

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

February 03, 1999 Hearing Room D

1:00 pm Tapes 19 - 20

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Rep. Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Rep. Gianella

Rep. Deborah Rep. Kafoury

Rep. Jeff Kruse

Rep. Jeff Rep. Merkley

Rep. Susan Rep. Morgan

MEMBER EXCUSED:

STAFF PRESENT: Kristina McNitt, Administrator

Gene Newton, Administrative Support

MEASURE/ISSUES HEARD: HB 2101 Public Hearing

HB 2163 Public Hearing and Work Session

HB 2164 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	Comments

TAPE 19, A

005	Chair Welsh	Calls meeting to order at 1:06 pm.
<u>HB 2101 PUBLIC HEARING</u>		
006	Chair Welsh	Opens Public Hearing on HB 2101.
007	Kristina McNitt	Administrator. Summarizes HB 2101.
114	Jill Zarnowitz	Habitat Division Director, Oregon Department of Fish and Wildlife (ODFW). Distributes written testimony (EXHIBIT A). Explains that the original legislation has sunseted. ODFW requested HB 2101 as another tool to provide incentives and funding for habitat restoration programs. Explains that HB 2101 will allow landowners who use their own money for habitat restoration to get a tax credit. Explains that ODFW had a great deal of success with this program in 1996. Discusses the timber industry's use of the funds for extensive work in coastal forests as the Oregon Plan was being developed. States that proposed projects exceeded \$100,000.
031	Chair Welsh	Asks how many projects were proposed.
032	Zarnowitz	States that in 1996 there were about 10 or 12 projects. These projects were usually completed in conjunction with a timber operation. States that prior to 1996 the program was not used extensively since it was originally designed to assist agriculture. Explains the funding limit of \$100,000 on the program of which 25% can be claimed as tax credits. States that in one given year there is a maximum \$25,000 impact on the general fund.
054	Chair Welsh	Asks if the tax credit is 25% per project/application.
057	Zarnowitz	Answers it is 25% per project and the total cap for the program is 25% of the program funding.
061	Chair Welsh	Emphasizes that it is 25% annually. Asks if it can carry over from year to year and, if so, for how many years.
064	Zarnowitz	Answers that she believes that it is one year but she is not sure how the tax laws work.
067	Rep. Kruse	Asks why the committee received a "no impact" revenue statement.
068	McNitt	Explains that the Revenue office has new information and has contacted her regarding the revenue impact.

073	Rep. Kruse	States a subsequent referral to Ways and Means Committee would be in order.
076	Zarnowitz	Explains that the revenue impact of \$500,000 is not included in the Governor's budget. Notes OWFD request that HB 2101 be referred to Revenue \$100,000/year funding level.
083	Chair Welsh	Cites ORS 315.134, sub 4, referencing Fish Habitat Improvement, as statute allowing tax credit for up to five years.
087	Zarnowitz	Apologizes for not being to provide the information.
089	Rep. Atkinson	Asks for an example of a landowner project. Asks also if a business owner or an individual who does not own land can apply for a project.
096	Zarnowitz	Explains that the projects can be industrial or non-industrial so businesses can take advantage of the program on lands that they manage. Provides an example of a timber operation. Cites an additional example of a farmer who might want to restore riparian habitat along a stream that runs through his property.
111	Rep. Atkinson	Asks if a person could contribute \$100,000 to a project and receive a 25% tax credit.
115	Zarnowitz	Answers yes. Explains a person would bring the project proposal to ODFW with projected costs. ODFW would approve the project if it would benefit fish. After the project is completed the person provides proof of costs and ODFW inspects the project. Finally, ODFW completes the required paperwork which the person can attach to their tax forms in order to receive the tax credit.
124	Rep. Atkinson	Asks question regarding who gets tax credit in the case of a partnership where a business improves habitat that is on land owned by someone else.
132	Zarnowitz	States that she does not know how the tax codes work in the scenario provided. States that she does not think ODFW would care who is spending the money on a particular project. States that it makes sense that the person spending the money would be allowed the tax credit.
140	Chair Welsh	Cites ORS 357.134 and reads provision allowing tax credit to the person who actually expends the funds.
148	Rep. Morgan	Asks what projects would be eliminated if HB 2101 was amended and reduced from \$500,000 to \$100,000.
155	Zarnowitz	States prior to 1996 the projects were approved on a first come, first serve basis. In 1996 there were an additional \$100,000 in projects that were proposed and requested certification.

