

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

May 28, 1997 Hearing Room E

1:00 Tapes 106 - 107

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

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD: HB 3724 Work Session

HB 3640 Work Session

HB 3455 Work Session

HB 2753 Work Session

HB 3405 Work Session

SB 902 Public Hearing and Work Session

SB 626-A Public Hearing and Work Session

SB 791-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 106, A		

003	Chair Lewis	Calls meeting to order at 1:41 p.m.
<u>HB 3724</u> <u>WORK</u> <u>SESSION</u>		
008	Chair Lewis	Opens work session on HB 3724.
012	Lynn Beaton	Submits and discusses the -3 amendments to HB 3724. (EXHIBIT A)
017	Chair Lewis	Asks if the -3 amendments are the ones that the committee needs to consider.
025	Joni Low	Representing the League of Oregon Cities. Suggests possible amendments to the -3 amendments.
031	Chair Lewis	Given Measure 47 and Measure 50, there would be pressure from business industry to give this tax abatement. All of Section 4 would need to be removed from the measure.
047	Rep. Lehman	MOTION: Moves to ADOPT HB 3724-3 amendments dated 05/27/97.
	Chair	Hearing no objection, declares the motion CARRIED.
052	Rep. Lehman	MOTION: Moves to AMEND HB 3724 by deleting Section 4 in its entirety.
	Chair	Hearing no objection, declares the motion CARRIED.
066	Jim Whitty	Oregon Economic Development Department. There are no opponents to this measure as amended.
071	Chair Lewis	In previous public hearings, no one appeared in opposition to this measure.
075	Rep. Lehman	MOTION: Moves HB 3724 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Revenue BE RESCINDED.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Simmons
	Chair	The motion CARRIES. REP. LEHMAN will lead discussion on the floor.
097	Chair Lewis	Closes work session on HB 3724.
<u>HB 3640</u>		

<u>WORK SESSION</u>		
098	Chair Lewis	Opens work session on HB 3640.
104	Mike Grainey	Office of Energy, submits and discusses the -5 amendments to HB 3640. (EXHIBIT B)
123	Chair Lewis	Recesses work session on HB 3640.
139	Chair Lewis	Stands committee at ease.
<u>HB 3455 WORK SESSION</u>		
149	Chair Lewis	Opens work session on HB 3455.
156	Chair Lewis	Submits and discusses the -1 (EXHIBIT C) and -2 amendments (EXHIBIT D) to HB 3455. Comments that it was her understanding that there was an attempt to work on language in the -1 amendments which resulted in the -2 amendments. Asks if there is any additional work required.
163	Marshall Koba	Representing the Oregon Trucking Association. Had concerns regarding an article in which it was suggested that the Department of Environmental Quality (DEQ) may be implementing emission testing on diesel trucks, which could result in a retrofit cost of approximately \$25,000 per vehicle. Have no problem with the -1 and -2 amendments.
175	Rep. Luke	His understanding that there was an agreement on the -2 amendments. Asks what the concerns are in regard to the -2 amendments.
181	Bob McKellar	Representing the Oregon Forest Products Transportation Association. There are no objections to the combination of the -1 and -2 amendments. The concern was regarding the hearing process with DEQ before reporting back to the Legislative Assembly. This seems to be backwards, in that if the Legislative Assembly is not interested in having DEQ do that, then it would be a waste of time for them to have gone through the hearing process.
199	Rep. Luke	Asks if it is a reasonable policy to have the public hearing process to see if there is a need to change the law, and give the public an opportunity to get on the record with any concerns.
211	McKellar	Would want to have the hearing before a legislative body.
214	Rep. Luke	Points out that it doesn't work that way. The system is set up so that DEQ conducts the hearings and makes the determinations. The legislature has oversight on how the department makes their determinations.
	Chair	Asks the committee how this should proceed. There is an obvious concern

