

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 14, 1993 TAPES: 229 - 232 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: HB 2936 - WORK SESSION HB 2197 - PUBLIC HEARING
HB 2396 - PUBLIC HEARING HB 2932 - WORK SESSION HB 3502 - PUBLIC HEARING
HB 2534 - PUBLIC HEARING

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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 229, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:20 a.m.

Opens the work session on HB 2936.

WORK SESSION ON HB 2936

WITNESSES: Kay Brown

PETER GREEN, COMMITTEE ADMINISTRATOR: Reviews provisions of HB 2936.

034 KAY BROWN: Is available to answer questions.

SEN. SHOEMAKER: Understand that HB 2936 would provide that individual
licenses Senate Agriculture and Natural Resources July 14, 1993 Page 2

for crew members would be issued to the boat.

040 KAY BROWN: It would make that available as an option. Some vessel
owners might not want to pay for crew members' licenses. We also have
fisheries where there is no boat involved.

050 MOTION: CHAIR CEASE: MOVES PASSAGE OF HB 2936 TO THE FLOOR WITH A
DO PASS RECOMMENDATION. VOTE: ON A ROLL CALL VOTE, MOTION PASSES WITH
SENATORS COHEN, KINTIGH, SHOEMAKER, AND CEASE VOTING AYE. SENATORS BUNN,
GOLD, AND SMITH ARE EXCUSED. 055 CHAIR CEASE: Closes work session on
HB 2936.

Sen. Bunn will be asked to carry the bill.

Opens the public hearing on HB 2197.

PUBLIC HEARING ON HB 2197 - EXHIBITS A through D

WITNESSES: Dan Meek, Utility Reform Project, Oregon Fair Share Liz
Frenkel, Sierra Club Bob Jenks, Citizens Utility Board Denise McPhail,
Portland General Electric Ron Eachus, Chair, Public Utilities Commission
Mike Grainey, Department of Energy

070 LIZ FRENKEL, SIERRA CLUB: Submits written testimony in opposition
to HB 2197 (EXHIBIT A) States reasons that Sierra Club opposes HB 2197.

We do not believe ratepayers should pay for costs for pre-construction activities listed in the draft PUC rule. Gives project examples. Sierra Club fails to find a public policy rationale for HB 2197 and urges rejection of the bill. 134 BOB JENKS, CITIZENS UTILITY BOARD: Offers testimony in opposition to HB 219 7.

- Shifting risk to ratepayer for pre-construction costs makes supply-side answer to Oregon's energy needs much easier and will encourage the building of new facilities rather than encourage demand-side conservation approach. - HB 2197 will shift costs into the rates for ratepayers.

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153 DAN MEEK, UTILITY REFORM PROJECT, OREGON FAIR SHARE: Submits written testimony in opposition to HB 2197 (EXHIBIT B).

States reasons for opposition.

Submits written testimony in opposition to HB 2197 for Brad Buvinger, Oregon Fair Share (EXHIBIT C).

SEN. BUNN: Joins the meeting.

265 DAN MEEK: Continues his testimony.

280 SEN. SHOEMAKER: Principal argument put forth by utilities for HB 2197 is that without it they would not take risks to develop very speculative resources. Do you have statistics on extent to which independent companies have tried to exploit those resources in Oregon?

SEN. GOLD: Joins the meeting. MEEK: Not in Oregon. Experience with competitive bidding producing resources is in California. 300 SEN.

SHOEMAKER: Have the private entrepreneurial companies you represent in Oregon taken the risk to develop thermal or wind power? 310 MEEK: Entrepreneurial companies I represent are on the conservation side and are doing work in Oregon pursuant to a competitive bid issued by

Portland in 199 2. The bid was limited to less than two average megawatts. 320 SEN. SHOEMAKER: Has there been a history of entrepreneurial exploitation of such things as wind and thermal in hopes of making a profit? 327 MEEK: There has been considerable exploration of geothermal resources in the Cascades. Not familiar with what wind resources exist in Oregon to be exploited in that way. Biomass plants operate in various areas in Oregc,n. 335SEN. SHOEMAKER: Would be useful to learn some of those statistics to see if there is a possibility of developing those resources under present law.

338 MEEK: Is a possibility and great probability if the utilities would undertake competitive bidding for those resources. PGE has issued a 50 average megawatt competitive bid limited to renewable resources. Responses should be received in a couple of months. Assume that will be as successful in Oregon as it has been in other parts of country.

