

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: March 8, 1993 TAPES: 66 - 67 PLACE: Hearing Room C TIME:  
8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,  
Vice-Chair Senator Joyce Cohen Senator Bob Kintigh Senator Bob Shoemaker  
Senator Gordon Smith Senator Dick Springer STAFF PRESENT: Peter  
Green, Administrator Chris Warner, Research Associate Kus Soumie, Clerk

MEASURES HEARD: SB 88 LC INTRODUCTION: LC3558 LC3530 LC2713 LC2091  
LC3692

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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 66, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:00 a.m. - Opens the  
public hearing on SB 88.

PUBLIC HEARING ON SB 88 - EXHIBITS B through E WITNESSES: Fred Hansen,  
Director, Department of Environmental Quality Ted Kulongoski, Oregon  
Attorney General Roy Hyder, Fish and Wildlife Division, Oregon State  
Police Dale Penn, Oregon District Attorneys Association

018 FRED HANSEN: (introduces EXHIBIT B) Offers testimony on SB 88.  
Senate Agricultura and Notural Resources March 8, 1993 Page 2

- Mentions specific requirement of the federal Clean Air Act for  
criminal enforcement authority. - SB 88 addresses this issue. - Reviews  
the intent of the bill and the history leading to its development. -  
Lists entities regulated by DEQ and therefore impacted by this bill.

CHAIR CEASE: How large is the group of blatant violators?

HANSEN: There are three or four crimes per year for which we pursue  
criminal enforcement activities. - These are generally not committed by  
the fully regulated larger entities. - Related a specific case with a  
company in Tualatin. - Provides analysis of Exhibit B, section by  
section. - Notes the appointment of a task force to review the adequacy  
of existing environmental crime laws in Oregon. 1 15 - Reviews the bill  
and its provisions, section by section.

143 CHAIR CEASE: Within a particular firm, who must "knowingly" violate  
these laws?

149 TED KULONGOSKI: The knowledge that is imputed is to the defendant.  
- The defendant could be an individual, or in environmental crimes, a  
corporation. - In any crime, whoever stands in the place of the  
defendant must have the knowledge imputed to them to gain conviction.

HANSEN: If a corporate president or board member knew of action taken,  
they become subject to that enforcement authority.

182 HANSEN: I can supply some additional information relative to  
"knowingly" or "intentional. " - Continues testimony on SB 88, and

overview of EXHIBIT B, page 5. - Reviews DEQ's procedure relative to permit conditions and self monitoring. "Intentionally and knowingly" would only capture the most blatant and extreme conduct. - "Reckless" or "with criminal negligence" would be required for conviction of misdemeanors. 247 KULONGOSKI: (introduces EXHIBIT C) Gives further analysis of sections 6 and 7 of SB 88 which address criminal penalties. - SB 88 indicates there needs to be a change in the remedial provisions of the Oregon law. 300 - This bill has been proposed to deter intentional disregard of the law.

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- Notes states which have felony sanctions for violations of environmental law. 347 - Lists the five crimes defined by the bill and their penalties, noting nothing currently legal has been made illegal. - Amendments to the bill will be offered.

373 CHAIR CEASE: What kind of public support do you anticipate for this kind of legislation?

KULONGOSKI: I believe the public understands the need for these regulatory options. - Those who violate the law to gain a competitive edge must be stopped.

CHAIR CEASE: Temporarily closes the hearing on SB 88. - Opens consideration of committee bills.

#### INTRODUCTION OF COMMITTEE BILLS

SEN. COHEN: LC 3558 deals with school districts under particular growth pressures with respect to the land use planning process. MOTION: CHAIR CEASE: Moves the committee introduce LC 3558.

VOTE: CHAIR CEASE: Hearing no objection the motion CARRIES. All members are present.

TAPE 67, SIDE A

CHAIR CEASE: LC 3530 allows dwellings on certain forest lands.

024 MOTION: CHAIR CEASE: Moves the committee introduce LC 3530.

VOTE: CHAIR CEASE: Hearing no objection the motion CARRIES. All members are present.

CHAIR CEASE: Senator Bradbury has requested the introduction of LC 2713 which increases allocation of forest products harvest taxes paid for forestry research purposes. Requires certain amounts to be expended for hardwood research.

MOTION: CHAIR CEASE: Moves the committee introduce LC 2713.

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VOTE: CHAIR CEASE: Hearing no objection the motion CARRIES. All members are present.

CHAIR CEASE: LC 2091 directs the establishment by the State Fish and Wildlife Commission of a system for restricted participation in Dungeness crab commercial fishing.

MOTION: CHAIR CEASE: Moves the committee introduce LC 2091.

