

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

February 08, 1999 Hearing Room D

1:00 pm Tapes 23 - 25

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

MEMBER EXCUSED:

STAFF PRESENT: Kristina McNitt, Administrator

Gene Newton, Administrative Support

MEASURE/ISSUES HEARD: Informational: Market Based Environmentalism

HB 2181 Public Hearing

HB 2187 Public Hearing

Committee Bills, Public Hearing and Possible Work Session

TAPE/#	Speaker	Comments
TAPE 23, A		
005	Chair Welsh	Calls meeting to order at 1:12 pm.
<u>INFORMATINAL MEETING</u>		
006	Chair Welsh	Explains his previous exposure to market-based environmentalism.
016	John Charles	Cascade Policy Institute. Distributes notebook (EXHIBIT A). Describes his background. Explains that current literature and thought suggests that large scale government intervention creates more problems than solutions when dealing with environmental issues.
042	Charles	Defines pollution as it relates to the "trespass doctrine". Explains that this doctrine was created by judicial precedence rather than statutes. Gives historical overview of trespass laws. States that the modern era command and control programs have undercut the protections provided by doctrine. Cites example of court case between the state of Illinois and the city of Milwaukee for sewage pollution of Lake Michigan. Explains that eventually, the Clean Water Act took precedence in this case. This case ended the use of common law in Federal courts for these type of cases and replaced it with a regulatory program.
084	Charles	Explains that Oregon is in the forefront of large-scale zoning programs. Discusses right to farm laws and how they interface with environmental issues and laws. Explains that property rights have been a strong means of forcing polluters to clean up their pollution but recent attacks on property rights have eroded that control. Cites two cases in Oregon that have become the precedence for common law in the state.
123	Charles	Continues discussion of common law issues. Suggests that reconsideration of property rights is important given that property rights are an excellent means of creating accountability for polluters. Describes government ownership of resources as another property rights issue. Cites land use management and multiple use approach as an example of intrusion on property rights. States that there is an ongoing fight over common property but no resolution since no one has clear title over the property. Defines alternatives to the "tragedy of the commons".
170	Charles	Discusses the use of water as an additional problem created by government ownership of resources. Explains the problems in the Deschutes Basin where 96% of the water appropriated out of stream was used for irrigated agriculture while that sector produced on 4% of the net economic activity in the basin. Discusses how wealth is created by transferring resources from low value to high value.
213	Charles	Explains that government monopoly of roads and transit has sometimes led to perverse outcomes. Explains how privatization is the key issue for successful

		<p>funding and provision of services for infrastructure. Relates the history of the Morrison Bridge in Portland, Oregon as an example. Explains that modal alternatives were reduced by 50% and cost of maintenance rose after the bridge was purchased by the city of Portland and the toll fee eliminated. States that privatization leads to lower costs and higher quality.</p>
257	Charles	<p>Discusses the proper role of government in society. Suggests that the state should ask why there is a Department of Transportation. Asks what they can do that cannot be done by the private sector. States that taxes can be replaced with user fees including user fees for pollution. Discusses discharge fees for polluters. States that the goal must be to try and make reducing pollution a profit factor.</p>
300	Charles	<p>Continues discussion of privatization of infrastructure, user fees, and end subsidies. States that frequently government rewards pollution. Explains "open" and "hidden" subsidies. Describes example of each type of subsidy. States that if risks are socialized and profit privatized there will be problems.</p>
347	Charles	<p>Discusses the pollution control tax credit program. States that a tax credit is a convenient way of placating lobbyist. States that all of the command and control programs such as the Clean Air Act, Clean Water Act, and Land-Use Planning assume that there is one best way to know what is best for all concerned which will lead to the optimum outcome. Suggests that lack of technological proficiency, lack of knowledge, political polarities, and value conflicts prevent optimum results.</p>
TAPE 24, A		
004	Charles	<p>Describes each section of the notebook. Describes each essay and how it relates to environmental issues. States that the problem with planning is that the future is unpredictable.</p>
046	Rep. Kruse	<p>Remarks that environmental policy may need to be looked at in a very different mode.</p>
056	Rep. Devlin	<p>Asks what is done when an item costs the public significantly more than the amount apportioned to the people that are benefiting but still serves the public purpose. Cites example of the State highway between Burns and Ontario.</p>
072	Charles	<p>States that if there is value, a project or item will be self supporting. Asks, if it is not, what is the argument for transferring wealth from others to maintain it. States that there is privatization of highways and rail systems throughout the world that are becoming profitable when taken away from government. Describes toll roads in Oklahoma. Relying on gas tax is not efficient since 50% of the traffic is "pass-through" traffic. Explains that a "toll" helps pay for it.</p>
097	Rep. Kruse	<p>Remarks that the rest areas in Oklahoma are private enterprises</p>
104	Charles	<p>Describes the Sam Barlow highway as an example of privatization of roads. Explains that it was built using private labor and tolls.</p>

