

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

June 16, 1993 Hearing Room D 2:00 p.m. Tapes 147 - 149

MEMBERS PRESENT: Rep. Bob Repine, Chair Rep. Marilyn Dell, Vice-Chair
Rep. Sam Dominy Rep. Bill Fisher Rep. Carl Hosticka Rep. Dennis Luke
Rep. Bill Markham Rep. Nancy Peterson Rep. Ray Baum

STAFF PRESENT: Kathryn Van Natta, Committee Administrator Karen
McCormac, Committee Clerk

MEASURES CONSIDERED: Work Session - SB 190 A-Engrossed - SB
1005 - HB 2934 - SB 5

Public Hearing - HB 3177

WITNESSES: TOM BARROWS, NW Mining Association LEE KERSTEN,
Horse Council of Oregon BLAIR BATSON, 1000 Friends of Oregon REP. JOHN
MEEK GREG WOLF, Deputy Director, Department of Land

Conservation and Development ART SCHLACK, Land Use Specialist,
Association of

Oregon Counties ROGER SAWYER, Farmer REP. MIKE BURTON REP. DAVE McTEAGUE
TOM GALLAGHER, ARCO FRED HANSEN, Director, Department of Environmental

Quality SUSAN BROWNING, Acting State Fire Marshal

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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. [--- Unable To Translate
Graphic ---]

DAVID YANDELL, Oregon Emergency Response Management JOHN ALTO, PETRO TOM
CHARMICHAEL, Charmichael Oil

TAPE 147, SIDE A

005 CHAIR REPINE: Calls meeting to order at 2:08 p.m.

008 OPENS WORK SESSION ON SB 190 A-ENGROSSED

010 KATHRYN VAN NATTA, Committee Administrator: We had a public
hearing on Senate Bill 190 on June 14. There is a minimal fiscal
impact on the

Department of Geology and Mineral Industries, and no revenue impact.

The Senate vote on this bill was 24 - 2. Senate Bill 190 amends the
policy statement for mineland reclamation statutes.

023 MOTION: REP. LUKE: Moves SB 190 to the FULL COMMITTEE ON NATURAL RESOURCES with a DO PASS RECOMMENDATION.

025 CHAIR REPINE: Restates motion and calls for discussion.

027 VOTE: REP. DOMINY, FISHER, HOSTICKA, LUKE, MARKHAM, PETERSON and CHAIR REPINE vote AYE. REPS. BAUM and DELL are EXCUSED.

035 CHAIR REPINE: The motion CARRIES. REP. LUKE will lead discussion on the floor.

CLOSES WORK SESSION ON SB 190 A-ENGROSSED

OPENS WORK SESSION ON SB 1005

039 VAN NATTA: Senate Bill 1005 was also in public hearing on June 14. The Senate vote on this bill was 29 - 0. There is no fiscal or revenue

impact. During the public hearing, Tom Barrows of the NW Mining Association recommended that an emergency clause be added to the bill, and that language conform to language used by the federal government.

049 TOM BARROWS, NW Mining Association: Presents Proposed -1 Amendments to SB 1005 (LC 3505), dated 6-14-93 (EXHIBIT A), which add an emergency

clause to bring the bill into effect before the federal act takes effect on August 1. It also changes the term "holding fee" to "fee" on Lines 6 and 18 of the original bill to conform with language used by the Bureau of Land Management.

068 REP. MARKHAM: What does the bill do?

069 BARROWS: If this bill is not passed, state statutes will still refer to assessment work being required of miners, whereas the federal government has removed that requirement and substituted a \$100 fee instead.

074 REP. PETERSON: Why wasn't the emergency clause added when the bill was on the Senate side?

075 BARROWS: At the time, we didn't know the date upon which the federal act takes effect.

077 MOTION: REP. LUKE: Moves the SB 1005 -1 AMENDMENTS (LC 3505), dated 6-15-93 to SB 1005.

079 CHAIR REPINE: Restates motion and calls for discussion. Hearing no objection, the motion CARRIES.

080 MOTION: REP. LUKE: Moves SB 1005 AS AMENDED to the FULL COMMITTEE ON NATURAL RESOURCES with a DO PASS RECOMMENDATION.

