

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.

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

March 11, 1991Hearing Room E 1:30 p.m.Tapes 73 - 75

MEMBERS PRESENT:Rep. Parkinson, Chair Rep. Whitty, Vice-Chair Rep. Burton Rep. Courtney Rep. Naito Rep. Norris Rep. Repine Rep. Van Leeuwen Rep. Watt

STAFF PRESENT: Kathryn VanNatta, Committee Administrator  
Guadalupe C. Ramirez, Committee Clerk

MEASURES CONSIDERED:HB 2641 - DEQ required clean up. HB 2276 - DEQ - Laboratory certification. HB 2078 - Rescheduled

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TAPE 73, SIDE A

004 CHAIR PARKINSON: Calls meeting to order at 1:36 P.M.

WORK SESSION - HB 2641 Witnesses: Rep. Watt Roger Haven, Portland Police Bureau, Oregon Association of Future Police Valerie SaliSB ury, League of Oregon Cities Russ Spencer, Oregon State Sheriffs Lee Vasquez, Yamhill County Robert Miller, Oregon State Police Drug Enforcement Section Mike Downs, Department of Environmental Quality Ed Wilson, Department of Environmental Quality

012 REP. WATT: Submits and explains Section Analysis of Hand Engrossed HB 264 1-1 (EXHIBIT A).

033 REP. BURTON: Would Section 5 eliminate the requirement to collect these costs from liable party?

040 REP. WATT: No, has been addressed in HB 2641-1, Section 5 (2).

054 REP. NAITO: Explain language in HB 2641-1, pg.3, line 7 (EXHIBIT B).

059 REP. WATT: This is existing law.

068 ROGER HAVEN, Portland Police Bureau: Amendments presented will address possible deficiencies HB 2641.

076 REP. VAN LEEUWEN: Referring to HB 2641-1, page 3 (EXHIBIT B), lines

1-3, who can be required to pay?

085 VANNATTA: Explains who is liable and required to pay under HB 2641-1. Lines 2-3 (EXHIBIT B), ORS 475.435 deals with directors authority to require liable (drug manufacturer) person to pay. In some cases these people are not caught or don't have the resources to pay. >The amendment in Section 5 is here because the current DEQ administrative rule has the local enforcement agencies paying for one half of the clean up costs. >This amendment makes it possible that the responsible party be required to pay for it before going to another source. Exempts everyone except the federal government.

107 REP. NORRIS: What is the trend in these drug labs, more or fewer?

110 HAVEN: It is going down which may be attributed to the Board of Pharmacies Enactment of precursor laws and some action by the AG's office. > Makes further comments.

137 VALERIE SALISBURY, League of Oregon Cities: Supports the amendments. > Because of the nature of the activity, vehicles are utilized which makes dealing with jurisdictional problems difficult. > Problem is statewide as distribution of product is statewide. > Difficult for local jurisdiction to anticipate for future budgeting purposes because of variances in clean-up costs. >Proposed bill is more equitable because costs are not associated to local policies and local jurisdictions can't control activity or cost.

164 RUSS SPENCER, OREGON STATE SHERIFFS > Agree with proposed language, key issues have been addressed. Most importantly, identifying it as a statewide concern. > Issue of broadening HB 2641 to deal with dumped chemicals is crucial to them.

177 LEE VASQUEZ, YAMHILL COUNTY: Satisfied with changes as they address concerns they had. Financial aspect was a problem but it is addressed in HB 2641

188 ROBERT MILLER, OSPD: > Methamphetamine lab is statewide concern. > Jefferson County seizure who were Lane County people > In eastern part of state there are problems because of California based organizations > Trend in number of lab seizure is going down. > Precursor controls by the Board of Pharmacies in the Phenol 2 Proponone labs have helped. > "Guardedly optimistic" there is reduction in smaller labs, but increase in number of larger labs. > Statewide indications show that methamphetamine is available at low prices. > San Diego County, CA.: 95% have odorless process, more difficult to detect. History: what happens in CA happens in OR. >No decrease of methamphetamine, maybe law enforcement is behind in catching up with new techniques.

