

SENATE COMMITTEE ON
AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENT

April 26, 1995 Hearing Room
3:00 P.M. Tapes 89, 90

MEMBERS PRESENT: Sen. Bob Kintigh, Chair
Sen. Rod Johnson, Vice-Chair
Sen. Brenda Brecke
Sen. Bill Dwyer
Sen. Tom Hartung

MEMBER EXCUSED: Sen. MARYLIN Shannon

STAFF PRESENT: Bruce McIntosh, Committee Administrator
Catrina Victor, Committee Assistant

MEASURES HEARD: SB 949, Work Session
SB 951, Work Session
Resource Damage Rules, Informational Hearing

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

Tape 89A

SB 949-4 Proposed Amendments, Staff. [EXHIBIT A]
SB 949 Staff Measure Summary, Staff, [EXHIBIT B]

03 Chair Kintigh: Opens meeting 3:18 P.M.

06 Opens WORK SESSION ON SB 949

16 Paul Cosgrove, Representing the coalition who brought amendments to SB 949: Bill proponent. Reviews the new amendments proposed by the Governor.

and their group. States minor changes to SB 949-4, on page 4, lines 6-10 would be deleted. On pages 5 and 6, delete Section 6. Change in language on

page 4, subsection 7, line 16 [EXHIBIT G]. Hopes Committee will adopt the bill without change in Section 7, with commitment the coalition and the Governor's office and the department will finalize and propose as an amendment on the House side.

50 Bob Danko, department of environmental quality: In favor of the amendments to SB 949-4.

58 SEN. Dwyer: If they meet the 25% or higher, then they do not have to keep records? Is that correct?

62 COSGROVE: Yes. If rate exceeds statutory amount, then no manufacturers need to keep record.

64 SEN. DWYER: How do we determine what the rate is if there is no record?

66 COSGROVE: The department makes the determination on an annual basis.

75 MOTION: SEN. HARTUNG: Moves AMENDED SB 949-4 to the Floor with a DO PASS recommendation.

85 VOTE: In a roll call vote, all members present vote AYE. SEN. SHANNON is excused.

88 CHAIR KINTIGH: The motion CARRIES.

98 Closes WORK SESSION on SB -949

100 Opens WORK SESSION on SB -951

107 BOB HALL, PORTLAND GENERAL ELECTRIC: Proposed amendments, SB 951-2, Staff, [EXHIBIT C]

117 Margaret Kirpatrick, ATTORNEY, STOEL RIVES: In favor of SB -951-2 as amended [exhibit D]. Reviews the changes in the language in the bill and gives the new amendments line by line. Notes significant changes since the last hearing.

140 Kirpatrick: Continues testimony.

175 KIRPATRICK: Continues testimony.

192 SEN. DWYER: How many of these plants do you plan on siting on the next two years with this window that you have here?

195 KIRPATRICK: Believes that the Department of Energy is probably in a better position to answer the question. However, many of the projects that are underway are being moved forward by independent power producers, not by investor-owned utilities. Getting site certificates take a long time. Unless a facility is well along in the planning process today, the facility probably wouldn't pass.

220 Sen. Brecke: How many plants may be built in that two-year window?

222 KIRPATRICK: Deferred to the Department of Energy. Is aware of one application that is filed now and another that has requested expedited review.

228 Dave Stuart Smith, SECRETARY, ENERGY FACILITY SITING COUNCIL and Department of energy: One application is currently under review, Hermiston power partners. We have filed notices of intent for about four other plants, but most of those notices have been filed with us for a long time.

They are currently independent power producers shopping their project around and trying to find customers. Received a recent notice of intent for a plant in Klamath Falls partly sponsored by the city of Klamath Falls, and there is another we haven't received a notice for yet near Toledo, a Georgia Pacific co-generation plant.

248 SEN. DWYER: If we pass this bill, will it create a rush?

250 SMITH: Doesn't think it will create a rush. Short term market right now is more than competitive and cost of planning and getting an application through process is half a million dollars effort. Because of the cost of permitting, someone must be pretty serious to apply for a permit.

261 Kirpatrick: Continues reviewing the amendments of SB -951 for the Committee. There is a catch in SB 951-2 the assistant attorney general raised. On page 25 of SB 951-2 Section 12, lines 15 through 19, the deletion of this language also referenced complying with the time for completion of construction of the facility. The attorney general's office is concerned that with deletion of this language there may be some question

about whether the council can put this condition for completion of construction in the site certificate. Attorney General recommends on page 25, line 4, after "...public health and safety," inserting "and for the time of completion of construction,...".

300 Kirpatrick: Continues testimony.

320 SEN. DWYER: The deleted language is still the lead?

321 KIRPATRICK: Yes. Clarifies insertions. Continues testimony.

348 Sen. Brecke: Can a person still enter in at the beginning of the process if they are in the contested case process?

359 Kirkpatrick: Yes, at the first public hearing when a site certificate application has been received and considered to be complete. If council holds multiple hearings on a site application, would be most likely for a facility covering a large geographical area.

