

HOUSE COMMITTEE ON NATURAL RESOURCES

July 13, 1993 Hearing Room D 2:00 p.m. Tapes 95 - 97

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

STAFF PRESENT: Kathryn Van Natta, Committee Administrator
Catherine Fitch, Committee Administrator Sue Nichol, Committee Clerk

MEASURES CONSIDERED: SB 87 - B Engrossed - Work Session SB
193 - A Engrossed - Public Hearing and Work Session SB 641 - A Engrossed
- Public Hearing and Work Session SB 535 - B Engrossed - Public Hearing
SB 1009 - A Engrossed - Public Hearing and Work

Session

WITNESSES: Jim Gardner, Pharmaceutical Manufacturers
Association, Health Industry Manufacturers Association and Abbott

Laboratories Joel Ario, OSPIRG Jim Whitty, Associated Oregon Industries
Sen. Ron Cease, District 10 Sen. Gordon Smith, District 29 Ted Hughes,
Oregon Plastic Industry Fred Hansen, DEQ Ray Craig, Assistant State
Forester Wally Rutledge, Department of Forestry Jill Zarnowitz, Oregon
Department of Fish and Wildlife Larry Kraft, Oregon State Police Sen.
Dick Springer, District 6

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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 95, SIDE A

CHAIR BAUM: Calls the meeting to order at 2:07.

MOTION: REP. DOMINY: Moves to suspend the rules so the vote by
which SB 87 was passed can be reconsidered.

CHAIR BAUM: Restates motion.

(This is where the tape record began.)

007 VOTE: CHAIR BAUM: Hearing no objections, the MOTION CARRIES.

009 MOTION: REP. DOMINY: Moves to reconsider the vote by which SB
87-B was passed.

010 VOTE: CHAIR BAUM: Hearing no objections, the MOTION CARRIES.

010 MOTION: REP. DOMINY: Moves that the referral to Appropriations be taken off SB 87-B.

013 CHAIR BAUM: Restates motion.

014 VOTE: CHAIR BAUM: Hearing no objections, the AMENDMENTS are ADOPTED.

016 MOTION: REP. HOSTICKA: Moves SB - B Engrossed to the floor with a DO PASS recommendation.

017 CHAIR BAUM: Restates motion.

021 VOTE: On a roll call vote, all members present vote AYE. REPS. DELL, REPINE and VANLEEUEWEN are EXCUSED.

033 CHAIR BAUM: The motion CARRIES.

034 REP. DOMINY will carry the bill.

035 CHAIR BAUM: Closes work session on SB 87-B

PUBLIC HEARING ON SB 641 - A

043 KATHRYN VAN NATTA: SB 641 amends language from SB 66 to exempt packages for non-prescription drugs, medical devices, infant formula and medical food from requirements for recycled content, recycling rates and

reusability of rigid plastic containers. Staff Measure Summary, Senate Vote Sheet, Senate Amendments Fiscal and Revenue Impact Statements are submitted for the record (Exhibit A).

063 JIM GARDNER, Pharmaceutical Manufacturers Association, Health Industry Manufacturers Association and Abbott Laboratories: For many of these

products, the packaging is part of the FDA approval process. There are real problems with trying to incorporate recycled material within those special types of packages. Submits written testimony in support of SB 641-1 (Exhibit B).

093 REP. DOMINY: Does this include everything from syringes to bandages?

095 GARDNER: Yes.

099 JOEL ARIO, OSPIRG: We're not opposed to the bill. We hope that as the law is implemented that the decisions that are made in California will

be followed here in Oregon.

