

**SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES**

February 11, 1999 Hearing Room 50

4:30 P.M. Tapes 41 - 42

**MEMBERS PRESENT:** Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Bill Fisher

**MEMBER EXCUSED:** Sen. Ted Ferrioli

**STAFF PRESENT:** Brad Harper, Administrator

Kristal Hatton-Nease, Administrative Support

**MEASURES HEARD:** SB 225 Public Hearing and Work Session

SB 226 Public Hearing

SB 227 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 41, A		
005	Chair George	Convenes meeting at 4:45 p.m.
<b><u>SB 225 PUBLIC HEARING</u></b>		
009	Brad Harper	Committee Administrator. Explains SB 225 <b>[EXHIBIT A]</b> allows the State Forester to implement Certified Burn Manager program. Allows State Board of

		Forestry and State Forester to permit burning of brush or other material for purposes of promoting establishment of new forest crops, conducting pest prevention or suppression or improving forest health.
017	Richard Gibson	<p>Fire Prevention Director, Oregon Department of Forestry. Submits <b>[EXHIBIT B]</b> and says there are three reasons why SB 225 was submitted to the 1999 legislature:</p> <ol style="list-style-type: none"> <li>1. To clarify the role of the Department of Forestry in assisting landowners with burning activities.</li> <li>2. To recognize the important role of fires as a viable tool in the management of forestland.</li> <li>3. To set in place a mechanism that is designed to promote the safe use of fire in forestland management and to improve forest health.</li> </ol>
064	Gibson	Explains the memorandum attached to his written testimony is from the National Conference of State Legislatures (NCSL) regarding private landowner's liability for prescribed burns.
093	Sen. Dukes	Asks if the handout on private landowner's liability for prescribed burns is in SB 225.
100	Gibson	Answers it is a handout from the Department of Forestry. Adds it is a summary of what is happening around the United States in regards to prescribed burns and the certified burn concepts discussed in SB 225.
105	Sen. Dukes	Asks if there has been a reduction of the liability.
109	Gibson	Replies nothing has changed as far as liability goes. Says this law extends the current protection from liability to people who would be certified burn managers. Comments that private landowners have needed to adjust their approach to land management.
119	Randy Clark	National Environmental Fuels Association. Submits <b>[EXHIBIT C]</b> and testifies in support of SB 225. Gives background information on the National Environmental Fuels Association.
169	Clark	Discusses the concept of "controlled environment" and urges the Department of Forestry to seek input from the private sector in the development of the Certified Burn Program. Adds he is giving the committee written testimony from Martin Desmond in support of SB 225 <b>[EXHIBIT D]</b> .
184	Chair George	Asks if he is proposing an amendment to SB 225.
188	Clark	Replies the agency is willing to seek input from the private sector.
192	Chair George	Asks if Clark is comfortable with the committee voting SB 225 out since the agency addressed his concern and said it would seek private sector input.

200	Clark Seely	Oregon Department of Forestry (ODF). Says ODF envisions creating an advisory committee made up of comprising forestland owners, private sector members, contractors, contractor associations, and forestry consultants. Says the department is open to inserting that as actual language in the bill.
<b><u>SB 225 Work Session</u></b>		
239	Sen. Dukes	<b>MOTION: Moves SB 225 to the floor with a DO PASS recommendation.</b>
242		<b>VOTE: 4-0</b> <b>EXCUSED: 2 - Fisher, Ferrioli</b>
244	Chair George	<b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. CORCORAN will lead discussion on the floor. For Sen. Fishers final vote on SB 225 see tape 42, A (240).</b>
<b><u>SB 226 PUBLIC HEARING</u></b>		
247	Harper	Explains SB 226 <b>[EXHIBIT E]</b> clarifies authority and procedures of State Department of Forestry related to forest fires prevention and protection program.
260	Richard Gibson	Fire Prevention Director, Oregon Department of Forestry. Submits <b>[EXHIBIT F]</b> and testifies in support of SB 226. States SB 226 will improve the administration of laws that relate to protecting forestland from fire. Explains SB 226 continues a four-year process to update, revise, and improve ORS chapter 477 and related statutes and that it is a follow-up to SB 110 (1997) which made numerous changes to ORS chapters 477 and 478.
316	Sen. Corcoran	Asks why the repealed sections are not listed in SB 226.
320	Gibson	Replies that is the way it is done in legislative counsel.
327		Questions and responses between Sen. Dukes and Gibson about the deletion of language in SB 226 and the process of appealing certain decisions of forest protection districts.
304	Gibson	Comments on page four language is being deleted which states if a person is in a forest protection district thinks the budget is to large.
354		Questions and responses between Sen. Dukes and Gibson about the process of filing a written appeal and the formulation of contested case hearings.