165	Rep. Kruse	Asks what the largest project, in terms of dollars, that ODFW has received application for.
170	Zarnowitz.	States that she believes the largest was approximately \$50,000 - \$60,000.
174	Rep. Kruse	Asks how many of the projects would not have been completed if this program did not exist.
179	Zarnowitz.	States that in 1996 the projects would have been completed regardless of the tax credit. Emphasizes that in previous years the program encouraged farmers to participate and complete projects or to expand their projects.
186	Rep. Kruse	Asks if there is any attempt to coordinate the projects with local watershed plans and priorities.
193	Zarnowitz	Explains that in 1996 watershed councils did not exist on the north coast. Explains that ODFW has reorganized into watershed basins with the purpose of working more closely with Watershed Councils on restoration projects.
202	Rep. Kruse	States that HB 2101 is a good project but emphasizes that partnerships are essential to avoid duplication of efforts.
217	Rep. Kafoury	Asks if there is a specific criteria for eligibility or approval for the program.
220	Zarnowitz	States that ODFW does not have criteria adopted by rule. Explains that any proposed project must benefit fish. States that the program will probably need rules and criteria in the future. Explains that this program is one of the action items in the Oregon Plan.
234	Rep. Gianella	Asks if the methods used for a particular project determine eligibility for the tax credit.
242	Zarnowitz	Explains that each project must be approved as beneficial to fish. Emphasizes that the timber industry projects previously cited had biologists working with them. States ODFW expects that individuals planning projects would have the agency provide expertise.
256	Rep. Merkley	Asks if this program has gone through a prioritization process with other programs offering alternative sources of funding for these types of projects.
262	Zarnowitz	States that this program was an "unfunded" priority.
267	Rep. Merkley	Asks if the program is funded in the Governor's budget.

273	Zarnowitz	Explains that it is funded for this biennium. Explains that there is no fiscal as it impacts revenue.
274	Rep. Merkley	Asks if there are broader implications that might stem from this program not being implemented.
281	Zarnowitz	States that this is one of many programs that can help towards recovery of fish habitat in Oregon. Explains that HB 2101 will provide incentive for individuals to improve fish habitat on their own with guidance from ODFW.
287	Rep. Merkley	Asks if there are implications for further listings or federal involvement in designing plans for the state if HB 2101 is not implemented.
293	Zarnowitz	States that vary program to recover species or prevent listings is beneficial.
301	Rep. Atkinson	Asks how many projects there have been since this program started.
304	Zarnowitz	Estimates that there were 12 in 1996 and 2 or 3 per year prior to 1996. Attributes the low number of projects to the program being "lost in the jumble".
315	Rep. Atkinson	Asks for an approximation, in dollars, of the average size of the projects and what incentives exist for inexpensive projects.
324	Zarnowitz	States that prior to 1996 all of the projects were quite small.
331	Rep. Morgan	Asks how ODFW sees HB 2101 engaging with Watershed Councils.
336	Zarnowitz	States that individuals could mesh the Watershed Council grant programs with HB 2101 projects and get additiOANI credit off the project costs.
350	Rep. Morgan	Asks if there is a problem with having HB 2101 flow through the same type of administrative process as the Watershed Council grants.
356	Zarnowitz	States that the projects have to be certified by ODFW biologists. Explains that it is simply a matter of confirming that the project is being done and emphasizes that ODFW provides expertise in the area of Watershed Councils for persons applying for grants. States that it is a certification program for tax credit so there is benefit to keeping it in ODFW. Explains that ODFW biologists would be reviewing projects by watershed councils as well as for HB 2101.
377	Rep. Taylor	States her understanding that HB 2101 would maintain the program at the \$100,000 level and extend the current program through 2004.
383	Zarnowitz	States that Rep. Taylor is correct in her understanding except that the program

