

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

April 03, 1991Hearing Room E 1:00 p.m. Tapes 102 - 104

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 MEASURED CONSIDERED:HB 2796 - WORK SESSION - Cemeteries on EFU zone. HB 2745 - WORK SESSION - Utility Facilities HB 2795 - WORK SESSION - Living History Museum SB 184 - PUBLIC HEARING - DEQ - Civil Penalty

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TAPE 102, SIDE A

002 CHAIR PARKINSON: Calls meeting to order at 1:03 and opens work session on HB 279 6.

WORK SESSION - HB 2796 Witness:Greg Wolf, Department of Land Conservation and Development.

012 VAN NATTA: Submits and explains staff measures summary (EXHIBIT A).
> There is no revenue or fiscal impact on HB 2796 (EXHIBIT B).

021 CHAIR PARKINSON: Explains why started bill.

027 GREG WOLF, Assistant Director, DLCD: No opposition to the change on this statute.

042 CHAIR PARKINSON: Because Russ Nebon was not present to represent Marion

County, assumed Marion County had no objection HB 2796.

045 REP. COURTNEY: Asked Russ Nebon if they had any objections to the bill: they took no position on HB 2796, based on this, Rep. Courtney has no position on the bill.

050 CHAIR PARKINSON: Sign up sheet from 3/25/91 indicates that Russ Nebon had checked himself as being for the bill.

060 CHAIR PARKINSON: Closed work session on HB 2796 and opened work session on HB 2745.

WORK SESSION - 2745 Witnesses: Mike Dewey, Oregon Cable Television Association. Greg Wolf, Department of Land Conservation and Development.

072 VAN NATTA: Submits and explains Staff Measure Summary (EXHIBIT C), Revenue Impact Analysis (EXHIBIT D) and the Fiscal Impact Assessment (EXHIBIT E).

094 MIKE DEWEY: Adding to previous testimony: "necessary" causes unnecessary

procedures. >The problem has been the word "necessary" because the court of appeals has been problematic because they are required to go through the process of obtaining a conditional use permit to try and locate facilities in areas other than EFU zones. > Ultimately you get to the EFU zone and show that then it is necessary to locate it there because you can locate it nowhere else. > In fact the best place to locate the facility is in the EFU zone. There was no opposition, Marion County does not appear to be opposed to HB 2745. > The farming community is not opposed to this legislation. > Doesn't have a problem with moving HB 2745 to other pieces of legislation relating to land use planning and exclusive farm use zones.

120 CHAIR PARKINSON: This will be used as the vehicle.

123 REP. BURTON: Is cable a utility? > Definition is someone that is centrally taxed.

130 DEWEY: Many definitions in some areas of the statute, cable is considered a utility. > Other area like the PUC/rate setting area: not considered a utility.

142 REP. BURTON: How is this going to help your client?

146 DEWEY: Discusses two sides of the argument about whether cable television is a utility. > Explains why it may be a good idea to allow cable television to be considered a utility in this legislation. > Technology can serve rural Oregon. > Would be best to clarify that in this particular part of HB 2745, you will be referring to cable television as a utility facility.

169 CHAIR PARKINSON: Rep. Whitty previously suggested that it didn't make sense to request this in forest zones either.

173 DEWEY: The language "necessary" may not be a problem in the forest zone areas.

184 GREG WOLF, Department of Land Conservation and Development: They have treated cable television lines as public utilities in the context of this statute, usually there is no controversy. > Nothing has been taken to LUBA for legal interpretation.

197 CHAIR PARKINSON: They have documentation of a particular case going to LUBA. > Do you have an opinion on the forest use aspect?

204 REP. WHITTY: Why wouldn't forest zoning be a concern when cable runs through exclusive forest zone areas?

214 WOLF: Current statute doesn't indicate permitted/non-permitted uses in the forest zone. > Forest goal and rule adopted by the commission last year, relevant to goal 4: They did include utility facilities as permitted uses in the forest zone. > Dealt with this issue through administrative rule.

223 REP. WHITTY: Microwave facilities are up in the forest.

230 WOLF: Law is unclear, counties have interpreted it differently.

239 VAN LEEUWEN: Referring to written from Johnson and Kluse Law Office. > McKaw Communications vs. Marion County case. > Counties have case discretion, Marion County has denied one that has been appealed. > It then goes on to refer to Marion County applying this particular case: that McKaw requires a showing that the facilities must go on EFU land rather than on non-EFU land. > Why would it be required that they go on EFU land?

265 CHAIR PARKINSON: The case requires proof that there is no alternative for the utility outside EFU land.

269 VANNATTA: Issue in HB 2745 is whether they are necessary for public service.

292 CHAIR PARKINSON: Cable company would have to prove that there is no non-EFU land available before they can apply for a permit.

298 REP. VAN LEEUWEN: Refers to another case from Marion county. This case had to do with a church and churches are one of the allowed uses of EFU zones.

308 MIKE DEWEY, Oregon Cable Television: The case says necessity needs to be shown to locate the facility in an EFU zone. > This particular case means that they must looking at every other piece of property that might be available outside an EFU zone. > Goes through and explains the process further. > After going through the steps, the company has made the showing that the EFU zone is the only place it can be put. > Some have argued that the word "necessary" is not needed because the county is still going to look at the key component which is the effect of the facility on the farming agricultural practices.