407	Pete Test	Executive Director, Oregon Farm Bureau Federation. Testifies the Oregon Farm Bureau Federation is neutral at this time in regards to SB 226. Expresses concern about legislation relating to grazing and how it may infringe upon forestland owners.
<b><u>TAPE 42, A</u></b>		
003	Glen Stonebrink	Executive Director, Oregon Cattlemen's Association. Comments he has several questions he would like to ask about SB 226. Says this is landowners who choose to become a fire protection district or have protection by the Department of Forestry. Asks the Department of Forestry to define "association" as used in SB 226 and asks what happens when a landowner chooses not to take part in the "association".
018	Gibson	Gives history of SB 226 and explains the statutes that is being amended by SB 226 took effect over 30 years ago. Says SB 226 sets up a mechanism by which rangeland owners can decide amongst themselves whether they want fire protection. Adds SB 226 is not trying to change the intent of the statute.
060	Stonebrink	Asks what happens when there is an individual landowner in an association who chooses not to be a part of the association.
067	Gibson	Replies the associations are voluntary and they have no taxing authority. Adds each sets up their own way of obtaining the funds. Gives the example of the Ironside Association in northern Malheur County. Says the association assesses its association members on a per acre basis.
090	Stonebrink	Expresses concern about the second repeal (ORS 477.291). Asks if there are costs associated with this protection and where do they come into play.
094	Gibson	Responds the ORS is being repealed in section 17 but that it is being reconstituted in section 6.
099	Stonebrink	Asks, for a landowner within the association who chooses not to be part of the association, if can he/she be charged a cost for fire protection.
111	Gibson	Responds the cost pertains to the protection of the land by the Department of Forestry fire patrol assessment. Adds that would not apply in a rangeland situation because the department does not protect those lands.
114	Stonebrink	Comments ORS 477.130 is the other repealed section of SB 226.
126	Gibson	Says the rangeland owners are not now subject to the other penalties.
132	Seely	Comments the statutes referenced in ORS 477.130 involve obligation and penalty. Says these statutes apply to forestland and the department is not sure why this statute was created 30 years ago because it applies to rangeland.

147	Sen. Corcoran	Asks if Stonebrink would be at ease of the committee could establish on record the intent of the removal of that ORS.
151	Stonebrink	Replies it could be. Says that on page 2 under the definition of forestland, grazing lands are included.
157	Gibson	Comments that within the definition of forestland there are three classifications of forestland and local county committees make the determination on how a piece of land is classified.
175	Chair George	Gives a personal account of his pastureland and someone telling him that it was, in fact, timber land.
190	Sen. Fisher	Comments on the definitions of "forestland" and "grazing lands".
220	Stonebrink	Asks if ODF would agree to meet with representatives of the Cattlemen's Association.
229	Chair George	Comments that is a good idea because everything should be clear when support is extended to SB 226.
<b><u>SB 225 WORK SESSION</u></b>		
240	Sen. Fisher	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. FISHER to BE RECORDED as voting AYE on the "Moves SB 225 to the floor with a DO PASS recommendation."</b>
245		<b>VOTE: 5-0</b>
250	Chair George	<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>SB 227 PUBLIC HEARING</u></b>		
257	Chair George	Opens public hearing on SB 227.
260	Brad Harper	Committee Administrator. Explains SB 227 allows the State Forester to recover costs incurred to extinguish fires on unprotected land. <b>[EXHIBIT G].</b>
275	Richard Gibson	Fire Prevention Director, Oregon Department of Forestry. Submits <b>[EXHIBIT H]</b> and testifies in support of SB 227. Says the Department of Forestry provides forest fire protection services to 15.8 million acres of forestland in 13 forest

