

SENATE COMMITTEE ON
WATER & LAND USE

Hearing Room
Tapes -100

MEMBERS PRESENT:

Sen. Rod Johnson, Chair
Sen. Bob Kintigh, Vice-Chair
Sen. Neil Bryant
Sen. Ron Cease
Sen. Bill Dwyer

MEMBER EXCUSED:

STAFF PRESENT:

Karen Quigley, Committee Counsel
Sarah A. Myers, Committee Assistant

MEASURES HEARD:

SB 516 - Work Session
SB 1050 - Public Hearing and Work Session
SB 1051 - Public Hearing and Work Session
SB 1086 - Public Hearing
SB 830 - Work Session

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 , A

003 SEN. JOHNSON: Opens the meeting at 4:10 PM.

WORK SESSION ON SB 516

Witnesses: Elizabeth Flurio, Oregon Water Coalition
Martha Pagel, Director, Water Resources Department
Ves Garner, Farmer Polk County
Mark Nelson

014 SEN. JOHNSON: Discusses the amendments, (-3), to SB 516 [EXHIBIT A].

040 ELIZABETH FLURIO, Oregon Water Coalition and the Oregon Wheat Growers League: Addresses the (-3) amendments. Testifies in SUPPORT of SB 516.

048 MARTHA PAGEL, Director, Water Resources Department: Testifies in SUPPORT of SB 516
-Recommends amending ORS 537 to Section 11

066 -PAGEL: Responds to a question from SEN. DWYER regarding the definition of "contiguous".
-Discusses the language as to the specifics.

080 SEN. JOHNSON: Discusses the proper language for "contiguous lands".

121 PAGEL: Responds to SEN. CEASE regarding amending ORS 537 to line 11.
-Page 2 of the (-3), line 27; the wording is confusing and not necessary.
-Calls for a change for appropriation for a ground water permit in terms of

ground water rights.

-The intent is that the permit may be amended to the point of diversion.
-Provision to require a notice of at least 60 days for proper notification regarding possible injuries, etc.

197 -Responds to a question from SEN. DWYER regarding the point of diversion

and whether or not the state has a requirement regarding the point of diversion.

-Continues to discuss the issue of diversions with SEN. DWYER regarding the placement of conditions on the provision.

248 PAGEL: Discusses the proposed use notification time period.
-Subsection 7 regarding no intervening diversions and no intervening tributaries the change can happen automatically and be reported to us even after the fact.

-Subsection 8 and the advance notification and the need for an up front injury analysis.

284 -Discusses the purpose of the notice of the proposed changes; the test is

simply one of "injury".

329 SEN. CEASE: Discusses the "injury" issue, and where the burden falls involving injury.

368 VES GARNER, Farmer in Polk Co.: The issue is providing land owners with some control regarding their water rights. Testifies in SUPPORT of SB 516.
-Past policies have made it very restrictive on land owners.

426 MARK NELSON: Discusses current law and the function of SB 516.
-Section 7, Page 2, line 22; asks for the application of an "injury" test.

TAPE 100, SIDE A

020 NELSON: Continues discussion of tributaries in conjunction to the point of diversion.

CLOSES THE WORK SESSION ON SB 516

OPENS THE PUBLIC HEARING AND WORK SESSION ON SB 1050

Witness: Jan Boettcher, Oregon Water Resources Congress

064 JAN BOETTCHER, Oregon Water Resources Congress: Testifies in SUPPORT of SB 1050.

-Responds to SEN. DWYER and his question regarding the parcels and the attempt to give more people access to the system politically [EXHIBIT B].

098 MOTION: SEN. JOHNSON: Moves the (-1) amendments be ADOPTED [EXHIBIT G].

VOTE: Hearing no objection the MOTION CARRIES.

106 MOTION: SEN. DWYER: Moves SB 1050 AS AMENDED to the Floor with a DO PASS recommendation.

VOTE: MOTION CARRIES
AYE: All present.
EXCUSED: Sen. Bryant

CLOSES THE PUBLIC HEARING AND WORK SESSION ON SB 1050

OPENS THE PUBLIC HEARING ON HB 1051

Witnesses: Jan Boettcher, Oregon Water Resources Congress
Joni T. Low, League of Oregon Cities

130 JAN BOETTCHER, Oregon Water Resources Congress: Testifies in SUPPORT of SB 1051 [EXHIBITS C, D].

-Discusses the specifics of what should remain as a part of the bill.
-Responds to SEN. CEASE and his question regarding the default on loans from the water development fund.

234 JONI LOW, League of Oregon Cities: Testifies in SUPPORT of SB 1051 with the (-1) amendments [EXHIBIT E].
-Responds to SEN. CEASE and his question as to where the funding would be deducted from.

CLOSES THE PUBLIC HEARING ON SB 1051

OPENS THE WORK SESSION ON SB 1051

268 SEN. DWYER: Discussion with CHAIR JOHNSON regarding changing the relating clause and the proper changes to be made [EXHIBIT F].

MOTION: SEN. DWYER: Moves that relating to the water development loan fund, to amend ORS, delete 285.740 to 285.968.

VOTE: Hearing no objection the MOTION CARRIES.

One MOTION: SEN. DWYER: Moves to delete Page One starting at line 5; Sections through Eight and Section Ten.

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: SEN. DWYER: Moves to ADOPT the (-1) amendments.

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: SEN. DWYER: Moves SB 1051 AS AMENDED to the Floor with a DO PASS recommendation.

VOTE: MOTION CARRIES
AYE: All present.
NO: None.
EXCUSED: Sen. Bryant

CLOSES THE WORK SESSION ON SB 1051

OPENS THE PUBLIC HEARING ON SB 1086

Witnesses: John Chandler, Counsel, H.B.A.

