

HOUSE COMMITTEE ON WATER POLICY

April 8, 1997 Hearing Room D

3:00 PM Tape 59 - 60

MEMBERS PRESENT: Rep. Ken Messerle, Chair

Rep. Tim Josi, Vice-Chair

Rep. Jo Ann Bowman

Rep. Tony Corcoran

Rep. Steve Harper

Rep. Jeff Kruse

Rep. Jim Welsh

MEMBER EXCUSED:

VISITING MEMBER: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Scott, Administrative Support

MEASURE/ISSUES HEARD: HB 2119 Public Hearing

HB 2607 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 59, A		
002	Chair Messerle	Calls meeting to order at 3:12 p.m.
<u>HB 2119</u> <u>PUBLIC</u> <u>HEARING</u>		
003	Chair Messerle	Opens public hearing on HB 2119.
005	Pat Zwick	Policy Analyst, summarizes HB 2119. (EXHIBIT A)

029	Martha Pagel	Director, Water Resources Department, submits and reviews testimony on HB 2119. (EXHIBIT B)
079	Pagel	Continues presentation.
088	Rep. Josi	Comments on the repeal of the state take over after the termination of license.
	Pagel	Continues presentation.
143	Rep. Josi	Asks who made up the work group.
144	Pagel	Refers members to Attachment B.
156	Rep. Kruse	Asks for definition of "non-utility owner of an hydroelectric project."
161	Pagel	Some projects are as small as only providing hydroelectric power for a single dwelling.
162	Bev Hayes	Hydroelectric Program Coordinator, Water Resources Department. Most projects licensed are non-utility producers. These are primarily in rural areas and mainly supply power for single house or a group of homes. There are a variety of projects which use hydropower.
168	Rep. Kruse	Asks if these are connected to an irrigation district or do they stand alone.
170	Hayes	Can be stand alone. Refers committee to a list of projects which are licensed by the state, including individuals, irrigation districts, cities, and counties.
180	Chair Messerle	Asks when fee portion of HB 2119 will be ready.
184	Pagel	Would like to make a recommendation within a few days.
190	Pagel	Continues presentation.
240	Pagel	Continues presentation.
275	Chair Messerle	Asks about on-going mitigation.
278	Pagel	Many of the projects have mitigation requirements as part of their original licenses. Some current mitigation projects are not working as well as they could. HB 2119 defines "mitigation" consistent with the understood definition used for other programs.
311	Pagel	Continues presentation
361	Pagel	Continues presentation.
375	Rep. Josi	Asks for an estimate of the amount needed and how many full time employees (FTE) will be needed.
379	Hayes	The fiscal analysis indicates that \$493,000 is needed to implement the program in three core agencies (Department of Environmental Quality [DEQ], Oregon Department of Fish and Wildlife [ODFW], and Water Resources Department [WRD]). Costs covered by the annual fee would not be charged in the application fees.
399	Rep. Josi	Asks for breakdown of the FTE.
402	Hayes	One FTE in each agency.

TAPE 60, A		
004	Pagel	Discusses duties of FTE.
010	Rep. Josi	Asks if there will be a time when the program will no longer be needed.
013	Hayes	It is expected that these projects will be reauthorized over the next 15 years.
017	Rep. Josi	Asks if that can be addressed legislatively.
019	Hayes	HB 2119 requires the agencies to make a report to the Legislature on how the authorization fees are spent. The Legislature would have a decision point to make every session on how the money is spent, and whether or not it is still needed.
022	Pagel	One option regarding the fees is to have more permanent financing of the program. Another task force is being considered to look into this.
027	Chair Messerle	Reviews details for clarification of the \$493,000 required each biennium.
030	Hayes	Correct, and a total of three FTE. The FTE would be permanent staff and part of agency budgets. Required by HB 2119 to submit report to Legislature detailing how the money is spent.
036	Hayes	Continues review of EXHIBIT B .
086	Hayes	Continues presentation.
093	Rep. Kruse	Asks why the state doesn't accept FERC (Federal Energy Regulatory Commission) relicensing process.
096	Hayes	Will be doing that to some extent, will be participating in the scoping meetings, reviewing the study plans.
100	Rep. Kruse	Asks if FERC relicensing process satisfies the needs and a team is already doing it, why does the state need a team doing the same thing.
109	Pagel	The federal government does not have the authority to issue a water right, and it is important to have a process for issuing the state water right. The state needs to be able to influence the federal decision-making process. The process is similar without being duplicative of the FERC process.
130	Rep. Kruse	Asks if the state would have any compelling reason to make the federal government change their minds if they denied a reauthorization application that the state found acceptable.
138	Pagel	If the federal license were denied, the business would probably be out of business and the state could not override the federal denial. But it may allow the state to have more influence in making recommendations.
150	Meg Reeves	Assistant Attorney General, Department of Justice. The 401 certification and the Fish and Wildlife recommendations to FERC will have to happen regardless of passage of HB 2119. There was agreement on the task force that the FERC licensees are in a better position with the water right.
168	Hayes	One of the key reasons members of industry wanted to continue with the water right program is that they do have the priority date and they have the need to preserve the priority date. If there is a debate about who has the right to water, they have clear legal right. If the license expires and leave

