

HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

July 24, 2003 Hearing Room E
1:30 PM Tapes 101 – 102

MEMBERS PRESENT: Rep. Dan Doyle, Chair
 Rep. Linda Flores, Vice-Chair
 Rep. Laurie Monnes Anderson, Vice Chair
 Rep. Vic Backlund
 Rep. Phil Barnhart
 Rep. Betsy L. Close
 Rep. Joanne Verger

STAFF PRESENT: Cara Filsinger, Administrator
 Janet Adkins, Administrator
 Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: HCR 13 – Public Hearing and Work Session
 SB 751 A – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
Tape 101, A 004	Chair Doyle	Calls meeting to order at 1:34 p.m., reviews agenda items, and opens a public hearing on HCR 13.
<u>HCR 13 – PUBLIC HEARING</u>		
013	Rep. Max Williams	District 35. Testifies in support of HCR 13. Comments on the professional services by Former Judge Joseph, his community service, and accomplishments.
031	Rep. Lane Shetterly	District 23. Testifies in support of HCR 13. Commends wording in the memorial to the committee. Comments on administrative abilities of the Judge Joseph and the inspiration he gave to other judges on the court.
074	Rep. Diane Rosenbaum	District 42. Testifies in support of HCR 13. Comments on her relationship with Judge Joseph and his wife, and the humor and dedication of Judge Joseph.
119	Rep. Verger Chair Doyle	Comments on having served with Judge Joseph on the Easter Seal Society Board and endorses the statements on Judge Joseph. Closes the public hearing and opens a work session on HCR 13.
<u>HCR 13 – WORK SESSION</u>		
122	Rep. Flores	MOTION: Moves HCR 13 be sent to the floor with a BE ADOPTED recommendation.
125	Chair Doyle	VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. ROSENBAUM will lead discussion on the floor.
138	Chair Doyle	Closes the work session on HCR 13 and opens a public hearing on SB 751-A.
<u>SB 751 A – PUBLIC HEARING</u>		

144	Sen. Rick Metsger	District 26. Testifies in support of SB 751 A. Explains history of problems in the Portland harbor and efforts to get it cleaned up under the Federal Superfund Law. Stresses the importance of the harbor and the Willamette River to the economy of the area. SB 751 A establishes the clean up authority to be chaired by the Governor. Explains the purpose of the authority. The bill has a lot of support, and the remedies are in the SB 751-A9 amendments (EXHIBIT A). There are four major changes that the opponents are happy with. Explains the SB 751-A9 amendments.
213	Rep. Gary Hansen	District 44. Speaks in support of the SB 751 A. States that he supports some of the changes that Sen. Metzger has indicated. This cleanup is critical for the state and the Portland area. The economic impacts are more important. It is a multi-modal transportation center for the state. The river and uplands must be clean. If this elevates the problem by evolving a state authority, we will have improved the situation. Submits and explains the SB 751-A10 amendments (EXHIBIT B) and states that he believes the amendments are included in other amendments.
276	Rep. Monnes Anderson Rep. Hansen	Asks how many legislative districts there are in the affected area. Responds there are at least two House and two Senate districts. Adds there is a great deal of community interest and business interest in doing what we can to clean the river and the sites. Thinks having local representation on the authority would help facilitate the problem solving.
300	Keith Leavitt	Port of Portland. Testifies in support of SB 751 A. Submits testimony prepared by Sebastian Degens' that he presented to the Senate Committee on the economic impacts (EXHIBIT C). Believes everyone understands this is an economic artery for the state; there are 940 businesses and 40,000 jobs. The products that come through the harbor are from all over the state of Oregon. It is the number one wheat export gateway in the United States, and it is also number one for exports of grain and minerals. There are a lot of auto imports that create employment. The stigma attached to Superfund and the uncertainty of liability attached to it is the chill on any investment. Businesses are not making investments now, land is not being redeveloped; the only major investment over the last several years is Toyota America's decision to come back to Terminal 4. Everything is pretty much on hold because there is a lot of uncertainty about their level of liability in the cleanup project. About three to five years remains of the remedial investigation and feasibility study. The Port of Portland with the Willamette Group has stepped up to fund the process and are working with the Department of Environmental (DEQ) and the Environmental Protection Agency (EPA).
350	Leavitt	SB 751 A speaks to the end of the process. When the remedial actions need to take place, they will have an idea of the amount of pollution that cannot be traced to a known responsible party. It will be a major policy issue for the State. If the State chooses to have an expedited cleanup, there will need to be a robust orphan program. SB 751 would begin the process of developing that program and that is why the Port of Portland supports the

