBIT G)</b> .
080	Chair Ringo	Asks question regarding civil suit. Asks if state brought lawsuit or if witness brought it.
085	Kerivan	Clarifies that he brought lawsuit, but DSL is appealing. Speaks regarding DSL's lawsuits.
095	Chair Ringo	Asks if witness would leave law as it is.
100	Kerivan	Confirms that he would.
101	Sen. Atkinson	Asks for clarification regarding two standards, one for Josephine County and one for the rest of the state.
105	Kerivan	States that there is one law in the state.
110	Keith Nelsen	Farmer and Chairman of the Josephine County Farm Bureau. Backs testimony of previous witnesses.
130	Liz Frenkel	League of Women's Voters of Oregon. Makes opening comments. Urges committee to make work group public if one is formed. Makes comments regarding DSL. Specifies that the League does have specific concerns.
160	Sen. Beyer	Asks what the interest is of the League of Women's Voters of Oregon.
165	Frenkel	States that their interest is in water quality and states that this bill is about water quality.
170	Sen. Beyer	Asks what the specific concerns are.
172	Frenkel	States that concern involves transfer of authority from Department of Environmental Quality to Division of State Lands. Mentions SB 54.
195	Scott Ashcom	Oregon Agricultural Alliance (OAA). Introduces himself. Submits and highlights written testimony asking for some amendments on bill <b>(EXHIBIT H)</b> . Talks regarding agricultural bill in 1985. Offers to participate in the work group if one is formed and describes the questions that the bill addresses.
280	Chair Ringo	Asks if a bill is necessary to clarify these things or if they should kill the bill.
285	Ashcom	States that clarification is necessary and that the bill holds some necessary clarifications of current law to bring the current law back to the original intent.
295	Chair Ringo	Verifies that if there was a work group the witness would like to be a part of it.
300	Ashcom	Confirms this.
301	Chair Ringo	Asks what the OAA is and how their interests are different than the Oregon Farm Bureau.

305	Ashcom	Describes OAA.
310	Chair Ringo	Asks if members would be impacted differently than members of the Farm Bureau would be impacted.
315	Ashcom	Indicates that they would not. States that several members are affected by the way DSL is applying agricultural exemptions.
320	Chair Ringo	Asks if members of OAA have interest in outcome of lawsuit with DSL.
325	Ashcom	Confirms no monetary interest. Decision of Josephine County Court consistent with their interpretation of agricultural exemptions from current law.
327	Chair Ringo	Asks if witness believes Josephine County was correct.
328	Ashcom	Confirms this.
360	Doug Rosenberg	Tillamook Bay Habitat and Estuary Improvement District. Submits written testimony <b>(EXHIBIT I)</b> . Makes opening comments.
370	Chair Ringo	Asks if witness believes this bill needs the committee's attention.
375	Rosenberg	Shares that preference is to see bill totally changed or scrapped. Gives background on Tillamook Bay Habitat Estuary Improvement District.
440	Rosenberg	Speaks about goals. Gives examples of accomplishments over the years. Talks about permits and the problems encountered. Refers to <b>(EXHIBIT I)</b> and talks about a potential project.
<b>TAPE 7, B</b>		
030	Rosenberg	Relates story. Requests that one of their professional advisors and one of the members be included in the work group if one is formed.
060	Clarence Boquist	Retired dairyman, Tillamook. Introduces himself. States that there are several problems with the bill and states opposition. Relates personal testimony.
095	Bud Gienger	Farmer, Tillamook. Relates personal testimony with exemptions. States opposition to bill.
125	Rudy Fenk	Chairman, Tillamook Soil and Water Board. Introduces himself. Makes opening comments regarding soil in Tillamook County. Makes comments about permit process. Asks why the state does not help protect from erosion if they say they own the bottom of the rivers, the banks and gravel bars.
155	Sen. Beyer	Asks for clarification if he is opposed to bill.
157	Fenk	States that the law should stay the way it is because there are enough regulations.
165	Sen. Shields	Asks how many of the problems come from the regulations and how many come from the "forces of nature."
170	Fenk	Conveys that it is necessary to work within the regulations, not get rid of them. Urges committee to leave the law the way it is.
190	Chair Ringo	Asks to hear response to the last hour of testimony.
195	Hanus	Clarifies that the proposal is not to remove exemptions but to make it more consistent. Offers again to sit down and talk through the bill with anyone who is interested.
205	Chair Ringo	Asks about specific example with the 50 cubic yards exemption. Asks if they would need a permit under the new law.
210	Hanus	Clarifies this exemption and refers to federal law.
215	Chair Ringo	Inquires that if the stream is not considered essential salmonid habitat that the exemption does apply.
218	Hanus	Confirms this.
220	Chair Ringo	Asks how many waterways there are that are not essential.

225	Lilly	Clarifies number.
235	Chair Ringo	Asserts that a change in exemption would affect the agricultural community.
240	Lilly	Reiterates intention to bring state law into consistency with federal law. Explains attempt to put a new type of “no notice” permit into place.
270	Chair Ringo	Asks when they expect an answer on the court case.
271	Hanus	They are unsure when they can expect an answer.
275	Sen. Beyer	Has some technical questions about the bill. States that a work group would be a better arena for dealing with these questions.
285	Greg Addington	Oregon Farm Bureau (OFB). Introduces himself. Submits written testimony <b>(EXHIBIT J)</b> .
290	Chair Ringo	Asks if a work group would be useful for this bill.
295	Addington	States that there are differences in interpretation of current state statutes. Expresses that a consensus might not be reached in a work group.
300	Chair Ringo	Asks if the testimony today reflects the broad interests of agricultural community.
305	Addington	Believes that members of OFB would prefer the status quo.
310	Sen. Atkinson	Asks if his members would be happy under the federal law.
315	Addington	Believes members would be happy living under the federal minimums.
320	Lilly	Addresses living under federal minimums. Identifies some differences between state and federal law.
345	Chair Ringo	Informs that a work group will not be formed.
365	Chair Ringo	Closes public hearing on SB 170. Adjourns meeting at 4:58 p.m.

## **EXHIBIT SUMMARY**

- A. SB 179, written testimony, Adam Sussman, 1 p**
- B. SB 185, written testimony, Adam Sussman, 1 p**
- C. SB 170, written testimony, Ann Hanus, 2 pp**
- D. SB 170, written testimony, John Lilly, 14 pp**
- E. SB 170, written testimony, Dale Buck, 1 p**
- F. SB 170, written testimony, Lynne Vanderlinden, 2 pp**
- G. SB 170, written testimony, Robert Kerivan, 9 pp**
- H. SB 170, written testimony, Scott Ashcom, 2 pp**
- I. SB 170, report with photos, Doug Rosenberg, 34 pp**
- J. SB 170, written testimony, Greg Addington, 1 p**