		the reauthorization to the federal government, the federal government does not have the jurisdiction of allocating water.
177	Rep. Bowman	Asks if water right reauthorized could be more than was originally authorized.
191	Pagel	The amount of water originally allocated is subject to a continuing priority date. Any water right above that original amount would have a different priority date.
202	Rep. Bowman	Asks when the state will run out of water it can issue rights for.
204	Pagel	Happening now, WRD is trying to identify alternative sources of supply. The amount of natural stream flow available for appropriation is running out. But there may be water available to be stored during high-flow times of the year. There may be ground water resources that have not been fully tapped, or even identified. Conservation may help get more use out of the water already appropriated. Voluntary transfers of water from one use to another may also help.
221	Rep. Kruse	Asks if DEQ will be required to do 401 certification regardless of the passage of HB 2119.
226	Hayes	They would only need to do 401 certification on the 47 projects licensed by FERC. The other 119 would not require 401 certification.
229	Pagel	Introduces members of task force.
239	Nicole Cordan	Voluntary Attorney, Northwest Environmental Defense Center. Comments on the work done by the task force in the drafting of HB 2119. There were many compromises made by all the members.
289	Cordan	Responds to Rep. Kruse regarding state and FERC process. From the public interest perspective, the FERC process doesn't allow for very much public participation, whereas the state process will have increased public participation. The fees component is still being drafted, and from the environmentalist perspective, there needs to be protection of resources and sufficient funding for state agencies. Mitigation standards need to be met appropriately.
338	Robert Hall	Representing Portland General Electric, presents and reviews testimony in support of HB 2119 as amended by the -1 amendments. (EXHIBIT C)
383	Hall	Continues review.
TAPE 59, B		
017	Pagel	Comments on the participation of agencies, industries, and individuals in the formulation of HB 2119.
036	Bob Atwood	Representing PacifiCorp, submits and reviews testimony in support of HB 2119. (EXHIBIT D)
086	Atwood	Continues review.
096	Chair Messerle	Asks who has the final authority in conflicts.
		The way HB 2119 is set up, if the members of the HART (Hydroelectric

101	Atwood	Application Review Team) team are unable to reach agreement, it goes to their respective directors. Ultimately, it would go to the director of Water Resources Department.
108	Chair Messerle	Asks if there is a time limit for these decisions.
112	Atwood	There are provisions which control, to a certain extent, the scheduling. The additional six months is justified if the various state agencies are going to put together a consolidated point of view on how resources need to be collectively managed.
121	Rep. Welsh	Asks if the six months is added to the 5 year process.
124	Atwood	Yes, the process is about 5.5 years for FERC jurisdictional projects.
126	Rep. Welsh	Comments on the FERC process. Asks if the state process is going to be as involved as the FERC process.
133	Atwood	It is basically the same process as the FERC process. Wherever possible, the state has joined with the federal process in order to avoid duplication. Have tried to minimize the potential for conflict.
143	Rep. Welsh	Asks if there will be added costs to industry.
145	Atwood	Yes.
146	Rep. Welsh	Asks how much.
147	Atwood	There will be about a 60% increase. It may seem like a large increase, but the fees have not been increased for a long time. If the benefits of a unified state voice and collective management of state resources is derived, the benefit is paid for.
156	Rep. Josi	Comments that the facilities were built with the understanding that the state would own the project at the end of the 50 years. Comments that the additional fee process will result in the ownership of the facility and a new 50 year contract.
164	Atwood	Correct.
167	Rep. Welsh	Asks if there is adequate provisions in HB 2119 for the resolution of agency conflict.
171	Atwood	Believe there is a mechanism in the bill to cover this. The implementation will not be smooth, but all of the task force members are willing to work at it.
178	Rep. Josi	Asks about concessions made during the task force meetings.
181	Atwood	There was give and take by all parties on the task force
189	William McNamee	Resource Economist, Electric and Natural Gas Division, Public Utility Commission of Oregon, submits and reviews testimony in support of HB 2119. (EXHIBIT E)
		Representing Eugene Water and Electric Board (EWEB), testifies in support of HB 2119. Concurs with testimony of PacifiCorp. Supports HB

