

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

May 4, 1999 Hearing Room 50

4:30 PM Tapes 112 - 115

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 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 112, A

004

Chair Messerle

Calls the committee to order at 4:44 p.m. as a subcommittee for the purpose of taking public testimony. Opens the work session on HB 3225.

HB 3225 n WORK SESSION

018

John Runyon

Coordinator, McKenzie Watershed Council. Submits and reads written testimony regarding the creation of a long-term, effective approach to fish recovery and water quality improvement (**EXHIBIT A**).

077

Jan Perttu

Coordinator, Applegate River Watershed Council. Testifies in support of the Oregon Plan and watershed councils. Notes her council's support for the definitions in the HB 3225-7 amendments.

116

Tom Macy

Director, Grande Ronde Model Watershed Program. Testifies on his organization's recommendations for the Measure 66 structure.

187

Macy

Continues testimony on recommendations for the Measure 66 structure.

231

Sen. Ferrioli

[Question inaudible]

244

Macy

Asks for clarification as to whether Sen. Ferrioli is talking about federal agencies applying for grants through the watershed councils.

248

Sen. Ferrioli

Clarifies his previous question [comments inaudible at times].

287

Macy

Responds that this is exactly what he is advocating.

301

Chair Messerle

Asks the other witnesses if they would prefer that state and federal agencies applying for grants do it through sponsorship with the local council.

305

Runyon

Responds that it should be sponsored through the local watershed council.

313

Perttu

Notes that BLM and the U.S. Forest Service own 2/3 of their watershed. Responds that they are more likely to apply for funds jointly for project proposals.

330

Rep. Starr

Asks Ms. Perttu to explain what she meant when she said that the HB 3225-5 amendments could create dissension.

335

Perttu

Responds that her concerns were detailed in written testimony that she sent to the committee previously.

392	Rep. King	Asks Mr. Runyon if he has had a chance to review HB 3225 and all of the proposed amendments.
413	Runyon	Responds that his council has not had the time for considerable deliberation on the bill and the amendments.
TAPE 113, A		
010	Chair Messerle	States that he would like go through some topics that staff and the Co-Chairs have developed that they need to get to a consensus on. Notes those issues that he feels the committee should remove from consideration [comments inaudible at times].
034	Judith Callens	Committee Administrator. Explains that that in all the amendments that deal with creation of the Parks and Natural Resources Fund, they are dealing with the same language that is lifted directly from Measure 66.
048	Ken Rocco	Legislative Fiscal Office. Explains the Parks and Natural Resources Fund structure. Referencing page 6, line 27 of the ñ2 amendments, notes that the only thing that might need to be reconsidered is identifying DAS as the single agency.
078	Sen. Dukes	Asks if the use of the term "native" is out of the ballot measure.
082	Rocco	Responds that it is.
084	Chair Messerle	Asks for clarification that the question is whether the fund would be administered through DAS or some other agency.
085	Rocco	Responds that the language in line 27 on page 6 would make this designation of the single agency. Notes that the mechanism of getting the monies into these accounts will be done by DAS regardless of what agency is identified in that section of the bill.
093	Chair Messerle	Asks for clarification that they are talking about whether the single agency would be DAS, WRD, or a stand-alone agency.
094	Rocco	Responds that this is correct.
096	Callens	Clarifies that lines 14 and 15 on page 5 of the ñ2 amendments is where the committee would be making the single agency designation and that line 27 on page 6 refers to the administration of the subaccount funds.
104	Rep. King	Asks for clarification that the subaccount function is currently being done by WRD.

