

SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

April 19, 1999 Hearing Room 50

4:30 p.m. Tapes 102 - 103

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Ted Ferrioli

Sen. Marylin Shannon

MEMBER EXCUSED: Sen. Bill Fisher

STAFF PRESENT: Brad Harper, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: SB 1252 Public Hearing

SB 1151 Public Hearing

SB 337 Public Hearing

SB 933 Reconsideration and Work Session

SB 1152 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 102, A		
003	Chair George	Calls the meeting to order at 4:42 p.m. Opens a public hearing on SB 1252.

SB 1252 PUBLIC HEARING

007	Chair George	States that there is some dispute as to the specifics of the bill. Indicates that there will be additional hearings on the bill. Closes the public hearing on SB 1252 and opens a public hearing on SB 1151.
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SB 1151 PUBLIC HEARING

013	Brad Harper	Committee Administrator. Gives a brief description of the bill. Says that the bill directs the Department of Forestry (ODF) to review the Oregon Forest Practices Act in order to identify potential conflicts. Adds that any recommended changes would then be sent to ODF for consideration.
026	Larry Swan	Representative, United States Forest Service; Representative, Oregon Employment Development Department. Testifies to a position of neutrality on SB 1151 (EXHIBIT A).
036	Ralph Opp	Representative, Ad Hoc Western Juniper Commercialization Steering Committee. Testifies in support of SB 1151. Indicates that questions have arisen concerning the interpretation of forest rules, taxation laws, and administration of state fire liability laws, regarding the harvest of western juniper.
044	Swan	<p>Explains that the reason there is such an interest in western juniper is because the plant currently occupies 2.2 million acres of Eastern Oregon, which represents a 500 percent increase since the 1930s. Indicates that western juniper will become the dominant forest type in the near future, displacing the ponderosa pine. Adds that nature has no way of halting the advance of western juniper, meaning that reduction by man is the only way to control its growth. States that over 1 million acres have shown detrimental effects of western juniper infestation, including:</p> <ul style="list-style-type: none">• Loss of site productivity• Decline of wildlife species• Decline in watershed health indicators• Reduction in overall bio-diversity
075	Swan	<p>States that the financial stability of ranchers has been damaged by the intrusion of western juniper into range lands. Suggests that management can improve conditions. Says that the intent of SB 1151 is to resolve several potential conflicts:</p> <ul style="list-style-type: none">• The fact that the Forest Practices Act is in effect would seem to require reforestation, which is not applicable• The disagreement over slash retention and reseedling practices• Whether juniper slash dispersal and removal will be prohibited by forest practices rules in and around dry drainages and springs
120	Swan	Indicates that there are two fundamental issues. Says that the first is whether juniper falls below minimum standards for ODF rules to apply, in which case the

		Department of Agriculture (ODA) would have jurisdiction. Asserts that the lack of consistency between counties is a problem for preventing the spread of juniper. Mentions the startup of the juniper harvesting industry.
144	Opp	Indicates that western juniper is a noxious weed and should be treated under noxious weed management rules. Indicates that there are individuals interested in expanding and clarifying the bill and that all parties are agreeable on working towards that goal. Questions whether ODF is the appropriate lead agency for watershed issues regarding western juniper. Says that members of his committee recommend passage of the bill with additional language to insure review that is not linked to forest practice rules.
180	David Morman	Policy Unit Manager, Forest Practices Program, ODF. Testifies to a position of neutrality on SB 1151 (EXHIBIT B). States that juniper harvest operations are, by statute, currently subject to forest practices requirements, although there are exemptions for minimum productivity standards. Indicates that there are no reforestation requirements or limits on the size of harvest units. Suggests that the most applicable requirements are for road construction and maintenance and water protection. Agrees that those rules were not designed to deal with juniper harvesting. Mentions that there is an advisory committee that is reviewing the adequacy of ODF water protection rules, which will consider the issue of juniper harvest.
236	Sen. Wilde	States that such areas would have been considered range land at one time, bringing them under the jurisdiction of ODA. Says that the introduction of western juniper, a "noxious tree," has given ODF a say in the management of these lands. Explains that the issue is confused by the fact that density of juniper affects the jurisdiction.
255	Morman	Indicates that the Forest Practices Act is silent, save for the event that commercial harvest occurs. Suggests that the distinction could be made through statute or rule. States that harvesting operations are now becoming large enough to justify revisiting the issue so as to clarify jurisdiction.
274	Sen. Ferrioli	Believes that regulating juniper is a legitimate extension of the authority of ODF. Compares juniper harvesting to that of yew harvesting, describing the increase in the yew industry over the past several years. Says that other species, such as poplar and cedar, have gone through similar commercialization processes. Asserts that commercialization is the trigger for management by the Forest Practices Act. Suggests that juniper management can have bio-diversity benefits.
320	Morman	Responds by saying that no one is for the total eradication of juniper but that there are definite benefits related to its management.
335	Sen. Ferrioli	Discusses research regarding juniper eradication. Says that juniper alters soil conditions in a way that simplifies the bio-diversity of the site, as well as creating their own microclimate. Asserts that the removal of juniper restores habitat for birds and other species. Argues that juniper management should go hand in hand with development of forest products related to juniper.
388	Jean Wilkinson	Representative, Oregon Cattlemen's Association. Testifies to a position of

