

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

April 15, 1999 Hearing Room 50

7:00 AM Tapes 85 - 86

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Sen. Joan Dukes, Vice-Chair

Rep. Bob Jenson, Vice-Chair

Sen. David Nelson

Sen. Frank Shields

Sen. Veral Tarno

Rep. Al King

Rep. Jeff Kruse

Rep. Randy Leonard

Rep. Lynn Lundquist

Rep. Susan Morgan

Rep. Bruce Starr

Rep. Terry Thompson

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

MEASURE/ISSUES HEARD: HB 3225 Public Hearing

HB 3071 Public Hearing

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 85, A		
004	Chair Ferrioli	Calls the committee to order at 7:12 a.m. Opens the public hearing on HB 3225.
<u>HB 3225 ñ PUBLIC HEARING</u>		
012	Paula Burgess	Governorís Assistant for Natural Resources, Governorís Office. Submits written testimony (EXHIBIT A) and testifies in support of creating a legal fund. Comments on adequate funding for the Oregon Plan.
055	Burgess	Continues testimony by suggesting changes to the sections of the HB 3225-2 amendments regarding the legal fund.
080	Rep. Kruse	Asks if the Governorís Office would have a problem with including the Clean Water Act as something the legal fund could be used to defend people against violations of.
084	Burgess	Responds that it should be this way.
086	Rep. Thompson	Asks for clarification on what is meant by the term "agencies" in Section 24 of the ñ2 amendments.
090	Burgess	Responds that they believe that a third-party is more likely to sue a department, so it is important that the fund be able to defend the agency permit program as well as a private individual.
100	Rep. Thompson	Clarifies that he was thinking in terms of fishermen and the potential for fisheries to go to court. Asks if this fund would be used in cases where ODFW feels that they want to defend the fisheries, like what the state is in right now with Coho salmon, for example.
109	Burgess	Responds that she does not have an answer at this point.
116	Rep. Thompson	States that he would be more comfortable if he had some parameters on how this is headed.
119	Burgess	States that they could begin to develop some draft criteria for when the legal fund would be used.
128	Rep. Messerle	Asks if the defense would be provided through the Attorney Generalís Office.

133	Burgess	Responds that this is the way they envisioned it.
138	Chair Ferrioli	Asks if there would be consideration for a mechanism to coordinate a legal strategy with private attorneys that might represent an intervenor, for example.
144	Burgess	Responds that they are always open to that kind of assistance.
147	Chair Ferrioli	Notes that there may be situations where a private attorney may mount a more vigorous defense than the Attorney General. States that it would be good to coordinate these efforts.
151	Burgess	Continues testimony by commenting on Section 26 of the ñ2 amendments.
188	Chair Ferrioli	Asks for clarification that Ms. Burgess will be back to comment on other sections of the ñ2 amendments.
191	Burgess	Responds that she will.
198	Jeannette Holman	Legislative Counsel Office. Notes that she has had some discussions with the Attorney General's Office regarding the legal fund issue. Testifies on the issues the committee needs to address in establishing a legal fund.
248	Holman	Continues testimony on the issues the committee needs to address in establishing a legal fund.
266	Rep. Lundquist	Asks if the committee needs to address the issue of who determines whether a person or agency is or is not in compliance.
271	Holman	Responds that this is part of the problem with the Oregon Plan in the way that it changes directions occasionally.
281	Rep. Lundquist	States that he can envision gray situations where it is difficult to determine whether or not a person or agency is in compliance.
288	Chair Ferrioli	Comments that the standards adopted by agencies have to be defensible or permits cannot be issued.
303	Rep. Lundquist	Notes that in the permit process, what activities the permittee is functioning and how they are doing this may be a gray area.
327	Rep. Kruse	Expresses concern about the area of citizen suits. Asks if there is any way to put a "loser pays" clause into statute.

340	Holman	Responds that she can look into whether something like this already exists in federal statute.
346	Rep. Kruse	Explains the reason for his question.
351	Rep. King	Asks if one of the considerations for this fund would be that there could be third-party lawsuits.
354	Holman	Responds that this is correct.
355	Rep. King	Asks what kind of authority they have in terms of authorization or disallowance of third-party suits regarding parties attached to GWEB actions that are private parties.
360	Holman	Responds that the citizen suit laws are in the federal laws, so the Legislature has limited authority to affect what can be done under those.
367	Chair Ferrioli	Comments that other states have created legal defense funds. Notes that providing defense for permittees is one way to remove some of the uncertainty with permitting under the ESA.
TAPE 86, A		
015	Ken Rocco	Legislative Fiscal Office. Comments on LFO's suggestion to use the Emergency Fund as the source of payment for any legal expenses that were authorized by whatever entity is generated to oversee and approve an action taken on the part of the state
034	Chair Ferrioli	Asks if there would be an allocation to the Emergency Board of a certain amount of dollars for this legal defense.
036	Rocco	Responds that it could be done in two ways.
041	Rep. Messerle	Asks how long it would take from the time someone applied for the authorization of the defense fund before they could start work on the case.
046	Rocco	Responds that he is not sure of the timeframe on the legal side, but the Emergency Board meets about every six weeks.
050	Rep. Lundquist	Expresses support for Mr. Rocco's proposal.
061	Chair Ferrioli	Notes that one of the reasons for a legal defense fund is to act as a deterrent. Asks Mr. Rocco if he is aware of any precedence for the state defending the permit against third parties.