117 CHAIR BAUM: Closes public hearing on SB 641.

WORK SESSION ON SB 641

118 MOTION: REP. JOSI: Moves SB 641 to the floor with a DO
PASS recommendation.

120 CHAIR BAUM: Restates motion.

122 VOTE: On a roll call vote, all members are present and vote
AYE.

124 CHAIR BAUM: The motion CARRIES.

125 REP. PETERSON will carry the bill.

130 CHAIR BAUM: Closes work session on SB 641.

PUBLIC HEARING ON SB 1009

135 VAN NATTA: SB 1009 prohibits the DEQ from taking enforcement
action, auditing or requesting copies of records relating to recycling
of rigid plastic containers before January 1, 1996. Staff Measure
Summary,

Senate Vote Sheet, Senate Amendments, Fiscal and Revenue Impact
Statements are submitted for the record (Exhibit C).

150 JIM WHITTY, Associated Oregon Industries: Reads testimony in
support of SB 1009 (Exhibit D).

187 REP. HOSTICKA: What is the current date in which the
enforcement is supposed to begin?

190 WHITTY: January 1, 1995.

200 SEN. RON CEASE, District 10: Speaks in favor of SB 1009. The
Governor promised this bill would not be vetoed unless it was
significantly

changed.

269 SEN. GORDON SMITH, District 29: Testifies in favor of SB
1009. Thousands of food processors' jobs are at stake if this bill
is not

passed. They need time to find alternatives so they can comply with SB

66. 324 REP. LUKE: Would it be considered recycling if the plastic
is broken down?

337 SEN. CEASE: The committee had not discussed it. There is a
note in DEQ's budget to look at that issue. It has to do with the
definition of "recycling" in SB 66.

348 REP. HOSTICKA: How is the Department supposed to get the
information by which they will set the rates?

364 SEN. CEASE: The whole process is put off for a year. The

Department will report whether certain plastic products should be exempt.

393 REP. HOSTICKA: What is the rate of recycling?

400 SEN. CEASE: I think it includes only those that are covered by the law.

409 SEN. SMITH: I think that is correct.

TAPE 96, SIDE A

004 ARIO: There are several categories to which recycling rates can apply. As the bill is written, categories would not exclude exempted

containers.

012 REP. NORRIS: Are there some cases in which recycled plastics containers are contaminants to products for human consumption? Are there inherent

dangers in using recycled plastics?

019 SEN. SMITH: Yes, it does transmit impurities from the plastic to the product.

039 SEN. CEASE: Evidence would show that products for human consumption should be exempted as medical items were exempted in SB 641.

062 REP. HOSTICKA: How long will it take the food processing industry to change?

064 SEN. SMITH: The frozen food industry does not have a container option.

074 REP. JOSI: What's an example of plastic that a frozen product would need to be encased in?

079 SEN. SMITH: TV dinners need separation between different products.

083 REP. DELL: My understanding is that exemptions would move the 25% goalposts. Do you have any idea of what percentage would be covered in

the exemptions?

093 REP. CEASE: The exemptions included in SB 641 would be a small part of the total. SB 1009 doesn't exempt anything.

114 TED HUGHES, Oregon Plastics Industry: We still intend to recycle these containers and to count them in the recycling rate. SB 1009 would just

exempt them temporarily from the reporting requirements.

126 REP. NORRIS: Is the goal 25% by weight?

131 HUGHES: We're not sure. We do know how much plastic is used

in the manufacturing process in Oregon by weight. That will be our measure.

136 REP. HOSTICKA: Will the fate of this program be decided by the 1994 General Election?

140 HUGHES: The plastics industry has been spending a lot of money on research and development to determine how to get to the 25% recycling

rate. I anticipate that with the new processes that we will have a solution or a combination of solutions on line by then.

144 REP. HOSTICKA: So it's not your intention to have the program affected by the 1994 election?

146 HUGHES: No, that is not our intent.

166 ARIO: We think the parts that clarify enforcement are improvements.

176 We think the extension is unnecessary because DEQ will probably get to enforcement about the same time as that which is in the bill.

190 This is not a recycled content law. We believe that the plastics industry will comply to the 25% rate by 1995. We would like the rate

pushed up to 50%.

204 FRED HANSEN, DEQ: The date for compliance does not change. The deferral only says that enforcement won't take place until after January 1, 1996.

