

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

January 20, 1999 Hearing Room D

01:00 pm Tapes 6 - 8

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

MEMBER EXCUSED: Rep. Jason Atkinson

STAFF PRESENT: Kristina McNitt, Administrator

Gene Newton, Administrative Support

MEASURE/ISSUES HEARD: Informational

HB 2419 Public Hearing

HB 2357 Public Hearing and Work Session

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	

TAPE 6, A

004	Chair Welsh	Calls meeting to order at 1:07 pm.
<u>INFORMATIONAL</u>		
005	Robin McArthur-Phillips	Land Use Advisor, Office of the Governor. States that she will advise the committee regarding the Governor's Task Force on Growth. Summarizes population growth in the states. States that the governor feels like Oregon has a strong land use program and that he is a strong supporter of it. Refers to packet (EXHIBIT A) . States that final report will be made available soon. Refers to a list of task force members at the end of the report and references chapter 6 . Provides background information on the make up of the committee.
050	McArthur-Phillips	Outlines all of the agencies that were involved in the task force. Highlights several of the conclusions and recommendations.
070	McArthur-Phillips	Continues to highlight conclusions. States that Oregon is relying increasingly on income tax revenues. States that the tax system is highly responsive to growth in personal income.
094	McArthur-Phillips	States a need for more than just regulations which only permit development but do not make it happen. Suggests that the State needs to provide resources for local growth. States that there is a need for state agencies to better integrate their programs. States that the Governor's Community Solutions Team is trying to get agencies to work together and build partnerships. Explains that citizens are very concerned about growth. States the need to involve citizens more in the process.
132	McArthur-Phillips	Briefly outlines the recommendations. States that the task force was unanimous in its support of the recommendations
167	McArthur-Phillips	Explains that many communities cannot apply for grants and loans at the state level due to lack of staff.
193	McArthur-Phillips	Summarizes what is next in the process. References the Fuller Report which is still in production. States that the governor will look at the Fuller Report and design ways to advance some of the ideas from the task force.
210	Rep. Kruse	Asks if the task force explored options for growth other than expanding urban growth boundaries.
208	McArthur-Phillips	Responds in the affirmative. Explains the issue of the 20 year land supply requirement States that it would be helpful if decisions could be made in a more regional context. Refers to St. Paul area as an example.
224	Rep. Kruse	Suggests that rather than expanding an existing urban area a new one could be created. Points out the difficulty in the Willamette Valley of expanding urban

		growth boundaries without having direct impact on soils Class I or Class II lands. Asks again if other options were considered.
245	McArthur-Phillips	States that the committee did not talk about that particular idea due to the overwhelming need of existing communities for infrastructure dollars.
253	Rep. Kruse	Asks if the task force had a good sense about what is currently happening to the funds relating to recommendation number three, allowing local jurisdictions to tax the added value of property added to urban growth boundaries.
262	McArthur-Phillips	Explains that the money raised would be property tax money and much of that money would go to the state General Fund.
267	Chair Welsh	Responds that the 1995 Legislature addressed the issue of allowing growth, remodeling, and construction so that communities could provide infrastructure services
279	McArthur-Phillips	Elaborates regarding city boundaries.
289	Rep. Taylor	Responds to reference regarding regional problem solving. Asks if regionalization is serving the state well.
309	McArthur-Phillips	Asks for clarification and states that she believes that regionalization has provided positive methods of dealing with problems. States that there is a need to start merging agencies so there are not as many boundaries to deal with.
HB 2357 PUBLIC HEARING		
350	Chair Welsh	Opens public hearing on HB 2357.
360	Rep. Thompson	Testifies in support of HB 2357. Defines HB 2357. States that this is a bill he introduced last session and that it had gone through a lengthy committee process at that time. States that the bill allows continued access to beaches if state parks are closed. Explains the importance of access to tourists and adjacent landowners. Explains that the fiscal report of \$118,000 is questionable. Hands out letter from Oregon Shores Conservation Coalition (EXHIBIT B). Again, questions fiscal report and asks if it can be appealed.
385	Chair Welsh	States that the fiscal report could be appealed and discusses the point in question.
389	Rep. Thompson	States that it appears the report is erroneous. States that it is only in the case of a park closure that costs would be incurred.
398	McNitt	Explains to the members of the committee that they have a copy of the fiscal report in their packet. Points out that at the bottom of the report there is an