111	Rep. Gianella	Asks if the policy summary was presented to the transportation committee and, if so, what was there response.
116	Charles	States that he has not testified for the transportation committee this session. Explains his attempts to persuade the state government to establish user fees for highways. Explains that the federal government has passed a statute that allows up to three states to convert their entire interstate highway system to toll roads.
135	Rep. Gianella	Asks which states have been converted.
136	Charles	Explains that the law is simply enabling. It allows three states to convert but, the states have not been determined.
142	Rep. Gianella	Asks what the next step is if Oregon is to become one of the three states.
143	Charles	Explains what the process would be.
159	Chair Welsh	Expresses appreciation for presentation.
<u>HB 2181 PUBLIC HEARING</u>		
160	Chair Welsh	Opens Public Hearing on HB 2181
162	McNitt	Administrator. Explains the bill.
178	Rep. Bowmen	State Representative from District 19 in Northwest Portland. Explains that she has introduces legislation that would repeal the pollution control tax credit referenced in HB 2181. States that the tax credit is a subsidy to businesses. Explains that in December of 1998, Oregon paid \$30 million to two businesses for the pollution control tax credit for following what is currently State and Federal law. Explains the history of the tax credit. Explains why the tax credit should be repealed.
206	Tony Van Vliet	Environmental Quality Commissioner, Department of Environmental Quality (DEQ). Testifies in support of HB 2181. Distributes materials (EXHIBIT B, EXHIBIT C, EXHIBIT D, EXHIBIT E). Explains the bill and reviews the history the tax credit. States that the tax has encouraged private and public facilities to improve the environment. Cites examples. Explains the work of the DEQ in issuing certification for tax credit projects.
247	Van Vliet	States that there will be \$32.5 million in tax credits in the next biennium. States that if HB 2181 were to end today, the state would pay \$94.5 million in tax credit obligations by the year 2008. States that HB 2181 was a subsidy with a good intention. Explains that DEQ is asking to raise the standards to coincide with the Federal levels of 1968. States that the key question is, should you be getting a tax credit for something you should be doing under the law.

297	Langdon Marsh	<p>Director, DEQ. Testifies in support of HB 2181. Explains that the law was created to help companies comply with new environmental requirements in the late 1960's. Explains that these were not anticipated capital expenditures by companies so it seemed fair to provide a period to share the costs of the requirements. States that capital planning for environmental regulations is now commonplace for most companies having environmental responsibilities. Remarks that the statute is outdated. States that only three states of the original 40 that passed legislation in the 1960's, continue to have this legislation in statute. Explains that 75% of value dollar tax credits are for pollution controls installed to comply with environmental laws.</p>
336	Marsh	<p>States that there was a shift in the 1980's towards more effective environmental use of tax credit dollars by including controls not required by law. Pollution prevention incentives included in the amendments of 1987. Explains that HB 2181 would strengthen the incentive approach and restrict credits awarded for complying with environmental regulations. Explains governors tax review policy advisory committee. Explains that HB 2181 follows the recommendations of the governors committee (EXHIBIT F).</p>
368	Helen Lottridge	<p>Administrator, Management Services Division, DEQ. Testifies in support of HB 2181. Explains three main features of HB 2181:</p> <ul style="list-style-type: none"> • Eliminates tax credits for the cost of pollution controls that simply comply with environmental regulations. Explains two exceptions: Tax credits would be available if State and local regulations are more stringent, and for pollution controls installed to comply with "new" and more "stringent" Federal or State regulations after December 31, 1998. • Provides credit for pollution controls that go beyond what is required by law. • Retains the credit for pollution controls constructed purely to reduce pollution, not necessarily to comply with a law. Specifically includes non-point source pollution controls.
TAPE 23, B		
001	Lottridge	<p>Gives two examples of controls that would no longer be eligible for tax credit under HB 2181: Stack scrubbers and bag houses. Gives example of control that would be eligible: Homebuilder with filtering system to remove the residue from texture finishing from waste water before the waste water was discharged into sewer system. Explains the financial impact of HB 2181. States that it is difficult to estimate and cites factors:</p> <ul style="list-style-type: none"> • Claim amounts vary widely. • Hard to predict number of claims. • Estimates are in dollar value of tax credits that are certified by the environmental quality commission which is not necessarily the same as tax credits that are actually used.
043	Lottridge	<p>Explains that some taxpayers delay taking their tax credits for up to three years and others who are not able to fully utilize their tax credit. The credit cannot exceed the amount of tax liability.</p>