249 CHAIR PARKINSON: Submitted for the record: > Letter in support of HB 2641 from Eric Mellgren, Public Safety Director/Chief (EXHIBIT C) > Memo in support of HB 2641 from Dennis Dinsmore, South Coast Interagency

Narcotics Team (EXHIBIT D).

260 MIKE DOWNS, ADMINISTRATOR, Environmental Clean Up Division, DEQ.

> DEQ participated with the committee work group (EXHIBIT E). > Supports the policy statement and the change in definition of illegal drug manufacturing sites described earlier (EXHIBIT A). > Agrees with the language proposing that the state pay the incurred cost. > Have the

authority to try to recover costs from legally liable parties.

305 VAN LEEUWEN: Asked for clarification about federal and state funding.

311 DOWNS: Will continue to require federal government to pay all cost when they request DEQ do a clean up on federal property.

318 REP. VAN LEEUWEN: Because of the significant amount of federal land in Oregon, this is important.

322 REP. BURTON: There has been indication in prior testimony that the state police have paid for some portion of clean up. >Is there a budget item for the state police to do clean up?

333 DOWNS: Unable to answer for the state police, but DEQ's budget request includes enough general fund for the department to pay for requests made by the Oregon State Police.

346 REP. BURTON: Maybe it should be looked into.

348 REP. NORTH: Has there been a fiscal impact statement?

350 REP. VAN NATTA: There is a preliminary and a history (EXHIBIT F) in committee member's package.

354 REP. NORRIS: What is the success rate of enforcing the drug producers to pay for the clean up.

360 DOWNS: People involved in producing drugs have limited resources. > District attorneys are able to get restitution upon prosecution. > Small payments have been obtained to help offset the program costs - \$13,000 first biennium and \$11,000, this biennium.

386 REP. NORRIS: Is your budget \$1.9 million?

400 DOWNS: Gives section by section review of \$1.99 million budget (EXHIBIT F). > Cost share continuation is subject to approval by Ways and Means. If they chose to do that, they could reduce the general fund request by an equivalent amount. > Gives analysis of Base Budget. > Haven't been able to get a permanent position for the program and have been operating off limited duration position. > Added a limitation significant amount for cost share. > Program implementation requires approximately \$1.3 million.

TAPE 74, SIDE A

004 REP. REPINE: Because the State Police have paid regularly as opposed to local government, is it your understanding that they have included the payment of drug lab clean up in their budget?

013 MILLER: No money budgeted for lab clean up; when 50% match requirement came up, the budgetary people took part of the existing budget \$76,500 and set it aside to be used, if needed, for drug lab clean up. > Next biennium they are facing a 10% cut in programming, the loss of 89 positions.

028 REP. VANLEEUEWEN: 10% from the proposed budget or the current budget.

029 MILLER: 10% of '89 - '91 biennium budget.

033 DOWNS: Concerned about language in HB 2641-1 (EXHIBIT B), Section 1, which changes "may" to "shall". > Present language gives them some discretion to respond or not. > They do respond every time there is a request: concerned that proposed amendment would require them to do even when the chemical has seeped into soil. > Presently they clean up anything on top of the land don't deal with any seeped into soil because of the potential expense. > Is opposed to adopting the change in language from "may" to "shall" in Section 1.

066 REP. WATT: Whether it seeps into the ground or not, it is still an environmental issue. > Still should be the DEQ's responsibility. > Cost is not the issue because of the nature of the problem. > Who should take the responsibility?

077 DOWNS: Property owner is liable and if s/he does not act, the department does the clean up and the cost is recovered from the property owner.

082 REP. WATT: Statutes indicate who the liable party would be. > There has been some indication that there are problems in collecting from these parties thus in the end, DEQ is ultimately responsible for the clean up.

094 DOWNS: Agrees with how Rep. Watt but is concerned with the potential cost of implementing the program with this particular language.

101 REP. BURTON: Last biennium, DEQ requested additional money because had run out. > Was the total amount of your budget last biennium under \$1.3 million? How much will you spend?

109 DOWNS: \$1.4 million.

111 REP. BURTON: Would this include the recovery of money from state police but not local jurisdictions? > If the City of Portland requests a clean up, what could you do under the existing language?

