

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

April 28, 1993 Hearing Room D 1:30 p.m. Tapes 80 - 81

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

MEMBER EXCUSED: Rep. Sam Dominy Rep. Bill Markham

STAFF PRESENT: Catherine Fitch, Committee Administrator Karen
McCormac, Committee Clerk

MEASURES CONSIDERED: Public Hearing and Possible Work Session -
HB 2020 - HB 2190 - HB 2217 - HB 3057

WITNESSES: DALE BLANTON, Policy Analyst, Department of
Land Conservation and Development REP. JOHN MEEK RON CAINE, Gasoline
Dealer OLIVIA CLARK, Department of Environmental Quality KEVIN DOWNING,
Clean Air Act Coordinator, Department

of Environmental Quality KEITH TONG, Fuels Program Analyst,
Department of

Environmental Quality LARRY HILL, Oregon Gasoline Dealers Association

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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 ---]

TAPE 80, SIDE A

005 CHAIR REPINE: Calls meeting to order at 1:26 p.m.

Let the record show that Reps. Josi, Peterson and myself are present.

HB 2020 was introduced by Rep. Shibley, who has requested that we
consider the bill at next week's meeting.

OPENS PUBLIC HEARING ON HB 2020

Asks whether anyone in the audience wishes to testify on HB 2020. [No
one present wanted to testify.]

CLOSES PUBLIC HEARING ON HB 2020

OPENS PUBLIC HEARING ON HB 2217

It has come to my attention that a similar piece of legislation was put

into SB 122, so there is probably no reason to hear this bill at this point. We will be hearing SB 122 when it is referred to the House. Asks whether anyone in the audience wishes to testify on HB 2217. [No one present wanted to testify.]

CLOSES PUBLIC HEARING ON HB 2217

OPENS PUBLIC HEARING ON HB 2190

047 DALE BLANTON, Policy Analyst, Department of Land Conservation and Development: Testifies in support of HB 2190. During the 1991 session, the legislature passed HB 2261, which created a new category of decision-making for local governments called "limited land-use decisions." In theory, subdivisions, partitions, and site and design review decisions within urban growth boundaries met the new definition, and were able to be processed more expeditiously.

During the interim, some jurisdictions discovered conflicting provisions in Chapter 92. These provisions prevented subdivisions and partitions from being processed administratively under the new category because the statute requires an appeal hearing before the governing body of the city or county. This bill deletes those conflicting provisions in ORS Chapter 92.044.

We also offer one conceptual amendment to the bill. County planning directors were concerned there would be inadequate cross-references if these sections were eliminated with no substitute language, so we recommend language such as, "appeals and fees for subdivisions and partitions shall be subject to Chapters 197, 215, and 227" so that procedural and fee requirements would apply.

Chapter 92.046(3)(b) and (c) have the same language that this bill removes, but only deals with minor partitions, so we recommend that the same change be made to that section.

096 CHAIR REPINE: You said there were concerns expressed by the Association of Oregon Counties?

100 BLANTON: Yes. We met with them, and at a county planning directors meeting last week, they agreed that the proposed cross-reference would

resolve their concern about the deletion of the section regarding appeal fees.

110 CHAIR REPINE: Are you planning to prepare those amendments?

113 BLANTON: We would be glad to work with legislative counsel on drafting those should the committee be interested in the bill.

129 CHAIR REPINE: Directs witness to draft -1 amendments.

Reads into the record a letter in favor of HB 2190 from Robert Quitmeier, Community Development Director for the City of Redmond and President of the Oregon City Planning Directors Association dated February 4, 1993 (EXHIBIT A), and a letter in support of HB 2190 from John C. Hossick, Planning Director of the City of Bend dated January 28, 1993 (EXHIBIT B).

Addition to the record: HB 2190 Notice of Possible Revenue Impact (EXHIBIT C)

155 Calls for a recess to allow time to retrieve Rep. John Meek, who will testify regarding HB 3057. Reconvenes meeting at 1:48 p.m.

CLOSES PUBLIC HEARING ON HB 2190

OPENS PUBLIC HEARING ON HB 3057

175 REP. JOHN MEEK: Testifies in support of HB 3057. Dealers in metropolitan areas are mandated to sell oxygenated gasoline. For

complying with this mandate, dealers have to pay a fee to sell it, which does not seem fair.

