

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

February 18, 1999 Hearing Room 50

4:30 P.M. Tapes 46 - 49

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Ted Ferrioli

Sen. Bill Fisher

MEMBER EXCUSED:

STAFF PRESENT: Brad Harper, Administrator

Kristal Hatton-Nease, Administrative Support

MEASURES HEARD: SB 233 Public Hearing

SB 234 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 46, A		
005	Chair George	Convenes meeting at 4:40 p.m.
<u>SB 233 PUBLIC HEARING</u>		
019	Brad Harper	Committee Administrator. Explains SB 233 allows special burning of animal carcasses during animal disease emergencies.

027	Chuck Craig	Oregon Department of Agriculture. Testifies in support of SB 233 and introduces the State Veterinarian.
035	Andrew Clark	State Veterinarian, Oregon Department of Agriculture (ODA). Submits [EXHIBIT A] and testifies in support of SB 233. Explains the purpose of SB 233 is to provide for disposal of high-risk animal carcasses with minimal potential for contamination of other animals and places.
085	Clark	States the proposed measure allows for the burning and/or burial of carcasses either at the site of the disease outbreak or at another site approved by the State Veterinarian in the event of an Animal Disease Emergency. Gives examples why SB 233 is a good issue.
120	Sen. Wilde	Ask if California has taken any actions statutorily on this issue.
124	Clark	Responds he does not know.
126	Sen. Wilde	Asks if any other states are taking action statutorily.
128	Clark	Replies the state of Wisconsin has a statute that says animals dying of highly dangerous animal diseases must be burned or buried at least six feet below the surface of the ground. Says the United States Department of Agriculture's Veterinarian's Services Emergency Disease manual lists five diseases which are diseases that should be buried or burned on the farm: African swine fever, anthrax, foot/mouth disease, hog cholera, and rift valley fever.
149	Sen. Dukes	Asks why can't diseased animals be killed now.
153	Clark	Responds the reason for this bill so that it is clear this burning and/or burial happen.
163	Sen. Fisher	Asks what is the potential for mistakes to be made.
169	Clark	Answers the diagnosis is done at the National Foreign Animal Disease Diagnostics lab in Long Island. Says action is not taken until a definitive diagnosis is made by the national laboratory.
171	Sen. Fisher	Asks what is the time frame on obtaining a diagnosis.
172	Clark	Explains Oregon has five field veterinarians that can make diseases diagnosis and they are required by law to report such diseases.
188	Sen. Fisher	Asks where the national lab is located.

190	Clark	Responds it is by Rhode Island.
197	Sen. Fisher	Asks how long it takes to get a diagnosis.
199	Clark	Answers it is less than two day and adds the reporting system is set up so the diagnosis can be done in a matter of hours. Says an indemnity paid to producer for any animals lost in a disease control operation.
207	Chair George	Says the committee checked ORS 601.090 to see if the indemnity clause was included in it.
209	Clark	Replies the indemnity is paid at the rate of 80% of the animal's value as a breeding animal at the time it is destroyed.
237	Sen. Corcoran	Says he hopes the committee remembers this discussion if someone brings a game farm bill before the committee. Comments on a case in Texas in which red tailed deer were killed.
243	Clark	Replies Sen. Corcoran may be referring to tuberculosis in captive elk. Adds there has been several cases of tuberculosis in elk herds. Says the Oregon Department of Agriculture requires tuberculosis tests of elk coming into Oregon. Says the Oregon Department of Agriculture is proposing two amendments.
289	Dave Barrows	Oregon Veterinary Medical Association. Submits [EXHIBIT B] and testifies in support of SB 233.
309	Glen Stonebrink	Associate Vice-President, Oregon Cattlemen's Association. Says the Oregon Cattlemen's Association concurs with amendments proposed by the Oregon Department of Agriculture.
325	Dave Nelson	Oregon Dairy Farmers Association. Testifies in support of SB 233. Says that in 1986 rust appeared in tall fescue (grass) that had come into Oregon from out-of-state.
356	Chair George	Closes public hearing on SB 233. Opens public hearing on SB 234.
<u>SB 234 PUBLIC HEARING</u>		
360	Brad Harper	Explains SB 234 is sponsored by the Oregon Department of Agriculture and the Dairy Industries Advisory Committee. States SB 234 is a comprehensive attempt to update, revise, conform and repeal many dairy statutes dating back to the 1950s.
385	Chuck Craig	Testifies in support of SB 234 and introduces Ron McKay.

