

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

March 29, 1999 Hearing Room D

1:00 P.M. Tapes 83 - 87

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

STAFF PRESENT: Kristina McNitt, Administrator

Danielle Hamilton, Administrative Support

MEASURE HEARD: HB 2882 Public Hearing

HB 2419 Public Hearing and Work Session

Please 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 83, A		
006	Chair Welsh	Calls meeting to order at 1:15 p.m. and opens public hearing on HB 2882.
<u>HB 2882 PUBLIC HEARING</u>		

021	Kristina McNitt	Administrator. Summarizes HB 2882.
030	Jon Chandler	Oregon Building Industry Association (OBIA). Mentions that HB 2882 did not come out of LC as planned. Discusses the original intent. Overviews some of the problems that occur from the current lack of standards (EXHIBIT A) .
080	Chandler	Comments on increased density, compact urban form and the policy compromises that will need to occur. Proposes an amendment to HB 2882.
097	Rep. Morgan	Asks how local jurisdiction handle environmental run off issues.
100	Chandler	Answers that it will vary from one jurisdiction to another. Provides an example.
114	Rep. Taylor	Asks Chandler to define "urban" as it relates to HB 2882.
118	Chandler	Describes the term "urban."
120	Rep. Taylor	Asks if HB 2882 applies to all cities or just those required to do a comprehensive plan.
124	Chandler	Answers he will assume that it will be all cities.
134	Louri Aunan	Assistant Director, Department of Environmental Quality (DEQ). (EXHIBIT B) . Testifies in opposition to HB 2882. Discusses the work group working on implementation of storm water policies and regulations. Comments on water quality improvement plans and the adjustments being made. Express concerns with HB 2882.
175	Jan Renfroe	Manager of Policy and Program Development Department, DEQ. Testifies in opposition to HB 2882. Expresses concerns with the broad statutory language of HB 2882.
215	Jan Renfroe	Continues to overview concerns with the language of HB 2882 relating to "storm water pollution". Discusses DEQ's current permitting process. Expresses concerns with the lack of local flexibility in HB 2882.
275	Jan Renfroe	Discusses the erosion control task force formed by DEQ.
291	Susan Schneider	City of Portland. (EXHIBIT C) . Testifies in opposition to HB 2882. express concerns with the lack of clarity in HB 2882.
325	Rep. Morgan	Asks if the city of Portland has addressed listing problems in its planning process.

337	Susan Schneider	Answers that Portland has begun to address storm water standards.
340	Mary Stevens	Bureau of Environmental Services. Discusses Portland's storm water management manual.
367	Rep. Morgan	Asks if the new storm water management is implemented and practiced on infill construction currently.
369	Stevens	Answers no. Explains the current buildings process. Provides an example.
385	Rep. Morgan	Comments that she was curious what the level of implantation was to see how effective it will be at stopping the amount of sediment in the run off.
394	Stevens	Explains the expectations the new storm water run off system.
403	Rep. Morgan	Asks what the monitoring process is and how people know it is successful.
412	Stevens	Explains the monitoring process.
418	Jim Labbe	Local resident of Portland. (EXHIBIT D) . Testifies in oppositon to HB 2882. Discusses the correlation of storm water planning and the salmon recovery efforts. Comments on concerns with the effects of HB 2882 on the salmon recovery efforts.
TAPE 84, B		
		TECHNICAL DIFFICULTY [refer to written testimony EXHIBIT D for unrecorded comments].
013	Labbe	Closes by stating that HB 2882 will hinder local efforts.
025	Hillary Abraham	Testifies in opposition to HB 2882. Introduces Kasandra Griffen.
030	Kasandra Griffin	Oregon Environmental Council. Testifies in opposition to HB 2882. Reads written testimony (EXHBIT E) . Discusses her involvement with the stormwater taskforce.
080	Griffin	Continues to reads written testimony EXHIBIT E . Comments on the language "assure" being changed to "ensure."
108	Rep. Gianella	Asks a how has the DEQ been monitoring every stream and creek.

