

SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

March 29, 1999 Hearing Room 50

4:30 P.M. Tapes 81 - 82

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Ted Ferrioli

MEMBER EXCUSED: Sen. Bill Fisher

STAFF PRESENT: Brad Harper, Administrator

Kristal Hatton-Nease, Administrative Support

MEASURES HEARD: SB 670 Public Hearing and Work Session

HB 2116 Public Hearing and Work Session

SB 673 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 81, A		
005	Chair George	Convenes meeting at 4:41p.m. Opens public hearing on SB 670.
<u>SB 670 PUBLIC HEARING</u>		
010	Brad Harper	Committee Administrator. Explains SB 670 mandates revocation of recreational licenses, tags, permits, and certificates after conviction for violation of criminal mischief, unlawfully discharging a weapon, or throwing objects at trains.

025	Rich Berry	Director, Fish and Wildlife Division, Oregon Department of Fish and Wildlife (ODFW). Submits [EXHIBIT A] and says ODFW has taken a neutral position on SB 670. Explains ODFW complies with the current statutes which permit courts to revoke the hunting and fishing licenses of persons convicted of certain crimes. Says the department is concerned SB 670 would take discretion away from the courts.
064	Sen. Ferrioli	Asks if Berry is familiar with the practice of horn hunting.
066	Berry	Asks what Sen. Ferrioli's definition of horn hunting is.
069	Sen. Ferrioli	Replies horn hunting is gathering shed antlers from big game antlers for resale. Asks again if Berry is familiar with horn hunting.
070	Berry	Responds he is.
072	Sen. Ferrioli	Asks what purchasers will pay, per pound, for horns.
073	Berry	Responds he does not know.
076	Sen. Ferrioli	Asks if other states have mandatory revocation of licenses upon the conviction of trespass.
079	Berry	Replies not specifically for trespassing.
081	Sen. Ferrioli	Asks what the discretionary path for the officer to follow is when a person is found trespassing.
084	Berry	States Captain Lindsay Ball of the Oregon State Police (OSP) Fish and Wildlife Division could answer that. Speculates that a landowner files a complaint.
082	Sen. Ferrioli	Asks what the situation is with the prosecutor.
085	Berry	Says the prosecutor has the discretion to prosecute the trespasser, depending on the circumstances of the case.
090	Sen. Ferrioli	Explains why he introduced SB 670. Says horn buyers pay upwards of \$8-10 a pound for horns. States the people who are hunting horns may or may not get permission from the landowner. Adds landowners complain to officers about trespass violations. States most trespass complaints are not enforced. Discusses what has happened in similar situations in various other states. Says trespassing is a serious crime and that trespassers should be prosecuted.
140	Sen. Ferrioli	Explains loss of hunting and fishing privileges is a very serious action. Urges

		support of SB 670. Says this is a real solution.
147	Sen. Corcoran	Comments on the allegations that law enforcement officers do not take trespassing violations seriously.
151	Sen. Ferrioli	Explains that if a trespass violation occurs, a landowner must have seen it. Says he realizes that there are other more pressing law enforcement issues, but that trespass violations should be prosecuted.
167	Sen. Corcoran	Asks if landowners must sign the trespass complaint.
170	Sen. Ferrioli	Replies no facts have changed except that the violation is put in a more serious category because of the penalties potential.
171	Sen. Corcoran	Says the penalty only accrues to someone who already had a previous conviction.
174	Sen. Ferrioli	Comments a person would need to go through all the same steps like now. Says he thinks officers feel there is no real penalty at the end of the process and therefore are reluctant to issue citations.
191	Sen. Corcoran	Asks why a trespasser would care if their license is revoked.
194	Sen. Ferrioli	Replies having a license in the field means that when a person is stopped by a game enforcement officer, he/she does not lose their truck, gun, or hunting privileges. Says this has a concurrent deterrent effect.
202	Sen. Corcoran	Asks how many trespassers have hunting and fishing licenses in the first place.
204	Sen. Ferrioli	Replies most of them do.
205	Sen. Corcoran	Asks how Sen. Ferrioli knows that.
207	Sen. Ferrioli	Says it was in the research conducted by Mike Kilpatrick, an attorney and elk rancher.
208	Sen. Corcoran	Asks if there is a law against gathering horns and if a license is needed.
212	Sen. Ferrioli	Replies a person must have a license to gather or to buy horns. Adds other states have encountered this problem and have solved it. They have compiled statistics on who is taking part in this type of situation. Says the problem is not just horn people, and that general trespass is a real problem in Oregon. Says the prospect of losing hunting and fishing privileges is a much better deterrent than the prospect of a \$100 fine.