111	Rocco	Responds that currently the grant program for the Oregon Plan is administered by GWEB. Notes that DAS currently distributes all of the lottery dollars in the state and that nobody does what is described in line 27 of the ñ2 amendments.
124	Sen. Ferrioli	Questions whether designating an agency other than DAS does anything other than create another item on a budget spreadsheet and create a paper trail.
139	Rocco	Notes that it is his understanding that one of the proposals is exactly this.
152	Sen. Ferrioli	Notes the DAS is the agency that distributes lottery funds. Questions whether they need to run the money through any other agency before it gets to the account and subaccounts.
159	Chair Messerle	Asks for clarification that if the money goes through DAS and on to an expanded OWEB it would go to WRD, and if they set up the accounts in a separate department and commission the money would go directly to that department.
167	Rocco	Responds that this is one path of doing this.
177	Sen. Dukes	States that the designation of DAS on page 5 of the ñ2 amendments makes sense and that the designation on page 6 should be changed to WRD.
192	Chair Messerle	Questions what the function of WRD would be if they set up a separate commission.
197	Rep. Thompson	Asks what the Co-Chairs have in mind in terms of the process of deliberation on the bill.
202	Chair Messerle	Responds that he is not asking for a vote tonight, but he would like to get consensus on some of the issues.
208	Rep. Lundquist	States that he wants to setup the structure in the simplest way that works effectively. Notes that it seems that DAS is a different level in the structure on page 6 than it is on page 5.
221	Rep. Starr	States that he supports the creation of a new commission.
230	Rep. Kruse	Comments that it makes sense to have the money come through DAS rather than WRD.
251	Callens	Notes that the language on page 5 is duplicative and that the language on page 6 has to be the single state agency that receives the initial 50% split. Clarifies that this is a separate issue from who is going to administer the grants.

267	Rocco	Notes that what Rep. Kruse just said is what he has been trying to communicate.
271	Chair Messerle	Notes there is confusion because some of the restoration and protection funds are going to go directly to other departments while the bulk will go to the granting authority. States that it makes sense to let the money go through DAS at this level and then at the next level through the board or commission.
280	Rocco	Notes that the bulk of those funds would go to whatever granting organization the committee has in mind, and this organization would be responsible for administering the grant program.
285	Sen. Nelson	Comments that the most important thing is to get as much money as possible out on the ground.
299	Sen. Ferrioli	Questions whether they need to talk about the interim process [comments inaudible at times].
313	Rocco	States that even if there is not an issue of backfill in the future there still may be a need for Measure 66 dollars for agency operations.
327	Rep. King	Asks if the only way watershed councils can receive money is through the grant process.
341	Rocco	Responds that in the current biennium the Watershed Improvement Grant Fund has been the source of funding for local watershed councils and that the same kind of arrangement could work under this structure.
356	Rep. King	Asks Mr. Rocco if the only way non-agency entities are going to get money is through the grant process, which could be done by WRD.
363	Rocco	Responds that this is correct and that there must be some state agency to pass that money on to local groups.
368	Rep. King	Asks for clarification that DAS would not be cutting payroll checks directly to watershed coordinators, for example.
370	Rocco	Responds that DAS would not be doing this.
376	Rep. Morgan	Comments that keeping part of the money in DAS and moving part of it to some place else for grant purposes will perpetuate the current problem of not being able to track the money very well.
390	Rocco	Explains how LFO will track these dollars by agency.

406	Rep. Morgan	Asks how this is different then the current situation.
408	Rocco	Responds that currently they can track the dollars, but they are more reliant on the agency to provide them with details.
TAPE 112, B		
005	Rep. Morgan	Asks why it would not be a good idea to have all of the Measure 66 money go to the agency that is going to disperse grant funds and have all the money be dispersed from there.
009	Rocco	Responds that this is a possibility. Notes that the only difficulty with this is that in this biennium a number of the recipients of those dollars are going to be state agencies.
024	Chair Messerle	Asks if there is a mechanism in the budget process that if the money is sent to the granting agency the funds could be passed straight through, or would this have to be a determination of the commission.
033	Rocco	Responds that it depends on the language the committee develops in establishing the commission. Notes that LFO feels it would be easier to use DAS and make that allocation to the agencies and then have the money directly passed into those agencies for their programs.
039	Chair Messerle	Notes that if the commission made the decision for the total amount, this could make things very difficult for the agencies, because the Legislature would have to underfund those agencies with a budget note telling them to go to the commission to request funds.
044	Rocco	States that this is correct.
046	Pat Amadeo	Explains that they want 100% of the salmon money to go to the single, lead substantive agency, not DAS. Notes that they are not interested in making it easy to use Measure 66 money to backfill.
086	Chair Messerle	Asks Ms. Amadeo if she feels the Legislature has the authority to designate where some of that funding goes.
088	Amadeo	Responds that she assumes the Legislature will do to that component of the fund exactly what it did to the Parks and Recreation Department.
096	Chair Messerle	States that the Legislature is currently developing budgets for other state agencies and that it seems what Ms. Amadeo is suggesting involves a time lag.
100	Amadeo	Notes that they assume there would be transition language that would be

