

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 9, 1993 TAPES: 225 - 226 PLACE: Hearing Room CTIME: 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 MEMBERS ABSENT: Senator Shirley Gold STAFF  
PRESENT: Peter Green, Administrator Chris Warner, Research Associate  
Pamella Andersen, Clerk

MEASURES HEARD: HB 3661 HB 2538 HB 2241 HB 3665 HB  
3512 HB 2936

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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 225, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:15 a.m. - Opens the  
public hearing on HB 3661.

PUBLIC HEARING ON HB 3661 - EXHIBITS A through F WITNESSES: Charles  
Williamson, Oregon Trial Lawyers Association Dave Nelson, Oregon Seed  
Council, Oregon Dairy Farmers Larry Trosi, Oregon Farm Bureau Bill  
Moshofsky, Oregonians in Action Clif Kenapy

CHARLES WILLIAMSON: (introduces EXHIBIT A) We are concerned with  
right-to-farm aspects of the bill in sections 17 through 22. Senate  
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- There is a remarkable lack of lawsuits to be addressing this issue  
with such strong measures. - Section 17 makes too wide a sweep on what  
it covers. - Reviews Exhibit A, which includes the proposed amendments.  
- We propose you delete the statement on drifted sprays being subject to  
regulation from section 17. 046 - We also propose the word "serious" be  
deleted from the "serious physical injury" language on lines 10 and 20  
of page 23. - We suggest you not amend the nuisance statute. - If you  
want to reverse the field burning-smoke trespass court case of Ream v.  
Keen, my attached amendment to SB 116 would do so.

075 DAVE NELSON: (introduces EXHIBIT B) References page 1 of the  
opinion attached to Exhibit B, reading a section relative to a grass  
seed production incident. - Discusses the Davis court determination. -  
The intent of the legislature all along has been to recognize that  
farming practices are consistent with land use planning practices, and  
that those be protected. 126 - We support strongly the need for  
right-to-farm legislation. - We support the words in the -A ~7  
amendments. - We believe it is a good idea to include the real estate  
notices as transactions occur.

139 LARRY TROSI: We were involved in the melding of the right-to-farm  
provisions under HB 3661 and SB 116 - Notes the major inclusions/changes  
of the -A47 amendments. - We would suggest the Department of Agriculture  
in conjunction with the Board of Agriculture might be the way to go with  
that.

167 BILL MOSHOFSKY: (introduces EXHIBIT C) We generally support the

concept and approaches to having protection for farming-enforced operations. - We also support having the applicant sign statements that they will not complain about forest practices. - While limiting the rights of people living in the rural areas to complain is an infringement on their rights, it is less draconian than denying them the right to live there. 181 - We want to stress the severity and extent of the problems has never been established or aggregated in a credible way. - (introduces EXHIBIT D) Notes the Farm and Forest Research Project conducted by LCDC and OIA's counter research report. - Those who ask for restrictions on other's rights have the burden of showing proof.

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215 SEN. COHEN: Does that also apply to the right-to-farm section of the bill?

MOSHOFISKY: We acknowledge that even though smoke may be a trespass, it would still be a protected activity. - The point I am making is, deal directly with those problems rather than denying people the right to complain. 234 - Dwellings in forest areas also relate to this overall issue. - We believe the problem of dwellings in forest areas is not as great as you have been led to believe. - We believe the department has misled you into believing the fire problem due to dwellings is more severe than it is. - Notes statistics stating the dwelling impact is very minor. - Notes incorrect statistics in the Medford Mail-Tribune on forest fires attributable to dwellings.