388 Richard Whitman: Section 26, page 46, SB 951-2 amendments. Gives additional amendment to subsection 2, insert "Except with regard to a nuclear or coal facility," at the beginning of the paragraph to be considered by the committee. Amendment will assure that the need standard is not suspended with those types of facilities.

421 SEN. JOHNSON: Clarifies offered amendments.

Tape 90A

15 Steve Marks, GOVERNOR'S SENIOR POLICY ADVISOR: Expresses Governor's assessments of the proposed amendments and what his concerns are. In the public interest in the siting of facilities, believes the task force given charge of looking at what proper role of expressing the public interest is a very important role. Governor has some outstanding questions about the two-year moratorium on the need for power standards, specifically how much development can we expect and what constraints will be employed during that time. Believes the amended bill has been vastly improved. Critically

important to the Governor that the framework of legislation move the issue forward to enable to get a stable resolution of how public interest is expressed in the facility siting.

45 CHAIR Kintigh: Do you feel the Governor will have objections about what was coming on line in the next two years?

49 MARKS: Clarifies Governor's position.

54 SEN. DWYER: Do you think this is a vastly improved bill over when we began to negotiate?

55 John SAVAGE, ACTING DIRECTOR, DEPARTMENT OF ENERGY: Yes, the bill restores and addressed a number of concerns had earlier. This is a good approach to this issue. We are hoping for a long-term resolution to what's the proper role of energy facility siting.

65 SEN. DWYER: To your knowledge is this two-year window is going to resolve in any more development than you previously testified?

67 SAVAGE: Power plants under review could still have a need for power standard applied for them and it limits the kind of development we could see in this state.

71 SEN. BRECKE: Asks for clarification.

76 SAVAGE: Clarifies standard need until sine die of the 1997 legislature.

86 CHAIR KINTIGH: Asks Bruce to clarify amendments to the amendment--two amendments to the SB 951-2 amendments on pages 25 and 46.

93 MOTION: SEN. JOHNSON: Moves that we amend SB 951-2, page 25, line 4, to read after the word safety, "and for the time of completion of construction," No objections.

98 MOTION: SEN. JOHNSON: Moves that we AMEND SB 951-2, page 46, line 21, before the word apply, we insert the phrase, "except with regard to a nuclear or coal facility,." No objections.

104 MOTION: SEN. JOHNSON: Moves that SB 951, gut and stuff by supplementing the SB 951-2 amendments for the bill moving the SB 951-2 amendments into the bill as amended

108 MOTION: SEN. JOHNSON: Moves SB 951, AS AMENDED, to the Floor with a DO PASS recommendation.

122 VOTE: In a roll call vote, all members present vote AYE. SEN. SHANNON is excused.

122 CHAIR KINTIGH: The motion CARRIES.

125 SEN. JOHNSON will carry the bill.

129 Closes WORK SESSION on SB -951

145 Opens INFORMATIONAL HEARING on Resource Damage Rules

Verbal questions, Oregon Department of Fish and Wildlife Informational Hearing, Staff [EXHIBIT E]

Responses to questions from Department of Fish and Wildlife [EXHIBIT F]

163 Terry WITT, oregonians for food and shelter: Opposed to the Resource Damage Rules. Concern centers around a number of issues, but primarily around process used to generate these proposed rules and concern over proper representation on the advisory committee. Strongly believe need proper representation of stake holders in the process. Five members were state agency personnel, three resided in the state of Washington, and one was a lawyer, who was indicated as the industry representative, but with an organization whose ability to represent industry many people questioned. We are in serious error when we don't have affected stake holders involved.

The rules shift substantially from a restorative approach dealing with natural resource damage to an approach punitive in nature. The process is extremely flawed and didn't do an adequate job representing those who are the major stake holders, as well as those who want to put a together a more draconian process by which natural resource user can be punished.

200 WITT: Continues testimony.

231 Sharon Beck, RANCHER, OREGON CATTLEMEN'S ASSOCIATION: Opposed to the Resource Damage Rules. Believes the rule changes are not updating and clarifying the rules, are not making them fair and equitable, and are not making rule objective rather than subjective. Does not believe there is a need for proposed amendments. Should change the law if there is need for a change and make it less punitive. They are counter productive to good relationships with our industry and the Department of Fish and Wildlife and to responsible land management. We fail to see statutory for using affected habitat rather than damaged habitat.

259 Bill Perry, director, governmental affairs, oregon farm bureau: We are opposed to the Resource Damage Rules and are concerned about the advisory committee. Doesn't feel there is a need to have these rules dealt with. In opposition.

281 KATHryn Vanatta, northwest pulp and paper association: Submits letter [EXHIBIT I]. The rule making process should be looked at again with a more diverse working group. Feels the process is necessary.

