

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: May 7, 1993 TAPES: 148 - 149 PLACE: Hearing Room C TIME: 8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,  
Vice-Chair Senator Joyce Cohen Senator Shirley Gold Senator Bob Kintigh  
Senator Bob Shoemaker Senator Gordon Smith STAFF PRESENT: Peter  
Green, Administrator Chris Warner, Research Associate Pamella Andersen,  
Clerk

MEASURES HEARD: SB 542 SB 541 SB 910 SB 88 SB 912  
SB 1114 SB 953 SB 1116 HB 2032 HB 2054

. 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 148, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:15 a.m. - Opens the  
work session on SB 542.

WORK SESSION ON SB 542

012 SEN. KINTIGH: Explains the intent of the bill. - Notes the -1  
amendments and what they do. Sonata Agriculturo and Natural Rasourocs  
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- References a letter he received from Wally Rutledge, head of the  
Service Forestry Program, which encourages small woodland owners to grow  
alders. - The -1 amendments will replace the original bill. - On line 7  
of the amendments, "without jeopardizing" should be replaced with  
"consistent with sound management of."

042 SEN. SHOEMAKER: We should also replace line 8 with "fish, wildlife,  
recreational and watershed values."

MOTION: SEN. KINTIGH: Moves to ADOPT the SB 542-1 amendments dated  
5-5-93 and that SB 542 be further amended on line 7, by replacing  
"without jeopardizing" with "consistent with sound management of" and on  
line 8, by deleting each occurrence of "or" and inserting "and"  
following the word "recreational. N VOTE: CHAIR CEASE: Hearing no  
objection the amendments are ADOPTED. All members are present.

MOTION: SEN. KINTIGH: Moves that SB 542 AS AMENDED, be sent to the Floor  
with a DO PASS recommendation. VOTE: In a roll call vote, all members  
present vote AYE. CHAIR CEASE: The motion CARRIES. SEN. KINTIGH will  
lead discussion on the Floor.

067 CHAIR CEASE: Closes the work session on SB 542. - Opens the work  
session on SB 541.

WORK SESSION ON SB 541

SEN. KINTIGH: Relates his activities reviewing the bill with interested  
parties. - There appears to be no need for the bill.

MOTION: SEN. KINTIGH: Moves that SB 541 BE TABLED. VOTE: In a roll call  
vote, all members are present and vote AYE. CHAIR CEASE: The motion

CARRIES.

090 CHAIR CEASE: (To Senator Kintigh) May we send a letter to the department noting our understanding is based upon the letters you referenced?

SEN. KINTIGH: That would be acceptable.

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CHAIR CEASE: Closes the work session on SB 541. - Opens the work session on SB 910.

WORK SESSION ON SB 910

SEN. KINTIGH: Relates his conversation with Dean George Brown regarding the University's involvement and investment in hardwood research. - Notes the financial commitment in their involvement. - Dean Brown would prefer a cooperative research approach than a rigid formulabased approach.

122 MOTION: SEN. KINTIGH: Moves that SB 910 BE TABLED. VOTE: In a roll call vote, all members are present and vote AYE. CHAIR CEASE: The motion CARRIES.

CHAIR CEASE: We will send a letter of intent on this bill also. - Closes the work session on SB 910. - Opens the work session on SB 88 and SB 912.

WORK SESSION ON SB 88 and 912

CHAIR CEASE: SB 912 will be used as the vehicle.

141 JIM WHITTY: (Associated Oregon Industries) This is a difficult bill for non lawyers to address. - The bill is filled with courtroom jargon. - The public will feel comfortable that there is protection for those seeking to comply.

167 TOM LINDLEY: (Associated Oregon Industries) This is a consensus package intended to replace the original SB 912 and SB 88. - Lists agencies that support the bill. - Summarizes the bill, noting its provisions. 205 - Begins review of section 2. - Discusses the specifics relative to the felony violations.

254 SEN. KINTIGH: How do you avoid knowledge?

LINDLEY: It is difficult for a prosecutor to prove a person knew relevant legal provisions related to their behavior. - You don't want to assume that everyone who tries to comply knows all the details.

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- We wanted to capture all the egregious cases; those presumed to know the law by their not going out and learning the law relative to the hazardous waste they are abandoning. 290 - Continues with key definitions relative to substantial harm to human health and the environment.