225 CHAIR BAUM: How will you get the information you need for the reports?

227 HANSEN: We would believe that during 1995 we would be voluntarily working with the manufacturers and other to determine a recycling rate

for plastics for calendar year 1994. That will be a baseline number.

It will not be used for a number by which we would be taking the explicit enforcement actions. The information calculated for 1995 is that which we have authority to be able to request information.

239 REP. LUKE: Would you explain what you meant in your Senate Testimony when you said that your department would be very reluctant to take

enforcement action retroactively against any product manufacturer operating in good faith? What exactly did you mean by good faith? What is the standard by which you would evaluate good faith? Could you give

us examples of bad faith?

247 HANSEN: One of the difficulties that occurs when one is dealing with a term such as "good faith" is that it is in the eye of the beholder and

one will know when they see it.

256 To answer the question about what would potentially trigger retroactive enforcement, that is, during the calendar year 1995. We would not view

any one action which alone would constitute bad faith. Rather we would look at the total picture, taking into account all the actions or inactions, size of company, ability to take independent action, such as a request from FDA's certification for a particular packaging material. This would be very similar to what we do when we consider under our current enforcement rules, the phrase "cooperativeness" when we are evaluating potential enforcement.

266 Any enforcement action that we take would begin with a notice of noncompliance, which is our first level of enforcement. This is really

more like a warning in a traffic violation sense. An individual company may informally approach us and provide us with new facts which could convince us that the enforcement action would need to go no further. Normally, for more serious violations the case is referred to our enforcement section for evaluation of whether a civil penalty is warranted. If a civil penalty is assessed, the respondent has not only the right to a contested case hearing under the APA, but we also explicitly encourage them to approach us and provide information which we may not have been aware of at the time the assessment was made. At this stage, based on new facts, the penalty may be reduced or withdrawn. Of course, any action taken in the contested case hearing would alter the assessment as well.

277 In the spring or summer of 1994, DEQ will complete a determination of recycling rate for 1994. Although the purpose of this rate is to

fine-tune our survey and determination techniques, and provide a baseline for all the players, it will also be very helpful in determining how close we are or if we have exceeded the 25% recycling

rate. In relation to retroactive enforcement, this rate calculation will be important in so far as we evaluate bad faith compliance with the law. Hypothetically, if the preliminary rate determination shows a relatively low recycling rate and therefore a high likelihood that the recycling rate will not be met for 1995, then to be operating in good faith will require entities subject to enforcement to be more active in trying to ensure the rate is achieved. That is, if it's clear from the 1994 information that you're not going to be achieving it, or there is a high likelihood that you're not, we would expect that action could be taken by those entities to be able to push along the process.

292 Similarly, if the recycling rate calculation for 1994 shows compliance with the law or high likelihood that the law will be achieved, good

faith efforts may constitute nothing more than maintaining the required records and supplying information requested by the Department as provided for in the current law.

301 DEQ recognizes that different companies face different opportunities in terms of what they can do to insure that the law is being met. A small

Oregon food processor, shipping most of their products out of state, has little ability to prepare and submit independent requests to FDA for packaging approval, to collect its discarded, empty containers from outside the state, or to influence APC in their efforts to meet the recycling rates.

309 This would be considered bad faith: A large manufacturer produces a package substantially similar to one produced by a competitor. The

competitor seeks and receives FDA approval for use of recycled material in their package. The first company chooses to do nothing where clearly there would be enough information. We would consider that "bad faith."

317 A second example: The recycling rate for 1995 shows only 10-15% of covered materials are being recycled in Oregon. From the time that rate is published, a manufacturer does nothing but wait for 1996 to come.

They do not contact the APC urging them to redouble their efforts. They do not seek to find a market for their end cuts. They do not encourage or take part in local or state-wide plastic recycling efforts. They do not consider alternative ways to comply with the law. This is another example of "bad faith."

320 Third, APC does nothing to improve the recycling rates in the next 18 months. You've heard from Ted Hughes that that's not the case, but if

that happened and a large manufacturer merely waits until the 1995 session in hopes that you will change the law.