370 DENISE MC PHAIL, PORTLAND GENERAL ELECTRIC CONIPANY: Submits written

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testimony in support of HB 2197 (EXHIBIT D).

Paraphrases "Utility Not Allowed to Profit" section of page 2, (EXHIBIT D).

PGE has issued an RFP for 50 average megawatts and expects to hear from people in September and make a determination in March. We hope to have a 100 megawatts in the next 10 years. We hope to have renewable resources added to our resource base with or without HB 2197.

PUC wants to remove negative incentive that we have for building gas-fired turbines.

HB 2197 does shift some risk to customers. Believes it is a fairly low risk. Believe HB 2197 will help in diversification of resources. Supports HB 2197 with proposed amendments we have not yet seen. If you want to bring it back to renewables, we'd welcome that opportunity.

TAPE 230, SIDE A

010 RON EACHUS, CHAIR, PUBLIC UTILITIES COMMISSION: Department of Energy and regional Power Council support HB 2197 which is an outgrowth of the council plan which encouraged utilities to acquire options and develop renewable resources.

Responds to previous testimony with which he disagreed.

065 We are trying to encourage utilities to be involved in development of renewables. Are we going to rely on the independent power market to develop and sell renewables to get renewables in place or do we want utilities to be involved in a way more than just purchasing it from someone else?

Everything we have received points to some problems.

Problems in developing renewables are: (1) getting financing (2) confirming existence of the resource (3) getting price that fits into what is least-cost with whatever values you may assign for diversity

One of the barriers is that the utility has no incentive. Utilities know things like gas and combustion turbines but do not know renewable resources at this point. We think that in terms of overall renewable development, developing more renewables and getting them on line sooner, and having utilities involved in more than simply purchasing them, will help advance the cause of renewable resources.

It is not a contested case process and we do not want to make it an adversarial contested case process. Believes the least cost planning process is something that does provide a realistic protection.

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Competitive bidding is being used. Mandatory competitive bidding is not a standard throughout the country. PGE example reflects choice where it is important and necessary.

105 The issue of whether or not a better incentive might be to allow utilities to profit on good deals when they purchase power is valid.

We do not see utilities doing a rush for renewable resources at all right now. It is only in recognition of the need for diversity that utilities are doing this.

We don't see the resources being confirmed or brought on line as quickly as they might be, but we do see renewables as a major source of power in the future.

Issue is, to what degree do you want utilities involved in the confirmation, development, and acquisition of renewable resources other than relying on purchasing power from independent developers?

We think it is important for utilities to be involved. We think we can provide the projections that are not going to create some unfair situation for developers.

155 EACHUS: After conversations with Mr. Meek, believe we can address most of the issues raised; would recommend restricting the bill to renewable resources and high efficiency cogeneration, borrowing the definition for high efficiency cogeneration from SB 1016, and making sure that preconstruction costs did not include purchase of equipment for renewable resources. Recovery of the cost would be over a period of time that would match the costs with benefits.

182 CHAIR CEASE: Is this kind of recovery allowed in the rate base any place else?

184 EACHUS: Can't cite specific instances. In this case we are not allowing any costs beyond preconstruction costs.

We support amendment suggested; that once you get beyond the option stage and begin construction, if you abandon the plan at that point you are not eligible for recovery of preconstruction costs.

200 SEN. KINTIGH: Did you include pump storage in renewable resource definition?

202 EACHUS: The definition of renewables is a reference to the renewable resource statute which defines renewable. There are many steps beyond that to get through the recovery stage. Must prove that it is a resource that should be in your least cost plan.

210 SEN. SHOEMAKER: Do I understand that there is no procedure or way for a utility to get advanced approval to recover pre-construction costs if it should turn out to be a bad venture? _ 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 14, 1993 Page 6

217 EACHUS: We do not provide advance approval. We do approve the least cost plan and we use the word "acknowledge" because we did not want to confuse "approval" with "pre-approval". Being consistent with the plan does not guarantee you will get cost recovery and not being consistent with the plan does not mean that you won't get cost recovery. The plan becomes an important road mal, for judging how prudent an action was or was not for the utility.

228 SEN. SHOEMAKER: Isn't the utility encouraged to believe it would recover preconstruction costs if it turns out to be a bad venture?

EACHUS: I think a utility would be encouraged to do the same thing with that as it does with the resource that's in the plan that's built. Other parties would have the ability to say it wasn't done prudently. This gives discretion that doesn't exist now.

SEN. SHOEMAKER: If they make their case, would you still have discretion to say no?

