

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

April 9, 1997 Hearing Room E

1:00 P.M. Tapes 52 - 55

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Michael Fahey

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

STAFF PRESENT:

Judith Gruber, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 3571 Public Hearing

HB 3281 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 52, A		
003	Chair Lewis	Calls the meeting to order at 1:15 p.m. and opens the public hearing on HB 3571.
<u>HB 3571 PUBLIC HEARING</u>		
009	Judith Gruber	Policy Analyst, summarizes provisions of the bill.

018	John Ledger	Representative, Associated Oregon Industries (AOI). Suggests that AOI and the Department of Environmental Quality (DEQ) work together to revise language of the bill. Explains that the bill is related to environmental audits. If a company does an audit on themselves, the audit can be held as privileged information.
039	Don Haagensen	Attorney, Cable, Houston, Benedict, & Haagensen. Indicates that he has been involved with the AOI task force related to the legislation. States that related legislation enacted in 1993 was supported by AOI, DEQ and the district attorneys. Explains that there are two concepts related to the proposed amendments. Currently, the privilege of confidentiality can be waived in certain situations and the amendment proposes to not waive the privilege unless the property is being purchased. The second concept of the amendment deals with state agencies. If a property owner can't clean up their property but wants to sell it, then DEQ can use the Prospective Purchaser program to waive the existing clean up responsibility to the purchaser which will allow the owner to clean the property.
108	Rep. Fahey	Verifies that a new owner would be exempt from cleaning existing contamination.
109	Haagensen	If the buyer is in the Prospective Purchaser program with the DEQ, then they are exempt if they were not involved with the original contamination.
119	Rep. Fahey	Asks if the property must be cleaned before the final sales transaction can take place.
120	Haagensen	Answers affirmatively. If a buyer purchases the property and they aren't in the Prospective Purchaser program, then they will have to clean the property.
128	Rep. Fahey	Verifies that the proposed legislation will mandate that the property be cleaned at the expense of the previous owner.
131	Haagensen	Explains that negotiations would be made with DEQ, but the goal is to put the property into an environmentally protected situation.
142	Rep. Fahey	Asks if a baseline of environmental quality status would be set for the property.
146	Haagensen	Agrees that there needs to be a baseline of contamination.
155	Rep. Fahey	Asks if the baseline would be listed in the transaction document.
157	Haagensen	Indicates that a file would be available through the DEQ.
167	Langdon Marsh	Director, Department of Environmental Quality. Expresses support for the environmental audit approach, but with proposed amendments it would be better (EXHIBIT A) .
194	Rep. Luke	Asks if the proposed legislation is related to both commercial and residential properties.
195	Marsh	Primarily commercial.
204	Rep. Luke	Asks if the bill will apply to commercial operations like farms.

209	Marsh	That is not included in the bill.
219	Chair Lewis	Closes the public hearing on HB 3571 and opens a public hearing on HB 3281.
<u>HB 3281</u> <u>PUBLIC</u> <u>HEARING</u>		
232	Judith Gruber	Policy Analyst, summarizes provisions of the bill. Provides documents related to the proposed legislation (EXHIBIT B) .
268	Rep. Piercy	State Representative, District 39. Expresses opposition to HB 3281 because of its negative impacts on home rule. Explains that HB 3281 would invalidate a law passed by the City of Eugene that requires large manufacturers to disclose what chemicals they have. Encourages the committee to preserve home rule and oppose HB 3281 (EXHIBIT C) .
296	Rep. Prozanski	State Representative, District 40. Expresses opposition to HB 3281. Explains that the Eugene initiative had plenty of public exposure and debate, yet it was passed. Indicates that the proponents of the legislation want to deny citizens of Eugene their home rule. Encourages the committee to think about what they would do if the legislation was related to their district.
336	Sen. Castillo	State Senator, District 20. Expresses opposition to HB 3281. States that the charter amendment in Eugene is very much an issue of local decision making (EXHIBIT D) .
355	Rep. Lehman	Asks if there is a distinction between affecting businesses that exist in Eugene currently and changing things for businesses that will enter the community.
361	Rep. Prozanski	Verifies that Rep. Lehman wants to know if the charter amendment is limited to new businesses.
367	Rep. Lehman	Asks if there should be a distinction between existing and new businesses.
370	Rep. Prozanski	States that the will of the people should dictate what is best for their community. Explains that the citizens want more information and should not be denied.
381	Rep. Piercy	Indicates that the community is capable of looking at the problem locally and that a board has been created to oversee the process.
394	Sen. Castillo	Indicates that the citizens were asked similar questions and they voted for the charter amendment.
398	Rep. Lehman	Asks if there should be a limit to what local constituents can pass into law.
407	Rep. Piercy	The community would be aware of the discussion of issues and that the community would be able to resolve the issues at the local level.
TAPE 53, A		
007	Rep. Prozanski	Indicates that a community does have limits to what they can do, but the task of the legislature is to determine if it is in the best interest of the state to

