

**JOINT COMMITTEE ON STREAM RESTORATION**  
**AND SPECIES RECOVERY**

**April 26, 1999 Hearing Room 50**

**7:00 AM Tapes 102 - 103**

**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 3071 Public Hearing and Work Session**

**HB 2881 Public Hearing and Work Session**

**HB 3225 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.

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| TAPE/#                                 | Speaker        | Comments  |
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| <b>TAPE 102, A</b>                     |                |   |
| 004                                    | Chair Messerle | Calls the committee to order at 7:15 a.m. Announces change in today's agenda. Opens the public hearing on HB 3071.                          |
| <b><u>HB 3071 - PUBLIC HEARING</u></b> |                |   |
| 008                                    | Judith Callens | Committee Administrator. Explains the provisions of the HB 3071-2 amendments.   |
| 046                                    | Jim Myron      | Oregon Trout. Testifies in opposition to the 2 amendments.  |
| 060                                    | Chair Messerle | Asks for clarification that there had been a discussion of aquatic weeds in regard to this issue as well.                                   |
| 063                                    | Myron          | Responds that they did this discussion. Notes that ODA already has statutes that seem to adequately cover weeds.                            |
| 066                                    | Lindsay Ball   | Fish and Wildlife Division Captain, Oregon State Police. Submits and reads written testimony regarding HB 3071 ( <b>EXHIBIT A</b> ).        |
| 097                                    | Rep. Jenson    | Asks for clarification that the exemption provided in section 5 of the 2 amendments is one that is not currently provided to this industry. |
| 112                                    | Ball           | Responds that this is correct.  |
| 114                                    | Callens        | Clarifies that in comparison to the HB 3071-1 amendments, the 2 amendments only add the exemption in section 5.                             |
| 121                                    | Sen. Tarno     | Asks for clarification that this only pertains to a criminal action, not a civil action.  |
| 122                                    | Ball           | Responds that this is correct.  |
| 125                                    | Rep. Thompson  | Asks if there has ever been a case of someone illegally transporting invasive species.  |
| 127                                    | Ball           | Responds that he is not aware of any.   |
| 134                                    | Chair Messerle | Closes the public hearing and opens the work session on HB 3071.  |