		assumption that there would be some closures.
406	Rep. Thompson	States that Oregon Parks and Recreation figures be sent to fiscal so the results would be the same.
TAPE 7, A		
001	Chair Welsh	States that HB2357 is scheduled again for Friday and the committee will request fiscal to come in at that time.
005	Rep. Thompson	States that he will not be able to attend on Friday, January 22, due to prior commitments.
007	Chair Welsh	States that the committee could reschedule it for Monday.
008	Rep. Thompson	Solicits any questions from the committee regarding the bill.
009	Rep. Taylor	Asks if the bill is moot given the recent new money that has been dedicated to parks from Ballot Measure 66.
014	Rep Thompson	States that the question is a fair one, but emphasizes that if the park is closed for any reason that it would be best to have the bill in place so that it would ensure maintenance of beach access. States that it would become a tremendous burden on the adjacent landowners.
021	Chair Welsh	Invites Jim Lockwood to speak. Explains that the committee will reschedule the bill for Monday.
031	Jim Lockwood	Explains that Parks and Recreation does support the bill because of fluctuations in the economy. Responds that they would like to return for further explanation.
038	Rep. Kruse	Suggests that a good deal of front end work still needs to be done with the new funding source and asks if there is a time frame from Parks and Recreation to have this information ready.
042	Lockwood	States that Parks and Recreation expects to have some explanation soon. States that Parks and Recreation should have the information regarding how Measure 66 affects the agency. Plans should be available the second week of February.
057	Rep. Kruse	States that the relevancy is going to be determined later in the session as base line funding is completed and Measure 66 funding definitions are developed.
063	Rep. Thompson	States that the bill would provide a good clue to people that the state cares about people and their access to the Oregon Open Beach Law.

069	Chair Welsh	States that the committee will discuss the issue and will reschedule further work on this at a later date to allow for all parties to be involved.
077	Rep. Merkley	Asks if the state would continue to provide any sanitary services.
081	Rep. Thompson	Responds in the negative. The bill deals only with beach access.
084	Lockwood	Concurs with statement by Rep. Thompson. States that part of the expense which the fiscal impact lays out is what it would cost to maintain access in terms of reducing any chance of vandalism, etc, but would not include restroom facilities.
099	Rep. Thompson	States importance to adjacent landowners. Concern revolves around maintaining access and private property trespass.
104	Chair Welsh	Closes the public hearing on HB 2357.
INFORMATIONAL		
120	Jon Chandler	Director of Governmental Affairs for the Oregon Building Association (OBA). Summarizes OBA's views on land use and affordable housing. Explains some of the history of OBA and states their legislative purpose.
158	Chandler	States that affordable housing is another issue the OBA will be interested in. Defines costs of housing in Oregon. Differentiates between subsidized and affordable housing. States that Oregon has the 5 th worst home ownership rate in the United States.
192	Chandler	States the national average for home ownership is 67% while in Oregon the number is 61% and dropping. Gives example of costs of "spec homes" in the Portland Metro area as of October, 1998. Summarizes the need to facilitate working relationships between agencies regulating the building industry.
231	Chandler	States that OBA would like to look at regionalizing the issue of growth and include periodic reviews. States that OBA will try to implement the Dolan and Nolan constitutional series of cases on illegal takings. States that OBA will be supporting transportation and infrastructure funding. States that OBA has significant interest in this funding. Remarks that OBA supports a gas tax increase.
277	Chair Welsh	Reiterates that from the overviews previously presented to the committee there is a net loss in both farm lands and forest lands. States that a conclusion could be drawn that the current programs in land use are not working. Suggests that incentives need to be used.
311	Chandler	Responds to remarks from the Chair. Explains that the state has switched its focus from farm and forest preservation concerns to urban growth management.