		has sunseted at this time.
386	Rep. Taylor	States that she has seen the effectiveness of the small projects and they are a source of pride. States that it is her belief that the incentives for landowners have been working well in her district.
399	Rep. Kruse	Asks if a project designed to increase water quantity would be considered a habitat improvement project.
404	Zarnowitz	Answers yes.
TAPE 20, A		
003	Rep. Kruse	Surmises that dams could be built with the money from HB 2101. Explains that the program creates a reduction in general fund revenue. Asks if the program is seen as Measure 66 money or general fund money.
009	Zarnowitz	States that she has "no perception along those lines".
013	Chair Welsh	Explains that the committee will not go into work session at this point in time as there will be a referral to revenue.
018	Rep. Kruse	Explains the reason for his last question. Emphasizes that Measure 66 requires that all Oregon Plan funds go through one agency and this requires a careful definition of programs.
024	Chair Welsh	Closes Public Hearing on HB 2101.
<u>HB 2163 PUBLIC HEARING</u>		
030	Chair Welsh	Opens Public Hearing on HB 2163
032	Kristina McNitt	Administrator, explains HB 2163.
036	Jeff Huntington	Deputy Director, Water Resources Department (WRD). Refers to question from Rep. Merkley during the Public Hearing on January 29, 1999, regarding section 1, subparagraph b. The new language would allow the Water Development Loan Fund to be consolidated. This would allow a potential borrower to refinance an existing debt as part of a project a loan application with WRD. The question then arises: Could an individual, having a high interest debt on something unrelated to water development, be able to add or include that debt to an application for a Water Development Loan? States that it would be unlikely plausible. States that it would be technicality subject to the department's discretion. States that the rules and process in place subject an application to a public interest evaluation that might ultimately result in a denial. The language in HB 2163 does, however,

		give to discretion the department. States that there have been proposed amendments to HB 2163.
066	Rep. Merkley	Proposes the amendments.
074	Huntington	Explains the ñ1 amendment. States that language is inserted in subsection b of Section 1, to change the definition of refinancing, to allow the refinancing of an existing debt as defined in subsection 7, f-m and o. The language would allow refinancing of existing debt if the borrow is a "public entity". Excludes subsections under the definition "water developer" that include private individuals, private partnerships for profit, corporations for profit, and non-profit corporations from eligibility. Emphasizes that WRD retains flexibility to refinance existing debt of irrigation districts, water improvement districts, water control districts, irrigation or drainage corporations, some types of drainage districts and any local soil and water conservation district. States that WRD is comfortable with the language as most requests will come from public entities.
104	Rep. Kruse	Asks why Community Districts would be excluded.
110	Huntington	Answers that the Community Water Supply Distribution organizations referenced in statute are not always public entities. States that it is a policy decision.
124	Chair Welsh	Closes Public Hearing on HB 2163.
<u>HB2163 WORK SESSION</u>		
127	Chair Welsh	Opens Work Session on HB 2163.
131	Rep. Merkley	MOTION: Moves to ADOPT HB 2163-1 amendments dated 02/03/99.
136	Rep. Kruse	Asks Rep. Merkley why community water supply distribution organizations are excluded. States that systems are not inexpensive and many need to be upgraded.
145	Rep. Merkley	Shares that discussion to include them or not was a close call. Emphasizes that he does not have strong feelings either way.
154	Huntington	Explains that excluding organizations formed for the purpose of distributing water for community vice only applies to the question of refinancing existing debt as part of a loan package application not to loan application eligibility.
161	Chair Welsh	Explains that under subsection 7, a definition water developer is provided. Asks if it would be necessary to include all of them to be consistent with the original bill. Explains the amendment again.

