

SENATE COMMITTEE ON RULES AND ELECTIONS

June 2, 1999 Hearing Room B

8:00 a.m. Tapes 72 ñ 73

MEMBERS PRESENT: Sen. Charles Starr, Chair

Sen. Lee Beyer

Sen. Neil Bryant

MEMBER EXCUSED: Sen. Randy Miller, Vice-Chair

Sen. Peter Courtney

STAFF PRESENT: Ray Kelly, Administrator

Gary Roulier, Administrative Support

MEASURE/ISSUES HEARD: HB 3280A Public Hearing

HB 3054A 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 72, A		
002	Chair Starr	Opens the meeting at 8:11 a.m. and opens a public hearing on HB 3280A.
<u>HB 3280 PUBLIC HEARING</u>		
008	Rep. Roger Beyer	House District 28. Testifies in support of HB 3280A which exempts non-emergency fire-fighting training from requirements for water use applications, permits, or certificates in specified situations.
027	Vince Herman	Assistant Fire Chief, Silverton Fire District. Testifies in support of HB 3280A.

		Explains that under current law, the drafting of water in rural areas for a training exercise is illegal without a special permit.
053	Sen. Beyer	Asks how much water is used for the training exercises.
057	Herman	Responds that it depends on the size and severity of the fire being addressed during the training exercise.
068	Rep. Beyer	Relates a situation in Molalla where the fire department is required to demonstrate the ability to sustain water pressure for 20 minutes.
092	Tom Byler	Water Resources Department (WRD). Testifies in support of HB 3280A.
112	Richard Koesan	Water For Life. Presents (EXHIBIT A) and (EXHIBIT B) and testifies in support of HB 3280A and the proposed ñA4 amendments. Explains the provisions of the ñA4 amendments which deal with adjudication proceedings under Chapter 539 of the current statutes.

167	Koesan	Reviews the provisions of Section 5 of the proposed amendments (page 2 of EXHIBIT A). Discusses Oregon Attorney General opinions and state administrative rules regarding water rights.
198	Sen. Beyer	Asks if the purpose of the amendments is to place the existing administrative rules in statute.
206	Koesan	Responds that Section 4 of the amendments bring some logic to water rights adjudication.
222	Sen. Beyer	Asks how Section 6 of the amendments codify the Attorney Generalís opinion.
229	Koesan	Answers that it mandates that regulation of water rights occur after the circuit court has entered and issued a decree.
257	Todd Heidricken	Water for Life. Testifies in support of the ñA4 amendments to HB 3280A. Adds that Section 6 of the amendments deals with adjudication of pre-1909 water rights.
278	Sen. Beyer	Asks if the purpose is to remove the ability to regulate water resources prior to final court action.
287	Koesan	Answers that all parties have not had the opportunity to be heard until the court issues a decree.

305	Sen. Beyer	Asks if there is any regulation of water if the river is unadjudicated under the provisions of the amendments.
312	Kosesan	Responds that would be correct for pre-1909 water rights.
318	Sen. Bryant	Notes that any water rights that are pre-1909 must be filed with the WRD. Comments that a registration is filed with WRD which delineates the quantity and use of the water. Asks if the WRD would have the right to determine proper usage.
341	Kosesan	Responds that Section 4 of the amendments define the requirements of a summary document (page 1 of the exhibit).
352	Sen. Bryant	Asks if these amendments are identical to those proposed for SB 299. Discusses the amendments with the witness.
408	Sen. Bryant	Comments on the possibility that the WRD and the Governor will oppose the amendments.
418	Sen. Beyer	Asks if the amendments apply only to pre-1909 rights.

TAPE 73, A

006	Heidricken	Answers that the amendments mandate that these unadjudicated water rights not be regulated prior to a circuit court decree.
012	Sen. Beyer	Asks if the intent is that any pre-1909 use be allowed to continue until adjudication, and to remove the ability of the WRD to regulate water rights.
017	Heidricken	Responds that is correct and that the use would need to be consistent with the historical use of the water.
023	Sen. Beyer	Asks if there is a formal acceptance of the claim by the WRD.
024	Heidricken	Answers that there is a formal acceptance.
027	Byler	WRD. Testifies in opposition to the amendments. States that these amendments would make a "good bill bad." Notes that the issues being addressed are extremely complex and could have a negative impact on the adjudication of water rights in the Klamath Basin.
043	Byler	Remarks that the United States Supreme Court determined that the federal

government is under state jurisdiction with regard to the Klamath adjudication. Emphasizes that the proposed amendments could jeopardize that position.