400	Ron McKay	Administrator, Food Safety Division, Oregon Department of Agriculture. Submits [EXHIBIT C] and testifies in support of SB 234. Explains the changes that are being presented in SB 234 were prepared by a committee comprised of members from ten Oregon Dairy Producers, Oregon Dairy Processors and the Department of Agriculture.
TAPE 47, A		
005	McKay	Says ORS 621 language has been updated in various sessions but that most of language remains from the 1950s. Reviews the "housekeeping" changes that are present in SB 234.
019	Sen. Fisher	Asks what is the difference between Grade A and B.
025	McKay	Answers grade A is fluid milk, which includes yogurt and sour cream. Explains grade B includes manufacturing milk used in other products and includes butter, cheese, and ice cream. Says there is slightly different standards of the facility used in making grade A and B products and different standards for bacteria and semantic cell counts.
075	McKay	Explains SB 234 requires a separate license for each of the activities of a producer and a producer-distributor. Says if the producer-distributor from both Grade A and Grade B fluid milk they must obtain a separate license for both.
082		Questions and answers between Sen. Fisher and McKay about the requirements set forth in the Code of Federal Regulations.
101	Chair George	Calls attention to page 8, line 33 which deals with the sale of pasteurized milk products. Asks McKay to explain what this section of SB 234 does.
105	McKay	Responds that Oregon currently has a statute that allows the bottling of raw milk. Adds there are two licensed raw milk bottlers in Oregon but that only one of them is operating at this time.
123	Sen. Dukes	Asks if raw milk included goat's milk.
125	McKay	Answers it does. Explains Oregon had two licensed raw milk operators until several weeks ago.
130	Sen. Dukes	Comments she thought there were more raw milk producers.
134	McKay	Says ORS 621 establishes standards for grade of cream and milk and it established what those standards should be based on. Says he is proposing this portion be deleted from statute and that the standards and their criteria be established by regulation.

148	Sen. Wilde	Asks why language relating to restraining order and temporary injunction is being deleted. Asks if the language is stated elsewhere.
160	McKay	Replies that was done at the request of the Legislative Counsel (LC) office. Adds LC said it was not necessary and that it was addressed better in other statutes.
184	Sen. Wilde	Comments this deals with due process. Adds the maintenance of a written record is needed in the event someone contests a decision by the milk grader. Expresses concern about dropping the requirement maintenance of a written record.
206	McKay	Understands Sen. Wildes concerns. Says he can not recall more conversation taking place when that part of SB 234 was being dealt with.
228	Sen. Fisher	Asks if a Grade A milk products facility would also meet requirements for a Grade B facility.
234	McKay	Responds that it would.
237	Sen. Fisher	Asks then why person must have two licenses to do both Grade A and Grade B.
247	McKay	Explains the licenses mostly have to do with the dairy products plant.
259	Sen. Fisher	Asks if there is a licensing process now.
262	McKay	Responds yes.
265	Sen. Fisher	Asks if SB 234 is changing fees.
270	McKCay	Responds it is not changing fees.
278	Sen. Dukes	Comments it seems that if someone has a Grade A license they would not have to obtain a Grade B license.
304	McKay	Says he does not know the history on it. Says provision to not license them was in place before he came to the ODA.
319	Sen. Dukes	Asks if a plant is doing both, why do they need both Grade A and Grade B licenses.
327	McKay	Answers they do have to have two licenses.

349	Harold Schild	President and CEO, Tillamook Cheese Company. Testifies in support of SB 234. Explains Tillamook Cheese Company keeps copies of records of products declined.
375	Jack Smalley	Dairy Producer from Scio, Oregon and Co-Chairmen of the Dairy Farmers Association. Testifies in support of SB 234. Explains the purpose of the change in antibiotic testing. Says SB 234 would give ODA opportunity to keep up with changes.
418	Sen. Wilde	Comments some of the proposed deleted language in the bill is language would not change too much over time.
TAPE 46, B		
007	McKay	Says ODA generic statutes require ODA tests to be kept and a written copy is to be given to the individual. Adds the deleted language Sen. Wilde is referring to would apply to a grader at a plant.
017	Schild	Comments that if graders detect bad milk at Tillamook Cheese Co. the milk is rejected on site.
040	Sen. Fisher	Asks how graders are expected to describe quality.
050	Schild	Responds there are a number of qualities milk must meet. Adds these qualities include taste, texture, smell, and wholesomeness.
082	Sen. Corcoran	Comments on if there was any objection to bill.
109	Schild	Discusses qualities of milk and milk products that graders can pick up by experience. Explains the state tests graders take before obtaining their grader's license.
146	Craig	Says there are not a lot of tanks rejected. Adds those that are a safety issue can be rejected because of flavor, quality, and temperature. Adds Oregon has the highest standard of milk in the nation. Says the ODA is concerned primarily with safety.
177		Questions and answers between Sen. Dukes and Schild about whether Tillamook Cheese Co. has Grade A and Grade B licenses. Schild says Tillamook Cheese Co. does and explains Tillamook Cheese Co. producers all have a Grade A license and in the processing Tillamook Cheese Co. has both grades. Says cheese is covered by the manufacturing grade. Sen. Dukes asks how much licenses cost and Schild says several hundred dollars a year.
238	Chair George	Comments the committee should begin dealing with the ñ1 amendments. [EXHIBIT D]

