

HOUSE COMMITTEE ON AGRICULTURE & FORESTRY

January 23, 2001
3:30 p.m.

Hearing Room 50
Tapes 10 - 13

MEMBERS PRESENT: **Rep. Jeff Kropf, Chair**
 Rep. Al King, Vice-Chair
 Rep. Donna Nelson, Vice-Chair
 Rep. Robert Ackerman
 Rep. Dan Doyle
 Rep. Elaine Hopson
 Rep. Wayne Krieger
 Rep. Mary Nolan
 Rep. Tootie Smith

STAFF PRESENT: **Ray Kelly, Committee Administrator**
 Michael Reiley, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2154 Public Hearing and Work Session**
 HB 2130 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 10, A		
004	Chair Kropf	Calls meeting to order at 3:39 p.m. Opens discussion on HB 2154.
011	Chuck Craig	Deputy Director, Department of Agriculture. Describes intent and purpose of HB 2154. Gives history of field burning issue.
064	Chair Kropf	Asks whether subsequent referral to revenue is necessary.
067	Craig	Answers no.
070	Rep. Nelson	Asks whether farmer fee increase will continue under proposed program.
075	Craig	Answers yes. Explains how fees will work.
086	Rep. Nelson	Asks about the total amount of fees collected in this program on annual basis.
089	Craig	Answers that program takes in \$625,000 per year, about \$150,000 left after operational cost available for research.
104	Dave Nelson	Oregon Seed Council. Submits and summarizes written testimony (EXHIBIT A).
138	Rep. Nelson	Asks if growers are the only ones who pay \$10 per acre fee.
141	Dave Nelson	Answers yes. Explains fee.
154	Chair Kropf	Clarifies acreage that can be burned and impact on fees paid.
164	Rep. King	Commends grass seed industry with regards to improvements in burning policies over last twenty years.
186	Rep. Nelson	Asks about results from money spent on research.
191	Dave Nelson	Describes results from research.
231	Rep. Nelson	Asks why money should continue to be spent on research.

238	Dave Nelson	Explains why money should continue to be spent on research.
271	Chair Kropf	Closes Public Hearing on HB 2154, opens work session on HB 2154.
279	Rep. T. Smith	MOTION: Moves that the SUBSEQUENT REFERRAL of HB 2154 to the committee on Ways and Means BE RESCINDED.
		VOTE: 9-0
		AYE: In a roll call vote, all members present vote Aye.
	Chair Kropf	The motion CARRIES.
298	Rep. T. Smith	MOTION: Moves HB 2154 to the floor with a DO PASS recommendation.
		VOTE: 9-0
		AYE: In a roll call vote, all members present vote Aye.
	Chair Kropf	The motion CARRIES.
		T. SMITH will lead discussion on the floor.
318	Chair Kropf	Closes work session on HB 2154, reopens, declares “absolute conflict of interest” due to fact that he burns fields, closes work session.
327	Chair Kropf	Opens public hearing on HB 2051, turns over meeting to Vice-Chair Nelson to move to dais to testify.
350	Rep. Nelson	Opens public hearing on HB 2051.
354	Chair Kropf	Introduces self, declares conflict of interest in testimony due to being AgriBioTech (ABT) claimant, he is “intimately involved.”
368	Chair Kropf	Explains that legislation primarily concerns grain producers lien and agricultural produce lien.
391	John Albert	Lawyer from Salem. Represents number of Oregon grass seed and alfalfa seed farmers and growers in ABT bankruptcy. Gives history of ABT. Explains bankruptcy situation.
TAPE 11, A		
008	Albert	Explains how HB 2051 would help growers.
107	Rep. Nelson	Asks how crop comes to value established in contract at beginning of season.
120	Albert	Explains how crop value is determined.
135	Rep. Nelson	Asks if ABT owns patents to grass seed that grass seed growers planted.
138	Albert	Answers that they do in about fifty percent, the remaining fifty percent are licensed from others.
143	Rep. Nelson	Asks if ABT has any claim to seed after it is grown.
145	Albert	Answers that rights to seed belong to seed company. Continues explaining how HB 2051 would help growers.
168	Rep. T. Smith	Asks if HB 2051 releases farmer from contractual liability in patented seeds for future contracts if company goes bankrupt.
183	Walter Gowell	Attorney from McMinnville. Answers that “bankruptcy court imposes automatic stay which gives bankrupt party right to pass contracts they have entered into to succeeding purchasers.”
198	Rep. T. Smith	Asks about time limits with liens.
205	Albert	Answers that time limits are covered in federal bankruptcy law, does not impose time limit.
218	Rep. T. Smith	States that ABT bankruptcy issue took “a very long time,” and growers lost a season. Issue is significant because farmers are seasonal.
223	Albert	States that lien law does not address issue.
227	Chair Kropf	Gives personal account of dealing with ABT. Clarifies