118 DOWNS: If the funding were not available, we could refuse to do the clean up.

122 REP. BURTON: Has this been done before?

122 DOWNS: No.

124 BURTON: Why?

125 DOWNS: Because the program has been funded to do it.

126 REP. BURTON: You must have been without funding or you wouldn't have had to go to the Emergency Board for additional funding. > Even though at some point the money wasn't there, DEQ chose to deal with a clean up problem. > Is attempting to figure out a way that they can go to other sources for the money. Another option might be that the city initiate proceedings to force the owner of the property to do the clean up?

138 DOWNS: DEQ went to the Emergency Board before they ran out of money. > Program has never been funded through another means.

143 REP. BURTON: Is there another legitimate way to force the clean up?

> Because local jurisdictions can't pay, and it is a statewide concern, the state will have to pay. > Property owner can be pursued but the clean up needs to be done in the mean time. > No alternative in "shall" or "may" language. > Unsure that discretionary language would make any difference.

165 REP. NAITO: If you're obligated to do the clean up and it is done improperly, either for lack of funding or timeliness, would DEQ then be liable to other concerned parties, like the neighbors or others with standing, to do the clean up?

178 DOWNS: This is the concern with the "shall" language, because the department is ultimately responsible to do the clean up. > If there are inadequate resources and DEQ fails to act, then does someone have the right to force DEQ to do the clean up. > Presently, we go in and remove the containers and contaminated lab equipment. > Law enforcement officials want this done immediately to prevent others from coming in to use them for more drug production. > Residuals left behind in the house must be cleaned up for human habitation. > Material left on top of land is always cleaned up but clean up of chemicals, which may have seeped into the ground, is left up to the property owner. > If the "shall" language is implemented, DEQ is going to be responsible for making sure the chemical that has seeped into the ground is cleaned up. > The state will have to pay and then try to recover the costs from the property owner. > There is a greater expense in doing the soil clean up and these costs won't always be recoverable from the owner.

218 REP. NORRIS: When rental property is involved, is the landlord liable for the cleanup?

223 DOWNS: Yes, according to an informal Attorney General's opinion. > There is a contractual relationship with the drug producer.

237 REP. NORRIS: Can landlords insure themselves against this liability?

242 DOWNS: The department has not looked into that possibility.

247 CHAIR PARKINSON: Insurance policies have riders in them to preclude this.

254 Chair Parkinson and Rep. Norris discussed the insurance policy question a bit further.

262 HAVEN: Ambivalent but believes that the amendments on the statute are appropriate. > Responds to insurance question about why there is a rider now on insurance policies. > Health division's program under ORS 453.855 - 453.992, is to train contractors. > Mandates homeowners to clean up the premises through use of licensed and trained contractors before they may use the premises for habitation. > Understands the Health Division may be jeopardy under Measure 5 impacts. > Once they have investigated and taken samples from the premises, DEQ has been responded by having contractors take away excess material and chemicals for disposal. > Residual contaminates within the household, to be cleaned up at the HD's expense. > No consideration for soil contamination is taken, that is factor that is expensive. > There should be a discretionary option for that type of contaminant clean up.

312 CHAIR PARKINSON: There is some action taking place on Senate side with regards to the problems with Health Division jeopardy problem. > What if we amended the HB 2641, to say that DEQ's responsibility extend

to soil clean up?

320 DOWNS: Is agreeable.

324 VANLEEuwEN: Recommends that "shall" language be kept. > Asked about the amount of soil DEQ is talking about.

341 DOWNS: Testing must be done to determine the extent of the contamination. > Amounts vary as some could be connected to septic systems. > Because of the inability to know where the chemical has been dumped, they must investigate the whole area which is why the cost could be potentially high.

371 VANLEEuwEN: Asks about the similarities between these chemicals and service station gas leaks.

376 DOWNS: They are different kinds of chemicals.

384 VANLEEuwEN: How many times has DEQ cleaned up the soil or required a landlord to clean it up?

389 DOWNS: Have never done soil clean up.

393 ED WILSON, DEPARTMENT OF ENVIRONMENTAL QUALITY: Instruct their contractors to pick up the materials that the police have identified as part of the drug lab. > The police don't go out looking for chemicals. > "Task orders" tell contractor what they want them to do. > One of the lines on the task order is to remove soil and if we were aware that there was soil contamination, DEQ would require the contractor to pick it up. > They don't require contractor to test all soil.