287 CLIF KENAGY: Offers testimony in opposition to HB 3661. - Notes the amounts of agricultural commodities he sent to processing plants this year. - Let the bill die. - Opposes the right-to-farm bill until the EFU statutes are tightened to eliminate further non-farm dwellings. 340 - Discusses the value of land and making protection determinations based upon historic use. - You have the opportunity to zone urban dwellers out of farming zones. - Non-farmers should not be required to pretend to be farmers. 381 - Hobby farmers should be accommodated in exception zones, on secondary lands, or on lands that have a valid lot-of-record claim. - I don't believe farmers should be getting farm use taxation on the acre beneath their home. - I don't recall any farmers thinking farm use taxation is justified. - The lot-of-record approach has value in helping define part of the problem but could be devastating if implemented too broadly. 430 - It is inappropriate to consider speculative interests when making land use decisions. - Once we define the problem with the lot-of-record issue, we should look for creative solutions to relieve the problem without compromising Goal 3. - Lists four possible solutions for consideration: - compensation - transfer of development rights - a land swap provision - temporary dwelling provisions. - Discusses means by which government could enforce these specialized provisions.

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054 CHAIR CEASE: (introduces EXHIBIT F) References Exhibit F, a letter from Richard Townsend, League of Oregon Cities. - States this bill will be the vehicle by which the committee addresses the land use issue. - Discusses the boundaries of the process. - Notes the players such as the Governor and the two caucuses in each assembly. - The lot-of-record, right-to-farm, court cases and other issues need to be reviewed. - Discusses the schedule for work on the bill. - Closes the public hearing on HB 3661. - Opens the public hearing on HB 3512.

PUBLIC HEARING ON HB 3512 - EXHIBITS G and H

WITNESSES: Rick Glick, Independent Hydro Developers Rose Otti, Senator Gene Timms' Office Mike Grainey, Oregon Department of Energy Bev Hayes, Water Resources Department Liz Frenkel, Sierra Club

128 RICK GLICK: Offers testimony in support of HB 3512 and the proposed amendments to the A-engrossed bill. - We understand the amendments mandate a contested case hearing for hydroelectric projects and ensure the Siting Council's recommendations are based on the record developed by the Water Resources Commission.

ADMIN. WARNER: We are addressing the -A3 amendments. - The contested case hearing is upon request of any party.

154 ROSE OTTI: Senator Timms originally worked with Mr. Glick to propose this and has no objection to the amendments.

167 MIKE GRAINEY: The department was involved with negotiations on this amendment and supports it and the bill.

173 BEV HAYES: The Water Resources Department supports the amendment and the bill. - We ask that on line 15 of the -A3 amendments, the word "made" be included following "upon request by any person."

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SEN. COHEN: I want to make clear FOR THE RECORD we are not proposing to interfere with any of the federal authorities.

GLICK: This should have no effect on the DEQ 401 program at all.

192 LIZ FRENKEL: We totally support the amendments including the noted change by Bev Hayes.

CHAIR CEASE: It is my understanding everyone is on board?

GRAINEY: To the best of my knowledge.

CHAIR CEASE: Closes the public hearing on HB 3512. - Opens the work session on HB 3512.

WORK SESSION ON HB 3512

MOTION: SEN. COHEN Moves to ADOPT the HB 351 2-A3 amendments dated

7-7-93 and that HB 3512 be further amended on page 1, line 15 of the -A3 amendments, by inserting the word "made" following "person." VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. Senator Gold is EXCUSED.

MOTION: SEN. COHEN Moves that HB 3512 AS AMENDED, be sent to the Floor with a DO PASS recommendation. 210 VOTE: In a roll call vote, all members present vote AYE. Senator Gold is EXCUSED.

CHAIR CEASE: The motion CARRIES. Senator Timms will lead discussion on the Floor.

CHAIR CEASE: Closes the work session on HB 3512. - Opens the public hearing on HB 3665.

PUBLIC HEARING ON HB 3665 - EXHIBIT I

WITNESSES: Representative Tim Josi, District 3

234 REP. JOSI: Notes the original purpose of the bill was to eliminate the lottery permit system. - States the reason for the emergency clause. - Concerns from the last committee hearing addressed the possibility of an artificially inflated price for the permits.