051	Rep. Taylor	Asks if the certified projects are ongoing exemptions.
58	Lottridge	Explains that the tax credit may be taken over the useful life of the facility or ten years, whichever is shorter. States that there is a provision in the law to not claim the tax credit for three years if it is more beneficial to the individual.
066	Rep. Devlin	Asks if HB 2181 would affect projects that have already been certified.
071	Lottridge	<p>Answers no. Continues discussion of factors which make it difficult to predict the fiscal impact of HB 2181:</p> <ul style="list-style-type: none"> • The health of the economy. • The rate of construction • The impact of the changes in the law itself. <p>References the chart from exhibit B, page 9. Explains chart. Estimates that the value of the tax credits would have decreased by \$23.4 million using the last 10 years as a baseline. Explains that the difference could be expressed as an increase in general funds.</p>
105	Rep. Gianella	Asks if businesses who are losing the tax credit incentives for pollution control, such as stack scrubbers, will continue the controls.
112	Lottridge	Answers yes. Explains that these controls are required by law and regulations.
115	Rep. Kruse	Asks if we are sending the message that mandated Federal requirements circumvent public interests thus, the public should not share in the responsibility of environmental activity.
125	Marsh	Answers no. Explains that it is a question of which requirements you choose to subsidize using the public's purse. States that DEQ's view is that it is better to use some of the tax dollars to create incentives for controls that are not currently required to increase the benefit to the public.
137	Rep. Devlin	Asks how you define the cost benefit of something that is going beyond Federal law and could DEQ end up giving credit for a project that is not providing any commensurate benefit.
150	Marsh	Responds that there would be some difficulties in drawing a line between expenditures that are minimally required and those that are newly required by Federal law. Explains that, in either case, they would have to reduce pollution or have environmental benefit.
158	Rep. Devlin	Asks if termination of tax credits for required regulations might cause businesses to reconsider continued operations in a particular site and continued compliance with environmental laws.
170	Marsh	Answers that the tax credits would not affect their previous decision to stay in a

		particular site. Explains that any possible affect would be on businesses making site decisions after December of 1998. Explains that since all but three states have eliminated these tax credits, Oregon would not be putting itself in an inferior position regarding recruitment of new businesses.
188	Rep. Devlin	Asks if states which have eliminated the tax credit program have phased it out over a time period or cut it off at some specified date.
195	Lottridge	Explains that it has varied widely from state to state. Explains what other states have done.
204	Van Vliet	States that there has been discussion to determine if the tax credit is an economic development incentive or regulatory. Explains that the more important question would be whether or not DEQ is creating an economic disadvantage between like companies if one is receiving the tax credit due to a large and knowledgeable staff of accountants and attorneys. States that DEQ is looking for fairness. Explains that under ordinary business conditions they would be putting in the control equipment or they would be facing fines for not meeting the standard.
244	Rep. Gianella	Asks how many states are meeting the stricter Federal pollution requirements.
249	Marsh	States that they are looking at their data over the last 10 years there has only been two instances where companies have arguably used the credits as an incentive for attracting new industry. Explains that there is no compulsion to go beyond the requirements by other states. Answers that he does not know how many states give tax credits for activities that are beyond Federal requirements as proposed in HB 2181.
274	Rep. Atkinson	Asks what the status is in Washington State.
278	Lottridge	Answers that Washington is not one of the states that still has the pollution control tax credit law. States that she does not know what the current law is in Washington but would provide the information later.
281	Rep. Atkinson	States that he would be more interested in knowing when the change in laws occurred. Explains Harvard case regarding a plant in Forks, WA. States that due to the tax credit they moved the plant.
295	Rep. Merkley	Asks if there has been a study of the cost effectiveness of funding pollution control with tax credits and incentives.
307	Marsh	Answers no. Explains that the portion of the tax credit that HB 2181 proposes to eliminate is not subject to manipulation by market forces. Explains some of the attempts on the national level to deal with pollution reduction through other mechanisms. Cites the attempts to reduce sulfur dioxide. States that DEQ has found that many business are willing to provide more control than what is required by law and are looking for incentive to do so. Explains Green Permits.