SEN. SHOEMAKER: Questions the use of "person" which can also be used to mean "corporation. "

350 LINDLEY: This could have been written "an individual" and that is its intent. - It would be acceptable to make that modification.

CHAIR CEASE: This goes to the Judiciary Committee from here.

365 SEN. BUNN: Does physical injury include a rash?

LINDLEY: The definition in ORS 161.015(6) states "impairment of physical condition or substantial pain." - I don't think a rash would apply, but the court would have to make that determination.

383 SEN. BUNN: On page 2, line 26, are there misdemeanors that are not punishable by jail time?

LINDLEY: This is the only misdemeanor that does not have any jail time associated with it.

SEN. BUNN: Are there other crimes where there is no possibility of jail time?

LINDLEY: The Departments of Justice and Environmental Quality have struggled with calling this a misdemeanor or an "offense."

420 SEN. BUNN: If this is the first offense, we need to think twice about statutorily creating a crime.

LINDLEY: The federal statute that obliges this broad coverage refers to a criminal fine.

TAPE 149, SIDE A

019 CHAIR CEASE: That issue can be flagged for Judiciary to review.

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LINDLEY: Contrasted sections 4 and 2 with respect to why the penalties are less. 046 - Reviews section 13.

074 SEN. KINTIGH: The records are known to be required in the first place?

LINDLEY: Section 15 applies to any document the agency requires to be

maintained.

091 SEN. BUNN: In section 13, are the felonies unclassified?

LINDLEY: Yes, those are not in the normal A, B, C felony classifications. - They go beyond what those classifications normally entail.

SEN. BUNN: In section 2(c) the penalties are well beyond most Class A felonies, but most classified felonies are much lower when they go into the sentencing guidelines. - If you wanted to hit someone hard, you would classify it as a Class A felony.

106 LINDLEY: Our intent was to ensure by exceeding the Class A felonies that corporations had a strong financial incentive to never violate the law.

1 17 DALE PENN: (District Attorneys Association) This is similar to the racketeering statute, in that it is unique. - - Here you have to prove a prior conviction under this statute. - It is appropriate to keep it in it's own classification outside the sentencing guidelines.

130 LINDLEY: Reviews section 17, page 6, addressing affirmative defenses. - This is limited to individuals, not corporations.

184 FRED HANSEN: This addresses the testimony offered by the representative of the AFL-CIO and the broader issues discussed.

188 LINDLEY: Continues with section 18. 259 - Reviews page 10, section 20, which creates an environmental audit privilege. 301 SEN. KINTIGH: Who will perform the audit?

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LINDLEY: These are voluntary internal audits. - These could be done by those contracted by the company or by internal audit teams.

CHAIR CEASE: It is clearly an internal activity designed to protect the corporation or public entity.

320 LINDLEY: Continues on page 11, with the provisions to allow the prosecutor to access information. 360 - Reviews definitions on page 12, section 6. - Notes the various issues audits may address, as they don't all address all issues. - The report was the "sticky" issue because it was difficult to determine how to define what comes out of the audit. - The information expected from the audit report is listed on page 14.

417 SEN. KINTIGH: What does the term "work product doctrine" on line 13 mean?

LINDLEY: Explains the two ways attorneys protect confidential information.

CHAIR CEASE: Reviews alterations to the amendments.

TAPE 148, SIDE B

056 LINDLEY: Notes the need to remain consistent in the terminology

used to reference the Act.

076 MOTION: CHAIR CEASE: Moves to ADOPT the SB 912-1 amendments dated 5-6-93 as further amended by the following: - On page 1, line 10, remove the comma between the two ORS citations and insert "and. " - On page 2, line 2, remove the comma between the first two ORS citations and insert "and." -On page 2, line 18, following "ORS 466.020" insert "and 466.095." - On page 2, line 28, remove the comma between the first two ORS citations and insert "and." - On page 3, line 26, following "is" insert "a misdemeanor" and following "punishable" insert "solely." - On page 4, line 29, remove "any" and insert "the first." - On page 8, remove section 19 and replace it with the new section 19. - On page 14, line 17 following the citation, delete "is" and insert "and 468 .990 are."