180	Rep. Merkley	States that it was his understanding that WRD anticipates that the loan fund will be used by public entities. States the original intent of WRD to direct the refinancing to public entities and the amendment accomplishes that intent. Emphasizes the importance of not appearing to agency to finance "person pleasures" with agency programs.
198	Chair Welsh	States that by the same motion HB 2163 eliminates an opportunity for a private water developer to be able to refinance a project for improvement. Asks if there is any other language that could be used to include any other financing.
207	Huntington	States policy objective and suggests proposed language is the simplest and most direct way to get there. Explains that amendment does not scope down the program or program availability to private individuals. Explains the purpose of HB 2163 is to enhance program availability. Explains that WRD is comfortable with the amendment, which allows WRD to gauge the demand for refinancing existing debt and whether or not it is an issue.
243	Rep. Kruse	Asks if the WRD is comfortable with the original bill.
245	Huntington	States the department is comfortable with the original bill. States the loan advisory board did not have an explicit discussion regarding the issue of refinancing existing debt. Explains the application process and that the issue raised by Rep. Merkley is valid.
260	Chair Welsh	States that this is a policy question and stresses the concern the committee has regarding eliminating opportunities.
275		VOTE: 8-0 EXCUSED: 1 - Rep. Taylor
	Chair Welsh	Hearing no objection, declares the motion CARRIED.
309	Rep. Kafoury	MOTION: Moves HB 2163 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0 EXCUSED: 1 - Rep. Taylor
		Hearing no objection, declares the motion CARRIED. REP. DEVLIN will lead discussion on the floor.

321	Chair Welsh	Closes Work Session on HB 2163.
<u>HB 2164 PUBLIC HEARING</u>		
325	Chair Welsh	Opens Public Hearing on HB 2164.
327	Kristina McNitt	Administrator, explains HB 2164.
334	Tom Byler	Water Resources Department. Testifies in support of HB 2164. Explains and defines HB 2164. Explains the mechanism the Water Resource Commission uses to grant an exception to the Basin Program rules. Explains that a water user can ask the commission to review the merits of their case. Explains that if the exception is granted the individual can move forward under the regular water right permit application process. States that HB 2164 is identical in language to bills passed in 1993 and 1995. Notes both had sunset dates. Explains the reason for those bills having a sunset clause. States that WRD is in the process of updating its' program rules. States the exceptions process is it is a proven and useful tool which has been used only a handful of times.
380	Byler	Defines groups of stakeholders. States that stakeholders have agreed to add a sunset to the bill. Explains what it would do. Explains that the bill was originally introduced with the idea that the authority would be permanent but, after discussion with stakeholders, WRD has agreed to allow an amendment which would provide a sunset on the bill. Stresses that the original intent of the legislation was to maintain a temporary mechanism.
TAPE 19, B		
001	Byler	States that there have been concerns that the criteria in HB 2164 was too broad which might allow or encourage abuse of the process. Explains the broadness of the categories and why they need to be that way.
013	Chair Welsh	Asks if the ñ1 amendments originated from the workgroup and asks Byler to explain them.
018	Byler	Explains the ñ1 amendments. Explains that HB 2164 would go into statute as a note since a "sunset" is being added. Explains that the authority of the note would expire in 2003. The ñ1 amendments would restore the original authority of HB 2164. Explains that the ñ1 amendments would be the statute and HB 2164 would be a note which would supercede the regular statute for a period of 4 years.
037	Rep. Kruse	States that this seems to be a strange way to write a sunset, from his experience. Explains that it appears that the amendments become operative (statute) on July 1, 2003. Asks if HB 2164 then becomes statute at sunset.
046	Byler	Explains section 3 of the -1 amendments would become effective in 2003.