		protection districts and that forest landowners in these districts pay an annual assessment for this protection. Adds that with increasing frequency, the department is being asked to respond to fires burning out side of forest protection district boundaries, on land that is completely unprotected from fire.
343	Chair George	Asks what happens when someone calls the department about a fire and unbeknownst to them someone else has called.
349	Gibson	Responds only the party who requests assistance can be billed under SB 227.
359	Seely	Adds the department has to verify the person making request is authorized to and that a third party may not ask for assistance.
381	Glen Stonebrink	Says SB 227 would allow for a governing body. Asks what would happen if there was a wildfire and someone called the Department of Forestry to seek its assistance. Asks how the department knows who is not a third party.
413	Gibson	Says the department will put into place a process to verify requests for assistance. Says that if the department did get a request and it turned out it wasn't the landowner or the governing body of the county, the department may seek reimbursement.
440	Seely	Comments on the decision to include "may" on line 9 was a conscious decision. Says this would come into play in the situation of a false alarm or a smoke chase.
<b>TAPE 41, B</b>		
007	Pete Test	Asks what the department would do when a power company calls for assistance during a fire and asks would the company or landowner be responsible for the costs incurred.
014	Gibson	Says in that specific case, the power company would be considered a third party and adds only a landowner or governing body can request assistance.
019	Test	Asks if there would be the possibility of contract immediately.
023	Gibson	Responds the department is envisioning contracts well before the fire. Says the department will not be debating fire line contracts.
028	Sen. Wilde	Asks what happens when there is a fire on land that is owned by an absentee owner. Says that clearly a leaseholder would want to protect the land.
037	Gibson	Says the department could enter into a contract with the leaseholder before the fire. Adds that the way the legislation is written now a lease holder would not be able to ask for help.

049	Sen. Corcoran	Says that line 6 uses the term "owner" of threatened land. Asks if an easement holder is a "owner" under SB 227.
056	Gibson	Says no.
065	Stonebrink	Says that on line 13 if there is no contract or agreement, the actual cost incurred by the forester in extinguishing the fire may recover from party requesting. Says the department could be recovering costs incurred twice.
078	Gibson	Replies he does not follow and that the language that Stonebrink refers to was basically copied from other portions of ORS 477. Adds the department has never billed twice.
098	Stonebrink	Comment there was a town hall meeting in Antelope, Oregon in which many Oregon Cattlemen's Association members came to express concern about SB 365 (1997). Says his concern is that SB 365 (1997) turned into a task force with a huge fiscal impact on attached to it.
130	Chair George	Comments the committee should notify people that SB 227 is being considered.
135	Sen. Fisher	Asks if there is there a limit on liability if a fire gets started and ODF does everything possible and still can not put it out.
140	Gibson	Responds an operator or owner liability is capped at \$300,000.
146	Sen. Fisher	Says ORS 477.068 contains situations where that amount has to be paid within 90 days and says most people do not have this kind of money within 90 days.
157	Gibson	Replies this would be a service for people who don't have the fire protection.
160	Sen. Fisher	Says that would mean the owner would then be responsible up to \$300,000 on one hand and the total cost of the suppression on the other hand. Says this seems to be double jeopardy.
181	Gibson	Responds the \$300,000 applies to owners and that this legislation is for landowners outside the fire protection.
187	Test	Says he would like to see something worked out in relation on SB 227.
197	Gibson	Comments SB 227 allows the forester to recover from party requesting assistance and adds this is a scenario driven situation. Adds the department could to some giving and taking in regard to provisions in SB 227.
230	Chair George	Asks if the department is in a grey area without SB 227.