bill. It does not erode the polluter-pays principle. There will be some pollution that can not be identified with the polluter. Questions whether there will be enough funding available at the State or federal level to be able to use as a tool to provide incentives to responsible parties to do clean ups, and if not, the State can step in and do the clean up and then go after the polluters for much more than it would cost for the polluter to have stepped up. The other situation is where the polluter cannot be found. Some of the pollution is from 50 to 70 or 100 years ago.

- 399 Leavitt States the bill makes sure policy makers have their eyes on the cleanup project and they will be informed and be able to make recommendations to the legislature next session or session after that.
- 417 Chair Doyle Asks Sen. Metsger to comment on the authority of the Governor to appoint a designee in his place and whether it would water down the authority.
- 426 Sen. Metsger Responds that the amendment was a request from the Governor's office. Believes the Governor wanted to make it clear that if he was going to be absent from a meeting he could designate someone else to be there. Believes that the Governor believes this is a very critical situation.
- 442 Chair Doyle Asks if it would be a problem to have designees of the legislators, and what would be the difference.
- 447 Sen. Metsger Responds that if the committee should choose to conceptually amend the SB 751-A9 amendments by deleting the change, he would not object.

TAPE 102, A

- 004 Rep. Close Asks if the SB 751-A has a fiscal impact.
Sen. Metsger States there is no fiscal impact. Comments that the bill was drafted to avoid any fiscal impact.
- 019 Rep. Close Asks if there is a cost for the authority to operate.
Sen. Metsger Notes language in the bill that says there will be no remuneration.
- 020 Rep. Monnes Asks if DEQ has the authority to issue bonds, and whether this
Anderson would exceed the role they have.
- 031 Sen. Metsger States that DEQ has authority for the Pollution Control Fund and would have no authority for anything other that listed under the fund. The legislature could issue general obligation if approved by the electors. By adding this as an acceptable use of the bonds, the legislation itself could simply be permissive. Suggests that DEQ can clarify the issue.
- 046 Dick Peterson Land Quality Administrator, Department of Environmental Quality (DEQ). Explains DEQ has been given authority to sell bonds for orphan site cleanups. States they have sold bonds to help pay for orphan sites around the state where the responsible parties are unknown or unwilling or unable to pay.
- 068 Jon Christenson Senior Legislative Staff to Sen. Margaret Carter. States that the Portland harbor is within Sen. Carter's district. Introduces Robin Plance of the St. John's neighborhood.
- 073 Robin Plance Chair, St. Johns Neighborhood Association, and Chair, Advisory Committee for the Portland Harbor Cleanup. Testifies in opposition to SB 751-A. The bill duplicates some existing state