053	Rep. Kruse	Rep. Kruse and Tom Byler continue discussion and clarification of what sunseted, the -1 amendments and why HB 2164 is being handled in this manner. Byler concludes that the -1 amendments, as proposed in the original bill, are being sunseted.
082	Rep. Kruse	Summarizes that in 2003 the original bill, including a sunset provision, will become statute.
089	Byler	Answers that Rep. Kruse is correct. Explains that the language proposed by HB 2164 sunseted last month.
102	Rep. Kruse	Explains confusion over language.
105	Byler	States that this is the standard way of dealing with sunsets and notes.
115	Rep. Merkley	States that it is his understanding that only clauses c-f would sunset after four year.
123	Byler	States that that is correct.
125	Rep. Merkley	Asks what the intention is of having some of the provisions sunset and others not.
127	Byler	Explains that HB 2164, lines 8 and 9 predate the 1993 and 1995 statute that HB 2164 replaces, and that they were in statute prior to c-f.
139	Rep. Kruse	States that he is confused by the language of the bill.
143	Rep. Morgan	Asks when c-f were inserted into the bill.
147	Byler	Explains that lines 10-14 were part of the original concept in HB 3203 and SB 197.
157	Rep. Morgan	Asks if c-f have been sunseted twice.
158	Byler	Answers yes.
160	Scott Ashcom	Oregon Association of Nurserymen (OAN). States that OAN has a very serious interest in water legislation. Explains that OAN has created the original bill in 1993. States that they have one minor concern in the original bill. States that he sees no problems with the amendments. Proposes that page 1, line 30, after the word "in", delete "determining whether to" and change "accept" to "accepting". Explains that the phrase "determining whether to accept" conveys an authority to refuse. This authority is inconsistent with existing water laws. Quotes the 1955

		statutes ORS 537.150 and ORS 537.691.
209	Ashcom	States that the 1955 legislature went to great lengths to ensure consistency. Explains that the proposed conceptual amendment would create consistency with the existing statutes.
224	Rep. Merkley	States that the authority to refuse an application is in the law.
233	Ashcom	Answers that that is correct. Explains that the commission would be delegated authority not to accept an application.
240	Rep. Kruse	States that WRD can still deny the permit but have to accept the application.
246	Ashcom	Explains the 1955 legislation and the efforts that took place to mandate that the applications be accepted. Explains the tentative priority date and its importance. Explains that the statute simply means that the applicant must receive their due process of application.
268	Rep. Merkley	Summarizes his view of the two-step application process. Explains that the proposal essentially eliminates the first phase. States confusion about why the change in the language is needed.
286	Ashcom	States that he does not understand what the question is.
297	Rep. Merkley	Explains his understanding of the philosophy behind the proposed change.
301	Ashcom	Clarifies position to state that the OAN does not believe it would not be consistent with current water law, either surface or ground water applications, to grant a new authority to the commission to except an application for an appropriation of water.
309	Rep. Merkley	Reads from section 1, sub clause 1 from the statute. States that the clause assumes a right to accept or reject an application and asks if OAN assumes it to be inconsistent with water right law.
317	Ashcom	States that his assumption is correct. Explains that he had a problem with the original language of the bill when it was created. Explains his interpretation of the language.
332	Rep. Merkley	Asks if the Water Resources Commission is a separate entity from WRD.
337	Ashcom	Answers yes. States that he does not envision the application going directly to the Commission and then being referred back to WRD for processing.

350	Rep. Kruse	Asks if the ultimate decision to deny an application rests with the WRD rather than the Commission.
352	Ashcom	Answers yes.
355	Rep. Kruse	Asks if the function of the Commission is to pass their opinion before consideration in the decision made by WRD.
360	Byler	Explains the process. Reiterates that the Basin Program Rules can restrict new uses depending on the resource need in the area. Explains that HB 2164 provides an opportunity appeal to the commission, provided they satisfy the criteria, to determine if they will accept the exception to the program and allow WRD to process the permit application.
392	Rep. Kruse	Asks if the amendment clarifies anything.
401	Byler	States that he is unsure if it clarifies what the OAN has asked for. States the importance of providing authority that recognizes that the Commission is making the determination.
TAPE 20, B		
001	Byler	Suggests that clarification might be accomplished by adding language in subsection 4, under subsection 1.
011	Rep. Kruse	States that the Commission does not have final acceptance but can refuse the application before it gets to the department.
016	Byler	Explains that the Commission can refuse the request for an exception to the Basin Program which would have the affect of not allowing that water user to follow through with a permit application.
019	Rep. Kruse	Asks if the original language means that refusal by the Commission would mean that the application was never accepted on record.
024	Byler	States that it would depend on the circumstances. Explains that WRD would work with the individual to find alternatives and if there are no alternatives WRD might recommend that they apply for an exception to the Commission and explains the process.
041	Ashcom	States that it is important that the committee define the word "accept" as it is defined in statute in ORS 530.150 and 530.691 and states that he disagrees with Bylers definition.
054	Byler	States that WRD would be glad to work with OAN to provide clarification on the

