

HOUSE COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES

February 11, 2003 Hearing Room D
1:00 PM Tapes 23 - 24

MEMBERS PRESENT: **Rep. Jeff Kropf, Chair**
 Rep. George Gilman, Vice-Chair
 Rep. Kelley Wirth, Vice-Chair
 Rep. Terry Beyer
 Rep. Dave Hunt
 Rep. Donna Nelson
 Rep. Patti Smith

STAFF PRESENT: **Ray Kelly, Committee Administrator**
 David Peffley, Committee Assistant

MEASURES HEARD: **HB 2188 – Public Hearing**
 HB 2203 – Public Hearing

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 23, A		
003	Chair Kropf	Calls the meeting to order at 1:30 and opens a public hearing on HB 2188.
HB 2188 – PUBLIC HEARING		
023	Norm Miller	Timber Tax Operations Supervisor. Submits (EXHIBIT A) in support of his testimony. Remarks that amendments will be forthcoming after HB 2197 passes out of the revenue committee so that both bills can work together.
060	Wally Rutledge	Director, Forestry Assistance. Submits (EXHIBIT B) and discusses the conflict with HB 2197. Reaffirms that we will need to revisit this legislation after HB 2197 passes.
068	Chair Kropf	Asks Miller whether the savings will be offset by HB 2197.
073	Miller	Addresses the privilege tax concern and notes that there will be some offset.
085	Chair Kropf	Asks if we will be reducing the FTE by two staff.
087	Miller	Confirms that this will be the net effect.
090	Chair Kropf	Closes a public hearing on HB 2188 and opens a public hearing on HB 2203.
HB 2203 – PUBLIC HEARING		
091	Ray Kelly	Committee Administrator. Explains HB 2203.
105	Charlie Stone	Assistant State Forester, Department of Forestry's Protection Division. Introduces HB 2203, clarifying its legislative intent.
140	Pete Norkoveck	Legal Services Coordinator, Oregon Department of Forestry. Submits (EXHIBIT C) in support of HB 2203, recognizing the

173	Bill Brickey	discretionary nature of the forester acting under emergencies. Oregon Department Of Justice (ODOJ). Testifies that the costs have already been borne and that HB 2203 will save much money as it will eliminate frivolous lawsuits.
211	Rep. Nelson	Asks for specific examples.
218	Brickey	Responds with the Schoolhouse Gulch Fire. Discusses the problems with the response time.
233	Rep. Nelson	Asks whether this is the only area of disaster relief which has to go through this process.
240	Brickey	States that he is not aware of any recovery which we can make for the state police. Adds that the question is how much money which should be repaid.
251	Rep. Nelson	Asks who will pay for the bad debt.
258	Brickey	Responds that they could sue, but that these are professionals and thus the situation should not arise.
268	Rep. Nelson	Asks if the Department needs to carry insurance.
271	Brickey	Responds that they do.
273	Norkoveck	Discusses the types and frequency of such claims and adds that 99% of the time there is an insurance mechanism in place and that it is rare for the claim to be borne by the home owner.
293	Rep. Smith	Asks for examples of negligence.
296	Brickey	Responds that specific instances are rare, but cites the examples of starting a fire in a barrel, running a bulldozer incorrectly, or running machinery in dry area.
310	Rep. Smith	Asks what the ORS 477.066 requires.
313	Brickey	States that it allows the state to recover its actual recovery costs.
318	Norkoveck	Adds examples of willfully malicious acts which would also be included in the negligence category.
345	Rep. Hunt	Asks for clarification on the recovery procedure.
350	Norkoveck	Explains the budgetary and fiscal procedures.
370	Stone	Adds that this legislation should not add fiscal impact to the Department.
387	Rep. Hunt	Asks how the lessening of legislation would not be cost saving to the department.
390	Stone	Responds that it may save a little, but how much can not yet be ascertained.
393	Chair Kropf	Asks if it's true that there are only two or three legal claims per year.
403	Brickey	States that it's generally two or three which go to trial, but presently there are seven pending.
420	Norkoveck	Adds that those two or three are the fires which are most significant.
TAPE 24, A		
004	Rep. Nelson	Asks if subcontractors are included in the actual costs.
010	Brickey	Confirms that is correct.
015	Norkoveck	Restates his intentions for inclusion in these figures.
023	Rep. Nelson	Asks about any present laws dealing with statutory limits.
031	Norkoveck	Explains the one exception to this rule.
043	Brickey	Adds that it would be rare to see such a claim.
048	Stone	Points out that many fires do not include a responsible party, thus no collection is possible
054	Rep. Smith	Asks if the state could be held liable if a fire were to get away from them.
061	Stone	States that if they're negligent, they could be held liable.