420 REP. WHITTY: Comes from an area where drug labs are prevalent and where

chemicals and other substances are dumped into the river, causing water life to be exterminated. > Impossible to clean up because it can't be found. > What would you do to the soil if you did clean it up?

TAPE 73, SIDE B

012 DOWNS: Hazardous waste landfill if appropriate, which is in Arlington, Oregon.

014 REP. WHITTY: That is why it is expensive.

020 REP. BURTON: "Shall" and "may" would cause additional cost to the department that they don't have now, per his understanding, DEQ would do the clean up until they reached the limit set in a budget, is that correct? > Understands that they just said that they don't do any soil clean up. > If soil is the problem but they have never removed soil, what is the additional cost?

036 DOWNS: Language change, would require them to clean up the soil.

037 REP. BURTON: But DEQ is not doing it now anyway.

040 DOWNS: Liability is covered under ORS 475.455 and is defensible argument by owners if they did not have knowledge. Section 2 has provision for property owners to use defense of not having had knowledge about what was going on their property.

047 REP. REPINE: Where does the money come from for hazardous waste toxins that have been dumped into the ground? > Is there a "feeing mechanism" used to pay for these kinds of clean ups?

058 DOWNS: Responsible party would be the property owner or operator. > Provision in superfund (Hazardous substance remedial action fund) law: If the responsible party is unable to do clean up, is unknown or just unwilling, the state has the responsibility to do the clean up using its own resources and to attempt to recover cost.

078 REP. REPINE: Is there a possibility that the chemicals being used in methamphetamine production fall under the regulations by which the superfund is used?

082 DOWNS: Hazardous substances could be covered by that fund. > First they attempt to get the legally liable person to do it.

087 REP. REPINE: So there are alternative ways of dealing with chemical clean ups.

090 CHAIR PARKINSON: Would like to move Dash 1 amendments leaving "shall" along with having another amendment that would not require DEQ to clean up the soil.

099 REP. WATT: Upon the request of a law enforcement agency, DEQ shall identify cleanup, store, and dispose of chemicals, nothing about financial responsibility. > This is why the amendment was added later on, there is no financial responsibility for DEQ in this section. > Further explains what DEQ's responsibility is emphasizing that liability functions will still be the same.

122 DOWNS: There is a potential for additional cost.

125 REP. WATT: There is a misunderstanding here. "Do you not agree that there is no financial or fiscal impact whatsoever on Section 1?" The financial impact is addressed later on in HB 2641.

129 DOWNS: Doesn't agree, he ties two together, if required to do clean up, they have the financial responsibility as well.

136 REP. COURTNEY: Are we going to adopt the Dash 1 amendments?

137 CHAIR PARKINSON: We could adopt them or have a Dash 2 amendment.

138 REP. COURTNEY: Because of the testimony presented today, it has been revealed that the DEQ is not doing soil clean up. > Concerned with the areas that they are dealing with such area like apartment complexes etc. where the potential for having children exposed is possible. > If we exclude DEQ's responsibility to clean up soils, we are neglecting a potential risk to children.

159 CHAIR PARKINSON: Assumption that if they were aware of soil that was contaminated, DEQ would probably take some kind of action.

164 DOWNS: If there was a threat to public health or environment, action would be taken.

168 REP. COURTNEY: Confused about what is really going on.

177 REP. BURTON: Doesn't want to exclude soil in the dash 2 amendment. > DEQ is required to clean up the site (places where chemicals have been dumped or otherwise disposed, including real property). Real property includes land and soil. > Understands DEQ's dilemma with reference to clean up. > Clean up is also another aspect that is unclear. > A clear policy statement in HB 2641 needs to be constructed. > DEQ is saying that if they are required to clean up soil, it will cost them more. > Policy should require that they do clean up soil, with some limitations.

210 MOTION: Rep. Courtney moves the Dash 1 amendments into HB 2641.

214 WITH NO OBJECTIONS, MOTION WAS APPROVED.

216 MOTION: Rep. Courtney moves that HB 2641 is amended to Ways and Means with a do pass recommendation.

221 REP. BURTON: Legislative action required the pharmacy board to include the precursor drugs on the list. > If this is going to Ways and Means, they should be notified about this committee's concern about potential additional cost as well as the matter of the State Police budget. > Would not want to see the State Police held liable for these clean ups.