220	Sen. Corcoran	Asks if the license to gather horns is identical to a hunting and fishing license.
222	Sen. Ferrioli	Replies he believes it is a different license. Defers the question to Captain Ball.
225	Sen. Corcoran	Asks if it would it make more sense to repeal the gathering license instead of the hunting/fishing license.
227	Sen. Ferrioli	Responds it would be a deterrent and that this sends a strong message that trespassing for any reason is a problem and could result in the loss of recreational privileges.
233	Sen. Corcoran	Comments he has no problem going after trespassers. Expresses concern about the people who abide by law will run afoul. Asks if there is any documentation on how many trespassing complaints OSP has received.
253	Sen. Corcoran	Asks if the hunting and gathering licenses are different.
255	Lindsay Ball	Captain, OSP Fish and Wildlife Division. Says there is a license requirement to sell horns. Adds a person can only pick up horns that are shed. Says this enables OSP to track horns sold in Oregon. Explains trespassing is a serious issue. Says there were 18,481 trespass complaints to law enforcement agencies in 1997 and, of those, 10, 604 ended in arrests. Adds there were 49,172 vandalism/criminal mischief complaints, which ended in 5,807 arrests.
304	Sen. Wilde	Comments on the gathering of horns. Describes a circumstance where a person would be kayaking/boating down and river and many would not know he/she is trespassing. Asks if SB 670 would apply to people boating on waterways.
320	Sen. Ferrioli	Responds it would apply only if the person was convicted. Says the judge in a recent court case involving a similar situation threw the case out.
346	Sen. Wilde	Comments that if someone drives drunk, he/she can have his/her car taken away. Says there is a direct correlation between the two. Says there is not a correlation between someone caught trespassing when taking pictures, or such, and have a gun taken away.
363	Sen. Ferrioli	Responds he is correct. States there is a problem with entering onto someone else's land even if for the purpose of taking pictures. Says there is variety of options for courts to do if someone is found guilty of trespassing. Points out driver's licenses are revoked when people do not pay child support.
380	Sen. Wilde	Asks if a spouse of a convicted trespasser would lose hunting and fishing privileges.
384	Sen. Ferrioli	Replies there is nothing in SB 670 that would cause a spouse of a convicted trespasser to lose their fishing and hunting license.

391	Sen. Dukes	Explains she has similar situations occurring in her district. Says it does not even need to be horn hunting, it can be mushroom or truffle hunting. Says there are not enough fish and game officers and that law enforcement officers cannot enforce all complaints. Adds there needs to be more of an incentive to enforce trespassing laws. Adds most of the time landowners know who are trespassing on their land.
TAPE 82, A		
022	Sen. Ferrioli	Points out current citations are only \$50. Says that if a horn gatherer has \$900 worth of horns, then the fine is not much to pay.
027	Chair George	Asks if there is data on waterway trespassing.
029	Ball	Replies there is not data on floating trespassing. Says there have been those kind of complaints to OSP.
056	Chair George	Says he has experienced similar situation with his land. Says trespassing can have significant damages. Says he does not complain because it is hard to enforce.
071	Paul Donheffner	Director, State Marine Board. Testifies the Marine Board has several concerns about SB 670. Says that in SB 670, it appears that any conviction would result in revocation of licenses. Says this does not link matters of the offense. Says he does not think the courts have a mechanism to easily ascertain whether a person has a boat registration to cancel. Says SB 670 is good in theory but that practical experience tells him that it does not work. Adds the State Marine Board is ready to implement SB 670, if the Oregon Legislature approves it.
128	Chair George	Calls attention to page 2, lines 38 and 39. Says the section reads that if a person is convicted of a trespassing violation the courts shall order the State Marine Board to cancel the registration for two years. Says this would not put the State Marine Board in the middle. Asks if the court judge would make the connection.
134	Donheffner	Agrees it would not put the State Marine Board in the middle. Says he is not sure the courts will make the connection between someone throwing an object at a train and checking with the State Marine Board.
145	Chair George	Points out the State Marine Board will just be responding to a court order.
150	Donheffner	Says that is true, if the courts make the connection.
153	Sen. Wilde	Says it costs money for the courts to have notification to agencies.
167	Sen. Dukes	Comments courts do work with agencies all the time. Says this is no more cumbersome than other situations.

