

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

February 15, 1993 Hearing Room C 8:00 a.m. Tapes 33 - 36  
MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,  
Vice-Chair Senator Bob Kintigh Senator Bob Shoemaker Senator Gordon  
Smith Senator Dick Springer MEMBERS EXCUSED: Senator Joyce Cohen  
GUEST MEMBERS: Senator Tricia Smith STAFF PRESENT: Peter Green,  
Administrator Chris Warner, Research Associate Kus Soumie, Clerk  
MEASURES CONSIDERED: SB 42 Work Session SB 191 Public Hearing SJR1  
Public 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 33, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:00 a.m.

WORK SESSION ON SB 42 WITNESSES: Chris Warner, Committee Staff Jeanette  
Holman, Legislative Counsel 014 CHAIR CEASE: This corrects erroneous  
material in Oregon solid waste and recycling laws. - Proposed amendments  
have been prepared. - February 11 memo from Legislative Counsel should  
be reviewed. - Amendments to SB 42 not in "LC form" and another in "LC  
form" are available 027 CHRIS WARNER: (introduces EXHIBIT A) Offers  
testimony on SB 42 and presents overview of EXHIBIT A. - Explanatory  
statement has been changed. - Added definition of "franchise" and  
revised the definition of "transfer station." Senate Agriculture and  
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047 SEN. SHOEMAKER: Shouldn't the definition of "franchise" include  
jurisdictions such as Metro that provide solid waste management?  
JEANETTE HOLMAN: There has never been a definition of "franchise" alone.  
- This can be repaired by replacing "city" or "county" with "local  
government." 062 WARNER: Definition of "liquid" or "solid waste" was  
deleted (page 1, line 42; page 14, line 1; page 17, lines 8 and 9).  
079 HOLMAN: Reviews Issue 1 of Legislative Counsel memo of February  
11. - Fees for recycling facilities. 092 WARNER: Reviews changes to  
page 21, line 19. 108 - Changes to page 22. - Changes to page 23,  
line 10. - Changes to page 33, lines 18 and 19. 134 - Changes  
to page 41, lines 3 through 6. - Changes to page 44, lines 4 through  
9. - Changes to page 46, line 17.

169 HOLMAN: ORS 459.005 defines "disposal site" and not "disposal  
facility." - This term is broad enough to include facilities.

180 CHAIR CEASE: Notes one amendment has been made to line 6 of the  
Counsel Proposed Amendments 42-1 by removal of "city or county" and  
replacing that with "by a local government unit." MOTION: SEN. BUNN:  
Moves that SB 42 AS AMENDED, be sent to the Floor with a DO PASS  
recommendation. VOTE: In a roll call vote, all members present vote AYE.  
SEN. COHEN is EXCUSED. CHAIR CEASE: The motion CARRIES. - Opens the  
hearing on SJR1.

PUBLIC HEARING ON S.1R 1

WITNESSES: Peter Bergel, Legislative Director, Campaign for a Healthy  
and Sustainable Oregon William Boyer, Chairman, Campaign for a Healthy

and Sustainable Oregon Lanny Sinkin, Education Coordinator, Campaign for a Healthy and Sustainable Oregon Dave Perry, Professor of Ecosystem Studies, Department of Forest Science, Oregon State University Peter Sorenson, Attorney, Campaign for a Healthy and Sustainable Oregon Anne Squier, Natural Resource Policy Advisor, Governor's Office Jerome Lidz, Assistant Attorney General, Department of Justice Jim WhiKy, Associated Oregon Industries Senate Agriculture and Natural Resources February 15, 1993 Page 3

Joe Keating, Director, United Community Action Network Debra Giannini Marcela Vinocur, M.D., Healers for a Healthy Planet Frank Gearhart, Bull Run Coalition Jim Mastne, Chairman, Guardians of Larch Mountain Ken McFarling, Oregon Plan Marlene Smith Mike Barnes, Campaign for a Healthy and Sustainable Oregon, Global Forum, Portland State University Ray Polani, Chairman, Citizens for Better Transit Calvin Hecoccta, Native Forest Council

230 SEN. SPRINGER: Offers background testimony on SJR1.

255 PETER BERGEL: We are open to working with other interest groups to produce a bill that satisfactorily accommodates all parties.