		override the will of local citizens.
015	Rep. Fahey	Indicates that home rule can work in the opposite direction also.
022	Rep. Prozanski	States that the people should still have recourse if they feel that home rule is infringing on their rights.
031	Rep. Welsh	Appreciates the discussion of local control, but indicates that there are greater philosophical issues to be dealt with. Asks why the initiative did not include all chemical users in the city.
046	Rep. Prozanski	The drafters of the initiative were trying to not impact small businesses that were not having similar rates of discharge as larger businesses.
056	Rep. Welsh	Asks if the state law was working before the initiative was passed in Eugene.
058	Sen. Castillo	The people of Eugene would not have voted for the initiative if the state law was working for them.
066	Rep. Piercy	Indicates that many state laws are working but they can be improved upon by "raising the bar" on them. The community wanted to raise the standards and gain more knowledge.
072	Rep. Prozanski	Indicates that they need a definition for what "working" is. Agrees that the law was working at a specific level.
080	Rep. Welsh	Asks if the initiative will be a burden on local industries that must report to them.
083	Rep. Prozanski	Indicates that they need a definition for what "burden" is. Asks if it would be dollars or information.
088	Rep. Piercy	States that any request for more information is a burden, but it is a greater burden to not know the requested information.
093	Rep. Welsh	Explains that if the initiative causes undo hardship and expense that it will be considered to be anti-business. States that the initiative was directed at one company in particular.
100	Sen. Castillo	States that the initiative is not anti-business, but an opportunity to provide information to the citizens.
105	Rep. Luke	Indicates that during the 1995 legislative session there were several requests from Lane County to override state laws. Asks Sen. Castillo, if the media was similarly not able to have access to information the citizens could not have.
110	Sen. Castillo	States that some members of the media were not able to get information that was requested.
119	Rep. Luke	Asks if the ordinance applies to the City of Eugene itself.
122	Sen. Castillo	The Eugene Fire Marshal could provide that information.
128	Rep. Wooten	State Representative, District 41. Expresses opposition to HB 3281. Explains that the Fire Marshal's office collects records about the storage of materials, not what happens to the substances. When information was requested from the office, it was too mired in paperwork that the requester didn't get it

		(EXHIBIT E).
161	Rep. Welsh	Asks why the state method wasn't altered to improve the reporting process if that is where the problem was.
167	Rep. Wooten	Indicates that the State Fire Marshal's office has been contacted and changes are being made there.
178	Rep. Wooten	States that the citizens of Eugene did not vote in an uninformed manner. They want to know what is in their air and water and demand the information. With regard to the anti-business comments, indicates that adjustments might be made regarding the amounts of chemicals that must be reported. States that it is not like the State of Oregon to tell any local government what they may or may not do for their own self interest. Urges the committee to oppose HB 3281.
241	Rep. Welsh	Asks if the electronics industries were invited into discussion when the charter amendment was drafted.
245	Rep. Wooten	States that she was not involved with the drafting and passage of the amendment, but doesn't believe that they were since there are no members in Eugene.
252	Rep. Welsh	That is one of the philosophical questions related to this issue - all parties should have been included in the process and wonders why they weren't.
265	Rep. Wooten	They may have been involved, but the American Electronics Association does not have members in Eugene. States that there was broad participation and debate over the issue. The main issue is whether the Legislative Assembly will override the will of the city of Eugene. Fairness in the drafting of the initiative is not the issue.
295	Rep. Luke	Asks if Rep. Wooten voted in favor to preempt local governments that pass ordinances that deal with sexual discrimination in 1993.
298	Rep. Wooten	Answers affirmatively.
303	John Ledger	Representative, Associated Oregon Industries. Explains that community "Right to Know" initiatives revolve around two things; either a possession program where a company must report what they have in their possession, or a release program where a company must report what they release. Right to know programs are definitely regulatory programs.
349	Ledger	Explains that penalties for errors and omissions can be high. States what the federal, state, and Eugene penalties are. Explains the accounting requirements for the Eugene program. Indicates that a Toxics Board has been appointed to enforce the act. Discusses the schedule of fees, the enforcement, and penalties related to the initiative.
TAPE 52, B		
		Indicates that citizen enforcement is also a part of the provision. States that not only is there a state "Right to Know" program, but there is also a federal program dealing with possession and release of toxic materials. Indicates that the State Fire Marshal's "Right to Know" program encompasses many