285	Rep. Krieger	ownership of crops and seed after ABT bankruptcy.
289	Albert	Asks if it is standard practice for farmer to waive right to lien.
290	Rep. Krieger	Answers it is common.
		Asks how bank would make loan to farmer who waives right to lien as it would jeopardize bank's ability to recover loan.
294	Albert	Answers that farm lenders believe with agreement with grower, grower can give farm lender security interest in crops.
310	Rep. Nelson	Asks Chair Kropf to describe borrowing of funds to plant crops to manage obligation with lender in situation like ABT.
316	Chair Kropf	Gives overview of growing process.
379	Rep. Nelson	Asks if financial institution evaluates contract.
385	Chair Kropf	Explains how he relates to financial institution through contract to continue growing.
391	Rep. Nelson	Asks when crop becomes property of ABT.
397	Chair Kropf	Answers that it is always their crop. He only provides service for which he is paid. Explains "plow down" clause.
414	Albert	Observes that "crop belongs to seed company unless company doesn't want it, then all of a sudden its the farmer's."
419	Rep. Nelson	Asks if there was any point where ABT could have declined to take crop, if farmer had right prior to bankruptcy to sell it to someone else.
428	Chair Kropf	Answers that in personal contract, it could have occurred.
437	Gowell	Explains that most contracts require that company's obligation to take delivery of seed is contingent upon seed quantity and quality determined by standards.
460	Rep. Nelson	Asks if growers met quality standards in ABT bankruptcy.
465	Gowell	Answers that "vast majority" of growers did meet quality standards.
468	Rep. Nelson	Asks if ABT had responsibility to inform growers of their financial condition.
475	Albert	Answers "as a legal matter, no." Explains seed delivery to ABT.
	Chair Kropf	Returns to dais.
TAPE 10, B		
040	Walter Gowell	Submits and explains written testimony (EXHIBIT B).
114	Rep. Nelson	Asks about wheat in regard to agriculture produce.
117	Gowell	Answers that it falls under Grain Growers Lien. Continues explanation of written testimony.
144	Rep. Nelson	Turns control of meeting back to Chair Kropf.
148	Gowell	Continues explanation of written testimony.
167	Rep. Nelson	Asks for clarification for payment time frame.
174	Gowell	Answers that provisions are made in contract. Continues explanation of written testimony.
199	Rep. Nelson	Asks for clarification about deadlines regarding holidays.
204	Gowell	Explains that deadlines are extended to next business day if deadline falls on a holiday.
215	Rep. Nolan	Asks about precedent in lien law
221	Gowell	Explains lien law precedent. Continues explanation of written testimony.
283	Rep. Nelson	Asks about definition of "sold" and "physically delivered."
289	Gowell	Answers that company does not give up right to reject seed until seed meets certain grade. Clarifies what is meant by "sold" and "delivered." Continues explanation of written testimony.
320	Chair Kropf	Asks Gowell to clarify.

323	Gowell	Explains how status of cooperatives differs under Agricultural Produce Lien and under Grain Growers Lien. Points out that John McCulley will explain in more detail later.
329	Rep. King	Asks that question be answered presently, since he must leave.
338	John McCulley	Agriculture Cooperative Council. Answers that they have traditionally been exempted from Grain Growers Lien. Speculates that cooperatives are exempted because grain is “more non-perishable” than produce.
356	Gowell	Adds that lien initially applied mainly to produce that went to food processing plants, paid for more regularly and quickly. Continues explanation of written testimony.
TAPE 11, B		
047	Paul Connolly	Attorney with Connolly & Doyle.
052	Rep. Doyle	Expresses conflict of interest since he has clients “involved in this area.”
056	Connolly	Submits and gives overview of written testimony (EXHIBIT C).
153	Rep. Nelson	Asks about insurance available for commodities.
157	Connolly	Answers that there is insurance available for casualties. Does not know of insurance for loss due to failure to pay after delivery.
164	Rep. Doyle	Asks for explanation of AgriFrozen situation.
168	Connolly	Explains his understanding of AgriFrozen situation.
182	Chair Kropf	Asks if there is implication of bankruptcy.
185	Connolly	Answers that there was no mention of bankruptcy. Explains confusion about deadlines.
200	Rep. Doyle	Asks if Agrilink is cooperative similar to Agripac.
204	Connolly	Explains business classification of involved companies.
225	Rep. Doyle	Asks about security of growers either individually or in strong cooperative.
239	Connolly	Answers about financing of cooperatives and individuals and various states’ lien laws and exemptions for cooperatives.
290	Rep. Nolan	Mentions standing time conflict. Asks Chair if anyone will testify against the bill.
294	Chair Kropf	Answers no.
296	Rep. Ackerman	Mentions standing time conflict. Asks Chair if banking community will be heard from.
299	Chair Kropf	Answers yes. States that issue will need to be held over to a later time.
321	Jean Underhill-Wilkinson	Submits and gives overview of prepared testimony (EXHIBIT D).
350	Darrell Hiebenthal	Grass seed grower from Dallas. Points out that grass seed market is “very flat.” Expresses desire to strengthen lien laws. Discusses difficulties he has recently faced growing relating to financing.
410	Chair Kropf	Asks Hiebenthal if he is involved in ABT bankruptcy.
412	Hiebenthal	Answers that he has “settled part of my money out of them.”
424	Kevin Doerfler	Grass seed grower from Stayton area. Directly impacted by ABT bankruptcy. Expresses desire for longer time period for lien coverage. Points out that there is too much grass seed produced because “nothing else is worth growing right at the moment.”
TAPE 12, A		
020	Chair Kropf	Asks Doerfler about ABT bankruptcy, not being paid, and its impact on his ability to grow in the future.
028	Doerfler	Answers that he operates “sizable operation” which makes the impact less on him than smaller producer. Assures that “we’ll