		necessary to make this particular entity function as they anticipated.
109	Rocco	Comments that if there is an allocation of these funds to various entities, this would be in a single budget document and it would be very evident where the money would be flowing.
118	Chair Messerle	Asks if this is a legislative decision.
119	Rocco	Responds that it is.
121	Sen. Ferrioli	Questions why it matters which entity is the one that does the accounting.
127	Amadeo	States that it does matter to the proponents because the lead agency that makes the recommendation on if or how the other agencies get money helps coordinate the Oregon Plan.
134	Sen. Ferrioli	Notes that DAS does not make recommendations to fill budget shortfalls nor authorize expenditures by the Legislature [comments inaudible at times].
139	Amadeo	States that the Governor's budget is the first blush of how the money is spent.
141	Sen. Ferrioli	Clarifies that DAS does not do anything by its own authority.
145	Rep. Lundquist	Comments that the way the language in the ñ2 amendments is written is appropriate and he is willing to move forward on this.
155	Rep. Jenson	Asks how much it would cost if the money goes through DAS.
158	Sen. Ferrioli	Responds that the intention is to include budget notes that would not allow DAS to charge for any of the costs associated with making electronic transfers to the agencies receiving money [response inaudible at times].
164	Rep. Jenson	States his preference that there not be an exorbitant charge to transfer money.
166	Chair Messerle	Notes that their goal is that there be no charge.
167	Rep. Morgan	Asks Rep. Lundquist if he was referring to DAS on the second level in his previous comments.
171	Rep. Lundquist	Responds that he was referring to page 6 of the ñ2 amendments.
178	Rep. Lundquist	MOTION: Moves that lines 24 through 28 on page 6 of the

		HB 3225-2 amendments be accepted by the committee.
181	Chair Messerle	Clarifies that any motion made on an individual piece is not binding and that the committee will be able to look at the whole package again when it is put together.
185	Rep. Starr	Asks for clarification that they are not talking about the agency that is going to distribute the grant funds at this point.
188	Chair Messerle	Responds that they are not. States that rather than a formal motion he would just like to get some consensus.
Committee discusses whether they are in consensus on the language in lines 24 through 28 on page 6 of the ñ2 amendments.		
205	Rep. Kruse	Asks if the second level on the parks side is still in DAS.
207	Chair Messerle	Responds that they only have one agency to deal with.
209	Rep. Kruse	States that, conceptually, it is no different.
214	Roy Hemmingway	Oregon Plan Manager, Governor's Office. States that they would support the ñ2 amendments as written.
229	Sen. Tarno	Notes that some of the committee members have a caucus at 6:00 p.m. and asks if the committee will be taking action on HB 3225.
230	Chair Messerle	States that they will not be moving the bill tonight.
237	Callens	Clarifies that the intention is to pull pieces together to develop ñ11 amendments to HB 3225.
251	Rep. Thompson	States that what he was attempting to do in bringing the ñ6, ñ7, ñ8, ñ9, and ñ10 amendments was to allow the committee to vote in sections.
260	Chair Messerle	Notes that they are not looking at a straight up or down vote.
262	Rep. Thompson	Expresses concern that some members may vote against the final bill because there is one piece that concerns them.
277	Chair Messerle	Recesses the committee for break at 5:58 p.m.
281	Chair Messerle	Calls the committee back to order at 6:13 p.m. States that he would like to