**HB 3071 n WORK SESSION**

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| 136 | Sen. Tarno     | <b>MOTION: Moves to ADOPT HB 3071-2 amendments dated 4/23/99.</b>   |
| 139 | Rep. Kruse     | Expresses concern about providing an exemption that does not currently exist.   |
| 150 | Rep. Jenson    | Questions why the n2 amendments are needed.   |
| 157 | Rep. Morgan    | States that giving the industry the exemption that is included in the n2 amendments would remove a tool out of the toolbox of the OSP, and this is not a good way to be writing this piece of legislation.  |
| 162 | Sen. Dukes     | Notes that ballast water is one of the biggest ways invasive species get into Oregon waters and that giving an exemption for ballast water does not make sense to her.  |
| 166 | Sen. Ferrioli  | Comments that the shipping industry is in the process of conducting a survey and that the exemption was connected to the completion of this survey. Notes that the n2 amendments reflect the idea that there should be no attempt at prosecution during the time the industry is conducting their survey. |
| 195 | Chair Messerle | Notes that it was his understanding that it was intentional for the purpose of transporting invasive species, not just knowingly. Asks Captain Ball to come back up and clarify things for the committee.   |
| 197 | Ball           | Explains that mental culpability must be established in order to convict someone of a crime.  |
| 214 | Rep. Lundquist | Comments that he sees the exemption as a reasonable approach.   |
| 226 | Sen. Tarno     | Notes that the crime is knowingly transporting and that no shipping firm would probably knowingly transport an invasive species.  |
| 238 | Rep. Kruse     | Questions whether it is premature to be making law around this issue.   |
| 253 | Sen. Shields   | Asks what the effect of the legislation would be without section 5.   |
| 265 | Callens        | Responds that the n1 amendments contain everything in the n2 amendments except the exemption in section 5.  |
| 273 | Sen. Shields   | Asks whether passing HB 3071 without the exemption would put some pressure on the industry to complete their survey.  |
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| 283                | Ball          | Notes that all laws are written so they create a deterrent effect as well. Responds that he is unable to address whether or not this would put pressure on the shipping industry.                                     |
| 306                | Rep. Jenson   | Comments that the shipping industry might be more concerned about the possibility of civil action.  |
| 327                | Rep. Starr    | Asks for clarification that if an individual in the shipping industry wanted to introduce an invasive species into Oregon waters, and the exemption is in place, this individual would not be subject to prosecution. |
| 334                | Ball          | Responds that it would be much more difficult for a district attorney to prosecute an individual under these circumstances.   |
| 338                | Sen. Dukes    | Comments that the ñ2 amendments is the wrong approach to take.  |
| 369                | Rep. Thompson | Notes that the main intention in introducing HB 3071 was to stop the transport of mitten crabs.   |
| 376                | Sen. Nelson   | Questions whether HB 3071 is needed at all. Asks for clarification that a person could be charged under present law for transporting an invasive species into Oregon waters.  |
| 386                | Ball          | Responds that this is not entirely correct. Notes that the present laws pertain to invasive fish species.   |
| 393                | Sen. Nelson   | Asks for clarification that there would be a substantial change in present law if they pass HB 3071.  |
| 394                | Ball          | Responds that this is correct.  |
| 397                | Sen. Nelson   | Asks how they would go about proving that someone knowingly transported an invasive species in ballast water.   |
| 401                | Ball          | Responds that they have not been able to do it yet.   |
| 405                | Rep. Kruse    | Asks how long it would take ODFW to develop a list of invasive species.   |
| 413                | Joe Rohleder  | Assistant to the Director, Department of Fish and Wildlife. Responds that it could take at least six months.  |
| <b>TAPE 103, A</b> |               |   |
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|  |                       | <p><b>VOTE: 5-9</b></p> <p><b>AYE: 5 - King, Lundquist, Nelson, Tarno, Ferrioli</b></p> <p><b>NAY: 9 - Dukes, Jenson, Kruse, Leonard, Morgan, Shields, Starr, Thompson, Messerle</b></p>                       |
| <b>025</b>   | <b>Chair Messerle</b> | <b>The motion FAILS.</b>   |
| Committee members ask for clarification on the vote count. |                       |  |
| 035  | Callens               | Notes that the committee rules require that a majority of each chamber's members vote in favor to pass a measure.  |
| <b>040</b>   | <b>Rep. King</b>      | <b>MOTION: Moves to ADOPT HB 3071-1 amendments dated 4/9/99.</b>   |
| 042  | Rep. Jenson           | Notes that he cannot support HB 3071 without clarification on the financial burden this places on cities and counties.   |
| 053  | Ball                  | Explains that most of the burden would be at the county level under class A misdemeanor penalties.   |
| 076  | Rep. Thompson         | Notes that the burden of the loss of the fishery is what is costing state and local government millions of dollars now.  |
| 082  | Sen. Tarno            | Asks if ñ1 amendments require ODFW to check the ballast water of vessels coming into Oregon ports.   |
| 094  | Rohleder              | Responds that he is unable to interpret section 4 of the ñ1 amendments well enough to answer the question. States that he would not assume that ODFW would be in the process of issuing ballast water permits. |
| 102  | Chair Messerle        | States that he did not think a permit would be required unless a person intended to bring in exotic species.   |
| 105  | Rohleder              | Notes that this section was written with the idea that it would allow flexibility in moving species that could be beneficial in some cases.  |
| 110  | Sen. Dukes            | States that she is interested in seeing the list of invasive plant species that ODFW develops. Comments on the threat of mitten crabs.   |
| 122  | Rep. Kruse            | States that he would be more comfortable creating a new law based on a known list.   |
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| 132                                    | Rohleder       | Notes that new invasive species comes to ODFW's attention very rapidly. Comments on why ODFW needs this higher class of invasive species that is different than the species covered by their wildlife integrity rules. |
|  |                | <b>VOTE: 10-4</b><br><br><b>AYE: 10 - Dukes, King, Leonard, Lundquist, Morgan, Shields, Starr, Thompson, Ferrioli, Messerle</b><br><br><b>NAY: 4 - Jenson, Kruse, Nelson, Tarno</b>                                    |
| 160                                    | Chair Messerle | The motion CARRIES.  |
| 162                                    | Rep. Thompson  | <b>MOTION: Moves HB 3071 to the floor with a DO PASS AS AMENDED recommendation.</b>  |
|  |                | <b>VOTE: 10-4</b><br><br><b>AYE: 10 - Dukes, King, Leonard, Lundquist, Morgan, Shields, Starr, Thompson, Ferrioli, Messerle</b><br><br><b>NAY: 4 - Jenson, Kruse, Nelson, Tarno</b>                                    |