114	Griffin	States that she does not believe that she had said that. Clarifies her statement.
122	Rep. Gianella	Asks if the monitoring taking place is due to federal law.
125	Griffin	Answers yes.
127	Rep. Kruse	Asks if the Environmental Council has any concerns with DEQ's 303 listing and the one-size-fits-all temperature standards.
136	Griffin	Answers she cannot answer that question.
148	Rep. Gianella	Asks for clarification on DEQ regulating water temperature.
153	Griffin	Explains part of the total maximum daily load standard.
166	Rep. Atkinson	Asks if the Environmental Council is interested in regional land use.
183	Griffin	Answers no.
187	Rep. Atkinson	Comments that water and air conservation closely relate to land use issues.
193	Griffin	Agrees with Rep. Atkinson, but does not think the Environmental Council can be involved in all the issues.
197	Jan Lee	Oregon Water Resources Congress (OWRC). Testifies in opposition to HB 2882. Expresses concerns that HB 2882 does not clearly exempt agriculture storm water runoff.
210	Chair Welsh	Suggests a work group on HB 2882.
232	Chandler	Comments that a work group is a good idea.
233		Staff distributes (EXHIBIT F)
239	Chair Welsh	Closes public hearing on HB 2882 and opens public hearing on HB 2419.
<u>HB 2419 PUBLIC HEARING</u>		
267	Gary Lynch	Oregon Department of Geology and Mineral Industries Mine Land Reclamation Program (DOGAMIE). Introduces Larry Contusion.

270	Larry Knudsen	Attorney Generals Office. Discusses the Sanders vs. DOGAMIE court case (EXHIBIT G) .
330	Knudsen	Continues to overview the history of the Sanders vs. DOGAMIE litigation. Discusses the ñ1 amendments to HB 2419.
380	Knudsen	Addresses Jamie Sandersí comment from her testimony on 3-24-99. Comments on the Sandersís concern with ground water protection.
TAPE 83, B		
022	Lynch	Explains the incentive to reclaim and how it impacts the issues being discussed. Addresses the operating permit requirement.
064	Rep. Merkley	Asks if Lynch said in his testimony that in certain situations needing to reclaim a mine site before it can be reopened does not make sense.
072	Lynch	Answers yes.
075	Rep. Merkley	Suggests a simpler adjustment in the mine reclamation language. Asks why DOGAMIE is removing the language completely instead of making an adjustment.
085	Lynch	States the term abandonment has developed a specific definition. Explains the definition of "abandonment."
107	Knudsen	Agrees with Lynchís statement. Elaborates on the term "abandonment."
129	Rep. Merkley	Asks if the intention of the retroactive language in HB 2419 is to overturn the Sanders vs. DOGAMIE court case.
140	Knudsen	Answers that will be an effect of HB 2419. Explains the primary intention.
159	Rep. Merkley	Asks if DOGAMIE's intention is for it to not apply retroactively why ORS 517.790 is included in the retroactive provision of the HB 2419 -3 amendments.
165	Lynch	Clarifies that the -3 amendments are not DOGAMIE amendments.
171	Knudsen	Explains the changes to the states that were requested by DOGAMIE.
179	Rep. Devlin	Asks if being able to renew a permit will affect aggregate operations that are not exempt.