Those minutos 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. Senate Agriculture and Natural Resources May 7, 1993 Page 7

- Change "person" to "individual" as referred to earlier in the meeting.  
VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. SEN. COHEN is EXCUSED.

MOTION: CHAIR CEASE: Moves that SB 912 AS AMENDED, be sent to the Judiciary Committee with a DO PASS recommendation.

SEN. SHOEMAKER: On section 16, line 8, is this intended to apply to CEO's ignoring a subordinate's misbehavior, contriving to protect himself from knowledge?

096 LINDLEY: That would be a conscious purpose to avoid knowledge of a conduct or circumstance.

HANSEN: The issue Senator Shoemaker would like to have on record is that this exclusion applies to the individual who is not conducting the act but who - is the CEO.

CHAIR CEASE: We will put that on the record.

SEN. SHOEMAKER: Does the use of "person" in this instance include the individual and a corporate person?

LINDLEY: That is correct.

CHAIR CEASE: That will be put in memo form for review.

SEN. SMITH: I don't want to expand it anymore and am concerned with the hypothetical situation used, as there are employees who act in ways you wish you could ignore. - You are not always able to control how employees act due to labor laws and contracts.

CHAIR CEASE: I don't have a problem with that. - Let's include that in our cover memo.

WHITTY: The intention of AOI on this provision is to address when an employee attempts to make a CEO aware of the condition, and the CEO refuses to acknowledge the impact of the information. - I don't think we would support expansion of this language beyond that.

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132 CHAIR CEASE: It would be my understanding that tinkering could be done with this language in Judiciary, but the main part of the bill should not fall apart. - Restates the motion.

ADMIN. WARNER: Notes the subsection references that Legislative Counsel would like to change while the bill is in Judiciary.

VOTE: In a roll call vote, all members present vote AYE. SEN. COHEN is EXCUSED.

CHAIR CEASE: The motion carries.

161 HANSEN: Mentions, for the record, those who worked on development of the bill and for how long.

CHAIR CEASE: Closes the work session on SB 912 - Opens the work session on SB 1114.

WORK SESSION ON SB 1114

175 ADMIN. WARNER: References the hand-engrossed SB 1114. - The word "Colorado" has been included in all listings of states. - In line 16, following the word "electric" insert the words "generation, transmission or." MOTION: CHAIR CEASE: Moves to ADOPT the SB 1114-1 amendments dated 5-5-93. VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. SEN. COHEN is EXCUSED. 189 MOTION: CHAIR CEASE: Moves that SB 1114 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. SEN. RASMUSSEN will lead discussion on the Floor. CHAIR CEASE: Closes the work session on SB 1114. - Opens the work session on SB 1116.

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WORK SESSION ON SB 1116

ADMIN. WARNER: Notes there is one amendment to SB 1116 that adds an emergency clause to the bill.

221 TOM O'CONNOR: (Oregon Municipal Electric Utilities) Northwest Natural Gas and the Public Utility Commission met with him to work on the bill. - The City of Springfield is concerned that competitors who are private entities don't have to release certain information, giving them a competitive edge. - We don't have any objection to the bill as written.

CHAIR CEASE: The only amendment is the addition of the emergency clause (-1).

MOTION: CHAIR CEASE: Moves to ADOPT the SB 1 1 16-1 amendments dated 5-6-93.

250 GEORGE RICHARDSON: (Northwest Natural Gas) Notes the reason for the emergency clause. - The longer we wait, the greater potential we have to lose industrial customers.

VOTE: SENATORS KINTIGH, SHOEMAKER, SMITH and CEASE vote AYE. SEN. BUNN votes NO. SENATORS COHEN and GOLD are EXCUSED.

MOTION: CHAIR CEASE: Moves that SB 1116 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. - Closes the work session on SB 1116. - Opens the public hearing on HB 2054.