072	Brickey	Adds that the Department is responsible for putting the fire out.
075	Rep. Smith	References the case of the Multnomah Falls fire in 1991.
078	Stone	Adds that if there have been cases where damages have been paid for a fire that burned its way onto private lands.
084	Chair Kropf	Asks how much money the Department Of Justice (DOJ) has spent in court costs.
090	Brickey	States that he doesn't know, but that DOJ spends \$30-40,000 prosecuting each fire case and another \$20,000 if they have to defend every single decision made.
100	Norkeveck	Adds that outside of the two to three cases which go to court, the money is spent on legal costs anyway.
126	Chair Kropf	Asks for clarification on the language of the bill.
131	Brickey	Clarifies that the heart of the problem lies with the discretionary decisions.
141	Chair Kropf	Asks for further clarification regarding legal costs.
145	Brickey	Affirms the procedural matter.
161	Chair Kropf	Confirms the intent of this legislation to limit the questioning of the judgment of the fire incident commander.
165	Brickey	Agrees with Chair Kropf.
171	Rep. Nelson	Asks if subcontractor costs will be taken into account.
178	Brickey	States that he can't recall questioning a bill which has come in. Asserts that the bills are properly paid.
184	Stone	Adds clarification to the process.
198	Rep. Nelson	Follows up with another hypothetical instance.
207	Norkeveck	Gives further clarification to Rep. Nelson's concern.
223	Rep. Wirth	Asks for clarification regarding the discretionary judgments of the court, vis-à-vis the factual determination of the court.
236	Brickey	Details examples which addresses Rep. Wirth's legal concern.
283	Rep. Wirth	Asks for a worst-case scenario of a blatantly wrong court decision.
290	Brickey	Responds to Rep. Wirth's question.
303	Rep. Wirth	Asks if a case could come to trial in which a judgment in error could clearly increase costs,
313	Brickey	Responds that it could and that this bill would address that issue.
335	Stone	Adds that adjustments to the bill are also possible.
363	Norkeveck	Adds understanding to the investigatory process.
401	Brickey	Adds that once it goes to the legal process, costs are incurred and that someone has to pay the bill.

TAPE 23, B

004	Rep. Nelson	Wants confirmation that this bill takes effect immediately.
013	Brickey	Confirms that it probably takes place the date it passes. Asserts his belief that the bill is sufficient as is.
031	Stone	Recommends checking with Legislative Counsel.
036	Chair Kropf	Concurs with Stone. Asks who is not going to like this bill.
040	Brickey	Hesitates to comment.
044	Chair Kropf	Assumes that judges won't like this.
048	Brickey	Reiterates that he doesn't want to speculate and that he doesn't believe that there would be a problem.
051	Chair Kropf	Asks if property owners might not like this.
057	Stone	States that it depends on each individual case.
059	Rep. Wirth	Moves to clarify that she didn't mean to give the impression that she disapproved or distrusted the Department, but that she was just bringing forth the worst case scenario.
072	Mike Dykzeul	Oregon Forest Industries Council (OFIC). Concurs with the

		expert testimony. Illustrates the levels of oversight, including those which keeps cost down.
113	Rep. Nelson	Asks how much money we owe from fighting fires.
116	Dykzeul	States that we are pretty much solvent, but warns that the hole in front of us is very deep.
139	Rep. Nelson	Asks what the burden is for fire insurance.
142	Dykzeul	Responds that they are still waiting for the figures. Reiterates that the level of insurance is related to protection.
161	Rep. Smith	Asks how many landowners OFIC represents.
164	Dykzeul	Answers that OFIC represents approximately six million acres and perhaps 175 landowners, small woodland owners and large industrials alike.
183	Chair Kropf	Remarks that we will await word from Legislative Counsel. Closes the public hearing on HB 2203 and adjourns the meeting at 2:44.

The following prepared testimony is submitted for the record without public testimony for HB 2203.

William Brickey Submits written testimony (**EXHIBIT D**).

EXHIBIT SUMMARY

- A – HB 2188, written testimony, Norm Miller, 1 p.**
- B – HB 2188, written testimony, Wallace Rutledge, 1 p.**
- C – HB 2203, written testimony, Peter Norkoveck, 2 pp.**
- D – HB 2203, written testimony, William Brickey, 2 pp.**