003	Ledger	more companies and materials than the federal program and its threshold for inclusion into the program is lower. Explains that Oregon's "Right to Know" program is a model program for the nation and that the federal program started long after the state program. Expresses concern with the creation of local regulatory agencies around the state. States that the Eugene initiative forces many businesses to monitor impossible amounts of material and will therefore violate the law. Companies will view the initiative as an inhospitable act. Indicates that citizens will use the initiative as a "Not in my back yard" mechanism to keep businesses away. States that the Eugene initiative is an unneeded regulatory burden since the state and federal programs are sufficient.
073	Ledger	Indicates that HB 3281 proposes to maintain programs at the state level and makes sure that agencies that impose regulations have the capability to do so. The community "Right to Know" information will be more available to the public than it is now. Information will be posted to the internet for wider access. States that chemicals need to be handled responsibly. In relation to local control, some things are best handled at the state level where there is adequate expertise to handle the issues.
110	Rep. Lehman	Asks if local governments have the right to extend benefits to a company to attract them to a community.
113	Ledger	Answers affirmatively.
114	Rep. Lehman	Asks if local governments have the right to discourage companies from entering their community.
116	Ledger	Answers affirmatively.
118	Jim Craven	Government Affairs Manager, Oregon Council, American Electronics Association. States that contrary to previous testimony, the American Electronics Association does have members in Eugene. Indicates that in 1985 the legislature passed the Community "Right to Know" Act. In 1989, the legislature passed the Oregon Toxic Use Reduction Act which requires companies to plan for the reduction of use of hazardous materials. In 1986, Congress passed the Toxic Release Inventory program. States that the existing state and federal programs addresses the public concern about hazardous chemicals. In 1996, Eugene passed the Community "Right to Know" charter amendment (EXHIBIT F).
155	Craven	Indicates that there was not a compelling issue in Eugene that provoked the initiative process. Expresses puzzlement as to why the initiative targets particular industries and exempts such locations as the University of Oregon. Explains that HB 3281 would preempt any local community "Right to Know" initiatives and improve public access to information gathered by the state program. Expresses support for continuation of the statewide program. States that the legislative assembly has the responsibility to take action to ensure sound public policy even if there are conflicts with local control issues.
225	Rep. Luke	Asks if the Eugene Water and Electric Board was exempted from the Eugene initiative.
227	Craven	They are a municipal corporation and therefore probably exempt.

228	Rep. Luke	Asks if they could have hazardous chemicals without having to tell anyone except for the state.
229	Craven	Answers affirmatively.
230	Craven	States that in this week's "Willamette Week", there is an article that discusses HB 3281. The article states that Hyundai was dumping hazardous chemicals into local wetlands. The western region manager of the Department of Environmental Quality has confirmed that the allegation that Hyundai was dumping chemicals into wetlands is "categorically false".
272	Judith Gruber	Asks, as a point of clarification, why the -1 amendments include the deletion of the legislative findings that indicate the need for the public and emergency personnel to have hazardous substance information.
282	Craven	The -1 amendments do not do that.
290	Ken Tollenaar	Eugene City Councilor, Expresses opposition to HB 3281. Responds to Rep. Fahey's earlier comment and indicates that HB 3281 will affect state and local control initiatives related to hazardous substances. Responds to Rep. Welsh's question regarding the invitation of participation to the electronics industry, indicating that they were probably not included in the process. States that HB 3281 proposes to prevent the enactment of a newly adopted charter amendment which would be bad public policy (EXHIBIT G).
353	Tollenaar	Not only would there be a violation of home rule, but also Article 11 Section 2 of the Oregon Constitution which states that the assembly will not amend a municipal charter. Indicates that Eugene's initiative is reasonable, but it might be an inappropriate use of the city charter. Agrees that there might be defects with the charter amendment, but local self government brings that risk.
TAPE 53, B		
012	Tollenaar	Asks the committee to allow Eugene to proceed with their experiment with the Eugene initiative. If it works, that's great; if it doesn't, at least they've tried.
022	Dave Pederson	Eugene Fire Marshal. Explains that he will clarify issues for the committee.
026	Rep. Luke	Asks what the difference is between the state program and the Eugene initiative.
028	Pederson	The most important difference is the quantity of material that needs to be reported. The state requires reporting to start at 25,000 pounds whereas the Eugene requirement is 2,640 pounds. The large reporting gap will include many more businesses in the reporting process. The Eugene program is a materials accounting program not a materials assessment program.
057	Rep. Luke	Asks if the Eugene Fire Department has hazardous chemicals for extinguishing fires.
059	Pederson	Answers affirmatively.
060	Rep. Luke	Asks if they would be reported under the charter amendment.
062	Pederson	Those chemicals would be reported.

