

032 ADMIN. ZAVALA: The first hearing on SB 48 took place February 16. - The Department has submitted SB 48-1 amendments. - The Department worked on the amendments alone. - There was no need for a work group.

CHAIR DWYER: Does this address Senator Cooley's concerns on reservoirs and impoundment structures?

049 SEN. COOLEY: Yes. It also defines "pump testing" and "dam" and discusses the imposition of civil penalties, fees and water use

reporting requirements.

ADMIN. ZAVALA: The League of Oregon Cities had concerns about the civil penalty language and whether there was the risk of double jeopardy.

Language has been added to clarify civil penalties may be imposed under one statute but not both.

063 MARTHA PAGEL: Reviews the amendments on the hand-engrossed version. - Changes on lines 13, 13a and 13b specify structures subject to dam

safety requirements. - Changes on lines 23a, b and c clarify there is no double penalty.

100 SEN. COOLEY: Requests clarification regarding the line numbering.

SEN. KINTIGH: The summary speaks about pump test requirements. What could you do to a pump test that would warrant a civil penalty?

BARRY NORRIS: We simply aren't getting the information. They are not reporting. It is not that they are doing something wrong in the field.

SEN. COOLEY: You are saying you are not getting compliance with ORS 537.772?

124 PAGEL: Yes. The statute requires reporting every 10 years. Multiple notices are sent out and noncompliance continues.

SEN. SMITH: Joins the meeting.

CHAIR DWYER: These tests are performed by professionals?

NORRIS: We have standards to which the owner can test or they can hire a professional. They may be required to have a certified water right examiner

157 JOHN BORDEN: A certified water right examiner is not required for the pump test.

SEN. KINTIGH: Do you routinely send out notices? Could someone be penalized when they were unaware of the requirement?

BORDEN: Up to five notices have been sent, plus a local public meeting is held before formal action is taken. Even personal visits have been made. We have not taken action due to lack of department resources.

175 MOTION: SEN. SMITH: Moves to ADOPT the SB 48-1 amendments dated 3-4-93.

VOTE: SEN. DWYER: Hearing no objection the amendments are ADOPTED.

All members are present.

184 ROBERT HALL: Offers testimony on SB 48-1. - I haven't seen the amendments. - The fear of PGE is similar to that of the municipalities: double

jeopardy. - Recommends a change on line 12 to address this problem. 210
- The language on line 12 is very broad, "Violation of any rule or order..."

SEN. COOLEY: Did you see the bottom of SB 48-1 where it says the Commission may impose civil penalties on government entities for failure to report under either, but not both requirements?

HALL: I haven't had the benefit of seeing that.

SEN. COOLEY: Does that address your concerns?

HALL: On the surface, that doesn't appear to address our concerns.

SEN. SMITH: I suspect there is something in FERC's rules that would keep us from coming in and doing something on top of them.

228 PAGEL: I am not aware of a specific requirement in Federal Energy Regulatory Commission regulations that disallows a state imposing a

civil penalty. - It is not uncommon for them to say their regulations preempt ours.

- We allow this to work out in a case-by-case basis. - If a facility felt it were being double regulated it could bring that to our attention. - We would not automatically assume such was the case. 246
- We would not like to see an amendment that excepted any facility subject to FERC regulation. - The State addresses issues other than those of interest to FERC.

CHAIR DWYER: These are done with notice. You warn persons to fix something before you penalize them?

PAGEL: A civil penalty is imposed as a last resort when we can't obtain compliance.

275 MOTION: SEN. SMITH: Moves SB 48, AS AMENDED, to the floor with a DO PASS recommendation. VOTE: In a roll call vote, all members are present and vote AYE.

SEN. SMITH will lead discussion on the floor.

286 CHAIR DWYER: SB 535 will not be heard today, it will be carried over. - Adjourns the meeting at 3:22 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

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