PUBLIC HEARING ON HB 2054

WITNESSES: Mike Grainey, Oregon Department of Energy Seiji Shiratori, representing Senator Jeanette Hamby

293 MIKE GRAINEY: Offers testimony in support of SB 2054. - The bill was introduced at the request of his department.

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- Notes the intent of the bill. - We believe this would provide substantial savings on energy and associated costs to state agencies. - Lists the agencies particularly impacted. - Lists the agencies that support the bill. 341 - Amendments were made in the House in response to the concerns of the utilities. - Mentions the amendments. - Notes that utilities would not be competing with state agencies for energy resources. - Clarifies the existing right of first refusal. 356 - The bill does not authorize retail wheeling. - The excess electricity from a cogeneration facility at a university could not be sold directly to a large industrial customer but would have to be sold to a utility. - Notes further activities not intended to be allowed by the bill.

TAPE 149, SIDE B

SEIJI SHIRATORI: Offers testimony in support of HB 2054 on behalf of Senator Hamby. - SB 191 had similar intent to this bill. - Couldn't we do more to encourage conservation? - Washington and California have

moved toward decoupling and we would like to know why Oregon has not also.

CHAIR CEASE: (To Mike Graine) Where is the decoupling bill?

GRAINEY: The bill is in the House Environment and Energy Subcommittee.

CHAIR CEASE: Closes the public hearing on HB 2054. - Opens the work session on HB 2054.

WORK SESSION ON HB 2054

023 MOTION: SEN. BUNN Moves HB 2054 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. SEN. COHEN will lead discussion on the Floor.

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- Closes the work session on HB 2054. - Opens the public hearing on HB 203 2.

PUBLIC HEARING ON HB 2032 WITNESSES: Steve Purchase, Division of State Lands

034 STEVE PURCHASE: Offers testimony in support of SB 2032. - His agency requested the bill be introduced. - Notes the intent of the bill and its provisions. - Reviews the intent and history of existing statute. - The bill would allow the sale of 32,000 acres of scattered, isolated parcels, most of which are in eastern Oregon.

SEN. KINTIGH: Does present law prohibit the exchange of more than 640 acres?

PURCHASE: The present law prohibits the sale, but exchanges may be made.

CHAIR CEASE: Closes the public hearing on HB 2032. - Opens the work session on HB 2032.

WORK SESSION ON HB 2032

072 MOTION: SEN. GOLD: Moves that HB 2032 be sent to the Floor with a DO PASS recommendation. VOTE: SENATORS KINTIGH, SHOEMAKER, SMITH, GOLD and CEASE vote AYE. SEN. BUNN votes NO. SEN. COHEN is EXCUSED. CHAIR CEASE: The motion CARRIES. SEN. GOLD will lead discussion on the Floor.

PUBLIC HEARING ON SB 953 WITNESSES: Susan Schneider, City of Portland  
080 ADMIN. GREEN: Reviews the -1 amendments. - Relates the effect of the amendments.

MOTION: CHAIR CEASE: Moves to ADOPT the SB 953 amendments dated 5-6-93.

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VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. SEN. COHEN is EXCUSED.

1 10 SUSAN SCHNEIDER: (City of Portland) The City supports the -1 amendments. - Notes their concern that it be made clear that all city residents are getting the same services. - Senator Smith indicated that was her intent. - The proponents are willing to make that clear in the record or through an amendment, if necessary.

CHAIR CEASE: If we were to indicate intent, would that be acceptable?

TED HUGHES: Yes.

CHAIR CEASE: No objections are noted by committee members.

131 MOTION: CHAIR CEASE: Moves that SB 953 AS AMENDED with the indicated intent, 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. SEN. BUNN will lead discussion on the Floor.

138 CHAIR CEASE: Closes the work session on HB 2032. - Adjourns the meeting at 9:48 a.m. Submitted by: Reviewed by:

Pamella Andersen Peter Green Clerk Administrator

#### EXHIBIT LOG:

A Information Packet- Committee Staff B Testimony on HB 2054 - Mike Grainey - 5 pages

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C Oregonian Article "Lift Conservation Barrier" - Seiji Shiratori - 1 page  
t\B Z=5q D Letter to Senator Cease on SB 953 - Phillip Lemman - 2 pages  
E Letter to Representative Repine on HB 2054 - Mike Grainey - 1 page  
F Memorandum to Senator Cease on HB 2032 - Steve Purchase - 2 pages  
G Letter to Senator Kintigh on SB 910 - Senator Kintigh - 2 pages  
H Testimony on SB 1116 - Bill Warren - 3 pages