326 The enforcement deferral refers only to meeting the recycling goals of the law. It does not refer to the record-keeping reporting requirements provided in the law. If any entity refused to participate in an audit,

or keep or provide records required by the law, we would treat this as we would any other similar violation of reporting requirements and the entity would be subject to enforcement.

336 REP. LUKE: Would you agree that a product manufacturer who is relying on recycling rates to comply with SB 66 would not be operating in "bad

faith" simply because a product manufacturer did not yet know the Department's published rate?

345 HANSEN: Yes, we would not consider that to be operating in bad faith to be able to be reliant upon that. There would be other factors that we

would look at on a particular case. If that were the only thing at issue, we would not consider that to be bad faith.

366 REP. HOSTICKA: If you don't supply a written copy of your testimony, is your spoken word then the legislative record?

367 HANSEN: Yes.

372 CHAIR BAUM: Closes work public hearing on SB 1009.

WORK SESSION ON SB 1009

377 MOTION: REP. REPINE: Moves SB 1009 - A Engrossed to the floor with a DO PASS recommendation.

379 CHAIR BAUM: Restates motion.

380 REP. FISHER: What is the use of delaying the enforcement action if it goes back retroactively?

392 JIM WHITTY, Associated Oregon Industries: On January 1, 1995, nobody is going to know what the state-wide rate is. The Department has to

calculate it based on evidence up to December 31, 1994. It would be difficult to enforce when you don't even know if you're in compliance or

not.

403 Those who have to rely on the state-wide rate have to be able to know whether they're in compliance or not. That's the reason for the delay,

so we can have some kind of notice.

TAPE 95, SIDE B

014 REP. FISHER: I don't understand how you're going to know how to comply if you don't have the information. 018 WHITTY: You have to decide at some time or another whether to continue to use that package or not.

027 VOTE: On a roll call vote, all members present vote AYE. REPS. JOSI, NORRIS and VanLEEUEWEN are EXCUSED. REP. NORRIS later votes

AYE.

036 CHAIR BAUM: The motion CARRIES.

040 REP. LUKE will carry the vote.

050 CHAIR BAUM: Closes work session on SB 1009.

PUBLIC HEARING ON SB 193 - A

060 MOTION: REP. HOSTICKA: Moves for unanimous consent to allow Rep. Norris to vote on SB 1009.

056 CHAIR BAUM: Hearing no objection, so ordered.

057 REP. NORRIS votes AYE on SB 1009.

067 CATHERINE FITCH: SB 193-A allows the State Forester to suspend Forest Practices Act reforestation requirements on individual parcels of land

in circumstances where the land is otherwise eligible to receive Federal cost-share dollars to aid reforestation. Preliminary Staff Measure

Summary, Senate Vote Sheet, Fiscal and Revenue Impact Statements are submitted for the record (Exhibit E).

082 RAY CRAIG, Assistant State Forester: Urges passage of SB 193. This bill would provide a suspension of the reforestation requirement of the

Forest Practices Act under certain conditions to allow small woodlot owners to use federal cost share programs to convert underproducing forests to producing forests.

136 REP. HOSTICKA: How will you determine that the cost exceed the gross revenues of the harvest?

146 CRAIG: This is speaking of the harvest that just occurred.

154 REP. NORRIS: How will private landowners in the Blue Mountains benefit from this bill?

162 WALLY RUTLEDGE, Department of Forestry: The bill would exempt the reforestation requirements under the Forest Practices Act for stands

that have been severely damaged by fire or insects.

165 REP. NORRIS: So they would then qualify for federal money?

170 RUTLEDGE: Yes.

171 REP. NORRIS: Would that carry them up to the "free to grow" stage? 172 RUTLEDGE: The intent is to carry them to the "free to grow" stage.

174 CRAIG: We do have service foresters in the field that offer technical advice from site preparation and planting clear through the free to grow stage.