181	Sen. Wilde	Calls attention to ORS chapter 166.268. Feels courts would not be happy because of the amount of complaints discussed. Says Department of Motor Vehicles (DMV) information is easily accessible. Asks if counties have the ability to determine whether someone has a boat registration.
201	Donheffner	Replies he is not sure.
212	Chair George	Asks if there is anything that would prohibit owner from selling a boat with a revoked license.
218	Donheffner	Responds there is not.
224	Sen. Wilde	Asks if a spouse could re-register the boat.
230	Donheffner	Responds he believes so.
232	Rod Harder	Oregon Sportsmen Defense Fund (OSDF). Testifies OSDF has several problems with SB 670. Says this would increase the workload of various fish and wildlife agencies. Adds OSDF believes this bill to be harsh punishment. Gives personal experience with trespassers on his land.
282	Harder	Says OSDF is concerned about what would happen if a boat were jointly registered, for example, to a husband and wife. Adds the penalty does not fit the crime if people do not know they are trespassing.
293	Chair George	Calls attention to page one, lines 13-15. Says this section discusses the court ordering removal of licenses. Says it seems as though a person, at that point, could plead with the judge if the trespassing was a mistake.
298	Harder	Says that he reads it so the court does not have that flexibility. Adds the bill reads the court "shall".
313	Al Elkins	Oregon Hunters Association (OHA). Testifies OHA is concerned about the additional workload on agencies. Adds OHA is in favor of the point sale program. Says he is willing to work on another solution. Calls attention to page one, lines 27-28. Says this is current language in Oregon statutes.
348	Chair George	Expresses concern that there are no amendments to SB 670.
355	Sen. Ferrioli	Says fishing, hunting, and boating licenses are sacred. Says a \$50 or \$100 fine is not a proper deterrent. Adds landowners pay hundreds and thousands of dollars to fix fences, etc. after someone trespasses. Says SB 670 sends a strong message to people who trespass. Points out SB 670 calls for a two-year revocation, not a lifetime one.

TAPE 81, B		
011	Sen. Dukes	Points out there is a bill coming to the Senate that would revoke licenses of students who do not go to school.
025	Chair George	Closes public hearing on SB 670. Opens work session on SB 670.
<u>SB 670 WORK SESSION</u>		
030	Sen. Ferrioli	MOTION: Moves SB 670 to the floor with a DO PASS recommendation.
		VOTE: 4-1 AYE: 4 - Dukes, Ferrioli, Wilde, George NAY: 1 - Corcoran EXCUSED: 1 - Fisher
	Chair George	The motion CARRIES. SEN. FERRIOLI will lead discussion on the floor.
037	Chair George	Closes work session on SB 670. Opens public hearing on HB 2116.
<u>HB 2116 PUBLIC HEARING</u>		
040	Harper	Explains HB 2116 repeals the sunset on provisions of law creating a mediation program for agricultural dispute resolution for property foreclosures, labor disputes, and nuisance claims.
055	Chuck Craig	Assistant Director, Oregon Department of Agriculture (ODA). Submits [EXHIBIT C] and testifies that HB 2116 would enable the department's Agricultural Mediation Program to become permanent rather than sunset on January 1, 2000. Recommends continuation of the Agricultural Mediation Program.
071	Brent Searle	Program Coordinator, Agricultural Mediation Program, ODA. Submits [EXHIBIT D] and testifies in support of HB 2116. Discusses legislative history of the Agricultural Mediation Program. Explains the program improves working relationships and lets the parties in a dispute retain control of the process. Calls attention to page three of the exhibit, which is the Agricultural Mediation Program report from January 1999.
107	John McCulley	Tree Fruit Growers. Submits [EXHIBIT E] and testifies in support of HB 2116.