		actions regarding the bonding of orphan sites. The bill will not accelerate the process. Comments on on-going activities to clean up the harbor. Comments on community outreach to make sure the cleanup is done right the first time. Suggests if the legislature is interested in engaging DEQ more forthrightly in the cleanup, expanding the ability of the Pollution Control Fund would probably be better. If orphan sites are identified, then they would like to see the state step forward. The EPA will oversee and cleanup the inland water. Over 60 potentially responsible persons have been identified.
105	Plance	States they need to go forward and EPA has the authority to bring action against the polluters for triple damages if they do not pay for the cleanup. Submits report "Portland Harbor Superfund Site, Remedial Investigation/Feasibility Study Programmatic Work Plan Overview" (EXHIBIT D). Offers to provide a CD that contains data collected by the Lower Willamette Group.
121	Christenson	States that Sen. Carter has a number of concerns that parallel some of the questions that Rep. Close has, that is, the fiscal impact and the pay-back strategies that would be used for the bonds. Comments that the bill has DEQ listed as the lead agency for cleanup; the EPA is the lead agency. Submits the SB 751-A8 amendments (EXHIBIT E) should the committee wish to move forward. Explains the SB 751-A8 amendments to address issues they have identified.
182	Rep. Close	Asks why the federal government is not providing money for the cleanup.
	Plance	Responds that he does not know. Adds that the DEQ has chosen not to, and as a state we should be putting pressure on the state representatives and senators to reinstate the tax collection and get the tax back into the Superfund.
197	Rep. Close	Asks if there is no money for cleanup from the federal government.
	Plance	Responds that the fund is winding down; the last figure he heard was \$30 million, which is not enough to do a cleanup. Once there is a record decision, they will come up with a process for cleanup. If needed, the EPA will go into litigation to make the potentially responsible persons pay their fair share, and if they don't they can bill those who did not pay for triple damages.
208	Rep. Verger	Comments that the Lower Willamette Group includes the Port of Portland and they support the bill. Asks which group Plance is with.
	Plance	Explains the different groups and memberships and their activities.
	Rep. Verger	Asks if the other groups' members live close to the harbor.
	Plance	Responds that some are close and some are not. Comments further on makeup of the community groups.
254	Rep. Verger	Asks if the SB 751-A8 amendments address all of Sen. Carter's concerns.
278	Christenson	Responds he believes they do. States that they would still be concerned with the State Land Board involvement because eventually the State Land Board will have to deal with this as a constitutional action.
	Rep. Verger	Asks if they are comfortable with the authority membership.

307	Christenson	Responds that their original suggestion was in the SB 751-6 amendments, which the committee does not have, to keep it under the Environmental Quality Commission (EQC) and the DEQ, and keep it within an executive line of operation.
334	Rep. Close	Comments that in the SB 751-A8 amendments they are repealing the January 2008 date and other amendments do not do that.
338	Christenson	Responds that they found there was no reporting date in Sen. Metsger's amendments. Comments on need to have a limiting end.
372	Louie Pitts, Jr.	Director, Government Affairs and Planning, Confederated Tribes of Warm Springs. Comments that they have been involved in cleanups all around the state that are negative to their treaty rights. Comments on tribal ownership and treaty rights.
448	Pitts	States that the structure imposed on the tribes is <u>U. S. v. Oregon</u> is a co-management authority. States it is up to the tribes to judge how the process or any structure impacts their sovereignty so they are closely watching SB 751 A. Believes the bill is okay and they will let the legislature know if there any problems.
466	Pitts	Comments on fish and eel that are important to the tribes, and fishing rights.
TAPE 101 B		
023	John Chandler	Legislative Advocates, speaking for Schnitzer Steel Industries and the Urban Developers Coalition. Testifies in support of SB 751 A. Submits testimony for Schnitzer Steel Industries (EXHIBIT F) . States he believes SB 751 A represents a good step toward getting a group together to fix the problem.
035	Rep. Barnhart Chandler	Asks if Schnitzer has a position on any of the amendments. Responds he believes they support SB 751-A9 amendments.
048	Travis Williams	Willamette Riverkeeper. Submits a prepared statement and booklet, "Willamette Riverkeeper's Citizen's Guide to the Willamette River Portland Harbor Cleanup: A Public Challenge" (EXHIBIT G) and testifies in opposition to SB 751-A.
154	Chair Doyle	Notes that the Democratic members have gone to a caucus meeting, and that the committee will not hold a work session on the bill today.
175	Rhett Lawrence	Environmental Advocate, Oregon State Public Interest Research Group (OSPIRG). Submits prepared testimony and speaks in opposition to SB 751-A (EXHIBIT H) . States that he does not believe this bill brings us any closer to a solution of the problem of the Willamette River or the Portland harbor because the system is in place and is working.
228	Chair Doyle Lawrence	Asks if there are solutions that would speed up or otherwise improve the cleanup of the Superfund site. Responds that we should focus on the federal level for reauthorization of the Superfund tax so the money will be there to clean up the orphan sites if there are any. We don't know what share of the cleanup moneys are going to the orphan sites. One solution would be to come up with a pot of money directed at the orphan sites, which SB 751 A does not seem to do.
224	Williams	Comments it would make more sense if we were three or four years down the road and we had a known quantity of orphan sediment. Part of the fears that there are those who might be