065	Sen. Beyer	Asks if there is a disagreement with the Attorney General's legal opinion handed down in 1996.
068	Byler	Responds that he is not the primary staff person handling the issue and would be reluctant to offer an opinion.
072	Sen. Bryant	Asks if the proposed amendments change the existing Oregon Administrative Rules.
075	Byler	Answers that he does not know.
079	Sen. Bryant	Asks if there have been any further Attorney General opinions since 1996.
085	Byler	Responds that he is not aware of any further opinions. Informs the committee of appropriate staff members that would be more conversant with the issues.
090	Sen. Bryant	Comments that the Klamath adjudication will cost \$1.1 million in the next biennium to complete. Notes that it would be helpful to hear testimony from the Attorney General regarding the water rights addressed in the amendments.
132	Chair Starr	States that the committee will require further study and stresses that he would not allow the amendments to jeopardize passage of HB 3280A.
143	Jan Lee	WRD. Testifies in opposition to the amendments to HB 3280A. Notes that representatives in the Klamath Basin litigation do not support the amendments.
167	Chair Starr	Closes the public hearing and opens a public hearing on HB 3054A.

HB 3054A PUBLIC HEARING

174	Rep. Kevin Mannix	House District 32. Testifies in support of HB 3054A which declares that the owner of land is not liable for injury, death or other damage to trespasser that arises out of conditions existing on the land. Presents (EXHIBIT C) and explains the provisions of the amendments.
208	Rep. Mannix	Explains that HB 3054A also creates the offense of unlawful posting of land. Summarizes the historical basis for property owner liability to a trespasser.
258	Rep. Mannix	Notes that existing statutes deal with nuisance abatement and exceptions should

not be created in order to keep "doors open" for litigation under the provisions of HB 3054A.

280	Sen. Beyer	Asks if the provisions of this bill would eliminate the concept of an "attractive nuisance."
296	Rep. Mannix	Responds that it would. Notes that local jurisdictions can establish standards to control attractive nuisances. Stresses that the property owner should not be punished "after the fact" when someone has been injured while trespassing on private property.
324	Sen. Beyer	Asks if landowner responsibility would be completely eliminated.
336	Rep. Mannix	Reiterates that a trespasser has no rights to be on the property and should not be protected.
361	Sen. Beyer	Asks when the "door is closed" on trespassing.
366	Rep. Mannix	Responds that the door closes when a property owner explicitly or implicitly invites people onto the premises.
381	Sen. Beyer	Comments that he sees the distinction but does not see that distinction within the bill. Cites an example of a mining operation that would be held harmless in the event of an injury to a trespasser.
391	Rep. Mannix	Reiterates that the property owner would not be liable for injury as long as the property owner did nothing intentional to cause injury.

TAPE 72, B

010	Sen. Bryant	Asks if someone can be a trespasser under Oregon law if they "unknowingly" enter onto private property.
020	Rep. Mannix	Responds that the definitions are different for criminal and civil law.
025	Sen. Bryant	Asks what statute covers civil liability for trespassers.
027	Rep. Mannix	Answers that he does not know.
033	Everett Cutter	Oregon Railroad Association. Presents (EXHIBIT D) and testifies in support of HB 3254A. Reviews national and Oregon statistics on railroad trespass incidents resulting in fatalities (page 1 of the exhibit).
075	Claudia Howells	Manager, Rail Division, Oregon Department of Transportation (ODOT). Testifies in support of the provisions of the bill concerning trespassers on railroad property.

