

SENATE COMMITTEE ON WATER POLICY

February 18, 1993 Hearing Room 137 3:00 p.m. Tape 11

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bob Kintigh,
Vice-Chair Sen. Wes Cooley

Sen. Frank Roberts

MEMBERS EXCUSED: Sen. Tricia Smith

STAFF PRESENT: Lisa Zavala, Administrator Pamella Andersen,
Committee Clerk

MEASURES CONSIDERED: SB 129-1

[--- Unable To Translate Graphic ---] 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. [--- Unable To Translate Graphic ---]

TAPE 11, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:05 p.m.

PUBLIC HEARING ON SB 129-1 - NO EXHIBITS

WITNESSES: Martha Pagel, Director, Department of Water Resources
John Borden, Department of Water Resources

CHAIR DWYER: (To Martha Pagel) I need the administrative rule that defines "impoundment."

006 MARTHA PAGEL: I don't believe there is an administrative rule defining the term. The term is commonly used by the Department. If it needs

definition that can be done by rule. The Committee could direct us to follow up with rulemaking.

025 SEN. KINTIGH: It is my preference that it be defined in statute.

JOHN BORDEN: I could get a definitive answer by telephone if the committee so wishes.

CHAIR DWYER: That would be helpful, as I am uneasy about putting something in statute that is not defined therein.

SEN. ROBERTS: Joins the meeting at 3:11 p.m.

081 PAGEL: The purpose of the bill is to clarify the difference between beginning construction with permit "in hand" or simply upon filing of

the application. We may require permits for the impoundment of water which is accomplished by constructing a dam, ditch or dike.

BORDEN: Barry Norris, our State dam safety engineer, believes "dike" is a subset of dam. "Impoundment" refers to anything not covered by the term "dam" that might have water impounded behind it. - Gives examples.

PAGEL: I reviewed this with the Attorney General's Office to ensure a pond dug in the ground would not be covered by this term.

116 CHAIR DWYER: What is coming over in terms of the pond bills?

PAGEL: We have two bills that relate to ponds. One deals with existing ponds and the other with new ponds that are part of the watershed or wetlands enhancement effort.

122 CHAIR DWYER: Will we be dealing with the log and fire ponds as we did last session? Would some of them be impoundments?

PAGEL: Yes, and some of them could be considered impoundments.

CHAIR DWYER: If a pond is dug in a creek, lined with plastic and then continues down the creek, is that an impoundment?

134 BORDEN: It might be addressed in the pond bill.

SEN. COOLEY: I don't have a problem with the bill. It is in clarification of the bill that we are groping. - Gives example of a logging operation which needs a fire pond. If

this bill will result in a two-year wait period before such a pond

can be permitted, we are deterring this operation from proceeding. 165 - Down the road we don't know who will be staffing the Department and interpreting these laws. Are we prohibiting other activities because of lack of definition other than that arbitrarily chosen at this

time?

173 PAGEL: Clarifies the bill was not intended to create new permitting requirements. No permits are required for those uses mentioned. The

bill only addresses when the already required permit must be "in hand."

SEN. COOLEY: Under the present structure you are allowing fire ponds because you know they are not permanent. You are requiring a temporary

permit now. Will this bill supersede the present flexibility?

207 BORDEN: I believe there would be no change. Limited licenses are issued before construction and lapse in 90 days unless extended another 90 days. I don't see how this bill would affect those.

SEN. COOLEY: In the future could they be affected if someone else were making the interpretation?

217 PAGEL: That gets back to the issue "except for use exempted under ORS 537.143." - That relationship hasn't changed, so the limited license remains

exempt.

257 PAGEL: Bev Hayes has suggested we add on line 8, following the words "ORS 537.211" "or a limited license under 537.143" before beginning

construction.

269 CHAIR DWYER: What do you want to do, Martha?

PAGEL: We are comfortable that the limited license statute is not affected by what is done here. If there is a concern, I would like to explore the language just proposed.

SEN. ROBERTS: I can't see what needs to be added. Why does language have to be included a third time?

SEN. COOLEY: ORS 537.143 addresses a different problem than is listed here. - We don't want to hamper what is already being done by allowing room

for a different interpretation later .

297 CHAIR DWYER: Lists exemptions in ORS 537.143. - Limited use licenses required before construction can begin. - Presently, some people begin to build assuming they will get the

permit when they will not.

SEN. COOLEY: What about the permit time? - Right now the Department is very flexible in limited license use. - They accomplish this in an expedient way. - If they shift to a permit system, applicants may have to wait a year

for results. - This may be interpreted in the future in such a way that persons

would have to wade through the permit process before being able to begin construction.

322 PAGEL: It is correct that the limited license process is

expedited. That is different from what we are addressing here. - Because ORS 547.143 begins with "notwithstanding...", I see no harm

done by adding ORS 537.143 on line 8. That would say you have to make application and obtain a permit or limited license before you begin construction.

339 CHAIR DWYER: (to Senator Cooley) How does that sound?

SEN. COOLEY: Sounds great to me.

CHAIR DWYER: Hand engross on line 8, after ORS 537.211 the addition of "or ORS 537.143."

BORDEN: It might be more exact to say "a permit under ORS 537.211 or a limited license under ORS 537.143."

CHAIR DWYER: Accepts that language. - Closes the public hearing. 358
- Opens a work session.

WORK SESSION ON SB 129

MOTION: SEN. COOLEY: Moves the amendment of SB 129-1 as further amended to include on line 8 after ORS 537.211, "or a limited license under 537.143."

VOTE: CHAIR DWYER: Hearing no objection the amendments are ADOPTED.
Senator Smith is EXCUSED.

MOTION: SEN. COOLEY: Moves that SB 129-1 AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. Senator Smith is EXCUSED.

CHAIR DWYER: The motion CARRIES. Senator Cooley will lead discussion on the Floor.

399 CHAIR DWYER: Adjourns the meeting at 3:40 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

No exhibits were submitted.