

SENATE COMMITTEE ON WATER AND LAND USE

June 14, 1999 Hearing Room D

1:00 p.m. Tapes 86 - 87

MEMBERS PRESENT: Sen. Veral Tarno, Chair

Sen. Tony Corcoran, Vice-Chair

Sen. Gary George

Sen. Marylin Shannon

Sen. Thomas Wilde

STAFF PRESENT: Ray Kelly, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: HB 2164-A Public Hearing and Work Session

HB 2865-A Public Hearing and Work Session

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 86, A		
002	Chair Tarno	Calls the meeting to order at 1:15 p.m. Opens a public hearing on HB 2164-A.
<u>HB 2164-A PUBLIC HEARING</u>		
007	Martha Pagel	Director, Water Resources Department. Testifies in support of HB 2164-A (EXHIBIT A). States that since 1993 there have been provisions in statute allowing for exceptions to basin plans. Explains that the law allowing the exceptions terminated due to its sunset clause in 1998. Says the bill will reinstate the provision, mentioning that it has been used only four times. Indicates that the ñA3 amendments (EXHIBIT B) clarify that applications are to be considered, rather than approved automatically.

043	Chair Tarno	Expresses concern that the A-engrossed bill is more confusing than the original. Says that the only thing necessary is an emergency clause, which is included in the ñA5 amendments (EXHIBIT C). Suggests that both sets of amendments be adopted.
057	Pagel	Supports the adoption of both amendments. Explains that section 1 of the bill reinstates the language that existed prior to the sunset of the program in 1998, while section 2 reinstates the sunset to 2003. Submits that the two sections counteract one another. Says the ñA5 amendments eliminate the sunset and make the provision permanent. Recommends the committee adopt only lines 1-5 of the ñA3 amendments and all of the ñA5 amendments.
083	Chair Tarno	Closes the public hearing on HB 2164-A and opens a work session on HB 2164-A.
<u>HB 2164-A WORK SESSION</u>		
086	Ray Kelly	Committee Administrator. Indicates that a conceptual amendment to the ñA3 amendments will be necessary, specifically the elimination of all language following line 5 on page 1.
098	Sen. Corcoran	MOTION: Moves to ADOPT HB 2164-A3 amendments dated 5/6/99 and that the measure be FURTHER AMENDED, deleting lines 6-24 on page 1 and all of page 2.
		VOTE: 5-0
		Hearing no objection, declares the motion CARRIED.
104	Sen. Corcoran	MOTION: Moves to ADOPT HB 2164-A5 amendments dated 6/11/99.
		VOTE: 5-0
		Hearing no objection, declares the motion CARRIED.
106	Sen. Corcoran	MOTION: Moves HB 2164-A to the floor with a DO PASS AS AMENDED recommendation.
115		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.

	Chair Tarno	<p>The motion CARRIES.</p> <p>SEN. TARNO will lead discussion on the floor.</p>
119	Chair Tarno	Closes the work session on HB 2164-A and opens a public hearing on HB 2865-A.
<u>HB 2865-A PUBLIC HEARING</u>		
125	Rep. Leslie Lewis	House District 29. Testifies in support of HB 2865-A. Says the bill deals with siting of utility facilities onto farmland. Explains that the phrase "necessary for public service" has created difficulties in court cases, which has led to the bill's attempt to clarify the meaning of "necessary." Mentions several groups who were involved in drafting the bill. Says the bill also addresses the siting of rural fire service facilities and the creation and enhancement of wetlands on high value farmland.
156	Burton Weast	Representative, Special Districts Association (SDA). Testifies in support of HB 2865-A. Indicates that the A7 amendments (EXHIBIT D) have been submitted for consideration by the committee. Explains that the amendments correct the bill's organization to better fit the statute in which it will be located. Mentions that there is objection to the fact that the relating-to clause does not reflect the wetlands language within the A-engrossed bill, adding that is also addressed by the amendments.
196	Weast	<p>States that the bill defines the word "necessary" specifically in relation to the siting of a utility facility. Offers a list of factors that would justify siting such a facility on farmland:</p> <ul style="list-style-type: none"> • Technical and engineering feasibility • Locationally dependent • Lack of available urban or non-resource lands • Availability of existing right-of-way • Public health and safety • Other requirements of state and federal agencies <p>Says that utilities agree to the factors listed above. Mentions several instances of objections to siting facilities. Asserts that counties will have both a guideline and flexibility as to how to site utilities. Acknowledges that the relatively low cost of farmland makes it a tempting site for facilities, which is why other factors must be considered. Says the bill would make the owner of the utility facility responsible for restoring the land to its former condition if it is damaged during construction.</p>
273	Weast	Discusses the bill's provisions for irrigation and rural fire facilities. Concludes that the bill merely redefines the word "necessary." Acknowledges a couple of groups do not support the amendments, despite efforts to address the concerns of all parties.

