

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

May 6, 1997 Hearing Room D

08:00 AM Tapes 76 - 77

MEMBERS PRESENT:

Rep. Charles Starr, Chair

Rep. Terry Thompson, Vice-Chair

Rep. Dennis Luke

Rep. Ken Messerle

Rep. Kurt Schrader

Rep. Judith Uherbelau

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Judith Gruber, Administrator

Linda Kowal, Administrative Support

MEASURE/ISSUES HEARD:

HB 2562 Public Hearing and Work Session

HB 2741 Public Hearing and Work Session

SB 107 Public Hearing and Work Session

SB 110 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 76, A		
009	Chair Starr	Calls the meeting to order at 8:00 am and opens the public hearing on HB 2562.

<u>HB 2562</u>		
<u>PUBLIC</u>		
<u>HEARING</u>		
013	Rep. Lee Beyer	District 42. States this bill addresses a concern about members of golf courses lugging around gallons of gasoline in their vehicles and provides a way for them to use the pumps at the golf course. The -2 amendments (EXHIBIT A) were suggested by Carol Washburn of the Fire Marshal's Office. Essentially this applies to community courses that limit their use to members only. They must meet all other standards and usage is limited to gas golf carts that are not designed for highway use.
040	Rep. Beyer	Continues, the golf course would still have to pay the fee, have the same annual auditing standards, and are still required to have annual training. For the record, one concern he has is the requirements outlined in statute talk about vehicles that use a certain amount of gallons. He was told by the Fire Marshal's Office they can exempt that because if the users of the golf carts are using them as intended they will in no way come close to meeting the minimum standard. Request they adopt the -2 amendments and the bill.
057	Rep. Messerle	Ask do they still pay the gas tax?
059	Rep. Luke	Interjects the retailer pays the gas tax.
062	Rep. Messerle	Asks can't they apply to get that reimbursed whereas it's non-highway use?
059	Rep. Beyer	Responds he doesn't know the answer to that. He assumed they would pay the gas tax.
063	Chair Starr	States they will not pay road tax on the gas that's used only in off-road vehicles. They would be excluded from the tax at the time of delivery from the dealer. If you were an individual user, like a farmer, you would declare the gas delivered is only used in off road vehicles and it can be delivered tax-exempt. If you're using both on and off-road vehicles then you'd file for refund of the tax.
073	Rep. Messerle	Asks if this applies to marinas also?
074	Rep. Beyer	Negative.
075	Rep. Luke	As he understand this bill only applies to private golf clubs, so those who can't afford to be members of private clubs won't be able to take advantage of this.
077	Rep. Beyer	Responds that's the way it was drafted with the intent of being narrow. States if they would like to take that out he would not object.
081	Chair Starr	States this is a broader bill that affects other private clubs not just the Springfield Golf Club. There are clubs where they build the golf course and then build a housing development around it.

087	Rep. Thompson	Comments the purpose is to allow gas to be used for golf carts and if similar carts are used on public courses then it should be the same for them. It doesn't seem right to him that this situation is created just for private courses.
097	Rep. Luke	Comments one problem is not having the pump manned. On a public golf course it would be difficult to be sure the person manning the pump is trained. There are courses that this doesn't apply to for example Sun River. People who live in Sun River have their own carts and drive the bike paths to the course.
115	Chair Starr	States he agrees there's a further problem out there. In talking with the state Fire Marshal it was their desire and concern that it be narrowed in this way. Asks if this is correct.
119	Rep. Beyer	Responds mainly they were trying to narrow it for comfort both on their side as well as the state Fire Marshal. They were able to do this and track it was by membership cards.
131	Rep. Luke	The main problem with the private clubs is they don't want to man the pumps. Suggests amending the bill to allow courses to pump the gas into carts and sell the gas directly to public.
141	Rep. Beyer	Comments he thinks they can do that now by getting a dispensers license.
144	Rep. Luke	States the whole point of the bill is: 1) your club didn't want to get a dispensers license because of the inconvenience and inspections, and 2) they didn't want to go through the problem of manning the pump.
149	Chair Starr	States these are really two different issues and believes that Rep. Beyer has accomplished a purpose for those private clubs.
154	Rep. Uherbelau	Clarifies as the bill reads it's anybody pumping their own gas.
160	Chair Starr	Responds they have to be members. Closes the public hearing and opens a work session on HB 2562.
<u>HB 2562</u> <u>WORK</u> <u>SESSION</u>		
168	Rep. Uherbelau	Asks why there is a provision that allows the State Fire Marshal to waive the hearing requirement.
177	Rep. Beyer	He believes this came from the Fire Marshal's Office in terms of administrative convenience.
190	Chair Starr	Asks if he carries this bill to the floor, will he answer that question.
193	Rep. Thompson	MOTION: Moves to ADOPT HB 2562-2 amendments dated 04/15/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
197	Rep. Thompson	MOTION: Moves HB 2562 to the floor with a DO PASS AS AMENDED recommendation.