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- (introduces EXHIBIT I) The -1 amendment should stop the lottery system from kicking in for the next couple of years, allowing development of a comprehensive bill for the next legislative session.

CHAIR CEASE: Closes the public hearing on HB 3665. - Opens the work session on HB 3665.

WORK SESSION ON HB 3665

MOTION: SEN. COHEN Moves to ADOPT the SB 3665-1 amendments dated 7-5-93. VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. Senator Gold is EXCUSED.

266 SEN. BUNN: I don't like this but feel it is a reasonable way to address this on the short term. - People shouldn't be making a profit off the value of the permits they buy. - We need to make it clear those permits are nontransferable. - We should identify the number of permits that can logically be used.

288 CHAIR CEASE: FOR THE RECORD we would like to note that the group studying limited entry would be expected to look at this also.

MOTION: SEN. COHEN: Moves that SB 3665 AS AMENDED, be sent to the Floor with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senator Gold is EXCUSED.

CHAIR CEASE: The motion CARRIES. Senator Bunn will lead discussion on the Floor. - Closes the work session on HB 3665. - Opens the public hearing on HB 224 1.

WITNESSES: Fred Robinson, Department of Forestry Bruce Anderson, Oregon State Home Builders Association

317 FRED ROBINSON: (introduces EXHIBIT J) Notes what the bill accomplishes: correcting a defect in funding of the emergency fire costs, seeking to apply a common standard of safety to all campfires and providing homeowners in high risk areas with the ability to use fireresistant roofing materials.

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368 CHAIR CEASE: Do you have a copy of the Oregonians in Action report? (Mr. Robinson responds, "no.") - Give the committee a picture of how you see the problem. SEN. KINTIGH: We should know the number and percentage of fires caused by people in homes.

CHAIR CEASE: He can provide that at a future point.

392 ROBINSON: Over the last decade we have seen an increasing number of residences with an increasing number of people. - Half of fires requiring suppression are human caused. - A growing proportion of those occur in and around homes in the interface and are sometimes caused by other parties than the people living there.

TAPE 225 SIDE B

ROBINSON: This is true nationwide.

019 CHAIR CEASE: There is a larger issue. - You are really saying on the roofs of houses in these areas, some roof material types are less fire resistant than others.

ROBINSON: We are new to this issue compared to California. We see houses burning down from the roof down. - Shake roofs are more prone to throw sparks than other roof types, possibly causing wildland fires.

CHAIR CEASE: Please review these three items specifically.

050 ROBINSON: Some subdivisions require the installation of shake roofs by means of deed covenants. - This makes those provisions unenforceable, but does not take away from the homeowner's right to choose that roof type.

CHAIR CEASE: If this bill becomes law, how will you inform people of the different requirements?

075 ROBINSON: Notes the avenues they will use to inform the public.  
SEN. KINTIGH: Are you aware of any research done on development of fireproof shakes?

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ROBINSON: There is research and products are on the market.

CHAIR CEASE: All this says is local governments or associations cannot enforce any deed restrictions that require use of shakes.

101 ROBINSON: Another key element of the bill is it only applies to those areas in the interface where a process has been gone through and the high hazard areas have been identified. - At one point we were talking about banning shake roofs statewide, but that is not necessary. - This is a process involving local government and the department. - This would only affect a small portion of the state.

115 BRUCE ANDERSON: Comments on section 3 of the bill. - References the Aubrey Hall fire. - We were concerned with the original wording in the bill relative to deed restrictions and discriminatory items. - We were concerned with watering down the law as we want to keep discriminatory items. - The point the State Forestry is after is for persons living in planned developments where covenant restrictions exist. - As of May 1, the state building code requires a class 1, 2 or 3 fire-rated roofing material for buildings erected in a wildlife hazard zone.