281 WILLIAM BOYER: (introduces EXHIBIT B) Offers testimony on SIR 1, and presents overview of EXHIBIT B. - Long range goals and driving principles should drive the future of Oregon. - As a state, Oregon could initiate the principles of protection from pollution-based illness and the sustainability of our natural resources. 316 - Compared preventive politics to preventive medicine (having the right policies before crises develop). - Reads from Oregon Revised Statutes. - A bill has not been developed to eliminate all pollutants. - Intention is to provide the right to work in an environment protected from known harmful pollutants. - These particular principles are universal. - Emphasizes these principles are appropriate for inclusion in the Oregon Constitution. - States two principles and implementation procedures which involve basic ethics and survival.

400 - You are only being asked to give Oregonians the chance to chose whether they want these rights and goals for Oregon.

LANNY SINKIN: (introduces EXHIBIT C) Offers testimony on SJR1, and presents overview of EXHIBIT C. 445 - Believes the planet is losing its vitality. - States specific reasons for his anger regarding ecological deterioration. - Explores the implications of this amendment to the constitution.

TAPE 34, SIDE A

050 SINKIN: Reviews questions asked by the amendment. - Notes manufacturers' responses to destruction of the ozone layer. - States how State agencies might respond to the requirements of this amendment. - How this amendment impacts small business owners. Senatc Agnculturc and Natural Rcsources February 15, 1993 Page 4

089 - People don't want to pay a price for stopping their own pollution. - We are not here simply to oppose what has been happening, but to attempt to reorganize society to harmonize our actions with the need for a healthy and sustainable life support system. - The longer we delay, the greater the harm to be undone and the more likely the harm

will be irreversible.

110 DAVE PERRY: (introduces EXHIBIT D) Offers testimony on SJR1, and presents overview of EXHIBIT D. - Is sustaining natural resources in a healthful environment a worthy goal? - Does government need to be involved in guaranteeing citizens the right to a sustainable healthful environment? 145- Are there threats to the sustainability of natural resources in Oregon? - Nearly fifty plant and animal species in Oregon are either now or soon to be listed as endangered. - Impact of land uses on decline of fish stocks. - References Oregon Department of Forestry survey indicating percentage of private forest harvested prior to riparian zone rules. - Protection of ecosystem health is impacted by forest management. - Major forest health problems exist in Eastern Oregon and are moving to Western Oregon. 204 - BLM study indicated 72 percent of their rangeland is in unsatisfactory condition. - Impact of fire exclusion. - Are current regulations and laws sufficient? - Problems of sustainability have not been addressed. 245 - An integrated, systems-level approach is needed. We must actively restore systems that have been degraded by past actions. 266 CHAIR CEASE: Temporarily closes the hearing on SJR1. - Opens the hearing on SB 191.

PUBLIC HEARING ON SB 191

WITNESSES: Sen. Tricia Smith, Senate District 17

341 SEN. TRICIA SMITH: Offers testimony on SB 191. - Conservation of energy should be made the first policy in our energy plans. - PUC should have come to this conclusion before now. 382 CHAIR CEASE: Temporarily closes hearing on SB 191. - Reopens hearing on SJR1.

PUBLIC HEARING ON SJR1 (continued)

PETER SORENSON: Offers testimony on SJR1. 433 Addresses standing clause, line 19. - Main thrust is that citizens have the right to compel State government or political subdivisions to comply with the law.

These lutes contain materials whicll paraphrase and/or summ nze statements ma~le dunnng this ~ ODb text enclosed u' quotation marks report a speaker's exact words. For complete contech of tbe proceedings, please refer to the tapes. Senate Agnculture and Natural Resourcc' February 15, 1993 Page 5

- The resolution does not go far enough. It does not provide the right for all citizens to enforce environmental rights and responsibilities.

TAPE 33, SIDE B

032 SEN. SMITH: Human beings live longer today than they did years ago when the atmosphere was less damaged. - Article 19, Section 2 is like a "lawyer's Full Employment Act" in Oregon. - I am alarmed by the impact that will be had by anyone making their living on the farm or in the forest. - It could ultimately give every citizen in Oregon the opportunity to sue anybody that they believe was in some way irreparably harming the environment.

060 SORENSON: Ignorance by the public about the importance of the environment is quite high. - I disagree that there is creation of

tremendous opportunity to enforce this. - This resolution doesn't create a right for suit against anyone other than the State of Oregon. 074 - Consider supporting the concept without the standing provision.