		Explains the types of incentives that can be used to solve problems such as additional open space and parks, simplifying the process so land use plans can continue, and outright government subsidies to help with infrastructure. Gives example of storm water treatment. Also states that there is a need to redefine success.
370	Chandler	Elaborates on lack of communication and lack of understanding.
391	Rep. Devlin	Asks what is the problem with the current System Development Charges (SDC) system and will the OBA be proposing any changes.
402	Chandler	Defines SDC: The ways that Oregon cities and counties and special districts fund their infrastructure.
TAPE 6, B		
001	Chandler	Explains that SDCs are called impact fees and can be used for water, sewer, streets and parks. States that there are several problems with them and describes the problems. States that a different source of revenue should be found. States that impact fees are not generally a good way to raise money.
027	Chair Welsh	States that land use and growth is of interest and recognizes need to find creative and new ways to look at problems and the solutions.
035	Chandler	Responds that it is time to try some different approaches to the same problems.
039	Chair Welsh	Closes informational meeting.
<u>PUBLIC HEARING HB 2419</u>		
044	Chair Welsh	Opens public hearing on HB 2419.
048	Rich Angstrom	Managing Director for the Oregon Concrete Aggregate Producers Association.
060	Kristina McNitt	Administrator describes HB 2419. States that it will exempt certain aggregate mining operations from zoning restrictions on interruption or abandonment of land use, providing a permit is annually maintained. The bill would apply retroactively to all actions and proceedings before, on, or after the effective date of this act.
064	Angstrom	Explains that MLR is the Mine Land Reclamation Act. States that the industry and the Department of Geology and Mineral Industry (DOGAMI) have worked together on the bill. States that they are trying to protect pre-existing uses of non-conforming sites from a common law abandonment. Explains a court definition of abandonment for the mining industry. Explains that the bill further defines the

		terms of abandonment.
100	Angstrom	States that when something is termed "abandoned" the government is essentially taking away a property right from an individual. States that it is an intent issue. Defines intent. Further explains that bill provides protection for both public and private sectors. States that Oregon Department of Transportation (ODOT) will be the largest benefactor of this bill, also counties, and, to a lesser extent, cities. Explains the interest of cities and counties. Further explains that Chapter 517 of the Oregon Revised Statutes (ORS) has been brought in to maintain consistency in the intent of the bill and the statutes.
134	Gary Lynch	Oregon Department of Geology and Mineral Industry (DOGAMI), Supervisor of the Mine Land Reclamation Program and one of two designated agency lobbyists. States that most people are unfamiliar with mining issues and regulations. Further explains what HB 2419 does. Codifies the definition of abandonment under land use. Presents the ñ1 amendments (EXHIBIT D). Explains the ñ1 amendments to HB 2419 relating to reclamation procedures.
169	Lynch	Explains that DOGAMI is trying to remove the definition of abandonment that was created in 1972 in the initial act and replace it with National Mine Regulatory Model. Explains the National Mine Regulatory Model definition for abandonment. Explains that DOGAMI is trying to get the letter of the law to support it. Explains the "life of mine permit." Explains the national model of the "life of mine permit" and its requirements. Discusses required Reclamation Bond.
183	Lynch	Describes incentives to reclaim. States that DOGAMI supports HB 2419 and the -1 amendments because DOGAMI believes it simplifies, clarifies and strengthens existing language.
197	Angstrom	Explains two portions of the bill: abandonment under land use is a "property rights" issue; and abandonment under reclamation statutes is a "forcing reclamation" issue. They are unrelated. References changes to language in HB 2419 with the ñ1 amendments. Explains things that were missed in translation in the ñ1 amendments: wanted to change the language of "aggregate mining operations" to "surface mining activity" which is a term defined in ORS Chapter 517. States that other changes clarify concerns with language. Explains the retroactive aspects of the bill and the intent behind it.
226	Angstrom	Explains that the critical period of time that OCAPA is concerned with is 1988-89. States that if the bill is not retroactive it does not have any real affect. Explains that quarries are subject to foreclosure under a current court case and HB 2419 will protect them. States that counties have not had time to talk with planners and DOGAMI will work out any problems with the counties if necessary.
253	Rep. Gianella	Asks why the abandonment interpretation is in the law in the first place.
259	Angstrom	Explains that it is a common law interpretation. References Subsection 7 of HB 2419 and explains the law and how the courts have interpreted the language. Explains two cases that have come up regarding this law.