240 CHAIR PARKINSON: State Police is General Fund and DEQ is "other" funded.

253 VOTE: In a roll call vote, the motion passed with Rep. Burton, Rep. Courtney, Rep. Naito, Rep. Norris, Rep. Repine, Rep. Van Leeuwen, Rep. Watt, Rep. Whitty, and Chair Parkinson voting AYE.

263 CHAIR PARKINSON: Closed work session on HB 2641 and opened work session on HB 2276.

WORK SESSION - HB 2276 Witnesses: Art Keil, Health Division  
John Loewy, Assistant to the Director DEQ Alan Hose, Laboratory  
Administrator, DEQ Jim Whitty, Associated Oregon Industries

Dave Barrows, Chem Waste Management Chuck Brokopp, Director, Health  
Division State Laboratory

278 ART KEIL, HEALTH DIVISION: Submits and explains testimony (EXHIBIT G). > Support the amendments to HB 2276 and the changes it will bring to the original bill. > Since HB 2276 was introduced about a month ago, there has been dialogue between DEQ and Health Division, explains further. > Concerned with HB 2276-2 Pg. 2A, Line 20 (EXHIBIT H).  
Grammatical concern

that no lab will be required to take and request certification under HB 227 6.

330 JOHN LOEWY, Assistant to the Director, Department of Environmental Quality. >Submits and explains testimony (EXHIBIT I). > HB 2276-2 Proposed Amendments (EXHIBIT J, pg. 1) Section 1 (5): Defined environmental laboratory: Addresses situation where one company might have several laboratory. Wouldn't have to obtain separate certification for each laboratory.

419 REP. COURTNEY: Do the dash 2 amendments require the Health Division to develop an environmental laboratory certification permit? > It doesn't require anyone to use, or for your agency to deny a city

treatment facility if they haven't used it. > How many times a year do the samples have to be taken to DEQ?

(TAPE 74, SIDE B)

003 LOEWY: The indication that he has given is not included in the bill but just so everyone understands how they would implement program he explains: > Even though this is a voluntary program they would anticipate as permits for individual dischargers come up. > Waste water treatment facility, it is every five years. > They would be inserting permit conditions that they would anticipate requiring on a quarterly basis. > Data would need to be submitted through or in conjunction with a split sample.

012 REP. COURTNEY: How often will a treatment facility need to come to you?

013 LOEWY: The permit they have must be renewed every five years.

014 REP. COURTNEY: The permit doesn't relate to what you are testifying about?

015 LOEWY: Correct.

016 REP. REPINE: You would through administrative rule writing or the renewal of that permit, require certification of some periodic inspection of those samples, is that correct?

024 LOEWY: There would be no requirement that any laboratory be certified. > Implementation of HB 2276 demonstrates how they would propose over time to use this program for quality assurance of data that the department was receiving.

029 REP. REPINE: Program seems to be a voluntary one, but with another aspect of it requiring that sampling be submitted which will be certified. > The program will give the municipalities/treatment a choice of sending samples to any lab, which may or may not be certified, and ultimately require the uncertified lab will be mandated to send the samples to a certified one. > Is the message: "If we don't get you this way will get you that way"?

045 LOEWY: Intent is to minimize the financial impact on facilities which do not want to be certified while at the same time providing quality assurance of data. > The requirement would be that a sample be submitted every three months. > Giving them an option would provide the means to economize. > The process of implementing the program would be slow. > It would be to DEQ advantage that labs be certified.

062 CHAIR PARKINSON: Certification would not be required but in order for labs to conduct business, it would be necessary that they be certified, correct?

068 LOEWY: Anticipates most commercial laboratories would want to be certified, permit requirement or not.

073 REP. NORRIS: (EXHIBIT H) p. 2, line 12t: Would it be possible to have regional (interstate) laboratories instead of requiring that they be located within the same state? > Because of the nature of these labs where scientific standards are used, the location of the lab is not an issue.

088 LOEWY: Correct, This applies to an industry with multiple labs. > Will talk about reciprocity later in testimony. The certification of labs will not be based on where the lab is located.