228	Lewis	that DEQ will force testing on diesel trucks which may require expensive modifications.
236	Rep. Luke	This measure was not brought forward by any action of DEQ, but because one employee of that department was quoted in a newspaper.
245	Rep. Shields	Do not understand this bill well enough to see what it is needed for.
248	McKellar	Did read a rather extensive article in a newspaper which outlined plans for requiring particulate-removing equipment. It is our intent to grandfather trucks that are presently in existence until December 31, 1997. For any trucks manufactured after December 31, 1997, the manufacturer could install the required piece of equipment.
276	Rep. Shields	Asks if it would be a lower cost than retrofitting.
278	McKellar	Would assume so, but if not, financing on a new truck would include that. It is not our intent to do anything other than grandfather current truck owners until the end of this year.
281	Rep. Simmons	Asks the weight of a tractor.
285	McKellar	Approximately 26,000 pounds.
288	Rep. Simmons	Asks the rationale for the 8,500 pound weight limit.
289	McKellar	The concept was taken to Legislative Counsel, they drafted the amendments with the 8,500 pound weight limit. Cannot tell committee why it was included. Would be agreeable if the number was raised.
301	Rep. Simmons	Discussion on an appropriate weight limit.
308	Rep. Simmons	MOTION: Moves to Conceptually AMEND the HB 3455-1 Amendments on page 1, line 5, by deleting "8,500," and inserting "17,000".
317	Rep. Luke	Asks, if the weight was changed in the -1 amendments, would there be any problems.
320	Steven Sumich	Department of Environmental Quality. The department would still not be in favor of the -1 amendments. The department does not feel that the -1 amendments are necessary now with the -2 amendments.
327	Rep. Luke	Asks how the process works, and how the -2 amendments tie into the process of establishing a new rule.
331	Sumich	Refers to Rep. Luke's earlier statements regarding the public hearing process. The department would ask for the authority to hold public hearings .
339	Rep. Luke	Asks if the -1 amendments pose any conflict with federal statutes.
342	Sumich	Not aware of any conflicts.
345	Rep. Luke	Comments that he has a problem with the weight limit being selected without any justification for that numbers.

352	Sumich	The department tests diesel powered vehicles weighing up to 8,500 pounds.
361	Rep. Luke	Asks if that would be the gross weight.
363	Sumich	The 8,500 pounds is based on the gross vehicle weight rating which is assigned by the manufacturer.
366	Rep. Simmons	Asks where authority for holding public hearings comes from.
369	Sumich	The Environmental Quality Commission (EQC).
372	Chair Lewis	Asks for clarification on the interpretation of the term "confer" in the -2 amendments.
376	Sumich	Interprets that term to mean that the department would appear before a legislative committee to make them aware of the department's position and what was being attempted.
381	Chair Lewis	Asks if the department would comply if the committee did not approve of an action.
387	Sumich	Can't answer that.
392	Chair Lewis	If the department appeared before a legislative body requesting addition of diesel trucks to the testing requirements, and the committee said no, asks what the next step be.
404	Sumich	The EQC would direct the department to research the need for that particular position, and give the department direction on how to proceed.
TAPE 107, A		
004	Rep. Luke	Points out that the department is the one who will confer with the legislature. After they confer with the legislature, they go back to the Commission and ask for the rule to be put in place. The legislature will be consulted before the rule goes into place, allowing the legislative body to send a letter to the Commission with regards to its opinion.
011	Chair Lewis	Comments on previous experience in dealing with the department and the Commission.
022	Rep. Fahey	Now that the weight limit has been discussed, suggests that the motion be withdrawn.
025	Rep. Simmons	Withdraws motion to conceptually amend the -1 amendments to HB 3455.
029	Rep. Welsh	MOTION: Moves to ADOPT HB 3455-1 amendments dated 05/13/97.
	Chair	Hearing no objection, declares the motion CARRIED.
035	Rep. Welsh	MOTION: Moves to ADOPT HB 3455-2 amendments dated 05/23/97.
	Chair	Hearing no objection, declares the motion CARRIED.
040	Rep. Welsh	MOTION: Moves HB 3455 to the floor with a DO PASS AS AMENDED recommendation.

