

Senate Committee on Water Policy
May 7, 1991 - Page

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 COMMITTEE ON
WATER POLICY

May 7, 1991Hearing Room 343
3:15 p.m. Tapes 58 - 59

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Wayne Fawbush

Sen. Bob Kintigh
Sen. Eugene Timms (Arrived at 3:40 p.m.)

MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair

STAFF PRESENT: Lisa Zavala, Committee Administrator
Bernadette Williams, Committee Assistant

MEASURES

CONSIDERED:SB 906 - Establishes Columbia River Bicentennial Commission; and declares an emergency, WRK

SB 1183 - Establishes Local Watershed Planning and Management Act, PUB

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TAPE 58, SIDE A

003 CHAIR HILL: Calls meeting to order at 3:30 p.m..

(Tape 58, Side A)

SB 906 - WORK SESSION

Witnesses:Lisa Zavala, Senate Water Policy Administrator

003 HILL: Opens work session on SB 906.

006 LISA ZAVALA, SENATE WATER POLICY ADMINISTRATOR:

SB 906 was amended to provide specific privileges to the Columbia River Bicentennial Commission so that they could carry out its' duties. We were concerned with what we allowed in the amendments and original bill. We are bringing it back to talk to

the Commission staff and Executive Department about their needs and how to go about setting some laws in statute.

024 HILL: Senator Dukes agrees that the language seems to raise concern about the use of state-owned vehicles, purchasing and contracting services, use of the state printer, etc.. Questioned why we needed this language, which is different from boiler plate language.

030 MOTION: SEN. HILL moved to reconsider the vote by which SB 906 as amended was passed to the floor with a "do pass" recommendation.

VOTE: Hearing no objection, the motion carried. Senators Kitzhaber and Timms were excused.

036 ZAVALA: In statute, any state agency has to request permission from the Secretary of State's office to use the state seal.

039 HILL: If we go back to the original language of the bill, they would be able to use the state seal with the permission of the Secretary of State.

The original language of the bill should give you the ability to do what you need to do (i.e. rent state office space, obtain a vehicle from motor pool, etc.) and seems to be good boiler plate language. Asks for comments on whether the original language will be satisfactory.

054 TOM PERRY, EXECUTIVE DEPARTMENT:
The issue of the use of state services wasn't our concern. The issue was creation of cash accounts within the State Treasury and the restricted use of those funds to carry out activities. This was based on language from the May 1990 E-Board, which established appropriations to fund overhead for the celebration. Fund raising activities are to go through the museum and therefore not be subject to state restrictions.

065 HILL: If the Commission utilizes the accounting procedures through Executive Department, do they have to pay for those services?

067 PERRY: Yes they do.

070 HILL: How would this language help avoid that?

071 PERRY: It removes the provision for an account in the State Treasury.

172 HILL: Where is that provision in the bill?

073 PERRY: In Section 4 (page 2, lines 1, 2 and 3) of the original SB 906.

076 HILL: Even with the amended language, will the Section 4 language remain?

079 PERRY: My understanding was that it would be removed.

082 HILL: If we want to exempt the Commission from having to pay an assessment to the State Treasurer for accounting, the adopted language doesn't achieve that. How much is that charge?

088 PERRY: It is on a per transaction basis; currently it is \$6.00 per check written.

090 HILL: How many checks will the Commission be writing?

091 GARRY BRECKON, PROJECT DIRECTOR:
Currently, state checks are written to reimburse the Columbia River Maritime Museum for expenses that I submit to the museum. There is a small number of checks that the state actually processes.

095 HILL: Does the Commission agree that the costs would be fairly small and that we don't need to worry about it?

098 BRECKON: If there are monthly checks at \$6.00 a piece over a period of a year and we are charged more than \$72.00, we can absorb that.

100 HILL: The point is dismissed.

With the original SB 906 language, the Commission can use the state seal with the permission of the Secretary of State, rent office space, rent a state motor pool vehicle (with reimbursement), utilize the state printer (with reimbursement), utilize the purchasing and contracting services of General Services (with reimbursement). Asks if in agreement.