084 CHAIR REPINE: Restates motion and calls for discussion.

085 VOTE: REPS. DOMINY, FISHER, HOSTICKA, LUKE, MARKHAM, PETERSON and CHAIR REPINE vote AYE. REPS. BAUM and DELL are EXCUSED.

088 CHAIR REPINE: The motion CARRIES. REP. LUKE will lead discussion on the floor.

096 CLOSES WORK SESSION ON SB 1005

OPENS WORK SESSION ON SB 5

098 VAN NATTA: Senate Bill 5 is from the Division of State Lands. It was in public hearings on May 5 and June 14, and repeals a section of

statute for which the Division of State Lands has never made rules.

There is no fiscal or revenue impact, and the Senate vote was 29 - 0.

109 MOTION: REP. HOSTICKA: Moves SB 5 to the FULL COMMITTEE ON NATURAL RESOURCES with a DO PASS RECOMMENDATION.

111 CHAIR REPINE: Restates motion and calls for discussion.

112 VOTE: REPS. DELL, DOMINY, FISHER, HOSTICKA, LUKE, MARKHAM, PETERSON and CHAIR REPINE vote AYE. REP. BAUM is EXCUSED.

121 CHAIR REPINE: The motion CARRIES.

CLOSES WORK SESSION ON SB 5

OPENS WORK SESSION ON HB 2934

123 VAN NATTA: HB 2934 is from the Horse Council of Oregon. This bill was in public hearing on April 12 and June 9, and Chair Repine recommended

that a workgroup composed of representatives from the Horse Council and 1000 Friends of Oregon be developed in order to reach a compromise.

Consensus was reached in the -1 amendments (EXHIBIT B). On June 9, the revenue analysis from HB 3661-A was distributed, since HB 3661 also addresses this issue. That revenue analysis stated that the

training and stabling provision will lower values of a few commercial horse stables, and could allow farm-use assessment for other people boarding horses, depending upon how the language is interpreted. Most commercial horse stables already receive farm-use assessment, due to breeding or other farm operations.

202 LEE KERSTEN, Horse Council of Oregon: Reviews new language contained in the -1 amendments for HB 2934.

232 REP. MARKHAM: If a wheat farmer also wants to have horses, are you saying he cannot have horses?

234 KERSTEN: The wheat farmer would be allowed the horses because

he's already farming.

The amendments allow the training and stabling of horses as an outright use in an exclusive farm use (EFU) zone.

249 REP. FISHER: If you were a retired farmer in Morrow County and decided you want a horse breeding facility on five acres, could you do it?

252 KERSTEN: No.

258 BLAIR BATSON, 1000 Friends of Oregon: Testifies in support of HB 293 4 as amended by the -1 amendments. The compromise addresses two major

issues which we were concerned about, which were the parcelization issue, and dwellings used in conjunction with farm use.

To be considered "farm use," the land must be employed for the primary purpose of obtaining a profit. This bill still does not address the problem of statutory standards for farm dwellings. This amendment would not affect standards for farm dwellings in

Deschutes County, due to numeric minimum lot sizes. In counties which do not have fixed numeric minimum lot sizes, the standard of whether a land division should be allowed in an EFU zone is determined on a case-by-case basis. Counties will need to consider other types of agriculture in the same area before parcelization can occur.

333 REP. LUKE: What will this bill do in Deschutes County?

335 KERSTEN: It will clarify that equine training and stabling are farm use activities.

351 BATSON: Language regarding other agricultural uses in the area would not impact the siting of the stable.

357 REP. LUKE: So if you've got a 20-acre parcel you're not currently doing anything with, you could apply for a conditional or permitted use

through the county for a stable or riding arena which fits in with the area?