		<p>neutrality on SB 1151. States that the jurisdictional issues are a matter of concern for ranchers dealing with juniper on their range lands. Asserts that juniper has negative ramifications on local habitats and water systems. Indicates that juniper removal could result in erosion and stream bank instability as well. Asserts that SB 1010 would identify conditions that have water quality ramifications under the auspices of ODA. Asserts that land users should not be subjected to regulation by two differing agencies. States that she cannot support giving ODF exclusive authority over any aspect of juniper management.</p>
TAPE 103, A		
033	Chair George	<p>Expresses concern that a piece of ground could be designated as pasture land, only to come under the jurisdiction of ODF should juniper be harvested there on a later date. Wonders how a balance might be created between forest and pasture land designations.</p>
050	Pete Test	<p>Associate Director of Governmental Affairs, Oregon Farm Bureau Federation. Says that the distinction could be made on the basis of production, or if the land was originally designated as forest land. Suggests that if forest land is produced on forest land it should be treated as forest harvesting.</p>
061	Chair George	<p>Stresses the need for consistency. Notes that groups that often deal with forestry issues would feel more comfortable being regulated by ODF, while farmers and ranchers would feel more comfortable under the jurisdiction of ODA.</p>
070	Test	<p>Asserts that some questions being debated by ODF are not matters of concern for forestry. Suggests that ODF should do more research with regards to juniper. Expresses concern about the possibility of imposing a tax, which would act as a disincentive for juniper removal.</p>
090	Wilkinson	<p>Indicates that SB 1010 would not require additional rules, as it identifies conditions that should be avoided while leaving other issues to the discretion of the landowner. Suggests that the system is already in place for accommodating SB 1010 with regards to juniper control operations.</p>
117	Test	<p>Testifies to a position of neutrality on SB 1151 (EXHIBIT C). Asserts that the farm bureau has a clear policy for juniper management that should not be altered by ODF. Reiterates that juniper is damaging to watersheds, topsoil, and biodiversity. Mentions that juniper currently exists where it is not supposed to, and that it should be kept where it belongs. Asserts that range land owners have land that is not worth the cost of removing juniper, a problem which can be partially offset by allowing commercial use of harvested juniper. Argues that commercial harvesting of juniper is beneficial but will require incentives to promote. Reiterates that juniper management should remain a matter for ODA to deal with. Indicates that the Farm Bureau would support minor changes to the bill, but also supports it in its current form.</p>
200	Sen. Corcoran	<p>Asks for clarification as to how much support the Farm Bureau is willing to put behind the bill.</p>