112 PERRY: I believe so, but that was never our original concern.

113 HILL: Your concern was the accounting costs. Who drafted the amendments?

115 ZAVALA: The amendments in the rough form were submitted at the request of the Commission staff to Robert Muir of the Department of Justice. He drafted them and the staff submitted them to Legislative Counsel.

118 HILL: We thought the Department of Justice was recommending the amendments, but apparently they just drafted them. So, the amendments came from Commission staff and they were processed but not recommended by the Department of Justice, correct?

122 BRECKON: Technically that is true.

123 HILL: If you can do all those things under SB 906, you don't need the amendments, correct?

124 BRECKON: That is correct if we can do those things.

126 KINTIGH: Why use the state printer if you must reimburse it? In my experience, you can get printing done cheaper outside.

128 BRECKON: There may also be cases where it will be cheaper to use non-state vehicles. One of our concerns is having a vehicle available to allow us to move a traveling exhibit from one place to another. If the private sector is able to provide a vehicle at rates that are competitive, we would use them.

136 HILL: Suggests an amendment to clarify that the Commission have the ability to expend funds (appropriated or received by the Commission). On Page 1, Section 2, Subsection 3, line 26 add a Subsection B which would read "expend money received by the Commission for the purposes of this Act as provided by law". That would be a catch all; anything you are allowed to do under law is clearly approved.

149 PERRY: Will you be placing an expenditure limitation upon those funds?

150 HILL: They don't have an expenditure limitation right now. Do they have an "other funds" expenditure limitation for receipt of gifts?

156 PERRY: No.

157 HILL: We will have to send it to Ways and Means or you can come back to the Emergency Board.

Asks Senator Fawbush where their expenditure limitation is; we could use this as a vehicle for the expenditure limitation.

180 FAWBUSH: This gives them the expenditure limitation for \$40,000, but not any more.

186 HILL: The Commission also wants to be able to contract for services without going through civil service?

188 BRECKON: Yes.

188 HILL: The current language says you can enter into contracts necessary to carry out the purposes of the Act.

189 BRECKON: Subject to state regulations on contracting?

191 HILL: Personal service contracts, but that is not a competitive bid situation usually. It depends on the value of the contract.

196 BRECKON: We would then need to research the form of contract we would need to use.

197 HILL: The language of the bill reads that they may enter into contracts necessary to carry out the purposes of this act; my conclusion is that it includes contracts for personal services. Asks Jeannette Holman if she is in agreement.

213 JEANNETTE HOLMAN, LEGISLATIVE COUNSEL:

I believe that the language relating to the contracts they can enter into is not limited, except by the words "as necessary to carry out the provisions of this Act". It is permissive; they may enter into contracts and may hire a director.

219 HILL: They are subject to public contracting laws as a state agency?

220 HOLMAN: That is correct.

221 HILL: And they can enter into personal service contracts without going to competitive bids as long as it doesn't go above a certain level.

224 HOLMAN: I would have to check on that.

225 PERRY: I don't know the dollar limitation on the competitive bidding, but I know that the Executive Department is sensitive to competitive bidding.

227 HILL: You should be able to do that.

Under the original language of SB 906, the Commission has the use of state motor vehicles, state printers, and leasing of state office space as long as they reimburse the appropriate agency for that expense. It appears that the state seal can be utilized with the original language if they get permission from the Secretary of State.

236 HOLMAN: Yes, that would be my interpretation.

238 FAWBUSH: The \$40,000 is adequate. If they need more, they can come back to the Emergency Board or they can send this bill down and get more funding. Depends on the time limit.

242 BRECKON: The \$40,000 contained in HB 5055 is for administrative costs. We also have in SB 887 a request for \$47,000 in lottery funds. That is the extent that we expect the state to underwrite.

251 FAWBUSH: The question is, if you anticipate bringing in more than that you will probably need an expenditure limitation for your contributions, etc.

257 BRECKON: We expect to deal with contributions in that they will be handled in a separate fund of the Columbia River Maritime Museum; it will be sequestered.

265 HILL: You will need to formalize that. Because you are becoming a state agency with this bill, you need to technically have the expenditure authority for those other funds which you will receive.

If the Maritime Commission expends those funds, then you don't have to worry about it.

