

HOUSE COMMITTEE ON AGRICULTURE & FORESTRY

May 10, 2001
3:30 PM

Hearing Room 50
Tapes 91 - 96

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: SB 51 A – Work Session
SB 208 A – Work Session
SB 943A – Public Hearing
SB 212 A – Public Hearing
HB 3924 – Public Hearing
Informational Hearing
Noxious Weeds

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 91, A 003	Chair Kropf	Calls meeting to order at 3:43 p.m. Opens the work session on SB 51 A and SB 208A.
<u>SB 51A and SB 208A – WORK SESSION</u>		
026	Rep. King	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 51A. VOTE: 9-0
030	Chair Kropf	Hearing no objection, declares the motion CARRIED.
036	Rep. King	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 208A. VOTE: 9-0
040	Chair Kropf	Hearing no objection, declares the motion CARRIED.
041	Rep. King	MOTION: Moves SB 51A and SB 208A to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on House Stream Restoration and Species Recovery. VOTE: 9-0
046	Chair Kropf	Hearing no objection, declares the motion CARRIED.
047	Chair Kropf	Closes work session on SB 51A and SB 208A. Opens public hearing on SB 943A.

SB 943 A – PUBLIC HEARING

051	Rep. Lane Shetterly	House District 34. Testifies against SB 943A. Explains objections to SB 943A.
191	Rep. Doyle	Asks if the issue is on appeal. Asks about individuals that make similar claims against commissions.
198	Rep. Shetterly	Answers that it makes it difficult. Notes that commissions are limited by statute.
228	Rep. King	Asks if the major objection is the retroactivity.
230	Rep. Shetterly	Answers yes.
238	Rep. Nelson	Asks if Rep. Shetterly has ever encountered a similar situation.
242	Rep. Shetterly	Answers no.
249	Rep. Nelson	Asks if the Berry Commission Group is the only group to make a retroactive decision.
259	Rep. Shetterly	Answers
266	Rep. Nelson	Asks if there is another way to interpret an agreement.
277	Rep. Shetterly	Answers that there are different perspectives on the issue.
290	Chair Kropf	Asks if Rep. Shetterly participated in the work on SB 943A in the Senate.
291	Rep. Shetterly	Answers that he participated toward the end of the process.
298	Chair Kropf	Asks if Rep. Shetterly's arguments were presented to the Senate committee.
304	Rep. Shetterly	Answers that he cannot say for certain but suspects that Phil Olson gave similar testimony in the Senate.
314	Chair Kropf	Asks if it was the clear intent of the legislature to say what the court determined that assessment is on a per crop basis.
330	Rep. Shetterly	Answers and explains that the intent is determined from the statutory language.
347	Chair Kropf	Asks if the court came to the same conclusion as Rep. Shetterly based on statute.
355	Rep. Shetterly	Answers that the court found that the language favored Mr. Olson.
365	Rep. King	Asks about putting in language to preclude those who have already filed lawsuits.
387	Rep. Shetterly	Answers that he would want to check with legislative counsel before going forward.
400	Rep. King	Asks if Rep. Shetterly would be interested in discussing the issue with legislative counsel.
401	Rep. Shetterly	Answers yes. Notes that Phil Olson has amendments.
405	Rep. Nelson	Asks why Oregon Department of Agriculture (ODA) and Department of Justice (DOJ) would not be able to resolve the issue.
426	Rep. Shetterly	Answers that he will allow the agencies to speak for themselves.
443	Rep. King	Asks if it is a problem if the money was collected legally and spent for the benefit for those from whom it was initially collected.

TAPE 92, A

009	Rep. Shetterly	States that it is not an argument in which he would want to engage.
015	Rep. King	Argues that the commissions benefit the producers.
022	Rep. Shetterly	Concurs but notes that there is a statutory limit on how much can be collected.
026	Rep. Nelson	Asks if an audit was ever requested by the Department of Administrative Services.
029	Rep. Shetterly	Answers no.