291	Rep. Gianella	Asks the cost of an annual permit.
296	Lynch	Further explains the abandonment language. States that DOGAMI does not know the history of the law in place. Describes costs of permits. Explains that bond fees are necessary to provide financial security and that required amounts vary with the reputation of the operator.
320	Angstrom	States that the fees are significant and affects whether or not a person keeps a mining operation working.
324	Lynch	States that the decision to keep a mine site open is often not based on economics. Explains reasons why this might happen.
335	Rep. Taylor	Expresses concerns that Columbia County planners are unaware of the bill and its ramifications.
361	Lynch	Replies that Columbia County has a previous reclamation program. States that he does not believe that the provisions of HB 2419 apply in Columbia County, since there are no DOGAMI permits issued in Columbia County.
378	Angstrom	States that he would be glad to hear the concerns and work them out. Suggests ways of doing that.
391	Chair Welsh	Suggests that conceptual amendments regarding definitions be added to the bill and that input from all interested parties be provided before coming back to work on it.
401	Rep. Kruse	Asks for clarification as to the language on page 2, line 5 of the ñ1 amendments.
4408	Angstrom	Explains the change. Explains "surface mining" as a term defined under ORS 517.
415	Rep. Merkley	Asks for clarification regarding the intent of the language in the ñ1 amendment where the wording "annually receives a permit" is replaced with "renews a permit or other operating authority". Asks if this implies that a person could go without a permit for some length of time and then simply apply to renew a permit and reinstate the mine.
TAPE 7, B		
001	Lynch	Answers no. States that the ñ1 amendments clarify this point further. States that a person has to renew their permit or they will be in non-compliance. Explains that there is no inactive provision.
014	Rep. Taylor	Asks question regarding the intent of the recent court case. Requests information

		regarding this case and asks for clarification of the concerns of DOGAMI regarding the time period 1988-1989.
020	Angstrom	States that he will provide documentation as requested regarding citation of the court cases . Elaborates on the aspects of the case that the mining industry finds troubling. Explains the intent of the bill to create fairness when it comes to abandonment.
040	Rep. Merkley	Asks if the requirement to sustain a bond is tied directly into the permit.
042	Lynch	Explains what an operating permit entails. References ñ1 amendments, page 12, and states that the language adds further clarification.
055	Angstrom	Explains why the word bond was not included in the language.
064	Lynch	States that there are sites that do not have bonds. Explains sites that are exempt from the Mine Land Reclamation Act.
075	Rep. Merkley	Asks if section 3, page 6, is being deleted. Asks if this is repealing a current law. Asks how this deletion is connected to the current issue.
081	Lynch	States that section 3 is being deleted and replaced with a broader concept as outlined in section 6, page 12. Explains how it will strengthen the current provision. Explains that section 3 is deleted to avoid duplication.
093	Angstrom	States that the industry is supportive of all the comments and changes worked out with DOGAMI.
097	Rep. Morgan	Asks for a point of clarification of the annual permit requirements regarding "grandfathered" pits under the proposed revisions.
101	Lynch	Explains that the requirements on these sites are being increased. Explains that DOGAMI will not have to reissue if a "grandfathered" site is in violation.
112	Morgan	Asks if the "grandfathered" sites will be subject to reclamation plans.
114	Lynch	Replies that this bill will not provide any additional authority to require them to reclaim. Explains the Voluntary Reclamation Program.
125	Rep. Merkley	Asks if changing the wording from "shall not" to "may not" makes the law less emphatic.
130	Lynch	Replies that the most powerful tool is increased discretion.