272 FAWBUSH: What is your relationship with the Maritime Museum?

274 BRECKON: Any expenses that we incur as Commission members are imburshed by the Columbia River Maritime Museum and they in turn are reimbursed by the Executive Department. The Commission itself has never written or probably will not write a check; the disbursements have always been from the Columbia River Maritime Museum.

283 FAWBUSH: Do you have a formal contract with them?

283 PERRY: The Executive Department has a contract with the Columbia River Maritime Museum.

285 HILL: But that is being changed. There was a resolution recognizing the Commission and you had a contractual obligation with the Maritime Museum and the state. If SB 906 passes and you become an agency of the state, you would receive the money and pass it on to the Maritime Museum. The money is appropriated to the Commission. You would then have the contractual obligation being an agency of the state dealing with the local parties. The money would flow from you through the Commission to the other parties and from the other parties to you. The Treasurer would bank the money.

309 FAWBUSH: I think Sen. Hill is correct in his thinking. But that doesn't mean you can't contract with the Executive Department; the Commission will still need the authorization to do that.

321 HILL: All agencies don't bank with the Treasurer for their petty cash?

322 PERRY: They do. ORS 295. requires that all state funds be deposited with the Treasurer.

324 HILL: Do they all pay six dollars per check?

326 PERRY: No they don't all pay six dollars a check; it depends. That figure is derived from two components.

1) \$1.50 for state warrant written through control accounting which watches over the state budget.

2) \$4.50 is a charge from the agency accounting section of the accounting division to recover its costs.

334 HILL: Large agencies write volumes of checks; they don't pay \$6.00 a check?

336 PERRY: I don't believe they do.

337 HILL: Do they write checks on the account held by the Treasurer or do they have an internal

account?

338 PERRY: They have an internal account.

339 HILL: We should set it up that you have an internal account and can get a warrant or a check from the Treasurer once a month and disperse your money per period.

360 TIMMS: We are not trying to set up a state agency, but a Commission that will allow them to do certain things under Oregon Statute. Now we are saying we want to make a state agency out of them.

367 HILL: No, every Commission is a state agency.

368 TIMMS: Is every state commission a state agency?

369 HOLMAN: They are a public body more than a state agency as we perceive it.

372 TIMMS: Is the Oregon Trail a commission?

377 HOLMAN: This group is very similar to someone like the Indian Services Commission. It is a quasi state agency not an administrative agency because of the legislative tie in.

384 TIMMS: Is the chairperson saying that we want them to be a state agency?

389 HILL: They have a life until July 1, 1993 and then they are extinguished. They are also a Commission that currently operates under resolution and for various reasons they want to operate under statute, because that gives them certain abilities as a state entity. We are not creating a bureaucratic Bicentennial Commission, we are trying to help the people have an effective celebration. Let us call them a state entity.

The Executive Department will help you handle your cash following rules and regulations. General Services will help on the personal services contracts.

428 MOTION: SEN. HILL moved to rescind the previous motion adopting SB 906 dash 1 amendments.

VOTE: Hearing no objection, the motion carried. Senator Springer was excused.

432 MOTION: SEN. HILL moved to amend SB 906 by adding Subsection B following line 27 stating "The Commission may expend funds appropriated or received for the Commission's purposes as provided by law."

VOTE: Hearing no objection, the motion carried. Senator Springer was excused.

475 BRECKON: At the present time, the Commission has contracted with me to

provide services.

I am assuming there is nothing regarding employment practices that will hinder that arrangement.

491 HILL: Are you under a personal service contract?

492 BRECKON: Yes.

492 HILL: The value of that contract is an annual contract? What is the value of the contract?

496 BRECKON: \$25,000.

TAPE 59, SIDE A

030 HILL: You would be under the competitive bid requirements.

031 BRECKON: That would be the largest amount that the Commission would be dealing with in the state funds.

032 HILL: You might need to renew that contract because you are converting from a quasi public organization to a public entity (a recognized state entity). Asks Mr. Breckon to approach Senator Dukes to take it back to counsel and study it again and relay the content of this discussion. If there are problems with it you can address it in the House.

050 TIMMS: I am nervous about sending a bill that might cause problems with the people you've contracted with (i.e. paying higher wages, PERS, etc.). This could commit you to something that you can't deal with.