201	Test	Replies that some members of the bureau have concerns but that the bureau would support the bill if asked.
210	Chair George	Requests that the interested parties work together to agree upon a set of acceptable terminology regarding forest and range land.
223	Sen. Wilde	Wonders if the Forest Practices Act would allow a waiver on the timber tax if the harvest of juniper was only minimally profitable.
231	Morman	Replies that there is no allowance for an exemption from the tax, as it relates to the volume harvested, rather than the profit made through the sale of the harvest.
240	Sen. Wilde	Asserts that the rule would offer less flexibility in the formation of a solution.
248	Morman	Says that the determination of what is and is not forest land is very broad, and will definitely need further determination. Indicates that interaction with SB 1010 will make it difficult to define land as range land or forest land.
267	Chair George	Suggests that making the rule specific to juniper would eliminate ambiguity.
271	Morman	Agrees that there may be ways to define a minimum site productivity level.
290	Sen. Ferrioli	Clarifies that the threshold at which the Forest Practices Act is triggered is based upon the volume harvested per acre. Indicates that the minimum volume has yet to be reached.
299	Morman	Replies that there are specific productivity limitations but that there are no minimum standards.
303	Sen. Ferrioli	Wonders if such floors would be set by rule.
305	Morman	Replies that the size of harvest units is currently set in statute.
310	Sen. Ferrioli	<p>Says that the Board of Forestry should consider several issues in the process of developing a management plan for western juniper:</p> <ul style="list-style-type: none"> • Density per acre • Rapid spread • Effect on ecosystem • Relatively low commercial value, with potential for increase • Exemptions for watershed management <p>Asserts that juniper management may be a significant part of forestry in Eastern Oregon in the future.</p>

333	Chair George	Says there may be the potential for agreement on amendments.
337	Sen. Ferrioli	Asks if juniper producers would have access to the Oregon Forestry Research Institute in the event that juniper management were placed under ODF.
348	Morman	Replies that they would, as the institute is funded through harvest taxes.
354	Sen. Ferrioli	Asserts that the institute is designed to promote commercialization and would be ideal for juniper management.
364	Chair George	Closes the public hearing on SB 1151 and opens a public hearing on SB 337.
<u>SB 337 PUBLIC HEARING</u>		
371	Brad Harper	Committee Administrator. Gives a brief description of the bill. Says that under current law it is unclear as to which agency regulates agricultural burning other than open field burning. Says that some burning can contain hazardous substances. Indicates that the ñ2 amendments (EXHIBIT D) have been submitted for consideration by the committee.
392	Rep. Roger Beyer	House District 28. Testifies in support of the ñ2 amendments to SB 337. Says that the amendments make substantial changes to the intent of the bill, speaking to the burning of residue in christmas tree fields. Describes the process by which tree fields are burned, indicating that the process is regulated by the Department of Environmental Quality (DEQ). Reiterates that the amended bill would apply only to licensed christmas tree growers.
TAPE 102, B		
018	Sen. Dukes	Asks for a description of christmas tree residue.
020	Rep. Beyer	Replies that residue consists of various parts of harvested trees, as well as "culled" trees, which are not of high enough quality for sale.
025	Terry Thompson	Representative, Tony DeSantis Christmas Trees Inc. Testifies in support of the ñ2 amendments to SB 337. Indicates that tree farms often lease land for planting and growing trees. Explains that the leases grant rights to the property until harvest and that additional rent has been paid on property on occasions when it was impossible to get a burn permit. Asserts that many tree growers are in remote areas, where communication and transportation of workers are difficult.
049	Doug Sager	Christmas tree grower, McMinville, Oregon. Testifies in support of the ñ2 amendments to SB 337. Indicates that employees in the field often have to wait for notification to burn. Adds that the fire departments often consider notification a low priority. States that all growers face similar problems and support the amendments.