363 BATSON: Yes. 361 REP. JOHN MEEK: Testifies in support of HB 2934. It takes \$70,000,000 annually to feed horses in Oregon. This is not a hobby, but a major

business, and we have done little to protect this it. Recommends adoption of original bill.

TAPE 148, SIDE A

045 REP. MARKHAM: What portion of the amendments do you object to?

050 VAN NATTA: Originally, HB 2934 did not address ORS 215.263, which deals with non-farm dwelling parcelization standards. There are problems with the language in the original bill, and if adopted today, the work group would like some changes made. The entire thrust of the original bill

was to allow a property tax assessment break to certain stables.

103 REP. FISHER: If a wheat farmer who also has horses wants to sell his wheat farm operation and use some acres to continue his horse operation, which would require another dwelling, is he barred from doing this?

124 GREG WOLF, Deputy Director, Department of Land Conservation and Development: The purpose of this bill is to define the circumstances

under which he could conduct that type of operation.

If the training and stabling operation is a commercial operation, he should be able to divide that farm in order to conduct business.

186 ART SCHLACK, Land Use Specialist, Association of Oregon Counties: If he divides his property, he would be subject to the land regulations within his county, i.e., whether there is a minimum lot size, etc. If an

individual is training horses he owns which he may sell to another party, he would be able to divide his property into two economic units, i.e., wheat farming and the training and stabling of horses. However, if he was stabling other people's horses and training them, he would be precluded from dividing the land.

240 ROGER SAWYER, Farmer: Testifies in support of HB 2934.

281 MOTION: REP. BAUM: Moves the HB 2934 -1 amendments (LC 1758), dated 6-15-93, to HB 2934.

289 CHAIR REPINE: Restates motion and calls for discussion. Hearing no objection, the motion CARRIES.

293 REP. BAUM: Language from legislative counsel in the -1 amendments on Page 2, Lines 28 through 31 differs from language the workgroup agreed

upon. That language was, "Because the training and stabling of equines for profit can occur on parcels of land much smaller than needed for most commercial farming operations, parcels used for training or stabling facilities shall not be deemed appropriate to maintain the

existing commercial agricultural enterprise in an area where other types of agriculture occur." Language in the -1 amendments is confusing

without the explanatory portion at the beginning of the sentence.

313 CHAIR REPINE: So your conceptual amendment is the sentence you just read into the record?

314 REP. BAUM: Yes. We would like legislative counsel to try redrafting this portion.

315 MOTION: REP. BAUM: Moves to adopt LANGUAGE DEVELOPED BY THE WORKGROUP to Page 2, Lines 28 through 31 of the HB 2934 -1 AMENDMENTS (LC 1758), dated 6-15-93.

317 CHAIR REPINE: Restates motion and calls for discussion.

325 REP. FISHER: Can you explain why there would be no reduced tax rate for commercial operations such as this?

332 REP. BAUM: Before you can divide land from an existing farm, you must have a commercial, profitable stabling operation.

350 REP. FISHER: Some businesses don't turn a profit for several years. Would they be eliminated? We don't ask that of sheep farmers, who

sometimes don't make a profit for years.

360 REP. LUKE: A farm deferral requires a gross-income test.

365 REP. BAUM: Section 7 of the -1 amendments deals with parcelization, which doesn't necessarily impact whether you qualify for special tax

assessment.

399 VOTE: REPS. BAUM, DELL, DOMINY, FISHER, HOSTICKA, LUKE, MARKHAM, PETERSON and CHAIR REPINE vote AYE.

408 CHAIR REPINE: The motion CARRIES. We will ask legislative counsel to make the correction to the -1 amendments.

CLOSES WORK SESSION ON HB 2934

TAPE 147, SIDE B

OPENS PUBLIC HEARING ON HB 3177

011 REP. MIKE BURTON: Testifies in support of HB 3177. My district in Portland is the most industrial district in Oregon. Describes toxic

site located near the University of Portland and the Willamette River.