200	Rep. Uherbelau	States at this point she'll be voting no because she's not convinced there's a need. They can do this through another procedure and she realizes they want to circumvent that procedure, but she's not convinced they should be able to do that.
208		VOTE: 4-2 AYE: 4 - Thompson, Messerle, Wells, Starr NAY: 2 - Luke, Uherbelau EXCUSED: 1 - Schrader
	Chair Starr	The motion CARRIES . REP. BEYER will lead discussion on the floor.
214	Rep. Luke	States as this moves to the Senate, a way should be found to let the public clubs in on this also, whether it be permissive language or something of that nature.
219	Rep. Beyer	Thanks the committee for their consideration and states that he will address Rep. Luke's and Rep. Uherbelau's concerns.
224	Chair Starr	Closes the work session on HB 2562 and opens the public hearing on HB 2741. (EXHIBIT B)
<u>HB 2741</u> <u>PUBIC</u> <u>HEARING</u>		
223	Rep. Jeff Kruse	District 45. Comments he has nothing new to add to the information the committee already has. Refers to Rep. Luke's concern regarding the word "shall". States the gentleman from OSU Extension said he would talk to Rep. Luke about that. Asks if he did.
236	Rep. Luke	Negative.
237	Rep. Kruse	States that OSU Extension has no problem with the bill, the concept, or the language as it currently is.
247	Chair Starr	Closes the public hearing and opens a work session on HB 2741.
<u>HB 2741</u> <u>WORK</u> <u>SESSION</u>		
247	Rep. Thompson	MOTION: Moves to ADOPT HB 2741-1 amendments dated 03/19/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED .
252	Rep. Thompson	MOTION: Moves HB 2741 to the floor with a DO PASS AS AMENDED recommendation.
256	Rep. Luke	States he'll be voting no. He's watched the Extension Service take cuts in almost every session he's been here. He's watched programs

		get deleted in his county that are vital to the farming community in that area. The "shall" may not affect their budget in this session but as things become a priority the "shall" is there and it could affect the funding of the Extension Service at the expense of other important programs.
268	Rep. Thompson	States he agrees with Rep. Luke in the importance of the Extension and the cuts in the budget. He will vote yes because he believes this is a good program and he hopes the budgets will be improved so a situation never arises where this becomes a detriment to the Extension budget.
276	Rep. Uherbelau	States she shares Rep. Luke's concern. The only reason she feels comfortable voting yes is because it says "shall enhance" and you can enhance something in very tiny increments. She has good faith the Extension programs' level of enhancement won't be such that they would jeopardize other programs.
284	Rep. Luke	States that after the next census they will probably find the majority of this state will be in the metro area down to Salem, and not in the rural communities, and not on the coast, and not in southern or eastern Oregon. The philosophy of the state will change and he has real concerns about this.
290	Chair Starr	States that he personally is a very strong supporter of the Extension Service. Since they're comfortable with this language, that is the deciding factor for him.
298		VOTE: 5-1 AYE: 5 - Thompson, Messerle, Wells, Uherbelau, Starr NAY: 1 - Luke EXCUSED: 1 - Schrader
	Chair Starr	The motion CARRIES. REP. KRUSE will lead discussion on the floor.
308	Chair Starr	Closes the work session on HB 2741 and opens the public hearing on SB 107.
<u>SB 107</u> <u>PUBLIC</u> <u>HEARING</u>		
315	Fred Robinson	Assistant State Forester, Oregon Department of Forestry. States this is a short but important bill. (EXHIBIT C) States the obligation of forest landowners for fire on their land is what created Oregon's fire protection system and the Oregon Department of Forestry. Gives a brief history of the Europeans and native Americans in regard to burning for various reasons. Around the turn of the century, these fires began to be a problem so around 1910 - 1911 the first laws