190	Lynch	Answers that DOGAMIE does not have the ability to require reclamation at a small or limited exempt site.
201	Rep. Devlin	Asks if, for sites that are not exempt, there would be an incentive built in if the permit could renewed to not do the reclamation plan for a site that is required.
205	Lynch	Answers that an operator who would rather make the financial obligation verses reclaiming would be rare to nonexistent.
224	Knudsen	Adds that because a permitted operation has extended the period of time for final reclamation it does not exclude them from regulation.
239	Rep. Merkley	Asks about Section four of the ñ3 amendments. Asks if the "inspection" language was purposed by DOGAMIE.
250	Lynch	Answers yes. Explains the notice of abandonment process. States that DOGAMIE will still maintain the ability to put a call on the bond and it will not be called a notice of abandonment.
270	Rep. Merkley	Asks what the notice will be called.
274	Knudsen	Answers he is not aware of a special name for the notice.
279	Rep. Merkley	Asks if the intention is to conduct the procurement under a different term, why DOGAMIE does not just use a different term in the clause.
282	Lynch	Comments that the idea is to avoid confusion by not using the term abandonment relating to inspection.
290	Rep. Merkley	Asks if any mine owner that has paid a \$200 fee in the past can now apply to have that fee returned.
302	Knudsen	Answers that could happen if the retroactive clause was applied to the fee.
310	Lynch	Clarifies that the \$200 fee is a penalty fee.
332	Rep. Merkley	Asks Lynch if he could conclude from his clarification of the \$200 fee that the -3 amendments do not accomplish what was intended regarding the retroactivity clause.
340	Knudsen	Clarifies that DOGAMIE did not purpose the retroactivity clause.
361	Robert Van Brocklin	Attorney, Representing Tigard Sand and Gravel. (EXHIBTs H , I, J) Testifies in

		support of HB 2419. Discusses the land use section of HB 2419.
410	Van Brocklin	Continues to discuss the land use section of HB 2419. Addresses the fundamental use of aggregate materials. Comments on the term "abandonment."
TAPE 85, A		
010	Van Brocklin	Highlights reasons to support HB 2419: <ul style="list-style-type: none"> • Recognizes the importance of aggregate materials to the state's economy. • Recognizes that mining does not occur on a constant basis. • Acknowledges that obtaining a permit is a clear intent to resume mining operation.
050	Van Brocklin	Continues to highlight reasons to support HB 2419: <ul style="list-style-type: none"> • Protects mines whose nonconforming use rights may be at risk under current law. • Promotes the preservation of farmland. Reduces construction costs.
100	Van Brocklin	Discusses the Stafford quarry litigation and the -6 amendments. Overviews the history of the Stafford community and Tigard Sand and Gravel quarries.
150	Van Brocklin	Comments on Tigard Sand and Gravel's compliance with the nonconforming use regulations. Reads quote from Judge Miller, the judge presiding over the Stafford neighbors litigation EXHIBIT G.
200	Van Brocklin	Addresses traffic and water concerns expressed by the Stafford neighbors that testified on 3-24-99. Discusses the value of the Stafford quarry.
250	Rodger Metcalf	Vice President of Tigard Sand and Gravel. Testifies in support of HB 2419 and discusses reasons for support. Discusses compliance inspection report, EXHIBIT J. Addresses the hours of operation.
300	Metcalf	Comments on Tigard Sand and Gravel's truck traffic, pages 12-24c of EXHIBIT J.
350	Metcalf	Discusses the blasting history of the Stafford Quarry, pages 25-30 of EXHIBIT J.
403	Metcalf	States that the Stafford Quarry is a good neighbor. Introduces Dale Dennis.
409	Dale Dennis	Organic farm owner. States that the Stafford Quarry is a good neighbor and he has never experienced any problems with them.