		language.
057	Rep. Gianella	Asks if WRD and OAN are comfortable with the original change in language as proposed by OAN.
063	Ashcom	Answers yes. Explains the language change again.
073	Rep. Kafoury	Asks if the language has been there in the last four years.
077	Chair Welsh	Asks for clarification of language, "in accepting" or "upon accepting".
079	Ashcom	States that either wording would be agreeable with OAN.
080	Rep. Kafoury	Asks if the phrase, "in determining whether to accept", was part of the previous bills language.
081	Ashcom	Answers yes.
082	Rep. Kafoury	Asks if there were problems as a result of that language.
083	Ashcom	Explains that there have been problems with the few applications that have been filed in the past several years but the problems did not derive from the language "in determining whether to accept". Emphasizes that OAN has had consistent problem with the delegation of the new authority to the commission "not" to accept applications.
089	Rep. Kafoury	Asks where the delegation of authority is for the Basin Program
095	Ashcom	Explains why it is a good idea to have a consistent process for processing all applications for water rights. States that it is for the administrative efficiency and effectiveness in processing. Stresses that OAN does not want to grant new authority to WRD to refuse to accept an application of any kind.
107	Rep. Morgan	Asks how the previous sunset provision was articulated.
112	Byler	States that he was not with the agency at that time so a direct answer is not possible. Explains how the sunset language will be inserted into the statutes.
129	Rep. Morgan	Asks if the proposed amendment is the same as the previous bill.
130	Byler	Answers yes. Explains that it is based on SB 197 from the 1995 session. The intent was to have HB 2164 be the as that bill. Explains that since SB 197 was originally intended to be a sunseted bill it may have looked different in "bill

		form" than HB 2164 which was originally intended as permanent authority.
144	Rep. Gianella	Asks if this would be a proper time to make a motion.
146	Chair Welsh	Answers no. Asks if WRD has a problem with the change in the language as proposed by OAN.
156	Ashcom	States that he does not see a problem but he would like the opportunity to think it over.
161	Chair Welsh	Explains that Legislative Council can write the bill as amended which will give WRD the opportunity to discuss the proposed change.
165	Chair Welsh	Closes Public Hearing on HB 2164.
<u>HB 2164 WORK SESSION</u>		
171	Chair Welsh	Opens Work Session on HB 2164.
174	Rep. Kruse	MOTION: Moves to ADOPT HB 2164-1 amendments dated 02/03/99 as amended by the conceptual amendment.
184	Rep. Gianella	Asks for clarification of the wording.
187	CW	Explains that the conceptual amendment would use the wording "in accepting".
190	Rep. Merkley	Asks if the committee is voting on the amendments only and not the bill itself.
192	Chair Welsh	Answers yes.
197		VOTE: 8-0 EXCUSED: 1 - Rep. Taylor
	Chair	Hearing no objection, declares the motion CARRIED.
199	Chair Welsh	Closes the Work Session on HB 2164 and adjourns the meeting at 2:43 pm.

Submitted By, Reviewed By,

Gene Newton, Kristina McNitt,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2101, written testimony, Jill Zarnowitz, 1 pp

B - HB 2163, -1 amendments, LC, 1 p

C - HB 2164, -1 amendments with hand engrossed conceptual changes, LC and staff, 2 pp