159 SEN. SHOEMAKER: Reads language on page 2, lines 14 and 15. - What does that add to the previous sentence? ANDERSON: This was to address the issue of persons living in subdivisions and planned unit developments with covenants and restrictions. - It allows persons to replace cedar with something else without getting out of the commitment to maintain the consistency in appearance. - It is Legislative Council's attempt to address that issue. CHAIR CEASE: So the replacement should address fire-rating and not a completely new appearance. ANDERSON: That is correct. - I hope this language accomplishes that. SEN. KINTIGH: Can wildfire hazard zones be declared within urban growth boundaries as well? . 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. Senate Agriculture and Natural Resources July 9, 1993 Page 9

201 ROBINSON: Yes, those could be anywhere within a forest protection district. - This bill originally had a portion dealing with power line caused fires. - This is no longer present as the utility companies have developed with us a memorandum of understanding attached to Exhibit I. - We feel good that is no longer in the bill.

CHAIR CEASE: We might want to have you report during the interim on how that is proceeding.

CHAIR CEASE: Closes the public hearing on HB 2241. - Opens the work session on HB 2241.

WORK SESSION ON HB 2241

229 SEN. COHEN: Whether or not the folks in homes are causing the fires, we still need to provide this type of protection.

MOTION: SEN. COHEN: Moves that HB 2241 be sent to the Floor with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senator Gold is EXCUSED.

CHAIR CEASE: The motion CARRIES. Senator Kintigh will lead discussion on the Floor.

CHAIR CEASE: Closes the work session on HB 2241. - Opens the public hearing on HB 2936.

PUBLIC HEARING ON HB 2936

WITNESSES: Kay Brown, Department of Fish and Wildlife

253 KAY BROWN: Offers testimony in support of HB 2936. - The bill was proposed by commercial fishermen. - Notes the various licenses required by fishermen. - This bill speaks to the commercial fishing license for individual fishermen. - There have been occasions when vessel owners having hired fishermen to fish off their vessel, and then discovered one of the fishermen does not have a license. - This bill would allow the vessel owner to purchase a generic license. - Notes the department's original concern that a resident vessel owner would hire nonresident fishermen.

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283 SEN. BUNN: What do we care from where the fisherman came?

BROWN: There are various licenses throughout the state that are higher for nonresidents than residents.

SEN. BUNN: I understand why we want residents to have a greater opportunity to harvest, but with a commercial license, we are already charging such a fee for the boat operator. - Why do we care from where our fees come?

BROWN: I don't know.

SEN. BUNN: Why do we want to license the people on the boat?

BROWN: I don't know; these have been required for a long time.

SEN. BUNN: We need the money?

BROWN: Obviously, the fees affect the agency.

318 SEN. BUNN: I am just curious why we do the things we do.

SEN. COHEN: You have changed the actual worker permits from \$75 to \$85?

BROWN: This is an option available to the individual vessel owner.

SEN. COHEN: Can't the vessel owner purchase individual licenses for the fishermen, already?

BROWN: Yes. - The difference is right now they have to specify the individual; this would just state how many people could fish on the boat.

346 SEN. BUNN: We are really acknowledging the license is useless except to generate money for the state. - Why don't we just raise the vessel fees; it would lessen administrative paperwork.

CHAIR CEASE: Closes the public hearing on HB 2936. - Opens the public hearing on HB 2538. PUBLIC HEARING ON HB 2538 Senate Agriculture and Natural Resources July 9, 1993 Page 11

WITNESSES: Representative Larry Sowa, District 26 Ron Harder, Oregon Sportsmen's Defense Fund - Larry Hill, Oregon Guides and Packers Ken Evans, Oregon Hunters' Association Dale Pearson, Representative Dave McTeague's Office Mike Simms, Tillamook County Creamery Association

CHAIR CEASE: Negotiations are continuing on this bill. - Rep. Sowa has a bill we are considering placing into this bill. 388 REP. SOWA: We have been working for a few years to get certain parties to work together for the benefit of wildlife and to solve conflicts that arise between the parties. - The original bill appeared to address this. - Together with the other parties, we considered melding this into one concept; however, I was planning a different route. - Elaborates on why a consolidation was not made. - Notes the other bill is waiting in appropriations until HB 2538 passes.