066	Chair George	Mentions that he has a big pile waiting to be burned as well.
069	Sen. Dukes	Wonders what prevents burning at this time.
071	Sager	Replies that the day must be designated as a "burn day," which is usually done after 9:00 a.m.
080	Lauri Aunan	Assistant to the Director, DEQ. Testifies in support of SB 337 and against the ñ2 amendments to the bill (EXHIBIT E). States that the original bill was submitted by DEQ in order to clarify statutory burning practices. Says that DEQ has restricted agricultural burning in the Willamette Valley from occurring on the same day as field burning during summer months. Notes that agricultural burning does not include tires or other potentially noxious or hazardous materials. Asserts that the ñ2 amendments would completely change the intent of the bill. Says that burning is not restricted except in summer months.
107	Sen. Corcoran	Wonders if the authors of the ñ2 amendments contacted DEQ to express their intention to "gut and stuff" the bill. Suggests that the sponsors of the amendments should have brought out their concerns in a bill of their own.
115	Aunan	Replies that there was dialogue about the bill but not the amendments.
121	Chair George	Asks if the amendments would allow burning at any time, even non-burn days.
124	Aunan	Replies that is the interpretation of DEQ.
128	Sean Miller	Representative, Pacific Northwest Christmas Tree Association. States that the intent of the amendment is to allow burning residue during the winter months, after harvest. States that there is no need to burn christmas fields during the summer. States that the amendment, as drafted, would allow growers to burn when they need to, without causing the dangers that Ms. Aunan addressed. Indicates that he has not had the opportunity to discuss the amendments with DEQ but hopes to do so during the hearing.
151	Sen. Corcoran	Says that he was unaware that the amendments were a "gut and stuff." Expressed disdain for such conflicts and says that efforts should be made to resolve such disputes before the hearings take place.
157	Miller	Explains that his understanding of the original bill led him to believe that the bill was unnecessary, which is why it was chosen as a vehicle for the amendment.
168	Sen. Corcoran	Asks Ms. Aunan if the bill is worthless and, if so, why it was brought forward.
171	Aunan	Replies that the bill was designed to add clarification.

175	Chair George	Asks for specifics on the intent of the original bill.
179	Aunan	Replies that the bill would clarify that, during open field burning in the Willamette Valley, DEQ has the authority to restrict other types of burning in order to avoid smoke problems. Says that the bill would also prohibit certain materials from burning.
188	Chair George	Asks if tire burning is currently legal.
191	Aunan	Indicates that statute is vague concerning tire burning.
193	Chair George	Asks if there is a way to hold the goals of the original bill intact, while addressing the concerns of the christmas tree growers.
200	Aunan	Expresses willingness to work on the problem.
201	Sen. Ferrioli	Asks if there are no statutes regarding prosecution for tire burning.
203	Aunan	Replies that there are penalties for most tire burning, but that it is unclear as to whether it applies to agricultural burning.
212	Sen. Ferrioli	Asks if there is a history of violations by christmas tree growers.
214	Aunan	Replies that she is unsure and would have to investigate further.
216	Sen. Ferrioli	Expresses doubt whether there is a problem that needs to be addressed, as DEQ probably has the authority to prevent tire burning. Adds that unless there was a history of christmas tree burning problems, the agency should not be addressing the issue.
232	Sen. Corcoran	Requests that the representative of DEQ who was involved in the drafting of the bill should be brought in to explain the reasons that the bill was put forth.
245	Chair George	Closes the public hearing on SB 337 and opens a work session on SB 993.
<u>SB 993 WORK SESSION</u>		
250	Brad Harper	Committee Administrator. Gives a brief description of the bill. Mentions that the bill was voted out with conceptual amendments, which must now be ratified in their official form as the ñ1 amendments (EXHIBIT F).
267	Sen. Wilde	MOTION: Moves to SUSPEND the rules for the purpose of Reconsideration of the vote by which SB 993 was sent to

		the floor with a DO PASS AS AMENDED recommendation.
	Chair George	Hearing no objection, declares the motion CARRIED.
272	Sen. Wilde	MOTION: Moves to RECONSIDER the vote by which SB 993 was sent to the floor with a DO PASS AS AMENDED recommendation.
	Chair George	Hearing no objection, declares the motion CARRIED.
277	Sen. Wilde	MOTION: Moves to ADOPT SB 993-1 amendments dated 4/16/99.
	Chair George	Hearing no objection, declares the motion CARRIED.
283	Sen. Wilde	MOTION: Moves SB 993 to the floor with a DO PASS AS AMENDED recommendation.
286		VOTE: 5-0-2 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Dukes, Fisher
	Chair George	The motion CARRIES. SEN. FISHER will lead discussion on the floor.
305	Chair George	Closes the work session on SB 993 and opens a public hearing on SB 1152.
<u>SB 1152 PUBLIC HEARING</u>		
315	Brad Harper	Committee Administrator. Gives a brief description of the bill. Says that the bill would allow small scale mining so long as it was conducted in a regulated manner. Adds that the bill would prohibit restriction of access to open mines or interfering with lawful mining activities.
330	John Holleman	Executive Director, Oregon Independent Miners. Testifies in support of SB 1152 (EXHIBIT G). Refers to suggested amendments within the submitted testimony. States that the bill will rectify inadequate federal laws. Asserts that miners do not have the same protections from trespass. Refers to an intercepted e-mail, also