040	Welsh	VOTE: 5-1-1 AYE: 5 - Fahey, Lehman, Simmons, Welsh, Lewis NAY: 1 - Luke EXCUSED: 1 - Shields
	Chair	The motion CARRIES. REP. FAHEY will lead discussion on the floor.
050	Chair Lewis	Closes work session on HB 3455.
<u>HB 2753</u>		
<u>WORK</u>		
<u>SESSION</u>		
051	Chair Lewis	Opens work session on HB 2753.
064	Bob Costagna	Representing Oregon Catholic Conference, supports the -3 amendments.
070	Larry Campbell	Representing the Victor Group, submits and discusses the -3 amendments to HB 2753. (EXHIBIT E)
077	Rep. Shields	Asks if this amendment affects only Marist High School.
085	Chair Lewis	The -3 amendments do not seem to remove the rest of the measure.
093	Phil Fell	Representing the League of Oregon Cities. Oppose the -3 amendments. Suggests amendments which would make this measure applicable only to Marist.
102	Campbell	Agrees with Mr. Fell's suggestion.
114	Rep. Luke	Asks for additional clarification on Mr. Fell's suggestion.
117	Fell	Working from the -3 amendments, on line 3, delete "15" and insert "3", then insert "delete lines 4 through 15".
124	Rep. Luke	MOTION: Moves to conceptually amend HB 2753-3 amendments dated 05/20/97 on line 3, by deleting "15," and inserting "3, delete lines 4 through 15".
135	Rep. Lehman	Asks if a city or county has the right to condemn public school facilities.
137	Fell	Believes the answer is yes.
140	Rep. Luke	Asks if a city or county has the right to condemn state property.
144	Rep. Lehman	Comments on the situation between public and private property.

153	Fell	There are other private high schools in the state besides Marist. In the Portland area there are several private high schools. It could be that if this language is adopted, there could be different outcomes if the measure is used in different instances.
162	Campbell	This is an unusual set of circumstances, there would have to be a bike path, a private institution, and a condemning source, for this measure to apply.
175	Rep. Welsh	Asks if the Marist representatives were supportive of the conceptual changes.
181	Campbell	These changes would be acceptable.
183	Chair Lewis	Reiterates that a motion was made by Rep. Luke.
198	Chair	Hearing no objection, declares the motion CARRIED.
201	Rep. Simmons	MOTION: Moves to ADOPT HB 2753-3 amendments dated 05/20/97 as conceptually amended.
207	Rep. Shields	Asks how this measure could possibly apply in other situations.
211	Fell	It does cover other private educational facilities, and a bike path can be a common amenity in a number of different kinds of developments.
226	Rep. Shields	Raises this issue because letters and calls have convinced him that something needs to be done in this situation. Having a hard time believing that this measure could affect any other situation.
234	Fell	There may be a project in conjunction with another private school that could also include a bike lane. The obvious events that could be anticipated are small, but intrigued by the ones that aren't anticipated.
247	Rep. Luke	Informs the committee that there is a motion before them which needs a vote.
248	Chair	Hearing no objection, declares the motion CARRIED.
250	Rep. Luke	MOTION: Moves HB 2753 to the floor with a DO PASS AS AMENDED recommendation.
252	Chair Lewis	The committee can now continue discussion.
256	Rep. Luke	States that this is not good legislation, but there has been testimony that shows that this city does not hold good hearings, and does not listen to the people. Cannot believe that the city would still go through with this after all the response to this issue.
271	Rep. Shields	Asks if Mr. Costagna could respond to the comments of Mr. Fell and Rep. Luke.
275	Costagna	Marist High School contacted the Oregon Catholic Conference to request assistance in this issue. Marist submitted documentation and asserted that their position was misrepresented in the application to the federal government.
291	Chair Lewis	Reads what the City of Eugene stated in their application to the federal government. Comments that they obviously did not talk to the school first.