331 JILL ZARNOWITZ, DEPARTMENT OF FISH AND WILDLIFE: Provides overhead presentation [EXHIBIT H]. Stephanie Birchfield, Craig Robart and Chris Carter will help in the presentation. The department is in a public involvement process with our commission and the commission hasn't yet adopted the proposed rules. Explains.

383 JANE ARD, ATTORNEY GENERAL'S OFFICE: Gives overview of what the statutes do and what the department's authority is. Breaks the program down into sections for definitions and clarification.

417 SEN. JOHNSON: Does the money that is collected under this program go into a fund that the department has?

Tape 89B

001 ARD: It goes into the Fish and Wildlife Fund. Further expands on ORS.

007 JOHNSON: Asked for clarification on unlawful taking.

009 ARD: The amount that the department can recover for an unlawful taking has been set by a legislature in statute. Explains.

29 ZARNOWITZ: Describes the rules.

39 Sen. Johnson: Asks for examples and why the rules are necessary.

44 Zarnowitz: Have had rules in place to cover fish part of compensation since 1991, and we have collected compensation based on those rules. Also have collected compensation based on the statute prior to those rules. These rules wouldn't necessarily greatly change authority under the statute.

52 Sen. Johnson: Do you already have the power you need to protect fish and have their populations restored?

54 ZARNOWITZ: Explains the authority under the statute.

56 SEN. JOHNSON: Why do you need these rules?

57 ZARNOWITZ: We believed that we began working on them that we needed them in order to clarify how we would go about collecting information as well as compensation.

63 ARD: The rules don't cover what the department would do in assessing what damage would be to wildlife; it only covers fish. In 1991 when the commission adopted the rules they did so with understanding the department would be coming back with filling in on wildlife. Rules are limiting when we do in-kind restoration habitat--there is a dollar limit in current rules. We are raising the limits for in-kind restoration.

76 ZARNOWITZ: In kind restoration is the party, rather than paying money to the department, the party themselves could restore the habitat up to a certain value. We found we had experience with some larger events that exceeded the limit, and the department was unable to allow a party to do restoration of rules limitations.

86 SEN. JOHNSON: If the rules are needed are you asking for more than is needed to fix the need? Are there any non-water environmental spills?

103 ZARNOWITZ: We had a spill in Yoncalla Creek where locomotives went into the creek. Pond turtles are a Federal category 2 species and they are state sensitive. Turtles were oiled and were taken to a rehabilitation facility for cleaning. A number of aquatic animals that are game animals as well as non-game animals can be affected by water pollution spills. We are trying to have our rules encompass what the statute talks about. Our rules right now only relate to one part of the statute. Continues to describe what the

rules do, and with overhead presentation.

121 SEN. JOHNSON: Are there any non-water scenarios?

123 ZARNOWITZ: We can't.

123 SEN. JOHNSON: Clarifies question.

124 ZARNOWITZ: Clarifies testimony and further explains rules.

163 ZARNOWITZ: Continues testimony.

203 CHAIR KINTIGH: Why did you take out-of-state people on the advisory committee?

204 ZARNOWITZ: We chose people from other agencies because they had experience in other states that we didn't have with natural resource damage assessment, and we hoped to gain from their experience. We will do it differently next time.

231 ZARNOWITZ: Continues testimony.

262 Sen. Johnson: Applauds the common sense reaction here to the outcry of opposition and welcome that flexibility. Suggests that if the department chooses to either go forward or to have the attorney general look into giving them an official answer whether or not they need the rules, that attorney general opinion be developed quickly so the answer also can be given to the legislature while we are still in session.

294 Chair Kintigh: Relating to the Forest Practices Act, is there no change in this area?

307 ZARNOWITZ: Yes. It is still treated the same. We will probably meet with larger group of people than we met with yesterday to propose these options to them and the commission.

329 Chair Kintigh: Encouraged by the response of the community.

365 CHAIR KINTIGH: Meeting adjourned 4:35 p.m.

Submitted by, Reviewed by,

Catrina Victor Bruce McIntosh
Committee Assistant Committee Administrator

EXHIBIT LOG:

- A- SB 949-4 Amendments, Staff, 6 pages
- B- Staff Measure Summary, SB 949, Staff, 7 pages
- C- SB 951-2 Amendments, Staff, 47 pages
- D- Testimony, SB 951, Margaret Kirkpatrick, 16 pages
- E- Verbal Questions, Oregon Department of Fish and Wildlife Informational Hearing, Staff, 4 pages
- F- Responses from Department of Fish and Wildlife for Informational Hearing, Staff, 14 pages

G- Proposed amendments to SB 949-4 amendments, Paul Cosgrove, 3 pages
H- Overhead Presentation for Natural Resources Losses, Department of Fish
and Wildlife, 11 pages
I- Letter from Northwest Pulp & Paper on Resource Damage Rules, Kathryn
Vanatta, 1 page