

SENATE COMMITTEE ON WATER AND LAND USE

April 14, 2003
3:00 p.m.

Hearing Room D
Tapes 47 - 48

MEMBERS PRESENT: **Sen. Ted Ferrioli, Chair**
 Sen. Charlie Ringo, Vice-Chair
 Sen. Jason Atkinson
 Sen. Rick Metsger

STAFF PRESENT: **Judith Callens, Committee Administrator**
 Megan Jensen, Committee Assistant

MEASURE/ISSUES HEARD: **SB 418 Public Hearing**
 SB 590 Public Hearing
 SB 836 Public Hearing
 SB 838 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 47, A		
003	Chair Ferrioli	Calls meeting to order at 3:10 p.m. and opens public hearing on SB 418.
<u>SB 418 – PUBLIC HEARING</u>		
008	Chair Ferrioli	Discusses memorandum from Department Land Conservation and Development (EXHIBIT A).
025	Ringo	Asks if amendments are still in draft.
026	Chair Ferrioli	Replies that Legislative Counsel has not yet drafted amendments. Closes public hearing on SB 418 and opens public hearing on SB 590.
<u>SB 590 – PUBLIC HEARING</u>		
033	Judith Callens	Committee Administrator. Provides overview of SB 590 and -2 amendments dated 4/11/03 (EXHIBIT B).
042	Chair Ferrioli	Discusses actions that can trigger the potential cancellation of a water right.
056	Richard Kosesan	Water for Life. Explains how a claim of injury would move forward a cancellation of water right proceeding.
073	Adam Sussman	Water Resources Department (WRD). States that the bill remains ambiguous with the addition of -2 amendments: <ul style="list-style-type: none">• The term “injury” is unclear• The trigger action or event is unclear• Adds additional processes to the Department to maintain mandatory timelines
098	Kosesan	Explains what problems SB 590 is attempting to rectify.
125	Sen. Ringo	Asks for his definition of “injury.”
127	Kosesan	Talks about junior and senior water right users.
138	Sen. Ringo	Asks if the definition of “injury,” could be resolved.
142	Sussman	Responds that it is possible to come up with an acceptable definition of “injury.”
150	Sen. Ringo	States it should not be difficult because of the specific application

		in SB 590.
158	Chair Ferrioli	Remarks that SB 590 includes a claim of injury, not a determination of injury.
162	Sussman	Responds that the -2 amendments address a water right holder who is injured.
166	Chair Ferrioli	Comments that on the issue that there is no trigger process to cancel a water right in a timely manner.
180	Sussman	States that WRD supports the intent of the legislation but believes there are problems with mandatory timelines which require additional resources.
186	Chair Ferrioli	Requests Mr. Sussman work with Mr. Kosesan to define a triggering mechanism.
215	Sen. Ringo	Asks for clarification on what event triggers the 60 days time limit.
223	Sussman	Talks about the process of evaluating a petition and assuring that the information is correct, which then triggers a formal legal proceeding.
233	Sen. Ringo	Suggests the real issue may be that 60 days is not enough time.
235	Sussman	Explains that regardless of the quality or accuracy of the information, SB 590 will require WRD to act within 60 days.
253	Chair Ferrioli	Clarifies that SB 590 does not require WRD to conclude the cancellation proceedings with 60 days.
260	Sussman	Conveys his understanding that SB 590 initiates a formal legal process within 60 days.
267	Sen. Ringo	Inquires what it means to initiate proceedings.
270	Sussman	Explains the process of initiating proceedings.
278	Sen. Ringo	Clarifies WRD's concern is that in some instances, claim investigations might take more than 60 days.
284	Sussman	Explains that the investigation proceedings may take many months.
288	Sen. Ringo	Asks for suggested solutions.
290	Sussman	Responds that there is an informal process for the cancellation of water rights when it affects another water user negatively.
305	Chair Ferrioli	States that WRD works on a priority basis controlled solely by the agency and that SB 590 would enforce a process that WRD already is required to follow.
327	Sussman	Responds that there would be staffing impacts if required to make cancellation proceeding a priority.
337	Chair Ferrioli	Reiterates that SB 590 simply requires the cancellation process to begin by a certain time.
350	Sussman	Explains that investigations of claims consume WRD resources.
354	Chair Ferrioli	Inquires how many cancellation claims WRD receives.
356	Sussman	Responds that he has never received a claim.
359	Chair Ferrioli	Asks about a claim in Malheur County.
364	Sussman	Explains that the Malheur County case involved a transfer and no claim of injury.
397	Sen. Ringo	Asks about initiating proceedings when there were no grounds.
410	Sussman	Responds that he is not aware of any claims of that nature.
415	Chair Ferrioli	Comments that SB 590 only changes the starting date for initiation of proceedings.
TAPE 48, A		
010	Sussman	Responds that WRD is accountable for making sure processes are done in a timely manner.
018	Chair Ferrioli	Mentions concern that the informal process already in place has