		included in the testimony, threatens the gold mining industry. Argues that the bill is a step towards recognizing the heritage and importance of mining in Oregon. States that the income derived from the annual output of mines and wells in Oregon totals more than \$240 million annually. Asserts that small mines are an important part of the Oregon economy. Asserts that mining is done in such a way as to have minimal impact on the environment, and must be protected from extremists.
TAPE 103, B		
010	Sen. Shannon	Asks if there are individuals purposefully destroying equipment.
012	Holleman	Replies that there have been three separate incidents involving members of Earth First, including the removal of statement of intent signs.
105	Sen. Shannon	Wonders if the industry is regulated regarding the quality of water as it leaves the mining operation.
018	Holleman	Replies that state mining and environmental laws regulate mining activity, adding that Oregon has the most stringent mining laws in the nation.
022	Sen. Corcoran	Asks if the suggested amendments have been submitted to Legislative Counsel. Suggests that a work session be scheduled upon acquisition of the amendments.
026	Harper	Indicates that the amendments will arrive by the end of the week.
030	Sen. Shannon	Asks about the complaint made by the DEQ.
032	Holleman	Indicates that the bill and amendments do not affect federal law. Asserts that the appropriate science be used when enacting federal law.
036	Sen. Shannon	Wonders if the Governor is supportive of the bill.
038	Sen. Wilde	Inquires as to whether a Class C misdemeanor is sufficient to protect mining interests.
041	Holleman	Replies that it probably is not, adding that it was a compromise. Recalls a past incident in which a sluice box was destroyed and the mineral inside stolen. States that neither state nor federal authorities were able to take action regarding the incident. Indicates that the bill would only apply to state lands.
060	Sen. Wilde	Asks if trespass is an insufficient violation for such matters.
062	Holleman	Replies that mineral trespass involves actual removal of minerals that the miner

		has legally obtained.
067	Sen. Shannon	Wonders if the Tuttle amendments (EXHIBIT H) conflict with those suggested by Mr. Holleman.
071	Holleman	Replies that they do not. Discusses the differences between the two sets of proposed changes.
080	Sen. Shannon	Expresses concern that there may be conflict at the future work session.
084	Gary Lynch	Administrator, Mine Land Reclamation Program, Department of Geology and Mineral Industries (DOGAMI). Testifies to a position of neutrality on SB 1152 (EXHIBIT I). Says that DOGAMI has no problems with the proposed amendments.
101	Tom Quintal	Representative, Willamette Valley Miners. Testifies in support of SB 1152. Expresses a need for additional protections for miners. Asserts that there is a need to protect the lives of miners and the operability of their equipment. Says that those who threaten or hinder miners should be held criminally liable.
126	Tom Barrows	Representative, Northwest Mining Association. Testifies in support of SB 1152 as per the DOGAMI amendments. Reiterates the problems with vandalism and the gap within the law that does not allow state and local police authority to intervene.
146	Holleman	Indicates that the "Three River Basin Rule" is not in the bill and that the bill will not affect federal regulations.
157	Sen. Shannon	Describes the "Three River Basin Rule," which lists the Santiam, Clackamas, and McKenzie rivers as off limits to miners.
		Additional testimony was submitted to the committee for the consideration of the members (EXHIBIT J).
211	Chair George	Closes the public hearing on SB 1152 and adjourns the meeting at 6:18 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Brad Harper,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 1151, testimony, Larry Swan, 13 pp.

B ñ SB 1151, testimony, David Morman, 2 pp.

C ñ SB 1151, testimony, Pete Test, 2 pp.

D ñ SB 337, -2 amendments, staff, 3 pp.

E ñ SB 337, testimony, Lauri Aunan, 1 p.

F ñ SB 993, -1 amendments, staff, 1 p.

G ñ SB 1152, testimony, John Holleman, 11 pp.

H ñ SB 1152, testimony, Laurence Tuttle, 2 pp.

I ñ SB 1152, testimony, Gary Lynch, 1 p.

J ñ SB 1152, testimony, various, 2 pp.