CHAIR CEASE: FOR THE RECORD the budget for the department is in House Ways and Means as well as the fish fee bill. - Rep. Sowa's bill, HB 3649, includes some fees. - It would be my expectation to put those bills together and move it through.

TAPE 226, SIDE B

REP. SOWA: There are direct instructions to the department in HB 3649 to not charge their administrative costs to the fees. 026 - 99.9 percent of the fees would go to habitat programs, and purchase or leasing of access.

CHAIR CEASE: Notes the representation on the councils. REP. SOWA: It has worked so well on the Restoration and Enhancement Board. SEN. COHEN: The question of entry and liability for such, is that still in your bill?

REP. SOWA: It is. SEN. COHEN: I want to know how critical that is to Rep. Sowa.

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REP. SOWA: I meant to meet with Senator Timms and ascertain how important his concept was, but have been unable to, as yet.



SEN. COHEN: The Judiciary Committee is the real concern, relative to liability.

055 CHAIR CEASE: FOR THE RECORD, we have a problem with liability in reference to the relating clause. - If you put liability in HB 2538, or someplace else we might avoid that problem.

REP. SOWA: We originally came up with a prescription for change. - I am not wedded to the landowner liability.

070 ROD HARDER: FOR THE RECORD we have been in the process of working both of these bills as the sportsmen have a great deal at risk here. - "Access" is the magic word for hunters. - One of the things not mentioned to be included in the access board is a hunter ethics development program to relieve the problems hunters are causing for landowners. - We support the consolidation of the two bills.

083 LARRY HILL: FOR THE RECORD the Oregon Guides and Packers participated in the development of this bill. - We support the bill and believe this is a good solution to move forward. - We also support Rep. Sowa's bill. - FORTHERECORD we also supported HB 2538 on the House side and we believe the discussion on this side would produce a suitable amendment.

092 KEN EVANS: Offers testimony in support of HB 2538. - We also worked extensively on the development of these bills. - We believe it will help develop cooperation between the hunters and land owners. CHAIR CEASE: FOR THE RECORD with reference to the approach of melding these two bills and with reference to HB 2215, one important part happening is voluntary partnerships.

110 DALE PEARSON: Offers testimony in support of HB 2538. - This model works wonderfully and we recommend it be extended to the wildlife area.

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125 MIKE SIMMS: Offers testimony in support of HB 2538. - We have been trying to get relief for landowners with respect to wildlife damage to property and crops for years. - This is the first time we may be close to a good start. CHAIR CEASE: Closes the public hearing on HB 2538. 1 38 - Adjourns the meeting at 9:50 a. m. Submitted by:  
Reviewed by, Pamella Andersen Peter Green Clerk  
Administrator

EXHIBIT LOG:

A Testimony on HB 3661 - Charles Williamson - 5 pages B Testimony

on HB 3661 - David Nelson - 8 pages C Testimony on HB 3661 - Bill  
Moshofsky - 2 pages D Analysis and Recommendations Relating to the  
Farm and Forest Research Project- Bill Moshofsky- 44 pages  
E Testimony on HB 3661 - Clif Kenagy - 7 pages F Testimony on HB  
3661 - Linda Lynch - 3 pages G Proposed Amendments HB 3512-A3 - Staff  
- 2 pages H Hand-Engrossed HB 3512-A3 - Staff - 9 pages I Proposed  
Amendments HB 3665-1 - Rep. Tim Josi - 1 page J Testimony on HB 2241  
- Fred Robinson - 5 pages K Testimony on HB 3661 - Staff - 3 pages  
L Oregon Troll Salmon Vessels Table - Staff - 1 page - Information  
Packet - Committee Staff

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