139	Chair Welsh	Calls forth Craig Greenleaf from Oregon Department of Transportation.
138	Craig Greenleaf	Oregon Department of Transportation (ODOT). Hands out testimony (EXHIBIT E). Explains the bill and how it would affect ODOT. States that certain mining operations are allowed to have lapsed permits the permits. Explains that ODOT has approximately 600 sites around Oregon. States that if ODOT was required to purchase permits for these sites it would cost approximately \$381,000. States that in some cases, ODOT's interests, particularly with respect to mining in areas surrounding airports have been controversial.
179	Rep. Gianella	Asks for clarification regarding this controversy.
182	Greenleaf	Replies that the controversy centers around the water that remains as part of a mining operation. Water serves as bird attractant and airports are concerned about bird strikes.
195	Rep. Taylor	Asks how many airports are adversely affected.
200	Greenleaf	States that he does not have the numbers.
210	Rep. Taylor	States that the Scapoose airport is an example of this problem with increasing numbers of waterfowl. Asks for clarification regarding "delay reclamation".
222	Greenleaf	Explains ODOT's concern that an operation could keep a site in an unreclaimed condition and not pursue the reclamation activity by simply filing for permit renewals.
230	Angstrom	States that he strongly disagrees with Department of Aeronautics regarding the danger of potential bird strikes.
273	Lynch	States that currently there are only a handful of permitted sites near airports. States that the financial liabilities incurred by the sites will act as a strong incentive to reclaim. Explains that operators in the Eugene area have determined that the value of the reclaimed land will exceed the value of all the rock removed.
316	Rep. Taylor	State that the length of time is the concern.
318	Lynch	Explains that in the long term there is more incentive to reclaim than not to reclaim.
334	Rep. Kruse	Asks if the passage of HB 2419 eliminates alternative remedies for adverse impacts.
336	Lynch	States that it should have no impact on other remedies.

347	Chair Welsh	Asks Mr. Greenleaf if the ODOT numbers were presented to Legislative Fiscal.
354	Greenleaf	Replies no. The numbers presented are only regarding the permit question. Explains that it is not a fiscal analysis of the bill.
366	Angstrom	States that the industry believes that cities and counties should play by the same rules for maintaining sites. States that HB 2419 also protects ODOT from case law.
393	Rep. Gianella	Asks for definition of reclamation.
395	Lynch	Defines reclamation as land that, upon cessation of mining, is restored to a secondary beneficial use. The secondary beneficial use is determined by the county.
TAPE 8, A		
001	Lynch	Discusses authorities regarding zoning and permitting of mine sites.
004	Rep. Gianella	Clarifies reclamation and mining activity.
007	Chair Welsh	Discussion regarding the schedule. States that the committee could entertain a motion to move the ñ1 amendments and have an engrossed copy later.
017	Taylor	Requests that the committee have time to review amendments before a move to adopt them is entertained.
023	Kruse	Asks if there is any concern with the committee making a conceptual amendment to change the wording of the original bill, page 2 line 5, "aggregate mining operation" to "surface mining activity".
025	Chair Welsh	Closes Public Hearing.
HB 2419 WORK SESSION		
028	Chair Welsh	Opens the work session on HB 2419
030	Rep. Kruse	MOTION: Moves to AMEND HB 2419 on page 2, in line 5, after "an," delete "aggregate mining operation," and insert "surface mining activity,".
035	Chair Welsh	Calls for discussion.

035	Rep. Taylor	Expresses concern as to the speed of the process in adopting the amendments.
040	Rep. Kruse	Explains conceptual amendments.
043	Rep. Merkley	Asks for a description of "conceptual amendment" and process.
050	Chair Welsh	Explains conceptual amendment.
061	Rep. Merkley	Asks Rep. Kruse to explain the purpose of changing the language.
064	Rep. Kruse	States that the presenter of the bill stated that it was a more appropriate definition.
072	Rep. Taylor	Explains that her intent is to represent her district and states that the issue is very important to her constituents and she would like time to further study of HB 2419.
076	Chair Welsh	States the reason for expediting the process. Calls for roll call vote on the motion to adopt the conceptual amendment.
087		<p>VOTE: 7-1</p> <p>AYE: 7 - Kruse, Devlin, Gianella, Kafoury, Merkley, Morgan, Welsh</p> <p>NAY: 1 - Taylor</p> <p>EXCUSED: 1 - Atkinson</p>
094	Chair	The motion Carries.
071	Chair Welsh	Adjourns meeting 3:03 pm.

Submitted By, Reviewed By,

Gene Newton, Kristina McNitt,

Administrative Support Administrator

EXHIBIT SUMMARY

A - Overview of the Task Force on Growth In Oregon, Robin McArthur-Phillips, 8 pp

B - HB 2357, written testimony, Oregon Shores Conservation Coalition, 1 p

C - Publication from Oregon Building Industry Association, Jon Chandler, 4 pp

D - HB 2419, proposed amendments, Rich Angstrom, 13 pp