		dealing with forest fires were passed which assigned the landowners the responsibility for dealing with forest fires.
380	Robinson	States the system today is based on the principal that the landowners have a basic responsibility for fire on their land started intentionally or unintentionally.
416	Robinson	Continues, this bill deals with two issues: * the obligation to pay fire suppression costs that the State Forester or his representative incur in suppressing fires that have escaped from the landowner who started the fire.
TAPE 77, A		
014	Robinson	Continues, and * the issue of interpretation of the statutes in today's world.
050	Rep. Luke	Refers to a major fire that started in Bend last summer on or near private land which he believes was cause by lighting and moved on to areas that they are required to protect. Asks would this bill cover that?
055	Robinson	Responds if your referring to a skeleton fire, no. The only fires this bill deals with is when landowners are specifically responsible for the origin of the fire.
059	Rep. Luke	Gives another example that happened in Black Butte on private ground a few years ago. A landowner had permission to burn slash, the weather conditions were fine. Several days later winds fanned embers that were in that pile and moved the fire into the forest. That person followed the rules. Asks would they fall under this as still being liable?
068	Robinson	Responds if he's talking about the fire north of Sisters, this gets at that same issue. The fact is, landowners are responsible for the complete suppression of the fire, including hold over slash fires. It's very common in slash fires or land clearing operations for a fire to smolder for days or weeks. The basic principle includes all those sparks. Yes, the landowner is still responsible.
087	Rep. Luke	States a few years ago the forest service burned a slash fire. A few days later a wind came up. Asks if the Department of Forestry or the US Forest Service causes the fire and it burns private land, are they fully liable for the suppression and replacement costs to the private landowner?
098	Robinson	Answers fully responsible for suppression costs, yes. The liability is between the landowner and the US Forest Service.
122	Clark Seely	Director of Fire Protection, Oregon Department of Forestry. The Forest Service case is unique in that the state has an interagency agreement with them for fire protection generally in Oregon. If the fire escapes and requires the state to expend money the US Forest Service will repay their costs.

133	Rep. Luke	Asks if an authorized fire starts on land you control and crosses over to his land, will you restore my land and pay for damages by law.
141	Seely	He believes the answer is yes.
143	Rep. Luke	Asks if anyone knows for sure. States their asking private landowners to compensate the state or his neighbors, and he thinks if the state is responsible for the fire then they should have the same obligation.
146	Belinda Bruce	Oregon Department of Justice, representing the Department and the Board of Forestry. Answers in terms of recovering damages outside the damages incurred in the cost of suppressing the fire, yes. This is a private right of action in ORS Chapter 477. The same is true of the federal government, there is a Federal Tort Claims Act that would allow private landowners to recover against the federal government for acts of negligence.
168	Chair Starr	Asks does that recovery include attorney fees?
170	Bruce	Responds probably not. She doesn't know what the Federal Tort Claim Act provides.
177	Rep. Uherbelau	Ask why would you extend the time to file notice of lien from six to twelve months. Why would it take that long?
191	Seely	Answers the determination of the cause of the fire takes several weeks to a month or more depending on the size of the fire and the complexity of the investigation. What becomes difficult is when it involves multiple rural and federal agencies. In terms of lien processing, the six months is triggered at the end of the calendar year within which the fire occurs. For example, for a fire in late June or early July they have until the end of June of the following year. However, a fire in late September or October only gives them eight months instead of twelve months.
238	Rep. Uherbelau	States she's concerned that by allowing so much time to file the lien their interest could be lost. For example, if there's a fire in February you'd have almost two years to file the lien. In the meantime a person could fund their rebuilding and there's nothing in the bill that gives their lien priority.
256	Bruce	Responds the Department of Justice now assists the Department of Forestry with fire cost collection and the liens are usually filed as soon as the investigation is complete and the bill has gone out.
277	Rep. Wells	Asks how does Section 1 tie in with Section 3?
284	Seely	Responds the cost recovery process is spelled out in chronological order in ORS 477.068. The five paragraphs lay out the sequence.
303	Rep. Wells	Clarifies if the party pays in 90 days then there is no lien. Asks, there's twelve months from the time the fire started.
313	Seely	Responds there's twelve months from the end of the calendar year that the fire occurred. The twelve months allows more time for