		discuss the legal fund issue.
301	Richard Whitman	Department of Justice. Submits written material (EXHIBIT B) and testifies on the proposed changes to section 25 of the ñ2 amendments regarding the legal fund.
357	Whitman	Continues testimony on the proposed changes to section 25 of the ñ2 amendments.
407	Rep. Kruse	Asks if having this "preemptive strike" adds significantly to the cost.
TAPE 113, B		
001	Whitman	Responds that he does not believe so.
005	Rep. Kruse	Asks if the ability to have a quick turnaround is in the sense of government or in the sense of the real world.
008	Whitman	Responds that it is intended to be quick turnaround in the real world sense. Notes that there are court deadlines to meet.
017	Rep. Thompson	Notes that the suggested changes deal with the federal Water Pollution Control Act and this could open up a whole set of far reaching lawsuits. Asks if he is understanding this correctly.
023	Whitman	States that they believe these changes accurately represent the scope of the Oregon Plan.
027	Holman	Notes that in paragraph A it is required before you can proceed that it be consistent with the Oregon Plan, and this would limit it to a certain extent.
031	Rep. Thompson	Expresses concern that this could result in all kinds of lawsuits in the future.
042	Chair Messerle	States that he would be opposed to separating out different parts of the Oregon Plan.
050	Rep. Jenson	Asks for clarification that if an individual operating in good faith under the Oregon Plan with the support of the agency is involved in litigation, the state will be there along side of them, but they are pretty much on their own.
060	Whitman	Responds that where the landowner takes an action that is endorsed by a state agency, that agency will have the ability to participate in the lawsuit and that the Attorney General cannot be legally responsible for the defense of that individual.

077	Rep. Jenson	Notes that fundamentally this landowner is going to pay the \$125,000 in attorney fees.
082	Whitman	States that the hope is that by having the state help in the defense, the cost to the landowner would be reduced.
087	Rep. Jenson	Notes that if he were that landowner he would not be fond of even \$25,000 in attorney fees.
089	Whitman	States that one of the reasons for the amendments to this section is to allow DOJ to work with landowners to avoid them getting sued.
093	Callens	Referencing page 21, line 25 of the ñ2 amendments, asks Mr. Whitman to explain why the language regarding "to the limit of the fund" is not included in the suggested changes.
106	Whitman	Responds that the omission of this language was an oversight and should be in there.
109	Rep. Kruse	Asks for clarification that the state will defend the actions of the landowner but not the landowner.
114	Whitman	Responds that this is correct.
118	Sen. Dukes	Asks for clarification that if someone sues the landowner, but not the state agency, this fund does not help at all.
121	Whitman	Responds that it does help.
123	Sen. Dukes	Asks for clarification that the landowner would go to the state agency to ask what they do know and the agency would go to DOJ for legal advice.
124	Whitman	Responds that it could happen this way or in a variety of ways.
129	Sen. Dukes	Asks for clarification that the landowner would still be hiring an attorney.
130	Whitman	Responds that this is correct.
133	Sen. Ferrioli	[Comments inaudible]
155	Rep. King	States that it is his understanding that "to the limit of the fund" takes into account the individual or the local government.

169	Whitman	Notes that Rep. King's characterization is correct.
176	Sen. Ferrioli	[Question inaudible]
179	Whitman	Responds that what they are starting to see is a number of lawsuits develop across the country where the target of the lawsuits alleging violations of the ESA or the Clean Water Act typically are not landowners.
194	Chair Messerle	Asks if there is any opposition to the proposed amendment to section 25 of the ñ2 amendments.
207	Sen. Dukes	Questions whether Mr. Miller's presentation is from the first or second work group.
214	Greg Miller	Weyerhaeuser Company, Inc. Clarifies that his presentation is from the first work group. Explains that the original natural resources work group decided to take the ñ5 amendments and incorporate the 10 principles that the second work group came to consensus on.
267	Rep. Leonard	Asks who was involved in the in this work group.
269	Miller	Responds that they did not have the proponents of Measure 66, the environmental community, or the Governor's Office.
279	Rep. Leonard	Asks why these groups were not included in the work group.
287	Miller	Responds that they tried to include these groups in the broader work group.
307	Chair Messerle	Asks to receive copies of the new draft proposal that the natural resources work group has come up with.
311	Rep. Thompson	Expresses concern about the exclusion of the Governor's Office, the environmental community, and the proponents of Measure 66.
324	Miller	Acknowledges that they did not succeed in this work group setting. Notes that it was their desire to have an official work group put together earlier on.
339	Chair Messerle	Notes that Mr. Miller did present a consensus of a larger group.
350	Rep. King	Notes that the work group was working under the same timelines as the committee.
364	Chair Messerle	Notes that the Co-Chairs have met a couple of times with the Governor's Office.