093	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association. Testifies in support of HB 3254A.
107	Ray Phelps	Sauvie Island Kennels. Presents (EXHIBIT E) and testifies in support of HB 3254A. Explains that the ñA4 amendments correct a problem for Sauvie Island Kennels and will allow the business operation to continue.
156	Phelps	Notes that the amendments will limit the period back in time a kennel operator must provide written documentation. Reviews requirements for public hearings contained within the amendments (page 1 of the exhibit).
183	Chair Starr	Asks if the amendments clarify the situation for Sauvie Island Kennels.
192	Phelps	Responds that the amendments clarify that particular situation and also addresses local control for similar situations.
197	Sen. Beyer	Asks if dog kennels are a permitted use and if the problem is that the county will not permit this particular use.
203	Angela Schillereff	Owner, Sauvie Island Kennels. Responds that Multnomah County has continually approved the usage. Notes that Marquam Farms has objected and raised numerous issues regarding the use of the property.
243	Phelps	Adds that Multnomah County approved the kennels as a non-conforming use in 1996.
251	Sen. Beyer	Asks why there are specific exemptions for a commercial operation regarding greyhounds.
261	Sen. Bryant	Reviews the 1995-97 legislation regarding greyhound kennel operations.
278	Sen. Beyer	Remarks that he does not see the difference between raising dogs and other domestic animals such as cows and sheep.
283	Larry Derr	Attorney, Marquam Farms Hunt Club. Presents (EXHIBIT F) and testifies in opposition to the ñA4 amendments to HB 3254A. Reviews the history of the Sauvie Island Kennels. Notes that Multnomah County incorrectly granted a permit for the kennel operation in 1989.
335	Derr	States that a hearings officer denied a permit to expand the kennels in 1995. Stresses that the existence of the kennel in the 1950s is not disputed. Adds that the issue is with "continuous operation."

385	Derr	Comments that the Oregon Legislature is not the place to amend non-conforming land use laws for local jurisdictions.
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TAPE 73, B

006	Derr	Concludes that this is a complicated issue that is still being adjudicated in the courts.
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032	Robert Groves	Citizen, Multnomah County. Testifies in opposition to the ñA4 amendments to HB 3524A.
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043	Sen. Beyer	Asks about the size of the hunt club and kennel. Asks what the specific objections are to the existence of the dog kennel.
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051	Derr	Responds that the hunt club covers 250 acres and the kennel is 9.4 acres. Explains that the noise created by the dogs means that ducks will not be drawn to land owned by the club for hunting. Adds that the traffic is also a disturbance.
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071	Groves	Notes that the traffic and the noise of the dogs make approximately one-fifth of the property unusable for hunting. Adds that any conforming use would be acceptable.
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086	Derr	Adds that the kennel operation is to board and train dogs. Remarks that particular use is incompatible with the adjacent property usage.
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103	Sen. Beyer	Asks if the objection would be the same if they were raising horses.
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109	Derr	Answers that the dog training involves the firing of guns to train them for hunting.
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117	Groves	Adds that the courts have continued to rule in Marquam Farmís favor.
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121	Sen. Bryant	Asks when the hunt club was founded and whether the objection is to the amount of dogs being kenneled.
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139	Derr	Responds that the hunt club was founded in 1986 and adds that the property is also farmed. Explains that that the club objects to the current number of dogs as well as the proposed expansion of the kennels.
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153	Sen. Bryant	Remarks that he has clients who farm their hunt club property, primarily to create hiding locations and raise crops that attract waterfowl. Adds that there are tax advantages to farming the property.
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167	Steve Piucci	Oregon Trial Lawyers Association. Presents (EXHIBIT H) and testifies in opposition to HB 3054A. Notes that Oregon law already protects landowners.
200	Sen. Bryant	Asks for a copy of the Uniform Jury Instructions for trespasser cases and one example of the requirements for an attractive nuisance lawsuit.
204	Piucci	Responds that he will provide the requested materials.
206	Chair Starr	Closes the public hearing and adjourns the meeting at 9:49 a.m.

Submitted By, Reviewed By,

Gary Roulier, Ray Kelly,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3280A, amendments, staff, 3 pp

B ñ HB 3280A, letter and copies of administrative rules, Richard Koesan, 22 pp

C ñ HB 3054A, amendments, staff, 1 p

D ñ HB 3054A, written testimony, Everett Cutter, 4 pp

E ñ HB 3054A, written testimony and letters, Ray Phelps, 9 pp

F ñ HB 3054A, letter, Larry Derr, 3 pp

G ñ HB 3054A, written testimony, Stephen Piucci, 1 p

H ñ HB 3054A, letter submitted prior to meeting, staff, 1 p