208 REP. LUKE: Does the Department of Environmental Quality (DEQ) also charge dealers in attainment areas?

211 REP. JOHN MEEK: Representatives from the Department of Environmental Quality could better respond to that question.

215 CHAIR REPINE: The Preliminary Staff Measure Summary (EXHIBIT D) shows that last session, DEQ was required to adopt rules monitoring the sale

of oxygenated fuel. Do you know what DEQ does with the monies they collect?

219 REP. JOHN MEEK: No, I do not.

223 REP. FISHER: Is this required of each individual service station, or only of the jobbers who sell to the service stations?

228 REP. JOHN MEEK: It is my understanding that each outlet must pay a \$100 fee. Distributors pay a \$500 fee.

234 RON CAINE, Gasoline Dealer: Due to the DEQ mandate, we are also required to purchase a license from the state to sell the fuel.

Additionally, it costs between \$1,000 to \$1,500 for a special fuel filter.

259 CHAIR REPINE: Does the \$100 fee pay for DEQ inspections?

260 CAINE: I assume that part of that is spent on sampling by the DEQ to insure that stations are complying with the mandate.

We operate ten locations, and I'm not aware that any sampling has been done by DEQ at those sites.

266 REP. LUKE: Are dealers in the non-attainment areas the only parties which must comply with this mandate?

268 CAINE: Yes. Our industry has been devastated by mandates from DEQ and the EPA (Environmental Protection Agency). We are not able to get

financing for things like underground storage tank cleanups and retanking.

289 REP. MEEK: I do not object to the mandate regarding oxygenated fuels, but I do object to the fact that DEQ is allowed to collect approximately \$200,000 for this mandate.

309 CHAIR REPINE: If the same tank is used for non-oxygenated fuel, are there any other permit fees for other types of fuel?

314 CAINE: There is a tank fee, which DEQ is proposing to increase, and an annual pump fee per meter.

326 REP. LUKE: Do you sell oxygenated gas year-round?

328 CAINE: No. We receive our product from a major oil company, which delivers it approximately two weeks before the date the fuel needs to be sold, and we carry it approximately six months per year.

335 REP. FISHER: Does this product cost you more than regular gas?

338 CAINE: Yes. However, due to the competitiveness of the business, we cannot raise our prices to offset those additional costs.

344 CHAIR REPINE: During the six months during which oxygenated fuel is not used, do you take that filtering system off?

352 CAINE: We have to change the filter. It costs perhaps \$300 to change filters each time, but during the initial phase, it costs approximately \$1,000 to \$1,500 to add the special filter.

375 REP. FISHER: Do you have to have a special filter at each pump? And during the six-month period, are you allowed to dispense other types of gasoline?

378 CAINE: There is one filter per hose. If it is a double-hose unit, two filters must be attached. 392 OLIVIA CLARK, Department of Environmental Quality: Introduces Kevin Downing, Clean Air Act Coordinator, and Keith Tong, Fuels Program

Analyst.

Last session, this committee spent a lot of time working on HB 2175, which was the state implementation act for the federal Clean Air Act mandates.

TAPE 81, SIDE A

000 KEVIN DOWNING, Clean Air Act Coordinator, Department of Environmental Quality: The Oxygenated Fuels Program is a federal requirement to

achieve clean air goals. Areas which are above 9.5 parts per million for carbon monoxide are required to operate the program for a specific period of time. We focus on winter months, because the amount of carbon monoxide produced is much greater. Four areas of the state which are currently in violation of the carbon monoxide standard are Portland, Klamath Falls, Grants Pass and Medford.

During the spring of 1992, the department began a public review process to develop rules to implement the program. An advisory committee was established which consisted of BP Oil, the Santa Fe Pacific Pipeline, UNOCAL, Arco Products, the Oregon Department of Energy, the Oregon Gasoline Dealers Association, the Pacific Auto Traders Association, Texaco, Northwest Ethanol Fuel Association, the Oregon Petroleum Marketers Association, Western Stations, the Oregon Department of Agriculture, Tosco Refining, the Motor Vehicle Manufacturers Association, and the EPA.

047 Describes change in carbon monoxide levels with use of oxygenated fuels.

Currently, there is a three-tiered fee system for the collection of fees for the Oxygenated Fuel Program. The annual fee assessed on Oregon's 22 terminals is \$5,700, the annual fee for Oregon's 50 distributors is \$500, and the annual fee for service stations is \$100. We have identified 575 service stations which must pay this fee. For the biennium, the fees total approximately \$402,000.

Those fees are used to run the Oxygenated Fuel Program, which is basically an enforcement and compliance program. We register the

blenders, who mix the oxygenate with clear gasoline.