366	Rep. Merkley	Does DEQ know how much pollution control they have purchased with the tax credit program.
374	Marsh	States that DEQ does know that they have used 75% of the tax credits to purchase the amount of pollution reduction that is otherwise required by law.
379	Rep. Merkley	Asks why DEQ is proposing to continue to fund control devices that are already under new Federal law.
388	Marsh	Explains that DEQ is proposing what was agreed upon in the subcommittee. Explains that there would be some continuing benefit for new requirements. Explains DEQ reasons for this decision.
Tape 24, B		
002	Rep. Taylor	Asks if the State has done too good of a job providing incentives given the rise in the number of certifications over the last few years.
010	Lottridge	Answers that the trend is generally upward but it is difficult to know what to attribute it to. States that economic growth may contribute to the upward growth of certifications.
018	Van Vliet	Explains that the original law was very broad which made it very hard for the DEQ to turn down something that meets the requirements of the current law. Explains that the state is essentially buying pollution control that is not state of the art but is simply required by law.
025	John Ledger	<p>Associated Oregon Industries. Testifies in opposition to HB 2181. Discusses emission of contaminants and the concerns surrounding this issue.</p> <ul style="list-style-type: none"> • Expensive fees. • State and Federal oversight. • State and Federal penalties. • Incarceration. • Law suites by citizens. <p>Explains Title 5 Air Quality Permit and Discharge Permit. Explains environmental programs that are paid for by industry.</p>
062	Ledger	Explains the positive aspects of manufacturing. Explains that companies look at the total cost of a pollution control project. States that many companies in Oregon have gone beyond pollution controls required by law by using the tax credit incentives. States that no company builds anything to meet minimum requirements things are over-engineered. Explains that Oregon has a wide range of companies using tax credits. Explains that 90% of the tax credits go to facilities outside of Portland. Comments that tax credits keep facilities in Oregon and can make the difference whether or not a plant stays open. Explains how the tax credits help pollution program managers gain acceptance for their program.

104	Ledger	Summarizes his testimony. Asks if making it more expensive to control pollution will ultimately result in decreasing it.
114	Rep. Gianella	Ask if the pollution control tax credit program affects industry economically.
115	Ledger	Answers yes.
116	Jim Craven	Oregon Council, American Electronics Association. Testifies in opposition to HB 2181. States that HB 2181 offers more micro management and more government intervention than the current law.
144	Craven	Explains the difficulty in determining levels of need and requirements of regulations as opposed to what "goes beyond" those requirements. References section 10 of HB 2181 and states that the language is confusing and unclear. Suggests that is another layer of administrative rules and administrative determinations. States that there is no "line" of comparison in the rules regarding what is required by Federal government standards. Explains that many standards are comparative. Points out that the existing credit is sunsetted in statute December 31, 200. Explains that HB 2181 would go through an administrative procedure to set up a program that would sunset at the end of 2001.
195	Craven	Explains that companies never design anything to the minimum. Gives example. States that HB 2181 would be forcing companies to do just the minimum rather than going above and beyond the minimum. Cites example. Emphasizes that HB 2181 is a disincentive.
223	Paul Cosgrove	American Forest and Paper Association. Distributes written testimony EXHIBIT G). Emphasizes that the measurement of whether something is stricter than Federal standards is more than an academic exercise. States that the measurement of incremental costs is unmanageable.
275	Cosgrove	Describes his membership in a task force from 1995. States that HB 2181 would make more the program more complicated. Describes how business, legislature and the environmental community have taken a holistic approach when dealing with problems and explains the consequences of not doing so. Cites Clean Air Act as an example. Explains the fee schedule of 1991. States that the tax credits helped to offset the costs of the fees.
292	Rep. Taylor	Asks if the technology for pollution control changes at pace to warrant the continuing tax credit program.
300	Cosgrove	States that they are constantly using new technology to meet new requirements. Explains how new technology also impacts the production of paper. Explains that more and more paper is now made from recycled materials rather than wood chips. States that the paper industry is one of the most capital intensive industries in the nation. States that in the last year, the paper industry has spent over one-half billion dollars for pollution control improvements.
328	Hillary Abraham	Legislative Affairs Director, Oregon Environmental Council (OEC). Distributes