069	Rep. Luke	Asks if the fire department is collecting data now.
071	Pederson	No. The board is still planning forms and what data needs to be collected.
076	Rep. Luke	Asks if the department has the resources to carry out the amendment.
078	Pederson	No.
079	Rep. Shields	Asks what the fire marshal's roll will be when the charter amendment is implemented.
081	Pederson	The Eugene Fire Marshal will be the program administrator. The department will receive and provide information.
091	Rep. Shields	Asks if the charter amendment is workable or if it is cumbersome.
099	Pederson	The affect of the amendment is yet to be determined since the Toxics Board is still working on the data collection methods and requirements.
111	Rep. Shields	Asks if the committee is truly balanced.
113	Pederson	Yes, there are strong advocates from each side represented.
118	Rep. Luke	Asks if under state law, the local fire marshals had the authority to investigate possible illegal disposal of hazardous materials or if they had to go through the state.
125	Pederson	The City of Eugene is exempt from the state program because it is a charter city, however they try to comply with state reporting methods.
131	Rep. Luke	Asks if non-charter cities would have similar enforcement methods.
135	Pederson	Answers affirmatively.
136	Rep. Welsh	Indicates that the two issues here are that of home rule, and a plan that will have impact on industry that was invited to Eugene. Asks if the Fire Marshal is just as concerned with hazardous materials on the University of Oregon campus and other exempted locations.
154	Pederson	Yes, but other variables apply to those situations. Does not know why some locations were exempted.
177	Rep. Welsh	Asks how difficult it will be to track extremely hazardous substances.
186	Pederson	Tracking won't be a problem.
216	Don Upson	Representative, Molecular Probes Corp. Points out that the authors of the initiative are not familiar with manufacturing practices nor did they consult affected businesses. Explains that the reporting threshold of 2,640 pounds is cumulative to all chemicals on the premises. States that the initiative requires that the chemical balance be reported to the smallest accounting unit. Explains that New Jersey has the most advanced materials balance reporting program, but their threshold for reporting is 10,000 pounds per chemical. The Eugene threshold is unprecedented in the world (EXHIBIT H).
278	Upson	States that the Toxics Board is not empowered to change any of the law's features. There is no provision for honest mistakes, misunderstandings, or typos. Explains how the amendment would affect Molecular Probes. States

		that compliance with the amendment is technically unachievable.
350	Upson	Indicates that the initiative authors think that 100% reporting is easy, but anyone can make a simple mistake. Every report will be challenged and businesses will have to turn to dishonesty to survive. Expresses support for HB 3281.
399	Rep. Fahey	Asks what the standard measurement for contaminants in drinking water is in comparison to the 1 part per million (ppm) required for reporting practices with the Eugene initiative.
410	Upson	One ppm is a very small amount.
413	Rep. Fahey	Asks if one ppm of chemical in water would kill someone.
416	Upson	He wouldn't drink it.
TAPE 54, A		
012	Rep. Fahey	Asks if there are materials where one ppm isn't extremely bad.
015	Upson	Some chemical agents are that bad.
017	Rep. Welsh	Asks how many employees work for Molecular Probes.
019	Upson	Approximately 140.
020	Rep. Welsh	Asks how long the company has been in operation.
021	Upson	Since 1982.
022	Rep. Welsh	Asks how many other companies in Eugene are working with as many chemicals.
023	Upson	At least 40, but maybe 200.
026	Rep. Welsh	Asks if there has been a cost analysis for the future.
030	Upson	Indicates that reporting would cost about \$100,000 the first year and less the following years.
032	Les Duman	President, Lawrence David Inc. The company produces special coating and has been in operation since 1958. Currently the company is converting to an employee stock option plan organization but there is question as to how the company will survive with the initiative in place. Explains several issues about the initiative that will affect small business operations including the threshold requirements. States that the company has reduced their use of hazardous materials but that was customer driven. Offices in other states are encouraging the Eugene office to leave the state. Expresses support for HB 3281.
087	Scott Forrest	President, Forrest Paint Co. States that two of 100 people on the work force are devoted to environmental issues. Agrees that "raising the bar" is a good idea, but companies can't get over it now. States that a major problem with complying with the initiative is that there are no devices that will measure