309	Don Schellenberg	Associate Director of Governmental Affairs, Oregon Farm Bureau (OFB). Testifies to a position of neutrality on HB 2865-A (EXHIBIT E). Comments that the bill would include provisions for both human and animal waste systems. Expresses concern regarding the practice of wetland mitigation banking and its potential impact on surrounding farmland. Asserts that the bill, as a whole, does not address all of the needs of the OFB.
370	Chair Tarno	Inquires whether there has been feedback from the Governor regarding the ñA7 amendments.
374	Weast	Replies that he does not know if the Governor has taken a position on the amendments. Mentions that 1000 Friends of Oregon plans to request a gubernatorial veto. Expresses support for the bill, adding that it should be considered on its own merit.
386	Sen. Corcoran	Submits that there is a "circular responsibility issue" that could be eliminated by simply stating that the utility is responsible.
402	Weast	Explains that the language was written to insure that a bond requirement could be imposed on the subcontractor who performs the work. Says there was a need to eliminate the possibility that a subcontractor could "hide behind the language of the statute." Explains that the word "solely" was included to place final responsibility on the utility.
TAPE 87, A		
008	Dan Dority	Concerned citizen, Clackamas County. Testifies in opposition to HB 2865-A (EXHIBIT F). Argues that the bill was sponsored on behalf of the City of Newberg as a way to circumvent the authority of Marion County, which would not allow the city to site municipal wells on exclusive farm use (EFU) land. Explains that municipal water wells are far more intrusive than other utility facilities, such as cable heads. Says that the 1992 Newberg water master plan outlined the need to carefully control crop type, irrigation, and effluent and chemical application within the well head and groundwater capture zones. Concludes that the city's plan would have created "massive areas" outside of town where farmers would have been adversely affected.
052	Dority	Indicates that his testimony contains conceptual amendments prepared by Marion County, which would give counties some control over the siting of municipal water wells other than simply a "rubber stamp." Explains that the proposed amendments would allow counties to deny an application in the event that mitigation is impossible. States that the issue is one of property rights, as farmers would be denied the ability to work their land effectively.
075	Chair Tarno	Indicates that the committee will not entertain conceptual amendments at this time. Mentions that the bill will likely end up in conference committee, at which time amendments could be submitted.
079	Sen. Corcoran	Mentions that the primary concern of the bill is natural gas, rather than water wells.

083	Chair Tarno	Concurs with Sen. Corcoran.
086	Dority	Reiterates that the bill was sponsored by the City of Newberg, with the specific goal of allowing for the siting of municipal water wells. Argues that the other issues in the bill are "innocuous."
098	Chair Tarno	Requests that Mr. Dority have his amendments drafted by Legislative Counsel for presentation to the conference committee.
100	Blair Batson	Representative, 1000 Friends of Oregon. Testifies in opposition to HB 2865-A. Asserts that the current case law has a clear definition of "necessary" in that utilities cannot be sited on EFU lands if they can be sited somewhere else. Says the bill contains a loophole in its definition of "locationally dependent" on page 1, lines 18-21. Submits that it would be impossible for a farmer to argue that a siting on EFU lands was not locationally dependent. Indicates that 1000 Friends has conceptual amendments that it would like to bring to the conference committee. Mentions they have no quarrel with the wetlands or fire district sections of the bill.
140	Chair Tarno	Closes the public hearing on HB 2865-A and opens a work session on HB 2865-A.
<u>HB 2865-A WORK SESSION</u>		
146	Sen. Corcoran	MOTION: Moves to ADOPT HB 2865-A7 amendments dated 6/14/99.
147		VOTE: 4-0-1 EXCUSED: 1 - George
	Chair Tarno	Hearing no objection, declares the motion CARRIED.
149	Sen. Corcoran	MOTION: Moves HB 2865-A to the floor with a DO PASS AS AMENDED recommendation.
152		VOTE: 4-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - George
	Chair Tarno	The motion CARRIES.

		SEN. TARNO will lead discussion on the floor.
153	Chair Tarno	Closes the work session on HB 2865-A and adjourns the meeting at 1:55 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Ray Kelly,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2164-A, testimony, Martha Pagel, 3 pp.

B ñ HB 2164, -A3 amendments, staff, 2 pp.

C ñ HB 2164, -A5 amendments, staff, 1 p.

D ñ HB 2865, A7 amendments, staff, 3 pp.

E ñ HB 2865-A, testimony, Don Schellenberg, 1 p.

F ñ HB 2865-A, testimony, Dan Dority, 5 pp.