EACHUS: Yes. Least cost plan, from rate setting point of view, gives substantial weight to utility's argument that it acted prudently.

265 MIKE GRAINEY, DEPARTMENT OF ENERGY: Testifies in support of HB 2197. Agrees with points Eachus made. Important to remember the bill is just an authorization to PUC. Doesn't require certain expenses to be allowed or disallowed. Some concerns raised about competitive advantage can be addressed in rule making. This gives PUC authority to address this issue. 280 SEN. COHEN: Observations: I participated in projects a utility is looking at that are cost-effective cogeneration. Interesting that the investors want their money and profits first and then the utility has to buy the power basec on the built-in profits of the original investors to develop the resource. Those investors expect a return on their money and risks and the ratepayers have to pay for that too -- paying a double profit. CHAIR CEASE: I don't see that we have time to work this out. But if the parties want to continue to talk this out in the next few days we would certainly entertain that. As it is the bill has a lot of holes. CHAIR CEASE: Closes the public hearing on HB 2197. 315 Opens the public hearing on HB 2396.

PUBLIC HEARING ON HB 2396 - EXHIBIT E

WITNESSES: Wayne Carter Al Morelli Linda Inholt David Inholt Joe French, Oregon Forest Products Transportation Association

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320 CHRIS WARNER, COMMITTEE RESEARCHER:
Notes HE. 2396-A4 amendments (EXHIBIT E). 317 WAYNE CARTER:
Testifies in opposition to HB 2396.

We have been fighting this situation for years. Notes impacts of log trucks on his personal situation.

385 CHAIR CEASE: Notes that HB 2396-A ~ amendment (EXHIBIT E) would limit number of trucks to three. Would that make a difference?

389 CARTER: Understands that one trucking operation is the spearhead

of the situation. If you open the door for one or three trucks it will be a continuous problem. Don't think the three truck limit would help unless rules were strict and enforced. 430 SEN. COHEN: We can't give you the final answer you are seeking. This bill allows the activity to continue.

TAPE 229, SIDE B

015 AL MORELLI: Testifies in opposition to HB 2396. This is not an issue of timber and jobs but of property values which have been diminished with an industrial complex set down in a rural residential community. This activity goes on 365 days a year as early as 2:30 a.m. and definitely is a detriment to property values. We have suffered the indignity of lawsuits by these people because we used government avenues to protest the operation. The lawsuits were subsequently withdrawn. 040 Sees no necessity for a bill that could lead to something more since believe Clackamas County already allows loggers to park one or two trucks on their own property. 058 LINDA INHOLT: Testifies in opposition to HB 2396.

County has opposed this trucking operation for three years but the company has not left.

090 DAVID INHOLT: Testifies in opposition to HB 2396. Thinks the amendment is an improvement to the original bill, but still has concerns. Speaks of personal legal costs. Feels HB 2396 is a specialized bill introduced to accomplish for Marsden Trucking what the local government will not let them do. Enforcement would be a nightmare. The county has identified alternative sites for them, but they refuse to move. 112 Suggests amending HB 2396-A4 (EXHIBIT E) by adding "and where suitably zoned alternative sites are not available" after "owned by the occupant of the property".

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129 SEN. SHOEMAKER: According to the attorney general, the present statute does not clearly prohibit their use. If we put something in the statute that would make it clear that parking and maintenance of log trucks is a use, that would limit the counties' freedom to bend to the pressure of the truckers.

Could add "provided that such use shall not interfere with the peace and quiet of nearby residences." to HB 2396-A4 amendment.

145 INHOLT: Believes that would help and appreciates concern, but given the track record of the company, feels they will find a way around restrictions.

155 CHAIR CEASE: What has the county done?

159 INHOLT: County issued a temporary permit. Reviews history of the situation.

175 JOE FRENCH, OREGON FOREST PRODUCTS TRANSPORTATION ASSOCIATION: This

is not a one person bill introduced for the Marsden problem, but because this is a statewide problem.

OFPTA is in agreement with the amendment.

Understands the counties are in agreement with the amendment.

Urges passage of HB 2396.

210 SEN. SHOEMAKER: How would you react to my suggested amendment limiting this to a proviso that such use not interfere with peace and quiet of nearby residences?

213 FRENCH: Believes that would be a condition that the county could require. Can not give an opinion without consulting with Association.

218 CHAIR CEASE: Closes the public hearing on HB 2396.

Opens the work session on HB 2932.