034	Chair Kropf	Recesses public hearing on SB 943A. Opens public hearing on SB 212A.
<u>SB 212A – PUBLIC HEARING</u>		
040	Ray Kelly	Committee Administrator. Explains SB 212A.
066	Ken Yates	Executive Director, Oregon Food Processors Council. Submits and reads prepared testimony in support of SB 212A (EXHIBIT A).
096	Chair Kropf	Asks what caused the Land Use Board of Appeals (LUBA) decision.
100	Yates	Answers that there was legislation in 1999 that amended the public utility siting process.
107	Rep. T. Smith	Asks how Mr. Yates knows it was not the intent of the legislature for the legislation to “go awry.”
109	Yates	Answers that is due to the vote in the Senate and the comments that were made by Senators during the process.
114	Rep. T. Smith	Asks if it was due to administrative rules.
117	Yates	Answers that he does not know.
118	Rep. T. Smith	Asks if Mr. Yates worked with the legislature when the original legislation was drafted.
120	Yates	Answers no. Continues prepared testimony.
151	Jim Root	President, Sabroso Company. Submits and reads prepared testimony in support of SB 212A (EXHIBIT B).
195	Chair Kropf	Asks who appealed.
196	Root	Answers that is was a neighbor. Continues prepared testimony.
262	Chair Kropf	States that the committee intends to move SB 212A.
271	Rep. T. Smith	Asks if Sabroso has defaulted on any payments to growers.
274	Root	Answers no.
279	Rep. King	Asks what the annual payroll is.
280	Root	Estimates that it is in excess of \$10 million.
284	Rep. King	Expresses concern about the way the issue has been handled.
298	Rep. Ackerman	Asks what the basis was for the Department of Environmental Quality (DEQ) revoking the permit.
302	Root	Answers that the remand from LUBA put into question the validity of the land use compatibility statement issued by Jackson County, so DEQ would not allow them to discharge.
310	Rep. Ackerman	Asks if there was any process available to obtain a stay of the DEQ order to revoke the permit.
313	Root	Answers that the permit was not revoked, only threatened.
320	Rep. Ackerman	Asks for a description of the land to which the permit applied.
322	Root	Answers that it is an 80-acre farm site approximately 5 miles from the facility and the property is currently leased with an option to purchase.
332	Rep. Nelson	Asks who issued the decision.
356	Root	Answers that it was Kerrie Nelson, the southwest Oregon administrator of the DEQ.
370	Rep. Nelson	Asks if Carrie Nelson had visited the facility.
371	Root	Answers that she visited the facility on December 23.
374	Rep. Nelson	Asks if there was anyone in her position before who had visited the facility.
376	Root	Answers that the local administrator had been to the site.
381	Rep. Nelson	Asks if he had advised Sabroso that there was a potential problem.
384	Root	Answers that they got advise approximately one week before Ms. Nelson’s visit and had phone discussions with her leading up to

400 Rep. Nelson her visit.
402 Root Asks if there had been complaints.
Answers that there was a start up issue. Explains the process of building the facility. Notes that a foul odor led to the problem with the neighbor.

TAPE 91, B

006 Chair Kropf Questions that the neighbor was allowed to go to LUBA due to the legislation passed in 1999.
008 Root Answers yes.
014 Rep. Nelson Asks if Mr. Yates had ever dealt with DEQ before.
020 Yates Answers that they had never had a land use issue before.
041 Roger Wood Governor's Natural Resource Office. Testifies in support of SB 212A. Notes that amendments are forthcoming.
075 Don Schellenberg Oregon Farm Bureau. Testifies in support of SB 212A.
089 Willie Tiffany League of Oregon Cities. Testifies in support of SB 212A.
122 Chair Kropf Closes public hearing on SB 212A. Opens public hearing on HB 3924.

HB 3924 – PUBLIC HEARING

138 Rep. Nelson Explains –2 amendments (**EXHIBIT C**).
165 Schellenberg Testifies in support of –2 amendments.
181 Chair Kropf Clarifies that HB 3924 is a minor modification in current statute.
192 Schellenberg Concurr. Explains intent of HB 3924.
201 Chair Kropf Asks if this brings farmers to parity with wineries in terms of holding events in exclusive farm use zones.
205 Schellenberg Answers that those activities are conducted under different portions of the law and farmers could take advantage of it as well.
211 Chair Kropf Asks if he can hold a barn dance and charge customers under a section of the law that currently exists.
216 Ron Eber Department of Land Conservation and Development. Answers yes.
250 Schellenberg Thanks Rep. Nolan.
266 Carrie Kuerschner 1000 Friends of Oregon. Testifies in support of –2 amendments.
291 Chair Kropf Closes public hearing on HB 3924. Opens work session on HB 3924.