078 SEN. SHOEMAKER: I support the goal of this resolution. - Section 1 should be amended to reflect "laws of the State which may violate sections 41 and 42..." - If a determination is made which is disagreed to by a citizen, does the citizen have standing to challenge the determination? Is that the intent?

091 SORENSON: No, the determination is solely within the province of the Legislative Assembly. The determination is with the body making the determination and is not reviewable by a court. 107 SEN. SHOEMAKER: We should make that explicit as well. - If an agency fails to make a determination and a citizen brings a suit against them, what is the substantive matter against which the suit is brought? Should there be some finding that the suit has substantial merit before a temporary or permanent injunction is brought? SORENSON: The citizen would have the right to compel the government agency to take the action required, namely to make the determination. That would be the fundamental objective. 130 SEN. SHOEMAKER: What happens during the intervening time?

SORENSON: There is nothing in the Joint Resolution that addresses that.

SEN. SHOEMAKER: Should we provide some standards for the court to follow in making a determination?

SORENSON: No.

150 CHAIR CEASE: In reference to section 41, how would pollutants naturally occurring in the environment be addressed? What is the role of government with respect to these? Is it intended that this address those also?

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SORENSON: Offers his definition of "pollutant" Items naturally occurring would not be considered pollutants.

168 SEN. KINTIGH: Offers his experiences relative to reforestation. - How can we trust the opinions of biologists with respect to riparian zones and streams? 189 PERRY: I agree there are many examples of successfully regenerated clear-cuts. - In 1987, fires destroyed many of the newly reforested areas. - The stability of the system may not depend on our perspective today. - These are very complex systems which we have to treat very conservatively. We need to avoid doing things that are irreversible. 230 SEN. KINTIGH: Speaks to fire in Eastern Oregon. How do we get around the requirements in the Clean Air Act? 241 PERRY: I don't know. Increasing numbers of foresters are moving way from using fire as a tool because of clean air problems. At the right levels and frequencies, flre plays an important ecological role. 252 SEN. KINTIGH: Controlled burns to manage the ecosystem in the forest could be considered the generation of pollution. 259 SORENSON: There is nothing within the Resolution that enables a citizen to do anything

about a situation like that. 267 PERRY: There are going to have to be trade offs in achieving the broader issue of producing a sustainable environment. 280 SEN. KINTIGH: Comments on old growth forest burning as easily as new growth. 290 PERRY: The question is which structure of forest is less likely to burn up. The older forests are. 306 SEN. SHOEMAKER: Section 42 appears to have relative standards and section 41, absolute standards. Could the committee consider insertion of the word "substantially," as "an environment substantially affected?" 353 WILLIAM BOYER: There can be no absolute protection from harmful pollutants. - Our intent is to have maximum reasonable protection. - If language from the work session would make that clearer, that would be supported. 370 ANNE SQUIER: Offers testimony on SJR1. - Concerns raised at a recent multi-agency meeting included workload issues and potential litigation issues that might be associated with this measure. - Purposes of the proposal are not the concern.

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407 JEROME LIDZ: (introduces EXHIBIT E) Offers testimony on SJR1, and presents overview of EXHIBIT E. - When our agency sees a broad requirement, we are unable to tell the agencies what would be required of them. - Natural resource agencies are concerned that implementation of SJR1 would be impracticable and burdensome unless there are more specific standards. - The rulemaking process allows for determination of necessary trade-offs with the public. - SJR1 would short cut that process, providing a very board standard of "one size fits all." 466 - The question is how does the Legislature wish the agencies to carry out that mission.

TAPE 34, SIDE B

025 LIDZ: Some agency concerns would be partially alleviated by some of the answers Mr. Sorenson provided to Sen. Shoemaker's questions. 050 - Clarification on matters related to the impact of regulation of private entities by state agencies would be helpful. - This will be a burden in requiring increased resources of state agencies and local government.

070 JIM WE~ITY: (introduces EXHIBIT F) Offers testimony on SJR1. - The Association opposes the Resolution due to the uncertainty of its effect. - This could create new rights for individual Oregonians that could be abused if carried to an extreme. - Placing implementation in the hands of individuals only invites mischief.

111 JOE KEATING: Offers testimony on SJR1. - This Resolution is timely and he supports it. - Much confrontation is taking place due to the lack of clear direction on what the existing rules are with respect to sustainable growth. - Believes this provision would have been placed in the original constitution if the founding fathers had realized it would be an issue. - This Resolution gives us an opportunity to place Oregon again at the forefront of ethical and moral leadership.