233	Tom O'Connor	2119 as amended. It represents a balance which recognizes the economic importance of these projects to communities and at the same time, seeks to protect the natural resource conditions. Support the idea of a consolidated state review process.
259	Rep. Welsh	Asks about concerns of smaller projects receiving recognition in this process.
266	O'Connor	There is a process in the bill for smaller projects and for minimal impact projects.
285	Rep. Welsh	Asks if the state will have good representation by agencies for the purposes for which the dams have been built.
290	O'Connor	"All this is only as good as all the people participating in it."
309	Rep. Welsh	Asks if this has been well discussed and worked on.
312	Atwood	It is an improvement of the current situation. When going into a FERC relicensing process, which takes 5 years, one has to deal with seven different state agencies and five or more federal agencies, and each agency has a different opinion. HB 2119 has the intent of at least bringing the state resource managers into alignment. The benefits which will come from HB 2119 is worth the increased fee.
341	Chair Messerle	Comments that task force members are able to contact the committee if they have any concerns regarding this legislation.
349	Rep. Welsh	Comments on his concerns. Refers to past legislation where interagency process was changed by misconstrued intent.
366	Atwood	None of the existing authorities of the state natural resource agencies has been changed.
381	John Breuneman	Representing Idaho Power Company, testifies in support of HB 2119. Expresses appreciation to Ms. Pagel for her work in chairing the task force. The company has some concerns regarding fees. In a normal season, Idaho Power is about a 50-50 mix between hydro and thermal. There are approximately 15 other dams within the system, and combined they contribute about 1 million kilowatts. The Idaho Power complex provides a good share of all the generation of power.
TAPE 60, B		
011	Breuneman	There has been discussion regarding the state take-over provisions. Because this is a border river complex, Idaho Power is exempt from state take over provisions. Our dams come up for reauthorization in 2005. Troubled by the lack of a lower cap on fees.
033	Jill Zarnowitz	Representing Oregon Department of Fish and Wildlife, submits and reviews testimony in support of HB 2119. (EXHIBIT F)
061	Pete Test	Representing Oregon Farm Bureau, submits and reviews testimony in support of HB 2119 as amended by the -2 amendments. (EXHIBIT G)
088	Rep. Kruse	Asks how long the reauthorization process is for a project with 1 cfs. and 15 kilowatts.