		no time limit. Requests revised -2 amendments.
036	Sen. Ringo	Asks what happens if WRD does not initiate proceedings in 60 days under SB 590
041	Chair Ferrioli	Responds that SB 590 contains no penalty clause and elaborates.
049	Sen. Ringo	Inquires about the length of time for nonuse of water when someone has a claim of injury.
053	Kosesan	Replies that the period of nonuse is five years.
054	Sen. Ringo	Suggest that the 60 day time limit be increased to 90 or 180 days.
062	Kosesan	States that another time limit is acceptable.
074	Sen. Ringo	Asks how many people might file a claim under SB 590.
078	Kosesan	Believes very few would file under SB 590.
090	Sen. Ringo	Asks about including a clause that would allow a certain number of claimants to obtain results quickly.
094	Sussman	Responds that all claims are important and that “injury” needs to be defined.
101	Chair Ferrioli	Summarizes issues surrounding SB 590. Closes public hearing on SB 590 and opens public hearing on SB 836.

SB 836 – PUBLIC HEARING

133	Callens	Provides overview of SB 836.
135	Chair Ferrioli	Talks about the background of SB 836 and reviews the goals of the potential work group on SB 836 (EXHIBIT C). Requests the work group convene and provide solutions before the end of the legislative session.
244	Sen. Ringo	Comments on the ambiguity of the impact on schools.
246	Chair Ferrioli	Agrees and talks about properties that are inside the public trust.
252	Sen. Ringo	Believes SB 836 has no financial impact on the Common School Fund but that the issue should be researched.
260	Chair Ferrioli	Comments on non-trust lands that are under state management.
270	Jay McCaulley	Salmon Restoration and Enhancement Coalition. States support of SB 836.
295	Chair Ferrioli	Closes public hearing on SB 836 and opens public hearing on SB 838.

SB 838 – PUBLIC HEARING

300	Callens	Provides overview of SB 838.
315	Chair Ferrioli	Summarizes the issues surrounding SB 838. Requests Mr. Purchase discusses the circumstance under which a wharf or pier owner operates on state owned lands.
340	Steve Purchase	Division of State Lands (DSL). Provides testimony against SB 838 (EXHIBIT D). Talks about wharf provisions in navigable channels and provides an example of the Port of Portland.
366	Chair Ferrioli	Inquires if the state charges a lease for the use of wharves and piers in navigable waterways.
368	Purchase	Responds that the state does not charge lease fees. Continues explanation of wharf exemption definition and states that if the wharf structure exists outside of an incorporated city or a port district, there must be a lease with the state.
390	Sen. Ringo	Asks for clarification on what happens when the use of the wharf ceases.
394	Purchase	Explains that if the wharf is not being used for loading or unloading goods or merchandise, the wharf exemption does not apply.

TAPE 47, B

005	Purchase	Believes the problem SB 838 addresses is unclear. Discusses concerns with preference rights and contractual issues.
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038	Jay McCaulley	Salmon Restoration and Enhancement Coalition. Provides testimony in support of SB 838 (EXHIBIT E):
		<ul style="list-style-type: none"> • Provides consistency for the waterway leasing program with existing statutory requirements for grazing property, also administered by DSL, and provides reasonable certainty to current lease holders in aid of recouping investment in costly leasehold structures and improvements to state owned lands, while providing minimal requirements for bank financing such improvements • Requires DSL to offer a lease rather than require removal of wharf structures if the lessee no longer qualifies for the wharf exemption, which would provide financial benefit to DSL, the state, and the Common School Fund
133	Sen. Ringo	Asks if the wharf must be removed if the use changes.
136	Purchase	Explains that DSL's practice on wharf removal requirements.
147	Sen. Ringo	Asks if Mr. McCaulley's main concern is the Port of Portland.
148	McCaulley	Responds that the Port of Portland is one example of many throughout the state.
154	Sen. Ringo	Asks about Mr. McCaulley's specific interest in SB 838.
156	McCaulley	States his interest in establishing consistency with DSL leases.
174	Sen. Ringo	Reiterates that DSL can request wharf removal but it is not standard practice.
178	McCaulley	Advocates that all structures come under DSL in some manner.
190	Sen. Ringo	Asks if Mr. McCaulley agrees that DSL does not insist on removal of structures.
196	McCaulley	Disagrees.
200	Sen. Ringo	Asks for an example of DSL requiring removal of a wharf.
201	McCaulley	States that he does not have a specific example.
202	Sen. Ringo	Inquires if he is concerned DSL could request wharf removal at some future point.
203	McCaulley	Affirms.
204	Chair Ferrioli	Clarifies that SB 838 would make the lease 20 years with a preference right to renew and would change the policy of requiring removals
215	McCaulley	Affirms.
218	Chair Ferrioli	Asks for DSL's objections to changing from a 15 year lease to a 20 year lease.
220	Purchase	Explains the background of the 15 year lease and believes the 20 year requirement would require DSL to renegotiate old leases.
248	Chair Ferrioli	Asks when DSL's administrative rules were adopted by the work group.
250	Purchase.	Replies that the rules were adopted July 1, 1999 by the State Land Board.
252	Chair Ferrioli	Asks who decided to limit the leases to 15 years.
255	Purchase	Explains that a consensus was reached upon the recommendation that DSL made to the Land Board.
266	Chair Ferrioli	Asks if the Waterway Leasing Task Force had a recommendation for lease length.
267	Purchase	Offers to research the issue.
269	Chair Ferrioli	Clarifies that the 15 year lease decision was a DSL recommendation to the Land Board.
271	Purchase	Affirms.