098 REP. NAITO: Couldn't make it so that outright fraud would be detected, they could present a fraudulent sample so we couldn't address this part if we wanted to or not. > Could you address the need in this area?

109 ALAN HOSE, Laboratory Administrator, Department of Environmental Quality, (EXHIBIT K): > Need is particularly found in small labs: Quality assurance is not as good as the larger labs. The quality of data is unknown. > HB 2276 would introduce an element of quality assurance, to help the determination of the data quality from the discharge analysis results. > Approximately 30 states have a laboratory certification program. > Would like to see the federal government implement this programming nationwide.

134 REP. WHITTY: HB 2276 proposes that certification is not necessary but if you are certified then you can get more business. > This gives the assumption that the certified lab can charge more. > Validity is certified. Whatever you do to whatever you get is valid. > Why would anyone not be certified?

148 HOSE: This would apply to commercial laboratories of which there are approximately 30 of and 500 of the others in this state. > Because of additional cost and work involved in certification many will choose not to be certified. > If HB 2276 is implemented and we require a small percentage of samples to be split with a certified laboratory they can discharge obligation with minimal expense. > Anticipate that commercial laboratories will chose to be certified.

165 REP. VANLEEUEWEN: Asked for an example. Could a particular lab be certified by meeting your requirements?

176 HOSE: Yes

178 VANLEEUEWEN: What if this varied a little?

180 HOSE: A small city/municipality that may not choose to become certified thus their routine report in may not be done through a certified laboratory. > Responded further to Rep. Vanleeuwen's comments.

197 REP. WHITTY: Does your department certify places where oysters are produced?

201 HOSE: That would be the Health Division.

207 REP. VANLEEUEWEN: (EXHIBIT J), p. 6, Section 7, (2): > There are only three categories in HB 2276: interim, full or a provisional certification. > Would these be downgraded to one of these other categories based on the stipulations that are in those categories?

218 HOSE: Contemplated to be downgraded to provisional for that type of deficiency, unless it was supposed to have the certification removed entirely if deficiency was so great.

227 JIM WHITTY, ASSOCIATED OREGON INDUSTRIES:

> They were part of the group that DEQ met with. > After being convinced that there was a need for certification, advised the group AOI did not want a mandatory program, and further suggested a voluntary one. > Wanted the program to be market based. > Now they are concerned about possible "back door" mandate. > A bit more comfortable now after testimony about DEQ's intent for the program to be used as spot checking method for administering permits. > Concerned that limits have not been established in regards to amount of sampling data that must be spot checked. > Would like to see limit established as part of the permitting process.

259 REP. COURTNEY: Are you opposed to laboratories being held to certain standards or is the opposition to samples being "acted" as to what they say and don't say?

262 WHITTY: No to the latter. > Want the data of the samples to be accurate because decisions are based on them.

265 REP. COURTNEY: Your opposition is not to the testing that determines whether the sewer treatment facility and water issued into a river is of a certain standard?

269 WHITTY: Correct.

270 REP. COURTNEY: So do you want to make sure labs are not compelled to be certified?

277 WHITTY: Concerned with the expense.

278 REP. COURTNEY: So if it didn't cost as much, you wouldn't be opposed?

279 WHITTY: It would be up to each company to participate or not.

288 DAVE BARROWS, CHEM WASTE MANAGEMENT. > Representing the labs that were referred to as the majority in previous testimony. > They already do sampling and are concerned that they will have to go through another certification program. > Because the Dash 2 amendments address their concerns, they support HB 227 6-2.

314 CHAIR PARKINSON: Would your lab have to be certified?

315 BARROWS: No, but the company may do that, just to be able to say they are certified, but they would not take samples from anyone else.