		handle this, but it doesn't feel good. It's a tough industry right now." Points out that automatic lien period would have helped growers.
045	Rep. T. Smith	Expresses thanks to growers for testifying, hearing personal testimony it "really comes home to what the problem is."
060 087	John McCulley Chair Kropf	Submits and gives overview of written testimony (EXHIBIT E). Asks why cooperatives have been exempted from Agricultural Produce Lien.
089	McCulley	Gives history of Agricultural Produce Lien. Explains that owners of cooperatives are the producers and could not file lien against themselves.
111	Jack Sebastian	Chief Financial Officer, Norpac Foods. Gives history of legislation relating to exempting agricultural cooperatives from lien holding law. Explains financial operations of cooperatives. Discusses how payment works for cooperatives and individuals going to cash buyers.
201	Rep. Ackerman	Asks if potential changes in cooperative status within lien laws are specifically aimed at cooperatives, or are merely included within the sweeping nature of the changes in the lien law.
209	Sebastian	Answers that if cooperatives were no longer exempt, it would "create economic stress at the cooperative level." It would take borrowing base from lender and gives it to grower, putting them in potential position of placing lien on own company.
222	Ackerman	Asks if analysis would apply "across the board to all lenders."
234	Sebastian	Answers yes.
243	Ackerman	Comments about nature of changes in lien law and its effect on collateral position of bank that has security interest in "proceeds, accounts receivable, or inventory."
251	Sebastian	Discusses details of Norpac Foods. Summarizes that "cooperatives generally borrow money to operate much more than an investor corporation." Urges continuation of legislation as is.
306	Herb Dorn	Vice President of Finance and Chief Financial Officer, Tillamook County Creamery Association. Submits and reads written testimony (EXHIBIT F).
TAPE 13, A		
017	Rep. Doyle	Asks McCulley to comment on Connolly's testimony.
019	McCulley	Answers that he would have to check other states' lien laws relating to produce liens. Relating to banking issue, private vs. cooperatives, cooperatives have higher lending rates. Explains that cooperatives would face "limited borrowing capability" from Cobank if bill passes.
049	Rep. Doyle	Asks about relationship between Cobank lending to out-of-state cooperatives not exempted.
054	McCulley	Answers that he will get information.
058	Chair Kropf	Describes growers who are facing Agripac bankruptcy, some who lost their farms. Asks if they would have been better served to have been able to have liened the proceeds of their cooperative in this circumstance.
071	Dorn	Answers that it would depend on "additional equity capital" they would have to come up with and they would be the last ones paid as absolute equity owner. Speculates that they would have ended up financially in approximately the same place.
080	Chair Kropf	Reiterates and clarifies Dorn's response.

094	Chair Kropf	Asks John McCulley if he has amendments.
096	McCulley	Points out amendment attached to written testimony.
107	Chair Kropf	Adjourns meeting at 6:01 p.m.

Submitted By,

Reviewed By,

Michael Reiley,
Committee Assistant

Ray Kelly,
Committee Administrator

EXHIBIT SUMMARY

- A – HB 2154, Statement in Support, David S. Nelson, 2pp**
- B – HB 2051, Substantive Law Changes, Walter Gowell, 3 pp**
- C – HB 2051, Written Testimony, Paul Connolly, 3 pp**
- D – HB 2051, Written Testimony, Jean Underhill-Wilkinson, 1 p**
- E – HB 2051, Written Testimony, John McCulley, 3 pp**
- F – HB 2051, Tillamook Creamery Association information, Herb Dorn, 33 pp**