

HOUSE COMMITTEE ON
ENVIRONMENT AND LAND USE

March 11, 2003 Hearing Room HR E
8:30 Tapes 33 - 34

MEMBERS PRESENT: **Rep. Bill Garrard, Chair**
 Rep. Dennis Richardson, Vice-Chair
 Rep. Cliff Zauner, Vice-Chair
 Rep. Robert Ackerman
 Rep. Dan Doyle
 Rep. Mitch Greenlick
 Rep. Diane Rosenbaum

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

MEASURES HEARD: **HB 2431 – Work Session**
 HB 2362 – 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 33, A		
003	Chair Garrard	Calls the meeting to order at and opens a work session on HB 2431.
<u>HB 2431 – WORK SESSION</u>		
010	Chair Garrard	Announces the -3 amendments to HB 2431 (EXHIBIT A) as requested by the Oregon Supreme Court.
018	Ray Kelly	Introduces the -3 amendments to the committee.
049	Rep. Zauner	MOTION: Moves to ADOPT HB 2431-3 amendments dated 3/10/03.
052	Rep. Richardson	Asks for confirmation on the part of the bill to be amended.
055	Kelly	Affirms Rep. Richardson.
057	Rep. Richardson	States that he would like time to read the amendment.
060	Rep. Ackerman	Asks if the changes are substantive or procedural.
064	Chair Garrard	States that the changes are procedural. States his intention to appoint a work group for HB 2431. Offers to hold off on moving the amendments until a work group considers the bill.
072	Rep. Rosenbaum	Recommends deferring action on the amendment until the work group considers the bill.
075	Chair Garrard	Requests Rep. Zauner to withdraw the motion.
078	Rep. Zauner	Withdraws the motion to adopt the -3 amendments to HB 2431.
082	Chair Garrard	Announces the formation of a work group. Gives the work group three weeks to return with recommendations.
092	Rep. Ackerman	States that he'd like the work group to address assessed value.
098	Chair Garrard	Asks John Lilly to ensure that the work group addresses assessed

value.

101 John Lilly Assistant Director, Division of State Lands. Notes Rep Ackerman's concern.

111 Rep. Greenlick Notes confusion with Section 2 regarding permit applications. Requests that the work group address the language to make it more easily understood.

114 Chair Garrard Asks Lilly to note that we'd like to streamline this process.

119 Rep. Richardson Speaks to addressing the time provisions contained within the bill.

126 Rep. Ackerman Concurs with Rep. Richardson. Also hopes the work group to consider the assessed values contained in Section 2.

143 Chair Garrard Speaks of the -4 amendments which combines Mel Stewart's amendment with the Supreme Court amendment. Closes the work session on HB 2431 and opens a public hearing on HB 2362.

HB 2362 – PUBLIC HEARING

154 Kelly Summarizes HB 2362.

163 Jennifer Flynt Audubon Society of Portland. Submits **(EXHIBIT B)** and introduces Jeff Merrick.

182 Jeff Merrick Testifies in opposition to HB 2362. Asserts that it is not duplicative to list a species on both the federal and state Endangered Species list.

210 Chair Garrard Interjects the preponderance of bald eagles in his district, Klamath Falls.

220 Merrick Continues and attests to the jurisdiction of Oregon's Endangered Species Act ESA vis-à-vis the federal ESA. Also addresses the concern about our right to gather information which would be compromised by HB 2362.

260 Rep. Richardson Asks Merrick if he believes that if bald eagles were delisted they would be annihilated.

264 Merrick States that he doesn't, but reasserts that his point that it is important for Oregon not Washington D.C. to control what species are listed.

269 Rep. Richardson Asks if this addresses the ability to sue.

274 Merrick Restates that if we pass this act, we are likely to be sued.

284 Chair Garrard Speaks to his district being compromised by the ESA economically, thus, we might need to amend this act.

299 Merrick Reasserts that the State should be involved in the listing process.

302 Chair Garrard Notes that the God Squad has rarely been called into action.

313 Merrick Responds with agreement to the Chair.

325 Rep. Greg Smith Sponsor of HB 2362 testifies in support to HB 2362 and the reasons and intent for this legislation. States that the federal ESA is sufficient, but that the state does not need to be involved. Asserts that overzealous enforcement of the ESA has compromised development and farming.

410 Glen Stonebrink Testifies in support of HB 2362. Submits **(EXHIBIT C)**, **(EXHIBIT D)**, and **(EXHIBIT E)** and clarifies previous testimony from the Audubon Society. Explains the intent of the bill to eliminate duplication in the ESA system.

TAPE 34, A

010 Stonebrink Continues testimony in support of HB 2362. Cites the Tarno amendment Speaks to the costs of the ESA and reaffirms the need to minimize duplication.