078 REP. DAVE McTEAGUE: Testifies in support of HB 3177. My district also contains an orphan site, which has contaminated Milwaukie's groundwater. Urges committee to not leave session before finding a solution for

cleaning up orphan toxic waste sites.

122 REP. HOSTICKA: Are you on the Appropriations Committee which put together the Department of Environmental Quality's (DEQ) budget?

123 REP. DAVE McTEAGUE: Yes, I was.

124 REP. HOSTICKA: Weren't bonds sold to take care of this?

126 REP. DAVE McTEAGUE: Yes. We were borrowing from one of the funds to service the outstanding bonds for this biennium. My understanding from

testimony is that this program has enough funding to continue for about six months into the next biennium.

131 REP. HOSTICKA: Who paid into that other fund?

133 REP. DAVE McTEAGUE: There were three different sources. The loss of the petroleum load fee as a funding source has negatively affected this program. Defers question to DEQ.

141 REP. DOMINY: Presents recommendations (EXHIBIT C) for funding of hazardous material orphan sites.

180 REP. PETERSON: I thought the load fee was illegal.

181 REP. DOMINY: This is actually an "unload" or tipping fee paid by those who unload the material.

198 REP. PETERSON: Is this a tipping fee on hazardous materials only?

201 REP. DOMINY: It's my understanding that the \$30 is currently only for hazardous material.

215 VAN NATTA: Meeting materials today include the -4 and -6 amendments for HB 3177. The -4 amendments (EXHIBIT D) are sponsored by Rep. Baum, and the -6

amendments (EXHIBIT E) are sponsored by the State Fire Marshal's Office.

230 REP. BAUM: Encourages representatives from State Fire Marshal's Office to agree on a set of amendments before the next public hearing for HB

3177.

The -4 amendments attempt to bring the portion of the load fee which the Attorney General has authorized us to use for cleaning up highway spills, which is approximately \$6 of the \$10 load fee. We're trying to obtain \$1.6 million of already-collected load fees, which are subject to some constitutional problems. The Attorney General's Office has informally communicated to the State Fire Marshal's Office that the

money should not be touched.

322 VAN NATTA: The -4 amendments are a total replacement of the original bill. Begins section-by-section explanation of the -4 amendments.

392 REP. FISHER: Are the fees described on Page 2, Section 3 of the -4 amendments only from off-road petroleum sources, such as farming,

logging, etc.?

399 REP. BAUM: No.

427 REP. HOSTICKA: If we adopt the -4 amendments, which eliminates all the back-up fees from the 1989 legislation, who is left paying into the

fund?

445 TOM GALLAGHER, ARCO: When it was initially set up, the Orphan Site Account had two funding sources. One portion was the petroleum load

fee. The fee is still being collected for chemicals. No one has found

a way to collect from the oil companies which doesn't affect the highway trust fund.

TAPE 148, SIDE B

037 REP. HOSTICKA: When the agreement was made for the load fee and the initial use fee, what was the approximate percentage contribution to the fund from each source?

040 GALLAGHER: I can't answer that. I assume it was close to 50-50.

054 REP. HOSTICKA: What happens if we adopt the -4 amendments?

060 HANSEN: My understanding is that it would all fall to the hazardous material possession fee.

072 REP. HOSTICKA: Was there an attempt to have those who are responsible for the problem pay their share to clean it up?

074 HANSEN: In the 1989 session, all three responsible parties were held equally liable. By repealing the gross operating revenue as a backup,

the -4 amendments take us to the next biennium. Current bonds that have been issued which were secured by equal revenue from the petroleum load fee and the hazardous material possession fee. Given that the petroleum load fee goes away, there is approximately \$400,000 in debt service to

be found. The Appropriations Committee ruled that for the one biennium

only, costs would be covered by the department borrowing from ending

balances from the account that is paid into by the Arlington Disposal

Fee (\$30 per ton) to cover the 1993-95 biennium debt service, with the expectation that revenue would need to be found to address the loss of the petroleum load fee.