413	Metcaff	Points out a letter from Sharon Finnestad (EXHIBIT I).
TAPE 86, A		
011	Rep. Morgan	Asks if Dennis lives on the main access road to the Stafford Quarry.
018	Metcaff	Answers yes.
022	Devlin	Asks, during the period of abandonment, if the Stafford Quarry maintained all the required permits.
024	Metcaff	Answers yes.
026	Devlin	Asks if the road master controls the truck route.
030	Mecaff	Answers yes, to some extent.
036	Rep. Taylor	Asks Van Bocklen if Tigard Sand and Gravel stopped mining, because of a judges ruling that Tigard Sand and Gravel was an abandoned quarry.
046	Van Brocklin	Answers that the Clackamas County Circuit Court approved an injunction to enforce the decision that the Stafford Quarry had lost its nonconforming use.
050	Rep. Taylor	Asks if Tigard Sand and Gravel's only interest in HB 2419 is the retroactive language of the bill, which will allow them to resume mining. Asks if Van Brocklen, as an attorney agrees with that interest.
058	Van Brocklin	Explains the complications with the current definition of "abandonment".
098	Van Brocklin	Continues to explain the current definition of abandonment. Provides an example of a Supreme Court case. States that Tigard Sand and Gravel will benefit from HB 2419, but HB 2419 will prevent other cases of this sort from appearing.
116	Taylor	Expresses concerns with the permitting process overriding the local land use planning process.
125	Devlin	Asks Van Brocklin if economic impact is the basic for recognition of preexisting, non-conforming usage.
146	Van Brocklin	Answers yes. Mentions that there are circumstances in which the nonconforming use would be disallowed in the modern zone.

187	Rep. Devlin	Asks Metcaff , what the ratio of the value the Stafford Quarry is, if it is allowed to operate, verses if it is not allowed to operate.
195	Metcaff	Answers that if it is not allowed to operate as a mine the value is zero and \$7-8 million of it is operating as a mine.
203	Rep. Devlin	Asks if it is logical to abandon property with a value of \$7-8 million.
204	Metcaff	Answers no.
207	Rep. Kafoury	Asks Van Brocklin if all the previous court cases had been allowing intermittent use what Judge Milleris reasoning was behind her ruling.
210	Van Brocklin	Answers that Judge Miller was inforcng a ruling by the Clackamas County Hearing Officer. Discusses the hearing officers decision.
255	Rep. Kafoury	Asks for examples of other court cases of mines that have lost their nonconforming use.
258	Van Brocklin	Comments that he would provide some cases for her.
261	Rep. Kafoury	Asks why, in Van Brocklinis opinion, the Stafford Quarry case was decided against the quarry.
264	Van Brocklin	Explains the descion of the Clackamas County Hearings Officer. Provides an example of a Polk County case.
291	Rep. Kafoury	Asks what the final decision was.
293	Van Broklin	Answers that the mine was granted nonconforming use.
295	Rep. Kafoury	Asks if the same body that heard the Polk County case refused to hear the Stafford Quarry case.
305	Van Brocklin	Explains the writ of review put before the supreme court.
311	Rep. Merkley	Asks when the management of Tigard Sand and Gravel first discussed the possibility that the state law could come to the rescue of the Stafford Quarry.
320	Metcaff	Answers he was not aware that was the intention of Tigard Sand and Gravel. Notes that other quarry owners heard about the Stafford litigation and were concerned that such litigation could affect them, so they met with OCAPA to draft HB 2419.

329	Rep. Merkley	Asks at what time Tigard Sand and Gravel got involved with HB 2419.
330	Metcaff	Answers that Tigard Sand and Gravel was not aware of HB 2419 until after its first hearing before the committee in January.
334	Rep. Merkley	Asks Metcaff if it had ever crossed his mind, prior to January of this year, that it might be useful to lobby for a change in state law.
338	Metcaff	Answers that he was not involved in any discussions that involved changing state law regarding the Stafford case.
343	Rep. Merkley	Asks why Metcaff did not ever consider changing state law.
349	Metcaff	Answers that in January Tigard Sand and Gravel was still pursuing the descion of the Supreme Court. Asks Van Brocklin what the date was that the supreme court declined the hearing of the Stafford case.
351	Van Brocklin	Answers April 14, 1998.
355	Metcaff	Comments that he is not knowledgeable in the ways of the legislative system.
360	Rep. Merkley	Asks about the Martin case.
375	Van Brocklin	Asks for clarification on Rep. Merkley's question.
382	Rep. Merkley	Clarifies that in earlier testimony VanBrocklin indicated that the difference in the Martin and Stafford Quarry case is a difference of 5-7 years.
390	Van Brocklin	Clarifies his point in the statement. Comments on the Martin-Polk County court case.
414	Rep. Merkley	States that the Martin and Stafford Quarry case are very different.
420	Van Brocklin	States that he did not intend to misrepresent the Martin case; the overall point was that each case is being determined on a case-by-case basis.
TAPE 85, B		
002	Rep. Merkley	Asks Metcaff if the Stafford Quarry had won the litigation and the neighbors in the Stafford area were lobbying to change the law, if they should be given a fair hearing.