272	Chair Ferrioli	Inquires if Purchase participated in the work group.
273	Purchase	Affirms.
275	Chair Ferrioli	Wonders if the work group and DSL had differing recommendations.
282	Purchase	Offers to research the recommendations from the Waterway Leasing Task Force.
284	Chair Ferrioli	Asks if there was a formal set of recommendations made by the work group.
287	Purchase	Offers to provide the recommendations.
290	Chair Ferrioli	Asks if there were recommendations from the work group and whether they differed from DSL's recommendations.
291	McCaulley	States there were several recommendations DSL did not follow.
320	Chair Ferrioli	Asks about preferential treatment of current lessees in lease renewals.
331	Purchase	Talks about preference rights with current lessees.
348	Chair Ferrioli	Clarifies that the current lessee would have preference under SB 838.
349	Purchase	Explains that the current preference right is to upland riparian owners.
352	Chair Ferrioli	States that if an upland riparian landowner sold the land to a third party, it would create a renewal preference for the third party.
353	Purchase	Affirms.
354	Chair Ferrioli	Asks if that process causes disruptions.
355	Purchase	Explains DSL leasing contracts and preference rights.
360	Chair Ferrioli	Suggests the conflict comes when the new upland land owner extends his or her preference right to take over the lessee's facilities.
363	Purchase	Believes the conflict is more widespread and explains.
368	Chair Ferrioli	States that the preference would stay with the pier operator if the amendments are adopted.
371	Purchase	Responds that there might be two preference landowners and explains.
378	Chair Ferrioli	Remarks that DSL offers the preference to the land onto which the pier or wharf facilities are pertinent.
380	Purchase	Affirms.
381	Chair Ferrioli	Believes there is some conflict within DSL policies regarding wharves and piers.

TAPE 48, B

014	McCaulley	Talks about the severability of riparian rights.
035	Chair Ferrioli	Comments on the right of first refusal.
036	McCaulley	Says that SB 838 does not preclude the state from deciding who is issued a lease and elaborates.
056	Chair Ferrioli	Asks about leases over \$100,000.
063	Purchase	Explains policies surrounding leases worth \$100,000 or more.
070	Chair Ferrioli	Asks about applying SB 838 policies only to new leases.
073	Purchase	Explains DSL would still have concerns over preference rights.
085	Chair Ferrioli	Inquires if DSL leases were originally 30 years.
087	Purchase	States that historic leases were between 5 years to 100 years.
090	Chair Ferrioli	Asks about the DSL director offering to personally negotiate with banks.
093	Purchase	Explains that there was a concern over whether banks would sign a 15 years lease.
105	Chair Ferrioli	Asks about consent agreements.
108	Purchase	Clarifies consent agreements.

114	Chair Ferrioli	Asks about the DSL director personally committing to work with banks.
116	Purchase	Responds that he is unsure.
124	Purchase	Believes DSL is cautious with the lease transactions.
132	Chair Ferrioli	Summarizes issues surrounding SB 838. Closes public hearing on SB 838 and adjourns meeting at 4:54 p.m.

EXHIBIT SUMMARY

- A – SB 418, memorandum dated 4/4/03, Ronald Eber, 3 pp.**
- B – SB 590, SB 590-2 amendments dated 4/11/03, staff, 1 p.**
- C – SB 836, memorandum dated 4/14/03, Sen. Ted Ferrioli, 3 pp.**
- D – SB 838, written testimony, Steve Purchase, 2 pp.**
- E – SB 838, written testimony, Jay McCaulley, 1 p.**