113 REP. PETERSON: Who does that?

117 KEITH TONG, Fuels Program Analyst, Department of Environmental Quality: Blending occurs at different levels along the chain of responsibility,

and could occur at the terminal, at bulk facilities, or even at service stations.

120 DOWNING: Continues testimony. We also conduct laboratory analyses of gasoline samples, coordinate public education efforts, and inspect

blender and service station sites. The EPA requires that we inspect 20% of all gasoline marketers, including terminals, distributors and service stations.

We offered the advisory committee ways to cut the costs of this program, including requiring terminals and distributors to do self-inspections.

EPA's response was to require that an additional 10% of all sites be sampled.

129 We are limited in the ways we can support this program primarily due to constitutional restrictions. The only other plausible source of funding would be from General Fund revenue. The consequence of not funding this program would trigger clean air sanctions, which means we would lose

federal highway funds, the EPA could impose a two-to-one offset for industries, or the EPA could even take over the program.

There are eleven other oxygenated fuels which could have been used instead of the ethanol oxygenate. Ethanol was chosen by dealers and distributors, primarily because of the tax credit. The concern about the use of special filters could be minimized, if not eliminated, by using these other oxygenates.

163 REP. DELL: Do the sanctions imposed by the EPA occur if we're not in compliance with the emission standards or because we don't comply with

the mandated process?

166 DOWNING: We face two levels of sanctions. One would be the failure to implement a program, which would trigger the sanctions we have already

discussed. Another set of penalties occur if we fail to meet the Clean Air Act goals, which requires that we use a more proscriptive level of

controls.

177 REP. PETERSON: Did the advisory committee discuss these fees?

182 DOWNING: Committee members were involved in the discussion, and the majority of the members were in favor of the proposal. The committee

would have preferred to see a fee assessed on automobiles, but understood the constitutional restraints.

202 REP. PETERSON: At that time, were the gasoline dealers and petroleum marketers in agreement regarding these fees?

205 DOWNING: The gasoline dealers chose not to support that portion of the proposal. The other members of the committee supported the fees.

214 REP. PETERSON: If we had to go to the General Fund, is there any part of the process that could be cut? Or does EPA stipulate exactly what

must be done?

220 DOWNING: We could minimize public education efforts, but that would not significantly lower the overall program costs. EPA has made it very

clear that they are seeking 20% inspections of 20% of the stations due to past experience, in which lower inspection levels did not deliver the required compliance.

235 REP. DELL: Do you see any potential revenue sources in those new regulations?

242 DOWNING: The vehicle emission fee is a potential revenue source.

262 REP. HOSTICKA: If the EPA took over this program, would they charge fees?

268 CLARK: Yes. I don't think Oregon would have any input, as we currently do with advisory committees.

273 REP. FISHER: What did DEQ actually spend for the program?

277 DOWNING: The \$402,000 was projected for the biennium, but the program has only been in effect for half of that period.

281 TONG: I'm not prepared to make a statement regarding how much we've actually spent. The original projection was \$400,000 per year, which

was pared down due to changes in sampling methods.

305 REP. LUKE: Is there testing duplication by DEQ and the Department of Agriculture?

310 TONG: The Department of Agriculture uses an entirely different set of parameters.

322 REP. LUKE: It bothers me that you don't know how much you're spending for this program. How often do you conduct the sampling?

331 TONG: The EPA's 20% inspection mandate requires that we inspect 115 sites per year. We were able to accomplish 89% of those at service

stations, and also investigated distributors.

Advises committee that there will be additional expenditures to purchase highly technical laboratory equipment.

351 REP. LUKE: How many sites were not in compliance?

353 TONG: Out of the 89% inspected, three sites were determined to be out of compliance. These were corrected immediately by site management.

384 CLARK: Addresses previous question regarding program expenditures. Assures the committee DEQ will obtain that information from their fiscal office.

389 REP. FISHER: You said that last year there were no days exceeding the carbon monoxide standard, so you've accomplished your goal. Why can't

you just monitor air quality from this point on?

405 DOWNING: We would love to get out of the regulatory business. However, there is a federal requirement based on the non-attainment status of an area. Reaching attainment levels is only the first step in the process. Non-attainment occurs if we violate more than three times over a three

year period. If that happens, we must go through another three year period with less than three violations.

The next step requires a maintenance plan which demonstrates that we will be able to maintain compliance with that standard for the next ten years.