| 173                                    | Chair Messerle | The motion CARRIES.<br><br><b>REP. THOMPSON will lead discussion on the floor.</b>   |
| 177                                    | Chair Messerle | Closes the work session on HB 3071 and opens the public hearing on HB 2881.  |
| <b><u>HB 2881 n PUBLIC HEARING</u></b> |                |  |
| 182                                    | Callens        | Explains the provisions of the HB 2881-1 amendments.   |
| 214                                    | Jon Chandler   | Director of Government Affairs, Oregon Building Industry Association. Testifies in support of HB 2881 and the n1 amendments.   |
| 250                                    | Chandler       | Continues testimony by explaining the proposed amendment that they want to put into HB 2881 when it comes back to the committee on the Senate side.  |
| 268                                    | Sen. Dukes     | Asks Mr. Chandler why they do not make this group a subcommittee of this committee rather than a task force.   |
| 287                                    | Chandler       | Responds that all they want is a legislatively compromised committee to look at this issue.  |
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| 308                                   | Rep. Morgan     | States that the need to address water quality standards of storm water runoff is going to become more important.  |
| 320                                   | Glen Stonebrink | Oregon Cattlemen's Association. States that his organization does not have any problems with HB 2881 if the 11 amendments are adopted. Notes his organization's concerns if the amendments are not adopted.   |
| 344                                   | Rep. Leonard    | Asks if non-point source pollution can be regulated under the ESA.  |
| 346                                   | Stonebrink      | Responds that non-point source pollution is not addressed in the ESA.   |
| 351                                   | Pete Test       | Oregon Farm Bureau. Notes that the decision in the Camp Creek case did not deal directly with non-point source pollution. Comments that the Farm Bureau did not support the original version of HB 2881, but they do support it with the 11 amendments. |
| 375                                   | Stonebrink      | Notes what the Clean Water Act can do with non-point source pollution.  |
| 385                                   | Rep. King       | Questions whether this committee is the appropriate body to deal with this issue.   |
| 399                                   | Chair Messerle  | Expresses concern about overloading this committee.   |
| 409                                   | Rep. King       | Comments on the number of members on the task force.  |
| <b>TAPE 102, B</b>                    |                 |   |
| 004                                   | Chair Messerle  | States that he is not opposed to a bipartisan committee.  |
| 005                                   | Chandler        | Comments that this was the intent.  |
| 017                                   | Rep. Kruse      | Notes that interim committees and task forces fall under the same proportionality rules as session committees do, so this issue would be addressed.   |
| 021                                   | Chair Messerle  | Closes the public hearing and opens the work session on HB 2881.  |
| <b><u>HB 2881 11 WORK SESSION</u></b> |                 |   |
| 022                                   | Sen. Dukes      | <b>MOTION: Moves to AMEND HB 2881-1 amendments on page 1, by deleting section 1, subsection 1 and changing the references to "task force" to "an appropriate interim legislative committee".</b>  |
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| 036                                    | Rep. Leonard   | Comments that the study outlined in section 1, subsection 2(A) through 2(E) does not require looking at what storm water may cause in terms of pollution.   |
| 054                                    | Rep. Morgan    | Asks Sen. Dukes to amend her motion to include a subsection 2(F) that deals with urban in-fill issues.  |
| 058                                    | Sen. Dukes     | States that she does not have a problem with this.  |
| 063                                    | Chandler       | Clarifies that the amendment Rep. Morgan has suggested is in Legislative Counsel and they will try to incorporate this into the bill when it comes back to the committee on the Senate side. Responds to Rep. Leonard's comments by noting that what they are attempting to do with the ñ1 amendments is to try and get away from the issue of standards. |
| 082                                    | Sen. Dukes     | Withdraws her previous motion. Notes that she is doing this so they can get the language regarding the in-fill amendment from Legislative Counsel.  |
| 086                                    | Chair Messerle | States that this would be the Chair's preference.   |
| 088                                    | Rep. Lundquist | Asks if the majority of the quorum specified in the bill in regard to voting by the committee is standard.  |
| 092                                    | Callens        | Responds that she would have to check with Legislative Counsel on this.   |
| 098                                    | Chair Messerle | Closes the work session on HB 2881 and opens the public hearing on HB 3225.   |
| <b><u>HB 3225 ñ PUBLIC HEARING</u></b> |                |   |
| 107                                    | Deborah Boone  | Coordinator, Necanicum Watershed Council. Testifies on her council's suggestions for changes to the HB 3225-2 amendments.   |
| 162                                    | Rep. Kruse     | Asks for clarification that the council just looked at the ñ2 amendments and not the ñ5 amendments.   |
| 163                                    | Boone          | Responds that they like the ñ2 amendments.  |
| 165                                    | Rep. Kruse     | Asks Ms. Boone if her council looked at the ñ5 amendments.  |
| 166                                    | Boone          | Responds that they did.   |
| 170                                    | Rick Sohn      | Chair, Umpqua Basin Watershed Council. Submits written testimony ( <b>EXHIBIT B</b> ) and testifies on the work he has done regarding the Measure 66 legislation. Notes that he has not had time to develop a thorough presentation to the  |



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|     |                | committee on HB 3225.  |
| 211 | Eric Carlson   | Coordinator, Clackamas River Basin Council. Submits written material <b>(EXHIBIT C)</b> and testifies on his council's concerns with the ñ5 amendments.  |
| 269 | Sohn           | Continues testimony by reviewing his council's feedback on the ñ5 amendments.  |
| 311 | Sohn           | Continues reviewing his council's feedback on the ñ5 amendments.   |
| 322 | Chair Messerle | Explains that this week the committee will be focusing on the other bills that need to be moved out, and that they will focus on HB 3225 next week. States that tomorrow's meeting will run late into the evening. Adjourns the committee at 8:33 a.m. |

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 3071, written testimony, Lindsay Ball, 2 pp.**

**B ñ HB 3225, written testimony, Rick Sohn, pp. [exhibit missing]**

**C ñ HB 3225, written material, Eric Carlson, 5 pp.**