006	Metcaff	Discusses the term "fairness."
035	Van Brocklin	Comments on the annual exemptions of the Stafford Quarry.
081	Metcaff	Discusses the Sandersí testimony from the 3-24-99 public hearing referring to the nonconforming use program.
108	Lloyd Marbet	Resident, Boring. Testifies in opposition to HB 2419. Reads testimony (EXHIBITS K, I) . Comments on the -5 amendments. Discusses the proximity of his property in Boring to quarries.
160	Marbet	Continues to read written testimony EXHIBIT K . Discusses his membership in the Clackamas Rive Basin Council (CRBC) and the history of the council.
210	Marbet	Comments on the Sandersí testimony from the 3-24-99 public hearing. Discusses the current abandonment provisions.
260	Marbet	Continues to read written testimony and points out an attached review in EXHIBIT K .
287	Rep. Gianella	Asks Marbet how many years he has lived near the mining operations
290	Marbet	Answers since 1973.
292	Rep. Gianella	Asks Marbet if the mines were in operation when he first moved to his property.
293	Marbet	Answer that most of them were.
302	Rep. Merkley	Asks about a reclamation bond.
309	Marbet	Refers to written testimony EXHIBIT K . Discusses the lack of specific information regarding gravel mining.
368	Rep. Merkley	Asks about the -3 amendments.
390	Marbet	States he does not have that answer.
TAPE 86, B		
003	Jeff Klienman	Attorney, representing the Stafford Quarry neighbors. Discusses the procedures and laws relating to service mining. Comments on the Polk County vs Martin case.

055	Klienman	Discusses the differences between permits and limited exemptions. Comments on VanBroklen's testimony regarding the Blue Mountain Dog Food Factory.
098	Paul Hribernick	Represents, CC Misal. Presents (EXHIBIT M). Discusses the portions of HB 2419 that relate to the DOGAMIE abandonment issue. Comments on the Sanders testimony from 4-24-99.
150	Hribernick	Provides overview of EXHIBIT M . Explains the purpose of the retroactive language in HB 2419.
200	Hribernick	Comments on the third party judicial review process. Notes that administrative procedures act will remain unchanged under HB 2419.
250	Hribernick	Continues to discuss the Sanders vs. Tigard Sand and Gravel. Comments on the 60-70 percent of the mines that could be abandoned. States that HB 2419 is a statewide issue.
314	Rich Ingstrom	Management Director, Oregon Concrete Aggregate Producers Association (OCAPA). Suggests an amendment to the retroactive fee language in Section 10 of the ñ3 amendments, by removing ORS 517.800.
375	Ingstrom	Discusses the importance of being good neighbors, from the perspective of the quarries and the residents near quarries.
445	Chair Welsh	Points out a needed correction in the -3 amendments.
455	Ingstrom	Answers that 517.940 will need to be changed to 517.945 in two sections of the -3 amendments.
TAPE 87, A		
035	Chair Welsh	Closes public hearing on HB 2419 and opens a work session on HB 2419.
<u>HB 2419 WORK SESSION</u>		
040	Rep. Kruse	MOTION: Moves to ADOPT HB 2419-3 amendments dated 3/24/99 and that the amendments be FURTHER AMENDED on page 1, line 3, by changing "ORS 517.940" to "ORS 517.945" and on page 13, line 15, by deleting "ORS 517.800".
		VOTE: 6-2