067	Rocco	Responds that he does not know.
075	Holman	Responds that the state has not done this on behalf of a private citizen, but it has defended state agencies that have issued permits.
079	Burgess	Responds that the state agencies she has talked to have not defended against any third-party lawsuit.
087	Chair Ferrioli	Notes that he would also like to ask the Attorney General if there is a strategy that can be employed that releases the permittee.
108	Louie Pitt, Jr.	Government Affairs Director, Confederated Tribes of the Warm Springs. Submits written material (EXHIBIT B) and reads written testimony on funding habitat restoration and suggested changes to the ñ2 amendments.
152	Pitt	Continues reading written testimony.
187	Michael Mason	Representing Confederated Tribes of the Warm Springs. Clarifies that the suggested change to Section 18 is in regard to membership of the Water Resources Commission.
202	Pitt	Continues reading written testimony on suggested changes to the ñ2 amendments.
211	Mason	Clarifies that the suggested changes are in reference to the ñ2 amendments, not the original bill.
220	Pitt	Continues testimony by reviewing the watershed and fish habitat restoration principles of the tribe.
276	Pitt	Continues reviewing the tribeís watershed and fish habitat restoration principles.
356	Rep. Messerle	Asks what the tribeís policy is in regard to a natural event like a forest fire or erosion in their set aside lands.
367	Pitt	Responds that he assisted in developing a "light touch" policy for dealing with these wilderness areas. Explains how events like forest fires are dealt with in these areas.
TAPE 85, B		
006	Rep. Messerle	Asks Mr. Pitt to explain how they deal with the problem of erosion.

009	Pitt	Responds that it depends on the area.
027	Rep. Lundquist	Asks how long the lands that they practice this passive restoration have been set aside.
032	Pitt	Responds that by paper, they were set aside in 1977, but by tradition they have always been set aside.
054	Rep. Lundquist	Asks if the tribe has changed any management practices since 1977.
056	Pitt	Responds that they had a heavier handed "stop the burning" policy before 1977.
076	Janice Green	Oregonians for Fish and Fishing. Submits written testimony (EXHIBIT C) and testifies on the components her organization would like to see included in the amendments.
098	Chair Ferrioli	Summarizes the points Ms. Green was making in her testimony.
1404	Green	Comments that she would take the commissioners of the various boards off the OWEB board.
116	Chair Ferrioli	Continues summarizing the points Ms. Green was making in her testimony.
119	Green	Notes that private, non-profit organizations are not included.
126	Rep. Thompson	Asks Ms. Green if, when suggesting a fishery representative, she was referring to sport fishermen or commercial fishermen.
129	Green	Responds that it would be good to have one of both.
135	Chair Ferrioli	Closes the public hearing on HB 3225 and opens the public hearing on HB 3071.
<u>HB 3071 - PUBLIC HEARING</u>		
142	Judith Callens	Committee Administrator. Explains the provisions of the HB 3071-1 amendments.
202	Rob Douglas	Representing Columbia River Steamship Operators Association. Introduces Mr. Townley. Notes the change from "and" to "or" in the description of the crime.
227	Jim Townley	Executive Director, Columbia River Steamship Operators Association. Comments on the issue of ballast water and testifies on his organization's

		concerns with HB 3071.
247	Townley	Continues discussing what is being done to address the issue of ballast water and invasive species.
317	Townley	Continues testimony by suggesting changes to HB 3071.
325	Rep. Thompson	States that he thought concerns such as those expressed by Mr. Townley were addressed by including the term "knowingly" in the bill.
336	Chair Ferrioli	Comments on the issues the committee discussed regarding the bill.
350	Rep. Thompson	Notes that HB 3071 also requires that a list of invasive species be established.
357	Townley	Notes that they do not know what is on the list now.
368	Rep. Thompson	States that a ship captain would not "knowingly" transport an invasive species.
372	Rep. Leonard	Notes the concern being expressed and suggests using better language in the bill.
386	Rep. Messerle	Notes that the committee was equally concerned about private parties when considering HB 3071. Suggests having Mr. Townley's group report back to the Legislature periodically during the interim.
TAPE 86, B		
004	Chair Ferrioli	Notes that the concerns expressed by Mr. Townley are legitimate.
013	Pitt	Testifies in support of HB 3071.
030	Mason	Notes that the "knowingly" requirement makes it more difficult to prosecute. States that this is a serious issue.
041	Chair Ferrioli	States that the issue of invasive species is one the committee needs to deal with. Suggests Mr. Douglas and Mr. Townley work with staff to develop some additional amendments to HB 3071.
054	Rep. Thompson	Suggests exempting the maritime industry until they have completed their study on ballast water and invasive species.
064	Chair Ferrioli	States that the committee will bring HB 3071 before them again for a public hearing and work session. Closes the public hearing on HB 3071. Adjourns the

		committee at 8:38 a.m.
--	--	------------------------

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3225, written testimony, Paula Burgess, 2 pp.

B ñ HB 3225, written material, Louie Pitt, 3 pp.

C ñ HB 3225, written testimony, Janice Green, 2 pp.