177 REP. NORRIS: I thought the technical assistance programs were taken out of your budget?

179 CRAIG: We do receive technical assistance funds with federal cost-share programs that would allow us to service the landowners with these

programs.

185 REP. MARKHAM: Is there a limit on those federal programs that the State of Oregon can receive?

192 CRAIG: We are limited only by the distribution formulas that the federal government uses to funnel money this way.

196 REP. DELL: Are all of the cost sharing programs you're targeting administered by the State Forestry?

213 CRAIG: Yes, we either administer them or we're technical advisors.

208 REP. DELL: An owner whose trees are destroyed by insects still cannot cut unless they either reforest under the Forest Practices Act or they

take advantage of one of the cost-sharing programs?

214 CRAIG: Yes.

217 REP. DELL: Are we making it harder on people in the industry because we've closed the door on potential federal assistance?

228 CRAIG: If this bill did not pass, we'd make it extremely difficult for small woodlot owners to reinvest in their forest land.

261 REP. HOSTICKA: What do you consider a clear cut?

274 CRAIG: Clear cut means any harvest unit in Western Oregon that leaves fewer than 50 trees per acre that are well distributed over the unit and measure at least 11 inches in diameter breast height. It doesn't say

which species are included.

285 REP. HOSTICKA: If someone has a mixed stand and cuts out the conifers and then leaves more than 50 maple trees per acre, then it is not a

clear cut?

292 CRAIG: To my best understanding, it would not matter which species are being talked about.

298 REP. HOSTICKA: I'm trying to figure out why they're doing it that way.

299 RUTLEDGE: It doesn't matter what species the trees are but they do have to be healthy trees that will produce a forest in the future. A lot of

those hardwoods you're talking about wouldn't meet the definition of a healthy, vigorous tree.

314 REP. MARKHAM: I think they do it because there is no market for the hardwoods.

357 CHAIR BAUM: Closes public hearing on SB 193.

WORK SESSION ON SB 193

358 MOTION: REP. VanLEEuwEN: Moves SB 193 A-Engrossed to the floor with a DO PASS recommendation.

359 CHAIR BAUM: Restates motion.

365 VOTE: On a roll call vote, all members present vote AYE. REP. JOSI is EXCUSED.

380 CHAIR BAUM: The motion CARRIES.

385 REP. HOSTICKA will carry the bill.

400 CHAIR BAUM: Closes work session on SB 193.

Also submitted for the record: testimony from the Oregon Department of Forestry in support of SB 193 (Exhibit F).

PUBLIC HEARING ON SB 535

TAPE 96, SIDE B

003 FITCH: SB 535 has to do with granting the Department of Fish and Wildlife civil penalty authority when someone tampers with or otherwise destroys a fish screen or bypass device. Submits an outline of

enforcement avenues for these actions under current law. Also submits

-B7 amendments which would prohibit another penalty being assessed if a civil penalty is assessed. The amendments would also put any penalty money into the cost-sharing screening sub-account (Exhibit G).

021 REP. FISHER: These \$5 and \$125 costs for fish are in the present law?

023 FITCH: Yes.

049 REP. DOMINY: It makes more sense to put the penalty money into the fish enhancement screening project instead of the General Fund.

064 CHAIR BAUM: Requests amendments so a person will not be charged criminally if he or she has already been charged for a civil penalty.

080 REP. LUKE: Can't the court order restitution under current law?

082 CHAIR BAUM: Yes. 084 REP. LUKE: Then with your amendments, if they were charged a criminal penalty they could also be charged with a civil penalty.

086 CHAIR BAUM: We'd have to be sure that an option of one or the other would preclude the other option.

088 REP. LUKE: They could still order restitution if they were prosecuted under a criminal charge.

091 JILL ZARNOWITZ, Oregon Department of Fish and Wildlife: We strongly support the bill and don't feel it is redundant with current penalties.