323 REP. COURTNEY: Without being certified, what good are samples?

324 BARROWS: Their samples don't need to be checked because they are already being monitored by DEQ on a regular basis.

332 REP. COURTNEY: How are they spot checked?

335 BARROWS: The samples are split and are taken by DEQ to another lab.

340 REP. COURTNEY: Do they not have confidence in your lab because it isn't certified?

341 BARROWS: They do have confidence, but they must verify the samples occasionally.

344 REP. COURTNEY: Would they split them if you were certified?

345 BARROWS: Splitting them is part of testing the validity of the certification.

350 CHAIR PARKINSON: How long is your permit for?

350 BARROWS: Believes it is about 10 years, running 1 to 1.5 years.

356 CHAIR PARKINSON: During those 10 years, could you be required to use a certified lab?

358 BARROWS: Possibly with a Part B permit.

361 CHAIR PARKINSON: States that DEQ could.

371 REP. VANLEEUEWEN: Understands that Chem waste Management would be required.

377 CHAIR PARKINSON: Department testified that they could do that as a condition of renewing a water discharge permit and sewage discharge permit or a disposal permit.

382 REP. VANLEEUEWEN: What is the purpose of this hearing if most places have something similar to what you have because they nearly all have their own labs. > What does this legislation do?

385 BARROWS: Responds to comments reiterating previous testimony.

412 There is further discussion about which labs would need to be certified.

419 REP. BURTON: Does the Arlington lab do chemical, physical, microbiological testing?

426 BARROWS: Yes.

428 REP. BURTON: Do part of the conditions of the permit you have to operate that facility, allow DEQ come in do many things? > Lists the things that DEQ can do at their lab. > Would DEQ be able to determine if your company was producing high quality tests or samples?

443 BARROWS: Yes.

(TAPE 75, SIDE A)

011 REP. BURTON: Would it be your recommendation that DEQ give permits to all these other facilities, rather than certifying them?

014 BARROWS: The permit for the whole facility is quite extensive. The kind of permit we're talking about today would probably be much shorter (indicates by holding up a single sheet of paper).

020 REP. BURTON: Is it possible for someone to determine the capability of producing high quality tests or samples, adding that is only asking for an opinion?

024 BARROWS: Believes that it is possible.

025 REP. BURTON: Would it be done by setting up a list of criteria just

mentioned?

026 BARROWS: Beyond expertise.

027 REP. REPINE: Assuming permit process is similar to other facilities such as yours, they would be subject to similar types of inspections. > Does DEQ have authority, as they do in your company, to do arbitrary testing?

035 BARROWS: Assumes they do.

CHAIR PARKINSON: HB 2078 TO BE RESCHEDULED.

042 REP. REPINE: Does DEQ have the ability to inspect periodically to validate the quality of work?

049 LOEWY: Cost would be inefficient. The current proposal would assure quality of data in a more efficient manner.

057 HOSE: Yes they have the authority to inspect periodically. Is not sure about the permittee contracts with another laboratory.

064 REP. REPINE: Could the problem in the process be with the commercial labs where you haven't had the authority to go in. > Should a mandatory certification process be created for commercial lab?

069 HOSE: That is a possibility.

071 REP. NAITO: At this point, commercial labs don't need a permit from you, correct?

073 HOSE: Correct

074 REP. NAITO: Even where radioactive samples may be taken and kept?

075 REP. WHITTY: Makes comments on HB 2276-2.

098 REP. NORRIS: Since HB 2276 has reference to the Health Division, do we need to hear from the Health Division.

101 REP. BURTON: Would this be voluntary?

104 BARROWS: Correct and they are joint amendments with the Health Division.

106 REP. BURTON: How would appropriation fee be determined?

108 HOSE: It would be determined through rule form.

112 REP. BURTON: How would the amount of people that would voluntarily sign up be determined?

115 HOSE: Through estimation and surveys.

122 CHAIR PARKINSON: Do water supply people send you samples?

124 CHUCK BROKOPP, Director, Health Division State Laboratory: > These are not sent to us but do certify private laboratories to do those through out state facilities.

135 REP. NORRIS: Would HB 2276 be the responsibility of the Health Division?

138 BROKOPP: Yes.

139 KEIL: The result is this amendment.

144 BROKUPP: They see this as a quality assurance program. > HB 2276 proposes that there be certification requirements for labs of which there are 24 states around the country which presently have such requirements.

156 REP. WHITTY: Would there be any instances where the Health Division would use a non-certified lab for any reason?

160 BROKUPP: Yes there would, but before the Health Division could take action on a serious environmental problem, we would then want to be assured that the results came from a certified laboratory which was qualified to perform the analysis. > Because Oregon doesn't have a certification program, they are agencies are vulnerable to higher prices from certified labs which may take advantage of the situation.