HB 3924 – WORK SESSION

296 Rep. T. Smith **MOTION: Moves to ADOPT HB 3924-2 amendments dated 5/10/01.**
VOTE: 9-0
301 Chair Kropf **Hearing no objection, declares the motion CARRIED.**
302 Rep. T. Smith **MOTION: Moves HB 3924 to the floor with a DO PASS AS AMENDED recommendation.**
VOTE: 9-0
312 Chair Kropf **Hearing no objection, declares the motion CARRIED.**
314 Chair Kropf Closes work session on HB 3924. Reopens public hearing on SB 943A.

SB 943A – PUBLIC HEARING

354 Dave Nelson Administrator, Oregon Fine Fescue Commission and Oregon Tall Fescue Commission. Submits and summarizes prepared testimony in support of SB 943A (**EXHIBIT D**).

TAPE 92, B

070 Rep. King Asks if it would be appropriate to set a limitation on potential litigation.

080	Nelson	Answers yes.
083	Chair Kropf	Asks which fescue commission bases their assessment on the individual sale.
087	Nelson	Explains how the fescue commissions assess.
093	Chair Kropf	Asks how the tall fescue commission keeps track of the assessment on each individual sale.
097	Nelson	Explains how the fescue commissions keep track of their assessments.
112	Chair Kropf	Asks if it is more work for the tall fescue commission that assesses differently than the fine fescue commission.
116	Nelson	Answers that it is more labor intensive for seed dealers.
124	Chair Kropf	Asks if was a decision that the fescue commissions make for themselves.
127	Nelson	Answers that it was in response to Measure 5.
133	Rep. Nelson	Asks how fine fescue differs.
136	Nelson	Explains how the Fine Fescue Commission assesses crops.
156	Rep. Nelson	Asks if how many members are in each fescue commission.
159	Nelson	Answers that there are approximately 750 producers of tall fescue and approximately 170 producers of fine fescue.
173	Rep. Nelson	Asks if producers of different fescue have to pay fees into both commissions.
175	Nelson	Answers yes. Explains that different fescue goes to different geographic areas and different applications.
178	Rep. Nelson	Asks if the prices are the same for all growers.
182	Nelson	Explains the pricing system for fescue producers.
191	Rep. Nelson	Asks for clarification of the assessment process.
197	Nelson	Clarifies how each fescue commission assesses crops.
208	Rep. Ackerman	Asks for clarification of the language in the statute.
212	Nelson	Answers that the Department of Justice drafted it.
218	Bryan Osthand	Ryegrass, Highland Bentgrass, Mint, and Blueberry Commissions. Testifies in support of SB 943A.
273	Chair Kropf	Asks for explanation of how commodity assessment can be avoided.
278	Osthand	Explains how the commodity assessment can be avoided.
321	Rep. Nelson	Asks why changes were not made after the problems with the Blueberry Commission.
333	Osthand	Explains how the systems were set up.
359	Rep. Nelson	Asks what can be done to solve the problem.
377	Osthand	Answers what has been done with the commissions.
393	Rep. Nelson	Asks if the commissioners are all growers.
395	Osthand	Answers that 7 of the 9 are growers and the other 2 are handler representatives.
401	Rep. Nelson	Asks how to solve the problem.
413	Osthand	Answers that the commissions want to support SB 943A.
TAPE 93, A		
001	John McCulley	Tree Fruit Growers. Submits and summarizes prepared testimony in support of SB 943A (EXHIBIT E).
031	Chair Kropf	Asks how some commissions can operate a certain way while others operate differently.
040	McCulley	Answers that tradition and other factors may play a role in operations.
109	Jean Underhill-Wilkinson	Oregon Farm Bureau. Submits and reads prepared testimony in support of SB 943A (EXHIBIT F).
187	Chuck Craig	Deputy Director, Oregon Department of Agriculture (ODA).