244	Craig	Explains the three sections addressed in the ñ1 amendments. Says one deals with the definitions of ëretailerí and ëwholesalerí. Adds the second amendment deals with
292		Questions and answers between Sen. Fisher and Craig about the definition of ëinstitutioní included in the ñ1 amendments. Sen. Fisher asks if ëinstitutionsí included nursing homes and assisted living facilities. Craig answers yes and Sen. Fisher says his nursing home operation does not sell meals in a dining room like a hospital does.
346	Sen. Dukes	Says at this point it would be helpful if the Oregon Department of Agriculture could put on the record that frozen dessert retailer did not mean people engaged in the health care industry including direct care providers and nursing homes.
400	Chair George	Asks what was the purpose of the language in the ñ1 amendments.
407	McKay	Says he sent language over to Legislative Counselís office and that language was apparently not included. Adds the ODA is not interested in licensing an establishment that does not have a restaurant for the general public to use.
440	Sen. Fisher	Comments he does not know the legal definition of ëcafeteriaí or ërestaurantí.
TAPE 47, B		
019	McKay	Reiterates he does not know why that language was put in the ñ1 amendments.
025	Sen. Corcoran	Suggest having Legislative Counsel discuss the committee regarding these amendments.
027	Sen. Dukes	Says railroad dining cars should also be questioned.
034	Sen. Fisher	Asks if ODA licenses restaurants such as Sizzler, which has self-serve frozen food stands.
037	McKay	Replies yes.
040	Sen. Fisher	Asks then why would that same sort of operation be exempt in another establishment. Comments this is a double standard.
053	Chuck Taylor	Legislative Counsel Office. Addresses the issue of railroad dining cars in the ñ1 amendments. Says the chapter now has five definition sections and this attempts to combine them in to one section. Comments he is not sure what ëinstitutionsí include.

074	Sen. Dukes	Asks if it is Taylor's belief that assisted living facilities are included in the definition of "institutions".
078	Taylor	Replies his inclination is to say "institutions" would mean something similar to the nature of a school.
088	Sen. Dukes	Asks if Legislative Counsel can suggest some language that might make sure that type of facility was included.
090	Taylor	Responds these are intended to indicate facilities that the department can not license. Adds an approach along those lines would be best.
095	Sen. Dukes	Says she would think the health division would inspect kitchens of nursing homes.
101	McKay	Says the Department of Education inspects the kitchens in schools and that it contracts with county health departments.
112	Sen. Dukes	Asks why railroad dining cars are excluded.
116	Taylor	Responds the language dealing with them are existing language and speculates they are covered by interstate commerce act.
124	Sen. Fisher	Asks what is the definition of "frozen dessert".
126	McKay	Answers "frozen desserts" are defined in statute and that he needs the book of ODA regulations.
156	Sen. Fisher	Says problems occur when exceptions are made.
184	McKay	Says he can't answer all Sen. Fisher's concerns. Says that when the ODA inspects dessert machines it is just inspecting the machine and the product that comes out of it. Adds if there is a high count of bacteria ODA works with the establishments to solve the problem. Adds the ODA's involvement is not to go into inspection of the establishments.
231	Chair George	Asks if there is anything in SB 234 or in the "1 amendments that changes the way ODA presently conducts inspections.
236	McKay	Answers they do not change anything that is in existence.
241	Sen. Wilde	Says ORS 621.311 list the different types of frozen desserts. Says ORS 621.369 describes possession of frozen desserts and frozen dessert mix. Adds that possession of such substances is prima facie evidence of intent to sell.