184 REP. WHITTY: Do you use your own data.

191 BROKUPP: The Health Division doesn't have a laboratory with the exception of the microbiological contamination lab.

196 REP. WHITTY: Where do you go now for reliable testing results?

206 BROKUPP: When data is needed (gives example), they need to make sure that an error has not been made, because local municipalities and other agencies will have to spend money on trying to tract down contamination problems when in reality, there is none, it is a laboratory error. > If there is a certification program, they will be able to work with private labs to assure that methods used meet standards, accepted by the appropriate entities.

222 REP. WHITTY: What do you do now?

225 CHAIR PARKINSON: Do you presently certify labs that routinely test drinking water?

228 BROKUPP: Yes, drinking water only.

230 CHAIR PARKINSON: Those labs wouldn't have their own labs to monitor, spill into the ground water, correct? > Had further discussion with Mr. Brokopp about what their duties were.

239 REP. WHITTY: If, while performing these duties, you were required to go to court at some point, what would you use for validity purposes because the labs you use now are not certified?

250 BROKUPP: They are on shaky ground with the type of data they get now.

255 REP. REPINE: Asked for more clarification on the problem with interstate certifications.

268 BROKUPP: There are no standard requirements in Oregon to operate a commercial environmental laboratory. > Results given by these labs can

be used by any of the agencies that requested them. > HB 2276 addresses this problem.

285 CHAIR PARKINSON: What about limiting HB 2276, to commercial laboratories that don't take any outside work?

289 BROKUPP: It wouldn't harm HB 2276, but it would be to the advantage of the private laboratory economically, to be certified if they didn't have to send data out to a certified lab.

296 CHAIR PARKINSON: Concern is for the municipalities that have simple labs for testing chloroform.

301 LOEWY: Proposed HB 2276 is on a voluntary basis.

304 CHAIR PARKINSON: Couldn't they be required by administrative rule?

311 LOEWY: Through administrative rule, they could be required to use certified labs. > This would mean that they could not use their own labs to submit data to the department.

315 CHAIR PARKINSON: Do you take care of the sewage permits for DEQ?

318 LOEWY: Yes.

322 REP. BURTON: How would you know about the labs that you mentioned that might come into the state and take advantage of the situation?

328 BROKUPP: Would find out after the fact, when environmental contamination problems came to our attention.

331 REP. BURTON: How would HB 2276 prevent that?

335 BROKUPP: It wouldn't allow them to do anything to the lab that already performed the tests. > Once that laboratory was identified, they could let those concerned that it wasn't a certified laboratory.

346 REP. BURTON: But this is a voluntary certification anyway. > Are you going to constrain business on a voluntary basis? > There was further discussion on requirements vs. voluntary basis of certification.

371 KEIL: They cannot require out of state laboratory to meet Oregon standards because there aren't any.

374 REP. BURTON: You could license them to operate in the state. > What you are proposing is that there be a voluntary certification program and if people choose not to be certified, you will advise agencies not to used them. > Everyone that operates in the state can be licensed.

383 CHAIR PARKINSON: Closed work session and adjourns meeting at 4:00 PM.

Submitted for the record: > Letter from Eric Mellgren, Public Safety Director (EXHIBIT C) > Memo from Dennis Dinsmore, South Coast Interagency Narcotics Team (EXHIBIT D).

EXHIBIT LOG:

A - HB 2641-1 - Section Analysis - 1 p. B - HB 2641-1 - Proposed Amendments - 3 pp. C - HB 2641-1 - Letter from Eric Mellgren - 1 p. D - HB 2641-1 - Dennis Dinsmore 1 p. E - HB 2641-1 - Work Group - 4 pp. F - HB 2641-1 - Preliminary and History - 3 pp. G - HB 2276 - Art Keil - 2 pp. H - HB 2276-2 - Hand Engrossed - 7 pp. I - HB 2276 - John Loewy - 3 pp. J - HB 2276-2 - HEE - 6 pp. K - HB 2276 - Testimony - Alan W. Hose - 2 pp.

Submitted by,

Reviewed by,

Guadalupe C. Ramirez  
Clerk

Kathryn VanNatta Committee  
Committee Administrator