		AYE: 6 - Atkinson, Devlin, Gianella, Kruse, Morgan, Welsh NAY: 2 - Merkley, Taylor EXCUSED: 1 - Kafoury
047	Chair Welsh	The motion CARRIES.
057	Rep. Kruse	MOTION: Moves to ADOPT HB 2419-5 amendments dated 03/23/99.
065	Rep. Merkley	Asks for clarification on the -5 amendments.
070	Chair Welsh	Explains that -5 amendments are an emergency clause.
075	Rep. Devlin	Asks if the emergency clause prevents a referendum.
079	Chair Welsh	Answers that it would prevent a referendum.
089	Members	Discusses referendums.
093	Knudsen	Explains the -5 amendments.
101	Lynch	Notes that they are not taking a stand on retroactivity.
118	Ingstrom	Comments on the -5 amendments.
134	Chair Welsh	Comments that retroactivity will save tax payers money.
140	Rep. Merkley	Expresses concerns with the -5 amendments.
145		VOTE: 6-2 AYE: 6 - Atkinson, Devlin, Gianella, Kruse, Morgan, Welsh NAY: 2 - Merkley, Taylor EXCUSED: 1 - Kafoury
	Chair Welsh	The motion CARRIES.

156	Rep. Kruse	MOTION: Moves HB 2419 to the floor with a DO PASS AS AMENDED recommendation.
158	Rep. Merkley	MOTION: Moves to ADOPT HB 2416-6 amendments dated 03/24/99.
164	Rep. Kruse	Withdrawals his previous motion.
169	Rep. Merkley	Comments on the -6 amendments.
208	Rep. Taylor	Asks about Section 10 of the -6 amendments.
229	Kleinman	Explains the intent of the ñ6 amendments.
235		VOTE: 2-6 AYE: 2 - Merkley, Taylor NAY: 6 - Atkinson, Devlin, Gianella, Kruse, Morgan, Welsh EXCUSED: 1 - Kafoury
	Chair Welsh	The motion FAILS.
156	Rep. Kruse	MOTION: Moves HB 2419 to the floor with a DO PASS AS AMENDED recommendation.
263	Rep. Devlin	Comments on his concerns with the retroactivity of HB 2419.
280	Rep. Kruse	Addresses the retroactivity.
293	Rep. Morgan	Comments on the issue of residential encroachment on resource land.
320	Rep. Taylor	Expresses her concerns with retroactivity.
340	Chair Welsh	Comments on the importance of being a good neighbor and the statewide significance of HB 2419.
360		VOTE: 6-2 AYE: 6 - Atkinson, Devlin, Gianella, Kruse, Morgan, Welsh

		NAY: 2 - Merkley, Taylor EXCUSED: 1 - Kafoury
	Chair Welsh	The motion CARRIES.
375	Chair Welsh	Closes work session on HB 2419 and adjourns at 4:55.

Submitted By, Reviewed By,

Danielle Hamilton, Jennifer Peck,
Administrative Support Administrator

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EXHIBIT SUMMARY

- A ñ HB 2882, written testimony, Jon Chandler, 1 p.**
- B ñ HB 2882, written testimony, Lori Aunan, 2 pp.**
- C ñ HB 2882, written testimony, Susan Schneider, 2 pp.**
- D ñ HB 2882, written testimony, Jim Labbe, 2 pp.**
- E ñ HB 2882, written testimony, Kasandra Griffin, 3 pp.**
- F ñ HB 2882, written testimony, Staff, 2 pp.**
- G ñ HB 2419, written material, Larry Knudsen, 4 pp.**
- H ñ HB 2419, written testimony, Robert Van Brocklin, 15 pp.**
- I ñ HB 2419, letter, Robert Van Brocklin, 3 pp.**

J ñ HB 2419, written material, Robert Van Brocklin, 33 pp.

K ñ HB 2419, written testimony, Lloyd Marbet, 8 pp.

L ñ HB 2419, written material, Lloyd Marbet, 8 pp.

M ñ HB 2419, renewal application, Paul Hribernick, 2 pp.