050 Rep. Greenlick Asks for the basis of Stonebrink's argument regarding the

		Oregon Constitution.
060	Stonebrink	Clarifies his position on the Constitution and the role of government.
071	Rep. Greenlick	Affirms that there are many laws enacted for people and asks Stonebrink if he would apply the same test to the Cattlemen's industry. Asks how far we should take the argument.
090	Stonebrink	Gives a hypothetical to address his point on the role of government. States that we should first look at what is allowed by the constitution. Asserts that the federal ESA overrides and protects the same species.
116	Rep. Ackerman	Notes that the impact statement states that there is no revenue impact.
121	Kelly	Affirms no revenue impact and states that we don't yet have a fiscal statement.
133	Rep. Ackerman	Asks Stonebrink about the role of the legislature vis-à-vis the general welfare clause.
139	Stonebrink	Clarifies his point that needs are what are focused on in the Constitution.
150	Chair Garrard	Reminds the committee about the testimony on two similar bills. Notes that this is the third bill on the subject of the ESA. Recalls testimony that the federal government pays 75% of the costs for investigation.
172	Stonebrink	Notes that the 75% clause applies to recovery of species. Speaks to a huge cost involved in recovery.
201	Les Helgeson	Native Fish Society. States that the state ESA does have utility and supports HB 2362. Testifies that the state ESA is not entirely duplicative. Asserts that the problems in the Klamath are attributable to the federal government, not that of the state.
250	Roy Elicker	Oregon Department of Fish and Wildlife (ODFW) Submits (EXHIBIT F) and testifies in opposition to HB 2362. Asserts that the state ESA is very important in the listing process, especially in the light that the federal government is moving in the direction of not being involved with the listings.
360	Rep. Doyle	Asks whether all states have their own state ESA.
365	Elicker	Replies that most do, but not all.
370	Rep. Doyle	Refers to (EXHIBIT F) and asks how those other states would compete for federal dollars. Asks how the recovery of transient animals is dealt with.
391	Martin Nugent	ODFW. Responds to the state ESA and how migratory species on state lands are dealt with.
424	Rep. Richardson	Asks what portion of ODFW's budget is expended in some facet of implementing Oregon's ESA.
433	Elicker	States uncertainty, but informs the committee that he will research the answer to that question.
TAPE 33, B		
003	Rep. Richardson	Expresses concern about the fiscal impact.
007	Rep. Greenlick	Asks Elicker about the role of ODFW and what the consequences of abolishing the OESA would be.
028	Elicker	States that the federal government would still provide some funding. The effect would be that many local agencies running the show.
047	Rep. Greenlick	Asks how the passage of HB 2368 would alleviate financial burden.
057	Elicker	Confirms that ODFW would still have work to do whether the

		act is in place or not.
070	Rep. Ackerman	Asks Elicker whether, he thinks that the federal government would be more active if HB 2368 passes.
074	Elicker	Responds that he believes that would be the case.
084	Stephen Kafoury	The Wildlife Society. Reaffirms the scientific nature of The Wildlife Society and notes that their testimony will be of that scientific nature.
106	Warren Aney	Submits (EXHIBIT G) and testifies to the state's role in wildlife management and it's importance. Asserts that removing the state ESA would have serious consequences for the state.
203	Rep. Greenlick	Asks a hypothetical question on whether the state has the authority to deal with endangered species.
210	Aney	States that you can pretty much do what you want on your own land.
217	Kafoury	States that this is a grey area and unclear.
232	Rep. Greenlick	Asks about HB 2362's ability to deal with issues involving one's own land.
241	Kafoury	Confirms that private land is excepted.
246	Rep. Richardson	Expresses interest in the revenue impact as to the state's budgetary consideration.
252	Kafoury	States agreement that government spending should certainly be scrutinized.
258	Aney	Confirms the federal money coming into the state.
270	Rep. Rosenbaum	Asks for the reasons for protection from public disclosure.
278	Aney	Speaks to the need for this protection, including vandalism.
289	Rep. Zauner	Asks the effect of a provisional sunset.
298	Kafoury	Reaffirms that the Wildlife Society doesn't want to get involved in that discussion.
322	Chair Garrard	Restates his concern about overburdening protection and it's importance vis-à-vis farming rights.
349	Kelly	Clarifies the distinction between the state and federal ESA and the specificity of the state ESA, which is much more narrow.
383	Greg Addington	Oregon Farm Bureau (OFB). Submits (EXHIBIT H) and testifies in strong support of HB 2362. Asserts that the state ESA is both redundant and duplicative.
TPAE 34, B		
002	Addington	Continues with OFB's assertion that the state ESA is duplicative and in need of reform.
013	Rep. Rosenbaum	Asks if OFB has any concerns about federal intervention overtaking state action.
018	Addington	States that this act does not preclude the state from taking action where necessary. Reiterates that OFB does not see this act as a great benefit.
032	Rep. Richardson	Cites ORS 498.026 and addresses the fact that the takings language applies to the whole state.
049	Addington	Clarifies what the take means to the farmers.
054	Rep. Greenlick	Asks if the statute would go away if the state ESA were to go away.
058	Rep. Richardson	States that the ORS can not preempt a federal statute.
060	Rep. Greenlick	States concern that this statute refers specifically to hunting.
067	Rep. Richardson	Cites a Department of Justice memorandum.
071	Chair Garrard	Cites a problem with the SMS and makes a necessary correction about fisheries in the Klamath Basin. Closes the public hearing and adjourns the meeting at 10:12 AM.

EXHIBIT SUMMARY

- A – HB 2431, -3 amendment, staff, 13 pp.**
- B – HB 2362, written testimony, Jennifer Flynt, 3 pp.**
- C – HB 2362, written testimony, Glen Stonebrink, 1 p.**
- D – HB 2362, written information, Glen Stonebrink, 48 pp.**
- E – HB 2362, written information, Glen Stonebrink, 96 pp.**
- F – HB 2362, written testimony, Roy Elicker, 10 pp.**
- G – HB 2362, written testimony, Warren Aney, 2 pp.**
- H – HB 2362, written testimony, Greg Addington, 2 pp.**