WORK SESSION ON HB 2932 - EXHIBIT J

WITNESSES: Tom Gallagher, Destination Resorts Coalitions

WARNER: Reviews HB 2932-A4 and HB 2932-A5 amendments received by members earlier.

240 TOM GALLAGHER, DESTINATION RESORTS COALITIONS: Believe proposed amendments are excellent.

265 MOTION: SEN. COHEN MOVES THE HB 2932-A4 AND HB 2932-A5 . 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 14, 1993 Page 9

AMENDMENTS.

270 SEN. KINTIGH: Asks for explanation of portion of amendment.

275 WARNER: Provides explanation.

285 GALLAGHER: When we changed the definition of tract, we said that if a corner of the tract violated one of the other prohibitions of the statute you could site your resort on those portions of the tract which were all right under the existing land use laws.

It is a clarification to say that that property can be used for any use allowed under the law. It does not restrict its use, except to say that the management of the resort can not use that land as part of the destination resort site, or in conjunction with the destination resort site.

304 VOTE: WITHOUT OBJECTION, CHAIR CEASE DECLARES AMENDMENTS ADOPTED.

305 MOTION: SEN. COHEN MOVES HB 2932, AS AMENDE D, TO THE FLOOR WITH A DO PASS RECOMMENDATION. VOTE: ON A ROLL CALL VOTE, MOTION PASSES WITH SENATORS SMITH, GOLD, COHEN, KINTIGH, SHOEMAKER, AND CEASE VOTING AYE. SENATOR BUNN IS EXCUSED. 312 CHAIR CEASE: Will ask Sen. Cohen to carry the bill. Closes the work session on HB 2932. Asks for unanimous

consent to suspend the rules to allow Senator Gold to vote on HB 2936. Without objection, Senator Gold votes Aye on HB 2936. Opens the public hearing on HB 3502.

PUBLIC HEARING ON HB 3502 - EXHIBITS F through G

WITNESSES: John Chandler, Attorney for Common Ground, Urban Land Council of Oregon, Association of Home Builders of Metropolitan Portland Liz Frenkel, Sierra Club Olivia Clark, Department of Environmental Quality Art Schlack, Association of Oregon Counties Ken Bierly, Division of State Lands Russ Nebon, Planner, Marion County Greg Wolf, Department of Land Conservation and Development

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329 JOHN CHANDLER, ATTORNEY FOR COMMON GROUND, URBAN LAND COUNCIL OF OREGON, ASSOCIATION OF HOME BUILDERS OF METROPOLITAN PORTLAND: Testifies in support of HB 3502.

Notes what the bill is intended to accomplish: - Address a problem that occurs between state agencies with regard to requirements under state and federal law. - Clarify that the Division of State Lands should be the wetlands agency for the state of Oregon.

There is currently no standard set of definitions and practices with regard to wetlands regulation.

TAPE 230, SIDE B

011 LIZ FRENKEL, SIERRA CLUB: Testifies in opposition to HB 3502.

Two issues are: - Authority of DEQ and how they comment - What qualifies as a wetland

States Sierra Club's concern that wetlands, under Oregon's land use law, is an issue of planning. Division of State Lands' role in wetlands has to do with regulation. Planning and regulation issues are being confused.

Elaborates on concerns.

Specifically opposes Section 2 (3).

Has specific concerns about -A2 amendments.

066 OLIVIA CLARK, DEPARTMENT OF ENVIRONMENTAL QUALITY: Concerned that page 3, line 4, subsection c, may be in conflict with our responsibilities under the federal Clean Water Act.

Proposes conceptual amendment to address that issue. Reads suggested amendment from written testimony (EXHIBIT F).

Asks that if committee pursues HB 3502, it make sure the bill does not conflict with federal law.

ART SCHLACK, ASSOCIATION OF OREGON COUNTIES: 1 estifies in support of HB

350 2 and specifically HB 3502-A2 (EXHIBIT G).

Reviews provisions of HB 3502-A2 which provides the opportunity for cities and counties to continue deferring wetland administration to the Division of State Lands.

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115 SEN. SHOEMAKER: How does your amendment fit with section 2 (3) of the bill?

135 SCHLACK: We are looking primarily at the question of administration.

149 SEN. SHOEMAKER: What would be the avenue of appeal to LCDC or LUBA and what would the recourse be if someone felt that DSL was not appropriately handling the responsibilities delegated to them by cities and counties?