		Submits and summarizes prepared testimony in support of SB 943A (EXHIBIT G).
252	Rep. Ackerman	Asks what efforts ODA has made to help to settle the lawsuit with Phil Olson.
255	Susan Hiller	Commodity Commission Program Manager. Explains how the lawsuit came to be.
275	Rep. Ackerman	Asks if there were offers made to deal with the lawsuit.
277	Hiller	Answers that no offers were made since ODA was of the opinion that they were operating under the law.
281	Rep. Ackerman	Asks what ODA's current monetary liability is since they were ruled against.
282	Hiller	Answers that the original complaint was for \$7400, but Mr. Olson incorrectly calculated the assessment cap so it was lowered to less than \$2000.
289	Rep. Ackerman	Asks why the case was not settled beforehand for a small amount of money rather than attempt to overturn a court decision.
300	Hiller	Explains that ODA and the Blueberry Commission both felt that they had not assessed incorrectly.
313	Rep. Ackerman	Expresses concern about ambiguity in the process. Asks why the case was not settled.
319	Craig	Answers that ODA felt they were within agency discretion to clarify an ambiguity.
334	Rep. Ackerman	Asks what the potential liability is currently.
336	Craig	Answers that he has not tried to calculate it.
342	Underhill-Wilkinson	Answers that all the commissions except those that have their assessments determined statutorily operate under the same operating statute. Notes that potential liability goes beyond the blueberry growers.
351	Rep. Ackerman	Asks if the potential liability could be between \$100,000-\$300,000.
354	Craig	Answers that he does not know.
360	Rep. Ackerman	Asks what the reasoning is for not settling.
372	Craig	States that he understands Rep. Ackerman's position, but consulting with colleagues in the commission, it was felt that their position was strong.
377	Rep. Ackerman	Asks if the potential liability was considered.
391	Rep. Doyle	Asks if it was considered that if ODA settled with one person, other could soon follow.
404	Underhill-Wilkinson	Answers that it was a consideration in dealing with the lawsuit.
408	Craig	Notes that he cannot see how just one case could be settled and avoid all other lawsuits that could occur, so a more general approach to the issue was needed.
416	Rep. Hopson	Asks if the Blueberry Commission agreed with ODA's interpretation of the language. Asks if any offers were made from the Blueberry Commission to Mr. Olson.
430	Hiller	Answers that ODA has worked closely with the Blueberry Commission through the process.
446	Rep. Hopson	Asks if Mr. Olson participated in the discussions with the Blueberry Commission trying to resolve the issue.
450	Hiller	Answers that Mr. Olson is a member of the Oregon Blueberry Commission, so that he was involved in the issue.
460	Rep. Nelson	Wonders if a resolution to the issue is possible.
TAPE 94, A 033	Craig	States that ODA would be willing to operate at the direction of

		the chair on a solution.
043	Chair Kropf	Asks if it is more accurate to assess on the year that the crop is grown or use an average.
049	Craig	Answers that SB 943A provides for the commissions to decide how they will assess.
059	Chair Kropf	Recesses public hearing on SB 943A. Opens informational hearing on noxious weeds.

INFORMATIONAL HEARING – NOXIOUS WEEDS

063	Tom Hatfield	Roseburg. Submits and reads prepared information (EXHIBIT H).
167	Rep. Nelson	Asks if there are adequate programs to deal with weeds.
170	Hatfield	Answers no.
188	Rep. Nelson	Asks where money comes from for funding.
194	Hatfield	Answers that the primary sources are Oregon State University and the Extension Service.
238	Chair Kropf	Closes informational hearing on noxious weeds. Reopens public hearing on SB 943A.

SB 943A – PUBLIC HEARING

257	Phil Olson	Farmer, Amity. Submits and summarizes prepared testimony and information against SB 943A (EXHIBIT I).
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TAPE 93, B

017	Rep. King	Clarifies the purpose of state audits.
020	Olson	States his impressions of audits.
024	Chair Kropf	Clarifies assessment process.
026	Olson	States need for flexibility in assessment. Continues prepared testimony.
045	Chair Kropf	Clarifies that some of the criticism aimed at Mr. Olson is not valid due to the way the statute is written.
053	Olson	Concurs. Continues prepared testimony.
128	Chair Kropf	Asks if the percentage tax should be retained. Asks why he is against SB 943A.
140	Olson	Explains that there must be a statutory limit on parameters.
145	Chair Kropf	Asks how he reconciled difference between legislative intent and legal interpretation.
178	Olson	Explains difficulties of the issue.
221	Rep. King	Asks how the Blueberry Commission deals with growers who have a sub-par year.
240	Olson	Answers that the assessment has always been as they are.
250	Rep. Ackerman	Asks what ODA would have to have done to prevent a lawsuit.
255	Olson	Answers that ODA would have to recognize the 1.5% assessment set forth in statute.
264	Rep. Ackerman	Asks if it was ever considered to come to the legislature rather than litigate.
268	Olson	Answers that he was not aware of any considerations.
278	Rep. Ackerman	Asks what the financial recovery in the lawsuit was.
281	Olson	Explains his financial considerations of the lawsuit.
300	Rep. Nelson	Asks how many berry commissions are in Oregon.
305	Olson	Answers that there are 3 berry commissions.
313	Rep. Nelson	Asks how much the berry commissions charge.
320	Olson	Explains how the berry commissions charge.
332	Rep. Nelson	Asks why there is a difference.
334	Olson	Answers that it is due to the flexibility, but a cap is needed.
337	Rep. Nelson	Asks if it is due to the difference in backgrounds of commission members.