295	Rep. Shields	Asks if there is any reaction to Rep. Luke's comments.
297	Costagna	Agrees with Mr. Campbell's assertion that this is a unique set of circumstances. Not only is this an educational institution, but it is religiously affiliated. This school saves the tax payers about \$2.5 million per year. Given the difficulties that education is confronted with in this state, there is no greater public/private partnership than the private school community with the public school efforts. This should be encouraged and enhanced, rather than infringed upon. Asks the legislature to take that into consideration.
320	Rep. Lehman	States that he will vote against this measure in committee. This is clearly a local control issue. The Eugene City Council is the place to resolve this issue, not state government.
349	Rep. Simmons	This is a local control issue of a fundamental nature, not just the ability of cities and counties to determine what goes on in their jurisdictions, but also the ability of a property owning organization to determine what happens with their property. This addresses this, and this measure should be supported.
360	Rep. Welsh	Federal funds will be coming for projects, and this is one of them. Those funds are not meant specifically for a bicycle path, they are for use on other projects throughout the state. By using this in this particular manner, it would reduce some of those dollars for other projects.
385	Mike Redding	Representing the City of Eugene, submits testimony for review. (EXHIBIT F)
TAPE 106, B		
005	Rep. Luke	Asks how extensive the public hearing on the bike path was.
007	Diane Bishop	Representing the City of Eugene, reviews testimony submitted by Mr. Redding.
036	Rep. Lehman	Asks if Marist has been involved in this process.
039	Bishop	Yes. The community feels that this path is necessary.
043	Rep. Lehman	Asks if there other articles in the Eugene Register-Guard that dealt with the bike path and Marist's objections to it.
046	Bishop	Yes.
050	Rep. Lehman	Feels that the City of Eugene may deserve an apology. It is beginning to look like the people from Marist have not been entirely forthcoming in terms of the input.
056	Rep. Welsh	Asks how many public hearings have been held on this issue.
057	Bishop	Reiterates the hearings listed in testimony.
067	Rep. Welsh	Asks if those hearings had been specific to the bike path.

069	Bishop	No, they would have been for the capital improvement program, which includes other projects.
070	Rep. Welsh	Asks how many other projects would have been included in each of those hearings.
072	Bishop	There would have been a fairly large list of projects.
078	Rep. Welsh	There are many projects on those lists, and unless there has been a specific public hearing for this particular issue, there is a public hearings problem in Eugene.
088	Rep. Lehman	Clarifies his understanding of the testimony that Marist has been involved in this process all along.
089	Bishop	That is correct.
089	Rep. Welsh	Comments that the question is one of whether or not there has been due process.
096	Chair Lewis	Asks that there be a vote on the motion before the committee.
100		VOTE: 5-1-1 AYE: 5 - Fahey, Luke, Simmons, Welsh, Lewis NAY: 1 - Lehman EXCUSED: 1 - Shields
	Chair	The motion CARRIES. REP. CORCORAN will lead discussion on the floor.
104	Chair Lewis	Closes work session on HB 2753.
<u>HB 3405</u>		
<u>WORK</u>		
<u>SESSION</u>		
113	Chair Lewis	Opens work session on HB 3405.
141	Pat Zwick	Policy Analyst, submits and discusses the -1 amendments to HB 3405. (EXHIBIT G)
156	Rep. Fahey	MOTION: Moves to ADOPT HB 3405-1 amendments dated 05/22/97.
		VOTE: 6-0
	Chair	Hearing no objection, declares the motion CARRIED.
169	Rep. Fahey	MOTION: Moves HB 3405 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0

		AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 2 - Lehman, Welsh
	Chair	The motion CARRIES. REP. OAKLEY will lead discussion on the floor.
192	Chair Lewis	Closes work session on HB 3405.
<u>SB 902</u> <u>PUBLIC</u> <u>HEARING</u>		
198	Chair Lewis	Opens public hearing on SB 902.
212	Dave Hunnicutt	Director of Legal Affairs, Oregonians in Action, submits and reviews testimony in support SB 902 (EXHIBIT H), including the -2 amendments (EXHIBIT I).
230	Rep. Shields	Asks what government would do differently if this measure became law.
236	Hunnicutt	SB 902 with the -2 amendments, is a policy statement. Hope that both state and local governments will check and review that policy statement before enacting any subsequent legislation, to ensure that the rights of private property owners are protected. There aren't any specific requirements or mandates that are required.
249	Rep. Shields	This would be more effective as a policy statement then as a piece of legislation.
253	Hunnicutt	It is much like the policy statement that is codified in ORS 215.243, the agricultural lands policy statement, which guides the state's agricultural lands policy.
262	Rep. Shields	Asks if this measure, as a policy statement, requires the action of the Legislature.
273	Hunnicutt	As land use laws have developed with the passage of SBs 100 and 101 in 1973, there has been a lack of understanding of what happens to private property owners. The purpose of this legislation is to codify that the rights of private property owners are important and to ensure that this is considered in any subsequent legislative acts, ordinances, or amendments.
294	Dick Angstrom	Representing Oregon Concrete and Aggregate Association (OCAPA). Opposed the original version of SB 902 in the Senate. Sen. Tarno asked that OCAPA work with the supporters of SB 902 to draft amendments that might help accomplish the policy of the measure.
		These amendments were not given to Dick Benner of the Department of Land Conservation and Development for review. Agrees with Rep. Shields regarding the fact that this measure would probably do very little in law. It should be a policy statement. Goal 5 discusses the recognition of private

324	Angstrom	property. The land use policy decisions were always intended to be applied fairly and reasonably. This may be a redundancy, but it is valuable to put forth a policy statement that reiterates items that are hidden in the land use statutes.
373	Angstrom	OCAPA strongly supports land use. The entire land use system has to work, or it does not work for OCAPA. Would like to wait for Mr. Benner to look at the -2 amendments before making any final decisions. There is merit to the measure to remind people that when dealing with private property, it is necessary to be fair to the landowners.
390	Charles Swindells	Representing 1000 Friends of Oregon. Support the principles contained in SB 902.
TAPE 107, B		
001	Swindells	This is a policy statement with no enactment. A legislative purpose or policy statement is intended to cover unanticipated situations. Regarding forest lands, 1000 Friends of Oregon devoted a tremendous amount of time and resources during the 1980s relating to the stewardship incentives program. Would welcome a similar effort on the parts of the proponents of this measure.
021	Rep. Welsh	Asks position on the -2 amendments.
023	Swindells	There may be some questions which may be of concern to DLCD or the Governor. This is a policy statement with no enactment, therefore, what is its purpose. With that not being clear, 1000 Friends of Oregon does not support the measure, although the principles are acceptable.
030	Rep. Welsh	Comments on the measure.
037	Chair Lewis	Closes public hearing on SB 902.
SB 626-A PUBLIC HEARING		
039	Chair Lewis	Opens public hearing on SB 626-A.
043	Brad Higbee	Representing Metro, submits testimony in support of SB 626-A. (EXHIBIT J)
049	Chair Lewis	Asks if there is anyone present who is stands in opposition to SB 626-A.
056	Chair Lewis	Closes public hearing on SB 626-A.
SB 626-A		

<u>WORK SESSION</u>		
057	Chair Lewis	Opens work session n SB 626-A.
062	Rep. Luke	MOTION: Moves SB 626-A to the floor with a DO PASS recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Simmons
	Chair	The motion CARRIES. REP. SIMMONS will lead discussion on the floor.
078	Chair Lewis	Closes work session on SB 626-A.
<u>SB 791-A PUBLIC HEARING</u>		
079	Chair Lewis	Opens public hearing on SB 791-A.
081	Rep. Luke	Comments on his support of SB 791-A.
088	Stephen Kafoury	Representing American Fisheries Society and the Wildlife Society, testifies in support of SB 791-A. There are no policy changes, and it is voluntary for landowners or local governments to take part.
105	Rep. Welsh	Comments about carrying a similar measure which was defeated on the House Floor because it included houses on the property. Was informed that this measure would be re-written without that provision.
113	Kafoury	Asked biologists in Marion and Polk Counties if the sizes of the plots were large enough to really make a difference. They said it was very helpful, and there are now 500 acres in the two counties that are part of the program. May be small and diverse, but they allow animals to move from one area to another. Prime farmland is exempt from this measure so there will be no problem about taking land out of production.
123	Rep. Luke	Asks if a farm deferral could be retained if the land was not farmed "wall to wall."
129	Kafoury	That is correct. The amount of farming or wildlife that a person wants to get involved in is a matter of a wildlife plan which is worked out with the Oregon Department of Fish and Wildlife (ODFW). The tax deferral would be the same whether it was farmed or held for wildlife.
133	Rep. Welsh	Under present law, landowners would be required to reduce or eliminate that habitat.