The -4 amendments do not address the issue of the debt service required on existing debt or additional work on orphan sites in future bienniums.

124 REP. BAUM: We will have a work session on this next week.

147 REP. HOSTICKA: If we choose to leave it alone, we may obtain a Supreme Court Decision which gives us the backup funds.

150 HANSEN: The timeframe for such a suit would be in the two-year range. There is no certainty we would win that suit. What's at issue is that

every proposal has a built-in set of opposition. 160 REP. HOSTICKA: What if we passed the House-adopted DEQ budget and did nothing with this bill?

168 HANSEN: We would begin putting fencing along different sites, and the contamination would continue to spread. 185 REP. HOSTICKA: Would the -4 amendments result in the same outcome?

186 HANSEN: From DEQ's perspective, doing nothing and adopting the -4 amendments would result in the same outcome.

188 SUSAN BROWNING, Acting State Fire Marshal: We currently have nine teams statewide which cover emergencies and mitigating instances. If we

waited two years to resolve this funding problem, the training would stop and equipment would be recovered by the state.

214 REP. BAUM: The -6 amendments would require the billing of responsible parties of spills. If the -4 and -6 amendments were combined, what else would we need to address?

221 BROWNING: The -6 amendments are our attempt to reach consensus. Reviews -6 amendments.

338 DAVID YANDELL, Oregon Emergency Response Management: We have proposed to establish payment of at least 15% of our budget through the 911

telephone tax program. After analyzing our call volume, we discovered that over 80% of all calls received by the Oregon Emergency Response System (OERS) are first received by 911.

363 BROWNING: This provision is on Page 12, Lines 25 through 31, of the -6 amendments. Concludes explanation of amendments.

387 REP. PETERSON: On Page 12, Line 31, of the -6 amendments, it states that this "shall be subject to the availability of funds." Are there

available funds?

391 YANDELL: Yes, the dollars are there.

414 REP. HOSTICKA: What is repealed on Page 15, Lines 19 and 20?

416 HANSEN: Section 164 is the motor carrier, which probably contains the same constitutional problems already discussed.

427 BROWNING: Section 164 was part of the original 1989 alternative funding, and under advice from the Attorney General, they felt that the motor carrier fee provision would probably be declared unconstitutional.

437 HANSEN: Legislative counsel must have determined that the remaining sections are unnecessary. We'll check on that.

453 BROWNING: Explains rail fee increase on Page 6, Line 30, of the -6 amendments. The previous figure of \$100,000 was based on statistics

which showed that 4% of the spills were rail-related. Current statistics show a higher percentage, so we're proposing that this fee be driven by a percentage of direct costs.

TAPE 149, SIDE A

022 JOHN ALTO, PETRO: If these costs pass the constitutional test, we're willing to collect those taxes and pass those along to the state.

041 TOM CHARMICHAEL, Charmichael Oil: We're basically wholesalers, and recognize this as a very important program. Requests reconciliation by

Fire Marshal's Office after two years to determine if the \$5.80 load fee is fair.

072 VAN NATTA: This bill is scheduled at 2:00 tomorrow in the Subcommittee on Environment and Energy, as well as at 4:00 in the Full Committee on

Natural Resources.

076 CHAIR BAUM: CLOSING PUBLIC HEARING ON HB 3177

Adjourns meeting at 4:03 p.m.

Submitted by:

Reviewed by:

Karen McCormac
Administrator

Kathryn Van Natta Assistant

EXHIBIT LOG:

A - Proposed -1 Amendments to SB 1005 (LC 3505), 6-14-93 - Staff - 1
page B - Proposed -1 Amendments to HB 2934 (LC 1758), 6-15-93 - Staff
- 3 pages C - HB 3177 Testimony - Rep. Sam Dominy - 2 pages D -
Proposed -4 Amendments to HB 3177 (LC 2936), 6-16-93 - Staff - 6 pages E
- Proposed -6 Amendments to HB 3177 (LC2936), 6-16-93 - Staff - 15
pages