377	Sen. Dukes	Asks Mr. Miller if he has officially abandoned the bigger work group.
379	Miller	Responds that they have not abandoned the broader work group.
381	Sen. Dukes	Asks Mr. Miller if he will come back with recommendations from the broader work group.
382	Miller	Responds that further meetings have not been scheduled with the broader work group. Notes that once the committee has developed 11 amendments to HB 3225 the broader work group could get together to review these.
TAPE 114, A		
002	Callens	Explains the proposed membership structure of OWEB.
019	Chair Messerle	States that the committee needs to talk about whether to go with a board or commission structure before they start discussing membership. Comments in support of a commission structure. Notes that he would not want this commission to have oversight over other agencies.
036	Sen. Dukes	Comments that she does not support the creation of a commission.
047	Rep. Morgan	Comments in support of a commission structure [comments inaudible at times].
066	Rep. Thompson	Referencing page 4 of the HB 3225-6 amendments, states that this is the structure he would like to see created.
081	Chair Messerle	Asks for clarification as to what Rep. Thompson is suggesting.
083	Rep. Thompson	Clarifies that that he supports the creation of a commission structure as outlined in the 6 amendments.
085	Chair Messerle	Asks if this would be a stand-alone commission, or would it be under WRD or another agency.
087	Rep. Thompson	Responds that it would be a stand-alone commission.
090	Chair Messerle	Notes that the makeup of the board is the second discussion and the first discussion needs to be where they want to house this commission.
094	Rep. Kruse	Asks for clarification on what this proposed structure is other than an expansion of the current structure.

096	Rep. Thompson	Responds that this is what it is. Notes that this is an attempt to get the committee to something they can move forward with.
103	Callens	Clarifies that they are talking about three things: whether the structure is a board or commission, the functions of this entity, and what is the designated single state agency by which this entity will receive its grant money.
114	Rep. Thompson	Notes that the makeup of the board would make a difference to him in how it would be handled.
118	Rep. Kruse	Comments on the creation of the Oregon Plan and the need to fix the current structure. Comments that there are already commission structures throughout the state that work, and this should be the type of structure they create.
163	Chair Messerle	Expresses concern that the other commissions Rep. Kruse referred to are under some agency. Asks for clarification on what Rep. Kruse is getting at.
169	Rep. Kruse	Clarifies that there are commissions that operate quite well in terms of their structure and they should use these as a basis for the structure they are setting up.
183	Chair Messerle	States that the commission structure they create should be more like the commissions that are policy makers for agencies.
192	Rep. Kruse	States that what authority this commission has should be determined in full discussion.
197	Chair Messerle	States that he is thinking about authority only to manage the fund.
200	Rep. Lundquist	Asks if the basic issue before them is whether the Executive Branch will have control of this new entity.
205	Chair Messerle	Responds that it should be the Executive Branch since this is where all agencies operate.
211	Rep. Jenson	Comments that one of the issues not being discussed is maintaining the existing structure.
224	Rep. King	Questions whether they have the time to fully consider the creation of this structure.
244	Callens	Notes that as far as the appointments for this entity, in all of the amendments the language indicates that they will be appointments by the Governor subject to Senate confirmation.