		settlement discussions or negotiations on the bill. The majority of the cost recovery cases do not go to suit or liens.
339	Rep. Wells	Asks why there is a fiscal impact potential of \$500,000 to a million extra income per biennium.
345	Seely	Responds on the basis of ORS 477.281 this is money determined unrecovered per biennium in the large fire cases they were challenged on or lost. It's not a guarantee of revenue.
360	Rep. Wells	Clarifies this deals with Section 2.
362	Seely	Affirmative.
366	Robinson	Points out this is not a new issue. In the interim there was a working group that consisted of large and small landowners and to his knowledge everyone who worked on this supports it.
392	Chair Starr	Closes the public hearing and opens a work session on SB 107.
<u>SB 107 WORK SESSION</u>		
396	Chair Starr	States he's talked with Sen. Kintigh and Rep. Beyer and they have indicated this is a good bill.
406	Rep. Thompson	MOTION: Moves SB 107-A to the floor with a DO PASS recommendation.
410	Rep. Luke	Asks who's responsible for the stinky fire between Black Butte Ranch and Butte.
411	Seely	Believes it's the US Forest Service.
420	Rep. Luke	Comments there needs to be some underbrush removed.
429		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Starr	The motion CARRIES. REP. WELLS will lead discussion on the floor.
443	Rep. Thompson	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. SCHRADER to BE RECORDED as voting AYE on HB 2562.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
453	Rep. Thompson	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. SCHRADER to BE RECORDED as voting AYE on HB 2741.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
TAPE 76, B		

025	Chair Starr	Closes the work session on SB 107 and opens the public hearing on SB 110.
<u>SB 110 PUBLIC HEARING</u>		
034	Rep. Uherbelau	Refers to (EXHIBIT D).
047	Fred Robinson	Department of Forestry. States they've been in dialog with the lobbyist for the Guides and Packers.
055	Rep. Luke	States that Section 45 has only "fire prevention". All this says to him is if a guide has started a fire through negligence, he'd be careful about sending him back out also. If you're a professional out in the woods you have to know what you're doing and how to be safe in the fire season.
087	Chair Starr	Closes the public hearing and opens a work session on SB 110.
<u>SB 110 WORK SESSION</u>		
088	Rep. Thompson	MOTION: Moves SB 110-A to the floor with a DO PASS recommendation.
091	Rep. Luke	Asks, do they have to get permission from the Department of Agriculture before they can give permission to do slash burning?
105	Robinson	Negative.
106	Rep. Luke	States the committee moved a bill the other day (HB 3687) that requires local governments and state agencies to get permission from the Department of Agriculture.
111	Rep. Schrader	Clarifies the bill says coordinate.
113	Rep. Luke	Asks, are they going to have to coordinate with the Department of Agriculture, if that new law passes, each time someone applies to slash burn.
120	Robinson	Responds unless one of the members can deal with it, he's lost. States he'll look at the bill and meet with Rep. Luke.
125	Rep. Thompson	States he checked with the Guides and Packers and they are satisfied with the wording in the bill now.
127	Robinson	Comments they made some changes in response to their concerns on the Senate side.
129		VOTE: 6-0 AYE: 6 - Thompson, Luke, Messerle, Schrader, Wells, Starr EXCUSED: 1 - Uherbelau
		The motion CARRIES.

	Chair Starr	REP. MESSERLE will lead discussion on the floor.
140	Chair Starr	Closes the work session on SB 110 and adjourns meeting.

Submitted By, Reviewed By,

Linda M. Kowal, Judith Gruber,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2562, proposed amendment, Rep. Lee Beyer, 1 p.

B - HB 2741, proposed amendment, staff, 1 p.

C - SB 107, written testimony, Fred Robinson, 4 pp.

D - SB 110, written testimony, Don Hinton, 2 pp.