In summation, we need to obtain three years of clean monitoring data, develop a maintenance plan, and make a request for redesignation to the EPA, which will give us a chance to eliminate the requirement for this program.

TAPE 80, SIDE B

010 REP. FISHER: You mentioned that three sites were not in compliance upon inspection. Do you trace the problem back to the distributor?

020 TONG: We can only guess that it was blender error.

043 REP. FISHER: Is it more reasonable to keep an eye on terminals and distributors rather than all those service stations?

054 TONG: Yes. However, the fuel is dispensed at the service stations, and the EPA wants us to do the inspections there. Sampling at service

stations helps us determine what individual blenders are doing. The EPA audited our program this winter, and determined that we need to step up our efforts and include wholesale purchaser consumers, which are fleet owners and managers. In my database, 575 are retail gasoline sites, 50 are distributors, 22 are gasoline owners at terminal operations, and the rest are wholesale purchase consumers.

085 REP. FISHER: Why do the 1,600 outlets pay no fee?

089 TONG: At this point, there are no plans to assess fees at those sites.

191 REP. HOSTICKA: Does every retailer in the metropolitan area pay the same fee?

095 TONG: Yes.

099 REP. PETERSON: Before Rep. Meek left the room, he mentioned that distributors get a 3% rebate from the EPA.

103 DOWNING: I believe he was referring to the tax credits available for ethanol. A rebate is available on the gas tax collected, and is

available for the person who blends the ethanol in the fuel.

112 REP. PETERSON: So if a gasoline dealer wanted the tax credit, could he do the blending?

115 DOWNING: It is possible to blend ethanol within the tank truck, which is called "splash blending."

The tax credit reduces the overall cost of gasoline. The service station dealer gets a break at that point, because he's paying less for the product.

127 CHAIR REPINE: Are the city limits the boundary for the distribution of ethanol fuels?

130 DOWNING: Yes.

157 CHAIR REPINE: The Department of Agriculture does testing for other octane ratings. Does their sampling methodology mimic the sampling done by DEQ?

164 TONG: Typically, they gather a one-liter bottle sample of gasoline, which is what we do in our program. They test for volatility and octane rating, which is different from our test, but the fuel that is gathered could be utilized by both agencies.

179 CHAIR REPINE: Perhaps a partnership with the Department of Agriculture would be a more efficient way of gathering the data

needed by both

agencies.

188 REP. LUKE: How many positions are in this program?

192 DOWNING: There are 1.7 FTE (full-time equivalency).

194 REP. PETERSON: I've spent a lot of time during the last few months in hospitals. They would sometimes draw blood three different times from

three different departments, and when I asked whether one drawing was sufficient, each department would say they were testing for something different. I would like to encourage a one-time gasoline sampling.

203 REP. LUKE: Will DEQ bring us a cost breakdown?

207 CLARK: Yes.

208 CHAIR REPINE: Requests that DEQ work with the Department of Agriculture to determine whether it would be feasible to combine sampling and data

gathering.

244 REP. FISHER: Requests information regarding the safeguarding of blended fuels when they are received by dealers.

273 CLARK: We can provide you with that information.

283 LARRY HILL, Oregon Gasoline Dealers Association: What is the threshold we would have to reach before an EPA takeover? Requests committee to

review the fee schedule, since it may be out of compliance with Article IX of the Constitution. Article IX dedicates any tax, assessment, or

fee on the fuel or operation of a motor vehicle to be dedicated only to the road fund. This is a tax on fuel. If we value this program, we

need to insure that the funding source will stand in court if it is ever challenged. I suggest that Mark Houston, the Assistant Attorney General

advising the DEQ, be asked whether this would pass muster. This may be

a good time for DEQ to find alternative funding.

Addition to the record: HB 3057 Revenue Impact Analysis (EXHIBIT E)

304 CHAIR REPINE: CLOSES PUBLIC HEARING ON HB 3057

Adjourns meeting at 4:57 p.m.

Submitted by: Reviewed by:

Karen McCormac
Assistant

Kathryn Van Natta
Administrator

EXHIBIT LOG:

A - HB 2190 Testimony - Robert Quitmeier, 1 page B - HB 2190
Testimony - John C. Hossick - 1 page C - HB 2190 Notice of Possible
Revenue Impact - Staff - 1 page D - HB 3057 Preliminary Staff
Measure Summary - Staff - 1 page E - HB 3057 Revenue Impact
Analysis - Staff - 1 page