345	Olson	Answers that he would want to see it as an ability to pay in a percent.
359	Chair Kropf	Asks if there are commissions that are collecting fairly.
365	Olson	Answers that generally they are.
380	Chair Kropf	Asks if the issue with the law is the way the commissions operate.
385	Olson	Answers yes.
400	Chair Kropf	Asks if individual commission members need to make case to change the cap.
420	Rep. King	Asks if the current cap is 10%
422	Olson	Explains that in certain cases it is, but not in others.
431	Chair Kropf	Asks if the growers need to convince that assessments need to take place differently.
433	Olson	Answers that the growers need to do it, but there needs to be a cap.
TAPE 94, B		
003	Rep. King	Asks about instituting a cap and flexibility.
020	Olson	Explains how caps should be related to flexibility.
061	David Gatti	Chief Financial Officer, Rainsweet and Caneberry Cooperative. Testifies against SB 943A.
146	Rep. Nelson	Asks about cost of the administration and the fair and right pricing.
164	Gatti	Explains his testimony before the Senate committee.
195	Rob Miller	Mt. Jefferson Farms. Submits and summarizes prepared testimony against SB 943A (EXHIBIT J). Explains how commodity commissions have developed.
287	Rep. Ackerman	Asks how to get the best of SB 943A and forge a compromise.
300	Chair Kropf	Asks if Mr. Olson has a proposed amendment.
304	Olson	States desire for a compromise and re-asserts his position.
350	Anthony Boutard	Ayers Creek Farm. Submits and summarizes prepared testimony against SB 943A (EXHIBIT K).
TAPE 95, A		
002	Gary Hongel	Townsend Farms, Inc. Testifies against SB 943A. Discusses the impacts of assessments on his farm. Addresses North American Free Trade Agreement (NAFTA) issues.
077	Chair Kropf	Asks if Townsend Farms has influence with the commission since they are so large.
088	Hongel	Answers no. Explains that they have to pay workers minimum wage while others pay by the amount picked. Expresses desire for parity.
119	Rep. King	Asks if it would be appropriate to have fee-base program for different products.
128	Hongel	Answers that he supports a fee-based program based on product grade.
137	Chair Kropf	Asks for clarification for Mr. Hongel's testimony that they throw away product rather than produce it because it is not cost effective.
141	Hongel	Explains how the grower-processor relationship operates.
202	Larry Cummings	Amity. Explains the assessment on his crops. Testifies in regard to SB 943A.
261	Vice-Chair Nelson	Asks if he favors a flat tax or percentage assessment.
266	Cummings	Argues that a percentage assessment makes more sense.
290	Gretchen Olson	Submits and reads prepared testimony against SB 943A, (EXHIBIT L).

453	Ginny Olson	Submits and reads prepared testimony against SB 943A, (EXHIBIT M) .
TAPE 96, A		
045	Rep. Nelson	Expresses concern that an amendment may come forth to deal with the issue.
054	Rep. King	Explains the process for potential amendments
071	Gretchen Olson	States that there is an amendment that is a simple fix.
100	Chair Kropf	Closes public hearing on SB 943A. Adjourns meeting at 7:55 p.m.

Submitted By,

Reviewed By,

Michael Reiley,
Committee Assistant

Ray Kelly,
Committee Administrator

EXHIBIT SUMMARY

- A – SB 212A, written testimony, Ken Yates, 1 p.**
- B – SB 212A, written testimony, Jim Root, 3 pp.**
- C – HB 3924, -2 amendments, staff, 2 pp.**
- D – SB 943A, written testimony, Dave Nelson, 6 pp.**
- E – SB 943A, written testimony, John McCulley, 1 p.**
- F – SB 943A, written testimony, Jean Underhill-Wilkinson, 1 p.**
- G – SB 943A, written testimony, Chuck Craig, 1 p.**
- H – Noxious Weeds Informational Hearing, written information, Tom Hatfield, 31 pp.**
- I – SB 943A, written testimony, Phil Olson, 3 pp.**
- J – SB 943A, written testimony, Rob Miller, 2 pp.**
- K – SB 943A, written testimony, Anthony Boutard, 2 pp.**
- L – SB 943A, written testimony, Gretchen Olson, 3 pp.**
- M – SB 943A, written testimony, Ginny Olson, 1 p.**