		Says the Tree Fruit Growers believe the agricultural mediation program should become a permanent ODA program. Explains that Tree Fruit Growers see the emphasis on mediation as a way to effectively address labor issues before they escalate into a long, costly legal battle.
125	Tim Bernasek	Associate Director of Governmental Affairs, Oregon Farm Bureau Federation. Submits [EXHIBIT F] and testifies in support of HB 2116. Says the program allows agricultural employers and employees to solve labor disputes in an informal manner that benefits both employers and employees.
140	Chair George	Closes public hearing on HB 2116. Opens work session on HB 2116.
<u>HB 2116 WORK SESSION</u>		
145	Sen. Wilde	MOTION: Moves HB 2116 to the floor with a DO PASS recommendation.
		VOTE: 4-0 EXCUSED: 2 - Dukes, Fisher
Chair George		Hearing no objection, declares the motion CARRIED. SEN. WILDE will lead discussion on the floor.
150	Chair George	Closes work session on HB 2116. Opens public hearing on SB 673.
<u>SB 673 PUBLIC HEARING</u>		
155	Harper	Explains SB 673 exempts from double and treble damages, and holds secondarily liable, for certain statutory trespass claims, contract loggers who meet certain requirements.
168	Robert Leipper	Property owner, Columbia County. Submits [EXHIBIT G] and testifies in opposition to SB 673. Explains that four time contract loggers have come onto his property to cut his trees. Says three of those times he went to civil court. Explains experiences he went through in civil court.
218	Leipper	Explains it is difficult and expensive to prosecute theft of trees under the present ORS 105.810 and 105.815. Says that contract loggers know that few people are willing and able to pursue such matters in court. Comments the statutes are written for the benefit of the logging industry.
268	Leipper	Suggests making legal fees to the prevailing plaintiff mandatory. Suggests also that the value of the trees to the property owner should be assigned value and not the value to the loggers. Says restoration costs should be awards to the property owner as well. Urges the committee to reject SB 673.

296	Chair George	Says he personally experienced such a situation. Understands Leippperis frustration.
300	David Montgomery	Owner, Montgomery Timber Management, Inc. Submits [EXHIBIT H] and testifies in support of SB 673. Explains that in 1989 his company was hired, by a mill, to log a piece of timberland. Says the company logged it and found out two years later the land belonged to an elderly couple in California, not the person who represented himself as the owner. Says the alleged owner took the money and ran. Adds the mill filed bankruptcy and that left his company as the only viable party that could pay. Says his company settled out of court. Says two years later, he was told some of the timber was removed off state lands. Expresses concern that the attorney general's office lacked the resolve to pursue the real crook and again came after his company. Says he was offered a deal: pay the state \$59,000 and it would not sue for double stumpage, approximately \$250,000. Says he does not believe justice was served in this case.
351	Sen. Ferrioli	Asks if Montgomery had any legal recourse against the person who falsified his representation of the landowner.
358	Montgomery	Replies his company hired private investigators. Speculates the person either hid the money or spent it. Adds his company decided to not put good money after bad to pursue it. States his company does have a judgement against the person.
367	Chair George	Comments Montgomery's company suffered losses, as well as the property owner. Adjourns meeting at 5:59 p.m.

Submitted By, Reviewed By,

Kristal Hatton-Nease, Brad Harper,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 670, written testimony, Rich Berry, 1 p.

B ñ SB 670, written testimony, Paul Donheffner, 1 p.

C ñ HB 2116, written testimony, Chuck Craig, 1 p.

D ñ HB 2116, written testimony, Brent Searle, 4 pp.

E ñ HB 2116, written testimony, John McCulley, 1 p.

F ñ HB 2116, written testimony, Tim Bernasek, 1 p.

G ñ SB 673, written testimony, Robert Leipper, 2 pp.

H ñ SB 673, written testimony, David Montgomery, 4 pp.