140	Blair Batson	Representing 1000 Friends of Oregon. Testifies on neutral position in regard to this measure. Opposed the measure as originally drafted, but the amendments address concerns regarding being a basis for the proliferation of non-farm houses. Had asked that this be included in ORS 215.213 (2), because non-farm uses should be subject to county review, however the criteria that are in (2) regarding an analysis of impact, was included.
158	Chair Lewis	Asks why it should be included in ORS 215.213 (2).
166	Batson	The land is zoned primarily for farming and it should be ensured that limitations are not imposed on surrounding agricultural uses.
174	Chair Lewis	Comments on the position that farming and forestry comes before wildlife and habitat preservation. Asks where else the wildlife would live.
183	Batson	It is not necessary to displace or remove agriculture to have wildlife habitat.
193	Jill Zarnowitz	Representing ODFW, submits and reviews testimony in support of SB 791-A. (EXHIBIT K)
231	Rep. Luke	Asks if the landowner would have to stop farm practices if a threatened or endangered species moved into that wildlife area.
237	Zarnowitz	If it was a federally endangered species, it is possible that there would be limitations. The state's endangered species act only affects state land and would not affect private property.
253	Rep. Luke	In 1993, there were discussions about an endangered thistle which created difficulties for a farmer. The farmer eventually plowed the land up. Hopes that rules developed would make it easy for the landowners, and that their farming practices were not influenced.
263	Rep. Simmons	Comments on endangered species moving into a wildlife area.
269	Chair Lewis	This is a voluntary program.
272	Rep. Shields	Asks if even a spotted owl moved in, why would anything different need to be done to the land outside that wildlife area.
280	Rep. Luke	There have been highway projects which have been held up because of similar situations. Because of rules, the road work had to be stopped.
288	Rep. Simmons	Comments that the laws based on the Endangered Species Act are not based on common sense.
298	Chair Lewis	Closes public hearing on SB 791-A.
<u>SB 791-A</u> <u>WORK</u> <u>SESSION</u>		
299	Chair Lewis	Opens work session on SB 791-A.

302	Rep. Welsh	MOTION: Moves SB 791A to the floor with a DO PASS recommendation.
		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair	The motion CARRIES. REP. LUKE will lead discussion on the floor.
327	Chair Lewis	Closes work session on SB 791-A.
331	Chair Lewis	Adjourns meeting at 3:30 p.m.

Transcribed By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 3724, -3 Amendments dated 05/27/97, Lynn Beaton, 4 pp.

B - HB 3640, -5 Amendments dated 05/21/97, Mike Grainey, 1 p.

C - HB 3455, -1 Amendments dated 05/13/97, Rep. Leslie Lewis, 1 p.

D - HB 3455, -2 Amendments dated 05/23/97, Rep. Leslie Lewis, 1 p.

E - HB 2753, -3 Amendments dated 05/20/97, Larry Campbell, 1 p.

F - HB 2753, Written Testimony, Mike Redding, 5 pp.

G - HB 3405, -1 Amendments dated 05/22/97, Staff, 1 p.

H - SB 902, Written Testimony, Dave Hunnicutt, 1 p.

I - SB 902, -2 Amendments dated 05/27/97, Dave Hunnicutt, 1 p.

J - SB 626-A, Written Testimony, Brad Higbee, 4 pp.

K - SB 791-A, Written Testimony, Jill Zarnowitz, 2 pp.