Asks Chair Hill if they can come back at the next hearing.

062 HILL: We could invite Kathleen Bufait in and have her tell us if we are correct or if additional work is needed to accomplish the purposes of the bill. She can also speak to the contracting out and Commission activity questions raised.

Directs the Commission to talk to Kathleen Bufait directly before the next meeting.

Closes work session on SB 906.

(Tape 59, Side A)

SB 1183 - PUBLIC HEARING

Witnesses: Bev Hayes, Water Resources Department

079 HILL: Opens public hearing on SB 1183.

088 BEV HAYES, WATER RESOURCES DEPARTMENT (WRD):

Submits and summarizes written testimony on SB 1183. (EXHIBIT A)

142 TIMMS: I don't think that Strategic Water Management Group (SWMG) was set up to be a group that would create more bureaucracy. It was set up with the department heads so we would have the overall vision of water management. We will lose the

effectiveness of having a watchdog group that has turned into another bureau. How many people are employed by SWMG?

165 HAYES: SWMG is chaired by the Governor or the Governor's assistant for natural resources. The vice chair is the Executive Department director. There are 14 members on the group and they are the directors of all the natural resources agencies that have some authority over water matters.

178 TIMMS: What duplication do we have in the current water basin study groups that are currently active? Does this take the place of it?

185 HAYES: We have the same question. On page 3, lines 12 through 16, where it talks about these integrated, coordinated watershed management plans, our statutes already mandate that our Commission do that kind of planning. We have some question about duplication. It is unclear to us how our basin advisory committees and councils mesh with what is proposed here.

197 TIMMS: Under current statute, when the local river basin study groups do any water management or enhancement, what public input do they have to have? Are there any requirements?

202 HAYES: One basin committee in the John Day is funded by the counties in John Day and we have no supervisory authority over them. They were formed initially to help put together a John Day basin plan, which they did. They are very active in water issues. We have passed our streamflow restoration proposals through that group for their review and we use them whenever we have issues there that we are concerned about.

211 TIMMS: What is meant by Section 2 (c) of Exhibit A?

214 HAYES: We designate the special watershed management areas and also the areas of concern; they are designated if minimum streamflows or instream water rights are not met. It is unclear whether it means not met for any month of the year or all months of the year. If it were clarified in the bill, it would then trigger the declaration of one of these special watershed management areas or watershed of concern.

229 TIMMS: You are saying that they can do that in the total state.

230 HAYES: The language of watershed of concern says (page 4, line 2 of SB 118 3) "has sufficient quantities to only occasionally meet instream water rights". If we were going to look at our instream water rights and declare that a watershed of concern, you will find that everyone will not be met one month of the year. The question is how would we interpret

that. If we use that
as a criteria, the whole state may be involved.

245 TIMMS: Instream water rights are often paper flows.

249 HILL: That is true and one of our problems. Just because there is an
instream water right
doesn't mean there is water.

251 HAYES: Although in western Oregon we do regulate for instream water
rights and shut users
off.

255 HILL: If the instream water rights are necessary to meet the beneficial
uses as provided by the
instream water rights law and we are not meeting those beneficial uses,
shouldn't we be
concerned? Your point is that it is very broad and many waterways would
have sufficient
quantities to only occasionally meet instream water rights. Therefore,
most basins would be
included as a basin of concern. That is alarming.

263 HAYES: We don't disagree with the need to be concerned. The bill does
then kick in a lot
of responsibility and mandates, which we don't necessarily object to, but
they do require
resources and problems to work out (i.e. duplicating efforts, having basin
councils put plans
together). It is the details we are concerned about.

271 HILL: WRD doesn't disagree with the "red, yellow, and green light"
approach?

272 HAYES: No, not necessarily. We support the concept of the bill, it is
the details in how they
do that that concerns us.

272 HILL: That is the basic concept of the bill. WRD wouldn't have
objections to finding that there
are many basins that have problems, it is how to address them and the
resources that concerns
you. It is the redundancies among the various agencies and who makes the
decisions as to what
is beneficial use in the basins. It needs some work. Closes work session
on SB 1183. Adjourns
meeting at 4:20 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - Testimony on SB 1183 - Bev Hayes, Water Resources Department - 2 pages