259	Williams	inclined to push certain parts of the harbor and certain types of contamination and sediment into the orphan column if they knew there was a ready pot of funding to help pay to clean it up. States that last week's decision by EPA to not provide funding to McCormick and Baxter is driving some of the urgency on this. There is money today to fund work to develop the plan for the cap. The work will continue. People do not hear that there will be future opportunities to bring McCormick and Baxter back to the funding table. .
277	Liz Frankel	League of Women Voters of Oregon. Testifies in opposition to SB 751-A. States that everything has been said. States concerns of the League. (EXHIBIT I) .
326	Martin Taylor	Sierra Club of Oregon. Testifies in opposition to SB 751-A. Believes there a couple of core concerns from the environmental community that focus on the polluter-pays concept. It is about defending taxpayers from assuming a tax liability for pollution that was really caused by others. There is a point when we have to do something about the river and the harbor. The question is who should bear the cost. Does not believe Oregonians currently have the ability to fund the costs and we should not be asked to when the polluters are responsible. Sierra Club believes that creating another authority could confuse the current process and create a pot of money prematurely which would make it easier to get some of the polluters out from under their responsibility.
338	Chair Doyle	Asks if the Port of Portland and the City of Portland and other public entities will be sharing some of the responsibility.
396	Taylor John DiLorenzo	Responds they should apportion the responsibility. An attorney from Portland representing himself. Submits prepared statement (EXHIBIT J) . Testifies in support of SB 751 A. Reviews the history of SB 751 A. Comments in response to paragraphs 3 and 4 on page 2 of Lawrence's testimony (EXHIBIT H) .
TAPE 102, B		
011	DiLorenzo	Summarizes his prepared statement (EXHIBIT J) .
070	DiLorenzo	Continues presentation of his statement (EXHIBIT J, page 3) .
122	DiLorenzo	Explains why he does not support the SB 751-A8 amendments (EXHIBIT E) .
131	DiLorenzo	Speaks in support of the SB 751-A9 amendments (EXHIBIT A) . States that the words "or designee of the Governor" could be stricken from the amendments. Lines 15-17 of the amendments were designed to address Sen. Carter's concern regarding separation of powers. There is a Supreme Court case called <u>Martin v. Oregon Building Authority</u> that stands for the proposition that the legislative and executive cannot co-mingle in the exercise of a government function. Eliminating the provisions regarding subpoenas and compelling witnesses, which really are not needed, would eliminate even the specter of that problem.
153	DiLorenzo	States that the SB 751-A10 amendments are a mater of policy choice and he has no position on them.
166	Rep. Flores	Ask if DiLorenzo thinks this bill would set up a duplicative process.
	DiLorenzo	Responds that he does not think it is a duplicative process; the

process is more investigative. It will investigate the option of the State of Oregon in cleaning up our waterway like we should. Believes the Governor has a moral authority to clean up the Willamette River. Instead of duplicating a process, this bill builds on an existing study process, takes advantage of all the resources that have been devoted to the study. Once the study is completed, they would give a recommendation to the legislature as to whether we should do this and how much it will cost. Closes the public hearing on SB 751-A and adjourns the meeting at 3:14 p.m.

EXHIBIT SUMMARY

- A – SB 751, SB 751-A9 amendments, Sen. Metsger, 1 p**
- B – SB 751, SB 751-A10 amendments, Rep. Hansen, 1 p**
- C – SB 751, testimony prepared by Sebastian Degens, Keith Leavitt, 4 pp**
- D – SB 751, report, “Portland Harbor Superfund Site, Remedial Investigation/Feasibility Study, Programmatic Work Plan Overview,” Robin Plance, 17 pp**
- E – SB 751, SB 751-A8 amendments, Jon Christenson, 4 pp**
- F - SB 751, statement from Schnitzer Steel Industries, Jon Chandler, 1 p**
- G – SB 751, prepared statement and report by Willamette Riverkeeper’s, “Citizens Guide to the Willamette River Portland Harbor Cleanup: A Public Challenge” Travis Williams, 12 pp**
- H – SB 751, prepared statement, Rhett Lawrence, 3 pp**
- I – SB 751, prepared statement, Liz Frankel, 1 p**
- J – SB 751, prepared statement, John DiLorenzo, 5 pp**