293	Sen. Fisher	Comments he has been working with Oregon Department of Fish and Wildlife on the issues of animal parts sales. Says it has been illegal to buy and sell feathers that are used in fishing lures.
357	Dave Nelson	Oregon Dairy Farmers Association. Comments on statute history. Adds the changes in SB 234 are to address language that has been on the books since the 1950s. Encourages the committee to look at SB 234 in the context in which it was brought to the committee. Says the Oregon Dairy Farmers Association would like to see the bill moved.
411	Sen. Fisher	Agrees.
414	Sen. Dukes	Asks if the committee can introduce a similar bill to SB 234.
418	Sen. Fisher	Responds he was told by the Secretary of the Senate that committees could not still introduce legislation.
TAPE 48, A		
004	Nelson	Says the dairy industry did not bring forth the definition in the statute Sen. Wilde previously discussed.
015	Sen. Fisher	Suggests deleting 11 and 12 out of the -1 amendments.
018	Sen. Dukes	Says she would think the Senate President could allow the committee to introduce a bill.
030	Chair George	Asks if there is any reason this has to be inserted into the ñ1 amendments.
035		Questions and answers between committee members, Legislative Counsel, and McKay on the proposal to drop paragraph 11 of the ñ1 amendments.
089	Sen. Fisher	Comments that according to definition of frozen dessert and frozen dessert mix, Jell-O is included.
113	Sen. Wilde	Asks if SB 234 has changed existing statute language in the ñ1 amendments that deals with the frozen dessert retailer. Suggest placing a comma between the two words. Asks if SB 234 puts institutions into a different context that might be interpreted differently.
126	Taylor	Says that is a valid point that was probably overlooked.
137	Sen. Wilde	Says he believes the Senate rules allow committees to conceptually amend legislation. Asks if it would be okay to insert "assisted care facility" into the bill.

143	Sen. Fisher	Explains why he objects to doing that. Points out his facility is not a assisted care facility.
164	Sen. Wilde	Comments on the ODA inspection program and wonders how often someone is not found in compliance. Asks what is done and how often does the ODA inspects facilities.
174	McKay	Says that samples of frozen food are conducted approximately every 18 months. Says this is not a high priority. Adds that if someone is not found in compliance, ODA works with the firm to correct the problem.
197	Sen. Wilde	Comments on the risk to public health.
203	McKay	Says ODA tests for pathogens in some cases. Comments on a Schwan's Ice Cream nationwide recall three years ago.
215	Chair George	Asks McKay to work with Sen. Fisher and to come back Monday to work out SB 234.
221	Rick Mehlhoff	Fred Meyer Dairy. Testifies the concerns discussed by the committee members are legitimate. Adds he thinks more discussion is needed.
240	Sen. Fisher	Comments on the recall of the Schwan's Ice Cream and says the deformity was not found in the production. Suggests things may happen more often than every 18 months.
274	Sen. Dukes	Says she was unaware Fred Meyer had dairies. Asks where the Fred Meyer Dairy is located.
283	Mehlhoff	Says there is one in Portland on Swan Island.
288	Chair George	Asks if Fred Meyer Dairy thinks SB 234 would be beneficial if the issue of what is included in the "retailer" category is resolved.
289	Mehlhoff	Answers yes and says the committee has had some good discussions about SB 234.
298	Schild	Supports passage of SB 234. Says SB 234 updates statutes, but can see how some things are misinterpreted.
339	Sen. Fisher	Comments he is proud of the Oregon Department of Agriculture and is not opposed to streamlining. Says he would appreciate seeing some statistics on the amount of establishments not in compliance. Comments on Umpqua Dairy in Roseburg.

387	Sen. Wilde	Expresses concern about the ODA involving itself in the retail industry. Says it seems like health inspectors should be involved.
414	Schild	Says he takes exception to Sen. Wilde's evaluation. Says county health inspectors are generally young and inexperienced people and do not have the level of expertise to monitor dairy products and evaluate their quality.
433	Sen. Wilde	Asks how often county health departments inspect plants.
441	Schild	Replies every four to six months. Adds the county health departments do not have the facilities to test for bacteria on ice cream.
TAPE 49, A		
001	McKay	Discusses ODA's sampling program.
016	Sen. Wilde	Asks if ODA or county health inspectors inspect people when they rent and clean frozen dessert machines.
023	McKay	Says licenses are not given for social events. Adds that county and state fair food booths are inspected and licensed.
035	Sen. Dukes	Says there are frozen dessert machines in mini marts and other stores. Asks if Icee machines in mini marts are licensed.
041	McKay	Answers he does not believe they are licensed.
047	Chair George	Says the committee will hear SB 234 on Monday and asks Sen. Fisher to work with ODA to clear up the language discussed at the meeting.
069	Sen. Fisher	Asks ODA to come prepared to tell us why a county person could not take a reasonable sample.
079	Chair George	Adjourns meeting at 7:10 p.m.

Submitted By, Reviewed By,

Kristal Hatton-Nease, Brad Harper,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Written testimony on SB 233, Andrew Clark, 1 p.

B ñ Written testimony on SB 233, Steven Brown, 1 p.

C ñ Written testimony on SB 234, Ron McKay, 6 pp.

D - -1 Amendments to SB 234, Staff, 3 pp.