256	Sen. Ferrioli	Comments on his ideals behind the creation of the structure and in support of the commission structure [comments inaudible at times].
322	Sen. Ferrioli	Continues comments on his ideals behind the creation of the structure and in support of the commission structure.
395	Rep. Thompson	States that he does not see why they could not use the improved GWEB structure for the next few months while Measure 66 is implemented and then do a more thorough review during the interim.
TAPE 115, A		
001	Chair Messerle	Clarifies that no one is suggesting that they have to go to the commission structure at this level and that they have to have the new structure in place by July 1.
007	Sen. Dukes	Asks for an explanation of what the commission would look like if it is not what is proposed in the ñ5 amendments. Comments that the makeup of this commission is not much different between the ñ5 and ñ6 amendments. Notes that this does not institutionalize the Oregon Plan.
029	Chair Messerle	Clarifies that the Oregon Plan is not in statute and that all the Legislature did last session is fund the Oregon Plan. Responds that the commission structure is from the ñ5 amendments, excluding the language regarding oversight of other agencies and the regions.
038	Rep. Kruse	Comments on the commission structure.
051	Sen. Dukes	Notes that the current head of GWEB does not work for the Governor.
055	Rep. Kruse	Clarifies that Mr. Bierly runs the program and Ms. Solliday is chair of the commission, and she works for the Governor's Office.
063	Rocco	Comments that GWEB is as close to being its own agency as possible without actually being one.
079	Chair Messerle	Notes an additional difference between the proposed commission and the proposed board.
089	Roy Hemmingway	Oregon Plan Manager, Governor's Office. Clarifies that currently Ms. Burgess is the non-voting chair, or her designee. Notes that the ñ6 amendments would continue it in this way.
097	Chair Messerle	Notes that Mr. Hemmingway had told the Co-Chairs yesterday that the Governor had no problems with the structure being a commission as long as it did not deal

		with oversight of other agencies. Asks Mr. Hemmingway if he has more to add to this.
103	Hemmingway	Responds that they have no objection to something that is akin to an independent state agency, with additional appointments to what is now GWEB.
117	Rep. Lundquist	Notes that no matter which direction they go, the landowners are still going to have to deal with a state agency. States that he would like to get to the point where this board or commission has more of a direct impact.
131	Sen. Ferrioli	Expresses hope that they can get to a place where the watershed council coordinators, SWCD members, the public at large, and the state agencies are sitting at the same table working on how to implement, oversee, and put dollars on the ground for the Oregon Plan.
151	Rep. Thompson	Notes that there is a lot more people than just landowners involved in this issue.
161	Rep. Lundquist	Clarifies that he was thinking more along the lines of the Oregon Plan participants.
169	Rep. Kruse	Asks Mr. Hemmingway if he has a problem with a member of the Senate and a member of the House being non-voting members on this board.
172	Hemmingway	Responds that they do not have a problem if legislators are willing to do the review of these grant requests.
181	Rep. Kruse	Questions how the Governor, if he does not appoint the chair of this commission and the director of the commission, suddenly does not have the ability to coordinate state agencies.
186	Hemmingway	Comments on the government structure in Oregon with regard to agencies.
201	Rep. Kruse	Asks how the Governor's natural resource advisor being the non-voting chair of this entity makes this person better able to coordinate state agencies.
204	Hemmingway	Responds that it does not necessarily make anything happen, but it does allow for the coordination function to have a more direct role in the grant function as well.
228	Rep. King	Comments that if he has to choose someone to lead the Oregon Plan within the next two or three meetings, his choice would be the Governor.
249	Chair Ferrioli	Comments on how the commission structures in state government work.

284	Rep. King	Clarifies that his argument is that if they are going to have a broad scope they need more time to deliberate this.
287	Chair Ferrioli	States that he does not see the variables changing even if they studied the issue for a year.
296	Sen. Shields	Comments that he wants some guarantees that what structure they do create will be transcendent on all sides.
332	Chair Messerle	Notes that the Co-Chairs will be meeting with the Governor and his staff tomorrow.
344	Rep. Lundquist	Asks if the Co-Chairs have developed a flow chart of what the entity's role would be and what is their line of authority, whether it is a board or commission.
355	Chair Messerle	Responds that they have not developed anything, but the committee did have a schematic presented to them awhile back. Adjourns the committee at 7:40 p.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3225, written testimony, John Runyon, 1 p

B ñ HB 3225, written material, Richard Whitman, 1 p