		the inventory to the requirements. Explains that state certified scales don't match each other (EXHIBIT I) .
166	Forrest	States that the amounts required by the charter amendment are written into the city council charter and they can't be changed. If the "experiment" fails his company will be taken away from him. States that people voted for the initiative because they wanted more information, they didn't look at the whole law.
182	Rep. Welsh	Expresses appreciation for the testimony and states that safety is very important to the Forrest Paint Co. Asks if the initiative has been discriminatory.
196	Forrest	It has been discriminatory. States that large competitors such as Sherwin Williams or HomeDepot are not covered by the initiative whereas his small company is.
211	Rep. Welsh	Asks how many employees are in the company.
212	Forrest	Approximately 112 employees.
216	Rep. Fahey	Asks what the film on the tank weighs.
217	Forrest	The tank has never been empty.
218	Rep. Fahey	Indicates that the film will weigh something though.
250	Robert O'Brien	Eugene resident. States that the Eugene initiative is reasonable and indicates that many people put a lot of effort into getting it passed. Tells the committees that when they decided to override the vote of the people they need to have a good reason for doing so (EXHIBIT J) .
275	Rep. Fahey	Asks what the purpose of reporting is since people in industry have indicated that it is virtually impossible to comply with the law.
280	R. O'Brien	Indicates that the specificity will not be required. Companies will have to do estimates.
291	Rep. Fahey	Asks if there is a waiver that will be issued that hasn't been discussed.
293	Paul Engelking	Chemistry Professor, University of Oregon. Indicates that the Oregon Statutes have a positive constancy provision which allows the statutes to be interpreted in a positive way (EXHIBIT K) .
309	Rep. Fahey	Asks how that would go against the wishes of the people.
313	Engelking	States that the citizens could pass just about anything.
321	Mary O'Brien	Eugene resident. States that she assisted in the creation of the Eugene charter amendment in question. She is also the Chair of the Toxics Board. Indicates that federal and state reporting are two separate entities. Asks if it is reasonable to eliminate Eugene's "Right to Know" law. Discusses the differences in reporting. States that no place in the charter amendment does it require that a company measure or estimate to 1 kg accuracy. States that

		HB 3281 is about the prohibition of collecting any toxic material information systematically. Indicates that the state fire marshal gathers information about the transport and storage of hazardous materials, not on the use of hazardous materials (EXHIBIT L) .
TAPE 55, A		
003	M. O'Brien	Provides more information about the data collected by the state fire marshal. Indicates that the federal program reports nothing on toxic input and very little on toxic output.
026	Chair Lewis	Asks for witnesses to return at another time.
029	M. O'Brien	Expresses the desire to testify at another time. To answer the question as to why the University of Oregon was exempted from the charter amendment, Eugene can't regulate it since it is a state institution. States that the Toxics Board does not have to fine a company for reporting mistakes, but can do so if they are egregious.
044	Engelking	States that Hyundai chose to not participate in environmental care programs that were proposed to them.
065	Chair Lewis	Closes the public hearing on HB 3281 and adjourns the meeting at 3:40 p.m. Written testimony was presented to the committee before and after the public hearing on HB 3281 (EXHIBIT M) .

Submitted By, Reviewed By,

Marjorie Taylor, Judith Gruber,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 3571, Written testimony, Langdon Marsh, 1 p.

B - HB 3281, Written materials, Committee Staff, 23 pp.

C - HB 3281, Written testimony, Rep. Piercy, 1 p.

D - HB 3281, Written testimony, Sen. Castillo, 1 p.

E - HB 3281, Written testimony, Rep. Wooten, 2 pp.

F - HB 3281, Written testimony, Jim Craven, 3 pp.

G - HB 3281, Written testimony, Ken Tollenaar, 3 pp.

H - HB 3281, Written testimony, Don Upson, 6 pp.

I - HB 3281, Written testimony, Scott Forrest, 2 pp.

J - HB 3281, Written testimony, Robert O'Brien, 2 pp.

K - HB 3281, Written testimony, Paul Engelking, 23 pp.

L - HB 3281, Written testimony, Mary O'Brien, 9 pp.

M - HB 3281, Submitted testimony, Committee Staff, 12 pp.