152 DEBRA GIANNINI: Offers testimony on SJR1. - This proposed amendment represents the first step for preventive health care which is recognized as the most effective way to reduce health care costs.

176 MARCELA VINOCUR: (introduces EXHIBIT G) Offers testimony in support of S1R 1. - Offers to answer questions on behalf of the medical community.

198 SEN. SMITH: I am concerned with the short term consequences. - To farmers in my district who are not wealthy, this further erodes their ability to produce products. - When these principles are applied to the farms and the forests, we have people unemployed. - The first ingredient of a quality of life is to have a job. - These are problems that have not been created in a day and cannot be corrected that quickly. Senate Agriculture and Natural Resources February 15, 1993 Page 8

220 VINOCUR: Options are available such as with pesticide use.

SEN. SMITH: I raise organically grown vegetables that the average consumer will not purchase because it is not as appealing in appearance or taste, costs more, and may even carry bug-borne diseases. I am left with the consequences.

273 SEN. KINTIGH: Human beings have longer life spans, grow larger, and continue to break athletic records. I have difficulty reconciling this with the statement that the planet is dying. 298FRANK GEARHART: (introduces EXHIBIT H) offers testimony on SJR1, and presents overview of EXHIBIT H. - References satellite photo that shows lack of reforestation on the Washington side of the Columbia. - We must become pro-active in problem solving rather than crisis-reactive. - The founding fathers established government to manage our natural resources in trust for its citizens. - Recommends the Resolution be sent with a "do pass" recommendation to the Senate.

359 JIM MASTNE: Offers testimony on SJR1. - If this Resolution had been law in the past, we wouldn't have the problems we have at the Gordon Creek Watershed. - References his visual aids. - The State should pass a law that specifically protects our sources of drinking water within the State.

402 KEN McFARLING: (introduces EXHIBIT I) Offers testimony on SJR1, and overview of EXHIBIT I. - Government has the responsibility for deterring people from needlessly imperiling the health or morale of their constituents. - The argument that restricting commercial pollution and resource exploitation will reduce employment can be countered with the statement that all taxpayers will be burdened with the increased costs of health care necessitated by the exposure to those pollutants and for combatting the consequences of environmental degradation. 455- Urges the support of SJR1 with no substantive changes.

TAPE 35, SIDE A

018 MARLENE SMITH: (introduces EXHIBIT J) Offers testimony in favor of SJR 1. - Addresses contaminated water, drought, air pollution, ozone depletion, erosion of topsoil, hazardous, unhealthful workplaces and the loss of the State's moral and ethical reputation.

074 MIKE BARNES: (introduces EXHIBIT K) Offers testimony on SJR1, and presents overview of EXHIBIT K. - Lists some provisions of the "Rio Declaration." - Lists some principles and rights adopted by the United Nations' World Commission on Environment and Development.

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- The enactment of the Resolution will give Oregonians the opportunity to determine it they want these rights placed in the Constitution. - This Resolution would establish long term goals and values.

125 RAY POLANI: Offers testimony on SJR1. - Noted the four laws of ecology. - Defined "sustainable development."

172 CALVIN HECOCTA: Offers testimony on SJR1. - Year-to-year existence in Oregon must stop. - Holds concern for the impact of present practices on the "sacred places of life" that he frequents for spiritual purposes. - Questions the impact on the plants and animals who have a natural right to those resources. - Native American tradition cannot continue without a clean environment. - Laws are good when they protect all living creatures.

310 CHAIR CEASE: Closes hearing on SJR1. - Reopens public hearing on SB 191.

PUBLIC HEARING ON SB 191 (continued) WITNESSES: Angus Duncan, Northwest Power Planning Council Ron Eachus, Chairman, Public Utility Cornnlission CHAIR CEASE: Mentions Oregonian editorial dated August 28, 1992, entitled "Lift Conservation Barrier." - Reads letter from Senator Harnby dated February 11, 1993 in support of SB 191 .