235	Gibson	Replies that is correct.
240	Stonebrink	Asks what would happen when a fire does not stop at the requestor's property line and spreads onto adjacent lands.
259	Gibson	Says the department would pay attention to landowners. Adds that in SB 226 the department put a provision in it to allow the department to pay closer attention to what landowners want.
268	Chair George	Says the Oregon Farm Bureau and the Oregon Cattlemen's association has the means to notify farmers and landowners to pay attention to this.
273	Sen. Fisher	Asks how charges are broken down when fire occurs on multiple properties.
294	Gibson	Comments the best thing the department can do is to confront scenarios as they come.
311	Sen. Fisher	Expresses concern about the department being able to put lien on property.
326	Gibson	Says the department consciously put wording in the bill which lets the department recover part or all costs. Says the department is not looking at this as a revenue generating measure.
342	Sen. Fisher	Comments on a situation in 1993 with the State Fire Marshal. Says he felt the Fire Marshal was a good person, but that he might not be in the Fire Marshal position in the future.
381	Gibson	Understands Sen. Fisher's concern. Says the department is open to amendments to the bill.
393	Seely	Adds that at the time of a fire, the department does not want to say to a person not in a protected area "no we can not respond."
404	Sen. Fisher	Asks if a fire starts on protected land and then burns on to another piece of property does the department have the authority to fight the fire. Says he sees another double standard as far as where responsibility lies.
424	Gibson	Says when a fire crosses a line into unprotected area, the department will continue to put it out because the fire represents a threat to other lands.
<b>TAPE 42, B</b>		
009	Sen. Fisher	Asks if the department's obligations are complete when the fire crosses to unprotected land.



012	Gibson	Replies that is correct.
014	Seely	Says that under normal statutory circumstances, the Governor has at his disposal the resources of the state under his authority to declare a state of emergency in Oregon.
026	Sen. Wilde	Points out SB 365 became large and the reason was because the legislature tended to spell everything out.
049	Sen. Fisher	Discusses the limitations and liabilities set forth in SB 227.
068	Chair George	Asks if the department has ever been denied when it has requested additional money from the Emergency Board.
078	Seely	Answers not that he can recall.
077	Chair George	Comments on line 6 uses the term "governing body" the ODF could still operate with a county to provide the necessary fire suppression.
091	Sen. Fisher	Comments he is amazed that counties and cities are not testifying on SB 226.
099	Gibson	Responds SB 227 does not provide structural fire protection.
114	Sen. Fisher	Gives personal experience on fire suppression in the past.
155	Stonebrink	Says people do take pride in their land and helping their neighbors. Points out the people the committee is talking about to day are not the people who are asking for this legislation. Asks who is asking for SB 227.
171	Gibson	Responds he can not give specific names.
175	Stonebrink	Asks if they are individual landowners or governing bodies.
178	Gibson	Replies it is both.
180	Test	Says there is value in having an option for people to go to. Says maybe the legislature should look at some top out costs based on the value of the property.
197	Chair George	Comments the committee needs to hear from farmers and landowners.
204	Stonebrink	Says his association has not conducted an extensive study of its members but that he is willing to find out more. Adds there are some landowners who do request

		assistance from time to time. Adds he can personally can see both sides of issue.
226	Gibson	Says he want to be sure SB 227 is intended to reflect what was heard in the 1997 session with respect to SB 365 (1997). Says the department is not intending to impose protection upon people who do not want it.
235	Sen. Fisher	Gives a personal account of his brother being a crop sprayer and helped to put out a fire that occurred in a combine.
285	Chair George	Asks why not allow certain limits to be placed upon SB 227.
294	Gibson	Responds the department is open to suggestions.
306	Chair George	Adjourns the meeting at 6:31p.m.

Submitted By, Reviewed By,

Kristal Hatton-Nease, Brad Harper,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ SB 225, Staff, 2 pp.**

**B ñ Written testimony on SB 225, Richard Gibson, 8 pp.**

**C ñ Written testimony on SB 225, Randy Clark, 2 pp.**

**D ñ Written testimony on SB 225, Martin Desmond, 1 p.**

**E ñ SB 226, Staff, 7 pp.**

**F ñ Written testimony on SB 226, Richard Gibson, 2 pp.**

**G ñ SB 227, Staff, 1 p.**

**H ñ Written testimony on SB 227, Richard Gibson, 2 pp.**

**I ñ Written testimony on SB 227, Glen Stonebrink, 1 p.**