100 REP. DOMINY: Would you have any problem implementing the -B7 amendments?

103 ZARNOWITZ: No.

105 REP. DOMINY: Would you see any kind of a problem with or without the Chair's amendment?

111 ZARNOWITZ: I like the Chair's suggested change to sub 4 of the -B7 amendments.

124 CHAIR BAUM: Do we lose anything by not allowing prosecution both through civil and criminal statutes?

132 LARRY KRAFT, Oregon State Police: It's not uncommon to have both criminal and civil actions take place for the same violation.

144 REP. HOSTICKA: Are there any sanctions that you can impose before the fish are dead besides this bill?

152 FITCH: The Class A misdemeanor may be invoked whenever there is a violation of wildlife law. There does not need to be a kill present in

order to take that action.

158 ZARNOWITZ: You do need to prove intent.

163 REP. VanLEEUEWEN: Is it a civil penalty on both lines 4 and 5 of the -B7 amendments?

170 CHAIR BAUM: There are a couple of civil penalty provisions.

171 FITCH: "Sanction" would take in criminal.

175 REP. NORRIS: I think there should be a distinct grammatical separation between "sanction" and "criminal action."

182 REP. HOSTICKA: Can the Commission tell the DA that the DA can't prosecute?

192 CHAIR BAUM: We'd have to include "if the Commission imposes a civil penalty under this section, the State of Oregon may not impose any other civil penalty or criminal sanction for the same violation."

197 REP. LUKE: On page 2 of the -B7 amendments, I don't know if it's a good idea to let the department imposing the penalty keep the fines.

210 REP. DOMINY: It's pretty clear that the interference must be intentional.

220 CHAIR BAUM: These damage compensation assessments under current law aren't just for adult fish.

229 KRAFT: There were 44,000 Chinook smolts killed in the West End Irrigation District in Umatilla County. The full rate wasn't charged.

It came out to \$75,000 or less than \$2 per fish.

239 REP. FISHER: Who was that against?

240 KRAFT: The West End Irrigation District in Umatilla County.

244 REP. LUKE: You had another fish kill that were adult fish. Do you have any idea what they fined them?

251 ZARNOWITZ: I believe the person was fined \$5,000 and did some restitution to the creek.

265 REP. DELL: I'm becoming increasingly uncomfortable with limiting the alternatives to the criminal or civil penalties.

299 REP. FISHER: The current statutes are adequate for compensation.

314 SEN. DICK SPRINGER, District 6: I don't know if you should limit the District Attorney's authority to prosecute violators. Urges that the -7 amendments not be adopted.

371 CHAIR BAUM: I was concerned that some people will consider a \$25,000 fine cheap if they want to get some water. Criminal restitution will

not compensate adequately.

389 SEN. SPRINGER: I agree with you.

TAPE 97, SIDE A

010 REP. LUKE: Could a person's personal property be forfeited if it was used when tampering with these gates?

019 SEN. SPRINGER: I wouldn't ask for that and I don't think current laws would ask for that. I think that would be disproportionate.

025 REP. MARKHAM: You would rather kill the bill rather than amend it?

028 SEN. SPRINGER: Yes. I have no problem with the -B6 amendments or Section 2 of the -B7 amendments which would allow the money to be used

for fish enhancement.

040 CHAIR BAUM: Closes public hearing on SB 535.

044 Meeting is adjourned at 3:58.

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Kathryn Van Natta Clerk

EXHIBIT LOG:

A - SB 641-A - Staff Measure Summary, Senate Amendments, Senate Vote Sheet, Fiscal and Revenue Impact Statements - Staff - 4 pages B
- SB 641-A - Testimony - Jim Gardner - 2 pages C - SB 1009-A - Staff Measure Summary, Senate Amendments, Senate Vote Sheet, Fiscal and Revenue Impact Statements - Staff - 4 pages D - SB 1009 - Testimony - Jim Whitty - 2 pages E - SB 193-A - Staff Measure Summary, Senate Vote Sheet, Fiscal and Revenue Impact Statements - Staff - 4 pages F - SB 193 - Testimony - Ray Craig - 4 pages G
- SB 535 - Information and -B7 amendments - Staff - 5 pages