335 ANGUS DUNCAN: Offers testimony on SB 191 and continues testimony from February 12, 1993 relative to salmon recovery. - The Council is in support of decoupling as a mechanISMto move utilities from revenues and profits based on volume sales to revenues and profits based on the selling of other services and the investments in conservation acquisitions. - California utilities have had their profits and sales decoupled for about ten years through a program called ERAM. 400 - Maine has been decoupled, as well as Puget Sound Power and Light. - Making these kinds of regulatory changes won't cost Oregon any money. - The PUC has rendered an order to investor-owned public utilities to enter into collaboratives with their customers, with environmental and public interest groups and other interested parties to see if a decoupling mechanISMcan be developed.

TAPE 36, SIDE A

044 DUNCAN: Continues overview of NWPPC testimony on SB 191. - Puget Sound Power and Light had lower costs but a rate increase due to a milder winter with less energy usage. . Senate Agnculture and Natural Resources February 15, 1993 Page 10

- Research is being conducted to determine if a weather normalization factor that can be built into the regulatory structure.

088 CHAIR CEASE: How much impact would decoupling have on the need for increasing existing or new energy facilities?

092 DUNCAN: The consequence should be less pressure to build a new generating plant because more the utility's investment dollar would go into efficiency as a source of power. 103 SEN. KINTIGH: Could you

provide an example of where the incentive would come from with lowered profits? 108 DUNCAN: Profits are not necessarily lowered. - Gave example of personal venture in co-generation plant that resulted in decoupling. 157 SEN. SHOEMAKER: At one point in the past, PGE reversed the equation causing that the more energy you use the higher the rate, discouraging use of more. Could decoupling discourage conservation? 175 DUNCAN: There is nothing here that would discourage a tiered rate. I think they are not only compatible, but mutually reinforcing. - SB 191 is not a very useful contribution at this time. - It might derail the collaborative effort. - HB 2204 gives the PUC the authority it needs to structure a more effective decoupling mechanism.

246 RON EACHUS: (introduces EXHIBIT O) Offers testimony on SB 191 and presents overview of EXHIBIT O. - The PUC opposes SB 191 believing it is unnecessary and too restrictive at this time. - In least cost planning, energy efficiency is identified at the lowest cost resource. That is incompatible with the more traditional regulatory framework in the way rates are set. - They realize the critical point is the mechanism chosen. - For any incentive to really work, it has to be viewed as an incentive by the utility. - In least cost planning, a rate is set upon a revenue requirement. In between rate cases, the revenue, not the rate changes. - We had to treat conservation as an investment and allow a rate of return. 340 - Some form of recovery for lost revenue had to be determined. - Describes decoupling. - The PUC introduced HB 2204 because of existing rate cases to expand the tools available with regard to incentives and disincentives.

TAPE 35, SIDE B 005 EACHUS: Continues overview of EXHIBIT O.

016 CHAIR CEASE: Directs Senator Shoemaker to preside over the meeting. - Leaves the meeting.

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018 CHAIR SHOEMAKER: SB 191 seeks to make conservation of energy resources a goal in any rate setting procedure. - Does PUC have a statutory mandate to require the conservation of energy resources when reviewing rate proposals? 031 EACHUS: Yes. There are mandates for cost effective conservation. We have established a least cost planning process which clearly identifies least cost resources which are generally energy efficient. 041 CHAIR SHOEMAKER: Closes the hearing on SB 191. - Adjourns the meeting at 11:00 a.m.

#### EXHIBIT LOG:

A - Oregonian Article "Lift Conservation Barrier, H Staff, 1 page B - Testimony on SJR1, William Boyer, 2 pages C - Testimony on SJR1, Lanny Sinkin, 3 pages D - Testimony on SJR1, Dave Perry, 4 pages E - Testimony on SJR1, Jerome Lidz, 3 pages F - Testimony on SJR1, Jim Whitty, 1 page G - "Medical Responsibility and Global Environmental Change" and "Potential Health Effects of Environmental Changes", Marcela Vinocur, 14 pages H - Testimony on SJR1, Frank Gearhart, 1 page I - Testimony on SJR1, Ken McFarling, 1 page J - Testimony on SJR1, Marlene Smith, Ph.D. 4 pages K - Testimony on SJR1, Mike Barnes, 6 pages L - Testimony on



SJR1, Kelly Ross, 1 page M - Letter on SJR1, Sue Hallett, 1 page N -  
Letter on SB 191, Senator Jeannette Harnby, 2 pages O - Testimony on SB  
191, Ron Eachus, 15 pages

Submitted by:      Reviewed by: Kus umie      Peter Green  
Assistant            Administrator