339 SEN. JOHNSON: Provides background on SB 1086.

366 JOHN CHANDLER, General Counsel for the Home Builders Association:
Testifies in SUPPORT of SB 1086 with some proposed amendments.

402 SEN. CEASE: Comments on previous years' Land use and transportation
discussions in regard the successes; expresses concern that the issue not
be left totally up to the planning department.

420 CHANDLER: Clarifies for the committee what the proposed amendments will
encompass.

TAPE 99, SIDE B

020 SEN. CEASE: Discusses the necessary consideration of land use and
transportation at the same time.

CLOSES THE PUBLIC HEARING ON SB 1086

OPENS WORK SESSION ON SB 830

Witnesses: Mel Stuart
Ken Bierly, Department of State Lands, Wetlands Leader
Jenifer Robison, Department of State Lands

045 CHAIR JOHNSON: Talks to Mel Stuart regarding his work on "fixing the
wetlands problem" since the last time they spoke.

051 MEL STUART: The amendments to the bill addresses the fact that state
agencies when making their decisions should do so in a consistent fashion;
with acknowledgment of local comprehensive planning processes.
-Discusses the wording change "all of".

076 SEN. CEASE: Discusses the use of "clear and objective standards";
questions the meaning of the phrase on Page 2, lines 11 and 12.

085 STUART: Defines "Wetland" for SEN. CEASE.
-Original intent of creating such a wide definition was to allow the
process of examining the parcel once someone applies for a Wetland Permit,
in order to minimize the loss of functional values.

097 SEN. DWYER: What actually determines a wetland?
-Discussion with SEN. CEASE; regarding mitigation and what actually
determines the functional attributes.

121 SEN. JOHNSON: Questions line 13 on page 1; discussion of including the
words "all of".

128 STUART: Responds to the question regarding the wording "all of" with
CHAIR JOHNSON.
-Suggests a more even handed approach.

150 SEN. JOHNSON: Discussion with SEN. DWYER regarding the language.

190 KEN BIERLY, Department of State Lands, Wetlands Leader: Discusses
Section 2 of SB 830;
-Problem is with the attempt to create clear and objective standards driven

by broad policies.

-Responds to Sen. Cease; regarding the wording of "clear and objective
standards followed by standards which are subjective and the conflict which
arises.

-Responds to Sen. Johnson with reference to alternative language so that
the language is not overly broad.

240 BIERLY: Continues to testify and respond to committee questions
regarding changing the language.

263 JENIFER ROBISON, Department of State Lands: Interjects with discussion
on the process of permit issuance.
-Responds to SEN. CEASE in regard to the number of permits issued on a
yearly basis.
-Responds to SEN. JOHNSON in regard to the proposed wording.

316 BIERLY: The legislative direction is relatively clear in Section 2; it
says the "director shall issue a permit applied for, unless the director
determines it would unreasonably appear" etc

343 STUART: The "Clear and objective standards" came right out of State
Housing policy.

MOTION: SEN. JOHNSON: Moves to delete the sentence, "the director shall
approve or deny permits based on clear and objective standards.

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: SEN. JOHNSON: Moves to add the words "all of" after the word
consider on line thirteen.

VOTE: Hearing no objection the MOTION CARRIES.

369 BIERLY: Responds to question from Sen. Cease on the changes made on
lines 11 and 12 of the bill in that it presumes that all permits are for
wetlands and in fact permits for all water ways are also involved.

-Sen. Johnson; discusses legislative intent.

-If we look at replacing wetland attributes on a per acre basis, the
intention is to change consideration from an area basis to functional
attributes.

TAPE 100, SIDE B

009 STUART: Parcel of wetlands and proportion of replacement acreage.
-Responds to Sen. Johnson.

033 ROBISON: A more critical problem relates to all removal and field
permit mitigation in all waters of the state.

046 BIERLY: Unavoidable impacts; mitigation is used inappropriately as it
is defined in the statutes.

-Discusses language to be changed and specific terminology, with SEN.
JOHNSON.

MOTION: SEN. JOHNSON: Moves to amend Page 2 of the bill and change line
and insert "compensatory wetlands" in front of the word

"mitigation". 11

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: SEN. JOHNSON: Moves to amend line 37 on Page 2 of the bill and
delete the words "fully implement" and replace it with "complete rule
making for".

VOTE: Hearing no objection the MOTION CARRIES.

105 ROBISON: Line 21 on page 1; sound policies of conservation refers to
the overriding policy of both the removal fill law and the wetlands
portions of it which require in particular the best uses of the State's
water.

120 STUART: If this particular portion remains in the bill, then a rather
arbitrary decision process ensues. Additional standards are needed for
consistency.

MOTION: SEN. KINTIGH: Moves SB 830 AS AMENDED to the Floor with a DO PASS
recommendation..

VOTE: MOTION CARRIES.
AYE: All present.
NO: None
EXCUSED: Sen. Bryant.

160 CHAIR JOHNSON: SEN. DERFLER will CARRY the bill to the Floor.

CLOSES THE WORK SESSION ON SB 830.

166 CHAIR JOHNSON: Adjourns the meeting at 5:45 PM.

Submitted by, Reviewed by,

Sarah A. Myers Karen Quigley
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Dash Three amendments - SB 516 - Staff - 3 pages.
B - Testimony submitted by J. Boettcher - SB 1050 - 3 pages.
C - Testimony submitted by J. Boettcher - SB 1051 - 2 pages.
D - Testimony submitted by J. Boettcher - SB 1051 - 7 pages.
E - Testimony submitted by Joni T. Low - SB 1051 - 1 page.
F - Dash One amendments - SB 1051 - Staff - 1 page.
G - Dash One amendments - SB 1050 - Staff - 1 page.
H - Testimony submitted by Keith Bartholomew - SB 1086 - 4 pages.