VOTE: CHAIR CEASE: Hearing no objection the motion CARRIES. All members are present.

CHAIR CEASE: LC 3692 is the industry's version of the felony issue we are discussing this morning.

MOTION: CHAIR CEASE: Moves the committee introduce LC 3692.

VOTE: CHAIR CEASE: Hearing no objection the motion CARRIES. All members are present.

CHAIR CEASE: Reopens the hearing on SB 88.

PUBLIC HEARING ON SB 88 (Continues)

037 SEN. COHEN: (To Ted Kulongoski) Will the Attorney General's Office track asset forfeiture with respect to this issue?

048 KULONGOSKI: If it is appropriate, we will.

052 HANSEN: DEQ intends to provide technical evaluation and not become expert on criminal investigation.

064 SEN. COHEN: I know that constituents experiencing waste disposal/transfer sites in their residential communities would appreciate knowing the companies managing those sites are under greater obligation to prevent accidents.

075 SEN. SMITH: Much of what is now legal, may not be next year. - I know of two food processing plants in Washington that have closed due to actions of DEQ. - The risks were so great, it was not worth it to them to continue operations possibly violating new standards.

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094 KULONGOSKI: The committee needs to determine the definitions within specific felony crimes so that the appropriate parties are prosecuted. -

Gives example of parties seeking to limit "prosecutorial discretion." - Lists prosecution options for violators. - This bill addresses parties most people would feel should be dealt with harshly.

127 SEN. SMITH: I support using this against "bad apples," but my experience is this will be used to accelerate environmental clean-up. - Environmental clean-up is costly and may require some companies several years to come into full compliance. - I don't think these measures should be used except in the most egregious situations.

145 CHAIR CEASE: DEQ has not been overly zealous in enforcing areas where they currently have authority. 154 SEN. KINTIGH: Due to the reduction in prison space, how much time do you anticipate violators will actually spend in jail?

KULONGOSKI: Few will actually be sent to prison. - Restitution will be the method used most often.

166 HANSEN: That would depend on the history of the person who is being charged. - DEQ seeks to approach situations based on the strength of the factual situation so that only true violations are pursued. - We settle 70 percent of our civil penalty cases at the level originally assessed, or with the provision of new facts, even lower. - Pledges continuation of DEQ's standard and method of enforcement.

215 SEN. SHOEMAKER: Where are we in comparison with other states with respect to criminal fines and how will this bill impact those?

CHAIR CEASE: Asks Mr. Hansen and staff to perform research on this question and return their answers to the committee.

239 ROY HYDER: (introduces EXHIBIT D) Offers testimony in support of SB 88. - They intend for SB 88 to provide prevention of environmental accidents and degradation. - Nine officers have been trained in hazardous material investigation techniques.

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- Seventeen officers are trained to detect clandestine methamphetamine laboratories which produce hazardous waste. - Oregon is the only Pacific coast state that does not have a dedicated environmental law enforcement unit. - Presently, methamphetamine laboratory waste disposal is a misdemeanor.

322 DALE PENN: (introduces EXHIBIT E) Offers testimony on SB 88, and presents overview of EXHIBIT E. - This bill prioritizes environmental crimes. - Relates amendments they propose to the bill, one of which is to clarify a corporation is a person for the purposes of prosecution. - These cases will be expensive to prosecute, and it will be necessary to have an avenue for recouping those costs. - In response to the amount of imposed prison sentencing, where lives have been endangered, those convicted could go to prison. - Others could be involved in local jail time unless there were other serious influencing factors. - The maximum fine for a misdemeanor is \$2500, whereas fines for felonies could be as high as \$100,000.

387 CHAIR CEASE: It is clear there will be a number of proposed changes.

400 SEN. SHOEMAKER: In section 6, misdemeanor fines of \$10,000 and \$25,000 are mentioned. PENN: That would be a specific statutory increase. 418 SEN. SMITH: Is it your understanding the corporate president would be the one subject to felony charges? PENN: We would have to prove beyond reasonable doubt knowledge or intent of a conscious objective to cause this environmental crime on the part of any individual we hope to convict. - Explains their desire and intent in treating the corporation as a person. 458 CHAIR CEASE: Closes the hearing on SB 88. - Adjourns the meeting at 9:00 a.m.

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Transcribed by:  
Peter Green Assistant

Reviewed by: Pamella Andersen  
Administrator

EXHIBIT LOG: A Information Packet- Committee Staff - 20 pages  
B Testimony on SB 88 - Fred Hansen C Testimony on SB 88 - Ted  
Kulongoski - 3 pages D Testimony on SB 88 - Roy Hyder - 5 pages  
E Testimony on SB 88 by Michael D. Schrunk - Dale Penn - 1 page

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