		written testimony (EXHIBIT H). Describes history of OEC. States their goals. Testifies in support of HB 2181. Describes the existing pollution control tax credit program as a runaway train. States that Oregon taxpayers are forced to subsidize large corporations for complying with Federal law. Gives examples.
369	Abraham	States that the tax credit program is bad for the environment. Explains that subsidizing large investments in pollution control equipment encourages industry to buy equipment instead of making process changes or taking other steps to prevent pollution. States that HB 2181 focuses resources. Tax credits should not be provided for behavior that is legally required but, rather, should be used to encourage exemplary behavior that goes beyond what is required. Emphasizes that while OEC supports HB 2181, it suggests that the Legislature may want to end the program in order to expand tax relief for Oregon families.
TAPE 25, A		
002	Rep. Atkinson	Asks if OEC is advocating a tax cut for families.
006	Abraham	Answers no. Explains that a tax cut is just one possible example of how Oregon might use the money if the tax credit program ended.
008	Chair Welsh	Asks if she has ever worked in a manufacturing facility.
009	Abraham	Answers no.
010	Chair Welsh	Asks if she has ever taken a tour of a large manufacturing company such as Georgia-Pacific or Hyundai to view their pollution control facilities and technology.
012	Abraham	Answers that she has taken a tour of Wearhauser.
014	Rep. Devlin	Asks how the benefits are measured if a company is voluntarily going beyond those environmental quality controls required by law. Gives example.
029	Abraham	Explains that one of the benefits of a tax credit program is pollution prevention. States that preventing pollution is always a more cost effective way of dealing with pollution.
037	Rep. Devlin	Explains that going from "virgin" materials to "recycled" materials is a "dirtier" business in terms of controlling pollution. Asks how we judge the benefits of recycling programs if they are more costly and create more pollution. Asks if there is a preference that the recycled material be used even though it requires more investment.
052	Abraham	Answers yes.

058	Rep. Taylor	Concurs that it is more cost effective to prevent pollution than to clean it up. Asks if the existing law rewards prevention.
062	Abraham	States that the current law simply subsidizes business to comply with current regulation. Explains that it is more likely a company will move toward pollution prevention if there are incentives to go beyond the controls required by law.
070	Don Schellenberg	Associate Director of Government Affairs, Oregon Farm Bureau. Testifies in opposition to HB 2181. States that the grass seed and dairy industry favor a tax credit program. Explains the importance of the program to the grass seed industry and the agricultural community. States the concerns of the industry regarding the elimination of the tax credit program at the end of the year. Refers to section 18 of HB 2181. Explains that the tax credit program is specifically deleted for the grass seed industry. Explains that the dairy industry used the tax credit program extensively by establishing and improving holding ponds for animal waste. Comments that agriculture does not have the ability to pass on increased costs to the public since prices are established by the market. States that the tax credit program is the only way the public has of sharing in the costs of pollution controls developed by agricultural industries.
108	Chair Welsh	Closes Public Hearing on HB 2181. Adjourns meeting at 3:10 pm.

Submitted By, Reviewed By,

Gene Newton, Kristina McNitt,

Administrative Support Administrator

EXHIBIT SUMMARY

A - Informational material, Cascade Polity Institute, John A. Charles, 88 pp

B - HB 2181, written testimony, Lang Marsh, 9 pp

C - HB 2181, informational handout, Tony Van Vliet, 1 p

D - HB 2181, Tax credit program booklet, Tony Van Vliet, 75 pp

E - HB 2181, written testimony, Tony Van Vliet, 1 p

F - HB 2181, Review of Oregon's Tax System, Tony Van Vliet, 75 pp

G - HB 2181, written testimony, Paul Cosgrove, 1 p

H - HB 2181, written testimony, Hilary Abraham, 2 pp