092	Pagel	Refers committee to Attachment B and chart. (EXHIBIT B)
099	Hayes	It is a three year process. If WRD decides the program is small enough and there are no resource impacts to worry about, an order would be drafted after a short public input period. Once the proposed final order for the process is out for review, the water right process takes about 8 months.
110	Rep. Kruse	Asks if this would be an inexpensive process.
112	Pagel	It should be. The applicant would pay the cost of agency time in evaluating the hydrologic hazard associated with the project. Costs more than a regular water right application, but not anywhere near the amount of a major project.
122	Rep. Kruse	Asks for an estimate of the cost.
123	Pagel	Not sure, could be double.
125	Hayes	They would pay about \$500 up front and \$500 once the license is received.
129	Rep. Bowman	Asks how reauthorization process will take into account the increase in knowledge regarding environmental issues.
137	Pagel	The process will be public and agency input from the start to help identify what the issues will be. The past operation of the output will be examined and evaluated.
152	Rep. Bowman	Asks if there are good records to indicate past mitigation and issues.
155	Pagel	ODFW would have information based on observations over time.
164	Rep. Bowman	Asks if HB 2119 gives WRD the authority to authorize new dams.
166	Pagel	HB 2119 deals only with the reauthorization of existing projects. There is existing law regarding new hydro projects.
170	Rep. Bowman	Asks how an Endangered Species Listing on Coho would affect the reauthorization process.
173	Pagel	That would be looked at during the reauthorization process and would be addressed specifically.
180	Chair Messerle	Closes public hearing on HB 2119.
<u>HB 2607</u>		
<u>WORK</u>		
<u>SESSION</u>		
181	Chair Messerle	Opens work session on HB 2607.
191	Chair Messerle	Comments on decision to pass this bill out and allow the Senate to fine tune it.
207	Chair Messerle	Comments on visit to the affected area.

218	Chair	Asks where smolt would come from if this area was to be used for fish.
220	Zarnowitz	Currently, the smolts would be naturally produced.
221	Chair	Comments that there has been no adult fish observed using the fish ladder, and that it is 1/2 mile from the ocean. Asks if smolts are able to survive in salt water.
227	Zarnowitz	No. But a very few number of existing Coho smolts were found in the existing reservoir which indicates that there maybe at least one pair of adults which made it up in there. Mentioned that it wasn't productive for adults because there is not enough spawning habitat there. One of the options would be to use it for a smolt or a Coho rearing facility for hatchery or hatch box produced fish as an enhancement program. Trying to get not only Coho up there, but also sea run cutthroat and potentially steelhead. Were concerned with enhancing the existing situation and if there were juveniles that moved out, they would be able to get back up stream.
257	Chair Messerle	Comments on confusion during last hearing on HB 2607. Asks if smolts would be expected to be coming from salt water.
262	Zarnowitz	No. But there is not a high concentration of salt water right up to the dike.
271	Chair Messerle	Comments that it is close to the ocean.
273	Mike Lehman	State representative, District 47. Comments that it is probably salt water all the time, except during flood conditions.
276	Rep. Kruse	Asks how the smolts would get there if there is a fish ladder which will only accommodate adults, and there is no spawning above the dam.
280	Zarnowitz	There is a small amount of existing, potential spawning habitat that would be flooded out by raising the dam. The small amount that is there now, could produce some salmon.
287	Rep. Kruse	Asks if the dam was raised for hatchery fish, would it still be a good area for rearing smolts.
290	Zarnowitz	If it was raised, that was one of the mitigation factors looked at before finding out that the law did not allow mitigation measures.
296	Rep. Kruse	Comments.
303	Chair Messerle	Comments on intention to have the fine points worked out on the Senate side.
306	Rep. Lehman	Submits -3 Amendments. (EXHIBIT H)
332	Rep. Josi	MOTION: Moves to ADOPT HB 2607--3 amendments dated 4/7/97.
	Chair	Hearing no objection, declares the motion CARRIED.
336	Rep. Josi	MOTION: Moves HB 2607 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-1 AYE: 5 - Corcoran, Harper, Josi, Kruse, Messerle

		NAY: 1 - Bowman EXCUSED: 1 - Welsh
	Chair	The motion CARRIES. REP. LEHMAN will lead discussion on the floor.
360	Chair Messerle	Closes work session on HB 2607.
361	Chair Messerle	Adjourns meeting at 5:00 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2119, -2 Amendments dated 4/4/97, Staff, 12 pp.

B - HB 2119, Written Testimony, Martha Pagel, 387 pp.

C - HB 2119, Written Testimony, Robert E. Hall, 2 pp.

D - HB 2119, Written Testimony, Bob Atwood, 2 pp.

E - HB 2119, Written Testimony, William McNamee, 2 pp.

F - HB 2119, Written Testimony, Jill Zarnowitz, 2 pp.

G - HB 2119, Written Testimony, Pete Test, 1 p.

H - HB 2607, -3 Amendments dated 4/7/97, Rep. Mike Lehman, 1 p.