160 KEN BIERLY, DIVISION OF STATE LANDS: The construct anticipated under the proposed amendments would provide significant responsibilities on the part of the state agency to do local government planning. DSL is not fiscally prepared to do so. The difference between (2) of the A-Engrossed bill and the proposed amendment are substantial. (2) required the division to develop specific standards for local governments to comply with in their planning responsibilities but did not shift planning responsibilities. The proposed amendment provides a significant shift in responsibility at the discretion of the local government without discretion on the part of the state agency.

1 80 RUSS NEBON, MARION COUNTY PLANNER: The intent of the amendment is to break the log jam that has created such difficult situations for counties that very little is being done under Goal 5 at the county level to protect wetlands.

States Marion County and rural Oregon situations.

213 GREG WOLF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: Liz Frenkel characterized our difficulty very well in that Goal 5 needs some amendment in order to deal with this issue effectively.

The department is struggling, within our budget, to get at this Goal 5 issue during the next biennium if at all possible.

250 SEN. COHEN: The issue is money and expertise. Without absolute directive from us couldn't you go in to goal-change rulemaking to work out some of the problems with the goal itself?

265 WOLF: Anne Squier and I were speculating about whether DSL and DLCD could enter into rulemaking that might begin to address what is trying to be accomplished in section 2 of HB 3502. Believe we could make some movement in that direction.

275 CHAIR CEASE: Closes the public hearing on HB 3502.

Opens the public hearing on HB 2534.

PUBLIC HEARING ON HB 2534 - EXHIBITS H through I

WITNESSES: Rep. Tom Calouri, District 7 Senate Agriculture and Natural Resources Juiv 14, 1993 Page 12

Rep. Mary Alice Ford, District 8 Irma Tromlets John Bonn, City of Portland Linda Lynch, City of Eugene

280 CHAIR CEASE: For the record, I have letters in my file from Rosalie A. Hall and Richard Abel. Summarizes letters in favor of HB 2534.

290 REP. TOM CALOURI: Testifies in support of HB 2534 and explains provisions of HB 2534 and his interest in the bill. 400 Senators Shoemaker and Cease ask specific questions about HB 2534 effects and Rep. Calouri responds.

TAPE 231, SIDE A

Committee members and Rep. Calouri discuss specifics of HB 2534.

110 REP. MARY ALICE FORD: Testifies in support of HB 2534.

150 CHAIR CEASE: Would you agree that you are not going to stop annexation, and in order to be sure that it is rational, we need a line some place?

155 REP. CALOURI: Absolutely.

163 REP. FORD: Lists recent developments in her neigHB orhood.

170 REP. CALOURI: Speaks of recent developments in his area.

180 CHAIR CEASE: Asks Sen. Shoemaker to work on this issue with Rep. Calouri with the possibility of looking at HB 2534 and SB 122 together.

189 IRMA TROMLETS: Speaks of her involvement working on the issue addressed in HB 2534. We see it in our best interest to get an urban services boundary drawn because the City of Portland could not cross over that boundary.

254 SEN. COHEN: Does not like patchwork service districts between cities. Cities have an appropriate job to do to provide general purpose services. 267 TROMLETS: Our concern is the line changes all the time and the City of Portland has shown no commitment to trying to get a definition, process, and closure.

Expresses support for HB 2534.

275 JOHN BONN, CITY OF PORTLAND AND LEAGUE OF OREGON CITIES: Submits and

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paraphrases written testimony commenting on HB 2534 (EXHIBIT H).

Recommends rejection of HB 2534.

367 LINDA LYNCH, CITY OF EUGENE: Submits written testimony in opposition to HB 2534 (EXHIBIT I).

Comments on Eugene/Springfield situation.

TAPE 232, SIDE A

CHAIR CEASE: Reviews committee work plan.

Recesses committee.

030 Adjourns the meeting at 10:40 a.m. 031 HB 2932-A5 is submitted for the record (EXHIBIT J).

Transcribed by: Administrator Reviewed by: Pat Zwick Peter Green,

EXHIBIT LOG:

A Testimony on HB 2197 - Liz Frenkel - 3 pages B Testimony on HB 2197 - Daniel Meek - 5 pages C Testimony on HB 2197 - Daniel Meek - 1 page D Testimony on HB 2197 - Denise McPhail - 2 pages E Proposed Amendments HB 2396-A4 - Staff - 13 pages F Testimony on HB 3502 - Neil Mullane - 1 page G Proposed Amendments HB 3502-A2 - Staff - 1 page H Testimony on HB 2534 - John Bonn - 1 page I Testimony on HB 2534 - Linda Lynch - 1 page J Proposed Amendments HB 2932-A5 - Staff - 1 page

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