336 REP. VAN LEEUWEN: Doesn't agree with Mr. Dewey about what the letter says.

350 DEWEY: Explains what the county's role is in determining permit issuance.

380 WOLF: The word "necessary" creates another legal process that could be an impediment to getting the facilities completed.

388 REP. VAN LEEUWEN: You have no problem with taking necessary out.

389 WOLF: The department does not have a problem with HB 2745.

395 REP. NORRIS: Is this legislation attempting to accommodate cable television facilities?

399 DEWEY: Telephone operations and other utility facilities, would be affected as well.

404 REP. NORRIS: Definition of utility does not include cable television. > Do we need to change the statute so that cable television could be considered a utility?.

416 DEWEY: An Attorney General's opinion didn't adequately define utility facility. > It inferred that a cellular facility was a utility facility. > Cable television wasn't addressed because historically, it has been considered a utility facility for this particular section of the statute. > There are other definitions for utility facility but in this particular definition, cable television is a utility.

TAPE 103, SIDE A

005 There was further discussion about the definition of a utility and cable television being considered a utility at one point and not at another.

030 REP. NAITO: Are you regulated now by the PUC as a public utility?

032 DEWEY: No

035 REP. WHITTY: Do the cable companies control service areas in density?

039 DEWEY: Some franchises require that services be provided to every household customer in a franchised area. > This would not be the case for a county area because it would not be cost efficient. In a county you determine your service area.

045 REP. WHITTY: Who determines cost efficiency?

046 DEWEY: The cable company would, based on a homes per mile basis.

049 REP. WHITTY: Has this basis density provision changed in the last 10 years?

053 DEWEY: Yes they are serving fewer homes per mile than they used to. > Cable television is moving out into rural areas.

056 REP. WHITTY: Is one of the reasons that you are doing this, because of the competition from the telephone industry wanting to replace cable?

059 DEWEY: This debate is not occurring at the national level. > The company bases its decision to continue or change on economics.

080 REP. NORRIS: Asked about adding cable television facilities on Pg. 5 Subsection 2u (EXHIBIT O).

The committee continued to discuss Rep. Norris' suggestion about adding cable television as a facility.

098 WOLF: If a new category was created they would like to include the public service provision and some of the other limitations that are found in D. > For their purposes they view goal 11 defines facilities and services to include communication facilities. > The department would not have the same problems to address now.

111 VAN LEEUWEN: Asked about the competition between cable television and telephone facilities.

116 DEWEY: Telephone companies would like to be in the cable television business. > Prohibited from this under federal statute, can't be in video delivery business.

126 REP. VAN LEEUWEN: Can this be done under their fiber optic cables?

129 DEWEY: Yes.

133 CHAIR PARKINSON: Closed work session on HB 2745 and opened work session on HB 2795.

WORK SESSION ON HB 2795 Witnesses: John Meek, State Representative, District 5 Joan Smith, Washington County Historical Society. Dennis Mulvihill, Washington County Russ Nebon, Association of Oregon Counties Sue Hanna, Legislative Council

139 VAN NATTA: Submits and explains Staff Measure Summary (EXHIBIT F) and Revenue (EXHIBIT G) and Fiscal Impact (EXHIBIT H) statements on HB 2795.

154 CHAIR PARKINSON: Are there problems with the statutes?

156 VAN NATTA: It only amends the marginal land county's portion and the relating to clause wasn't as germane as the relating to clause of HB 2745 (EFU zones).

162 CHAIR PARKINSON: Determined with Legislative Council that the best vehicle for the three would be HB 2745 (Utility Bill). > Amendments have been drafted and after public testimony on HB 2795 (Living History Museum), we can look at those amendments. > Need to do something because as it is now HB 2795 only applies to two counties (Washington and Lane) because it is in the marginal lands portion of the statute and those are the only two counties used.

186 JOHN MEEK, State Representative District 5. > Marginal lands section was drafted incorrectly: > It should've been put in Section 2, ORS 215.213. > Submitted and explained testimony from Washington County Department of Land Use and Transportation (EXHIBIT I). > Further adds that by moving it from Section 1 to 2 answers concern about the three criteria for farm impact. > More stringent on the impact the county has to interpret to farm and forest use. > Encourages that this bill would provide for the opportunity to preserve and recreate some of the heritage of this state.

245 JOAN SMITH, Executive Director, Washington County Historical Society > As a private non-profit organization, they are governed by extremely stringent rules, or lose exemption status. > Bound by American Association of Museum ethics as well. > Under this exempt purpose, once the land is conveyed, for this purpose, it can only be used for this specific purpose. Permanent form of preservation.

270 REP. MEEK: Talked with Van Natta some of the language specifically "authentic", decided to use "authentic/replica" for clarification that they do want building built with the authentic character but they may be replicas.

302 REP. BURTON: Are there any amendments to HB 2795?

306 REP. MEEK: Didn't have any drafted, other than conceptual

amendments dealing with votes.

313 VAN NATTA: Explains further: HB 2745-1 amendments (EXHIBIT J) move HB 279 5 and HB 2796 into HB 2745. > Cemetery language moves directly into HB 2745 without changes. > The living history museum language moves into HB 2745 with changes because of concerns brought up at the last hearing, specifically HB 2745-1 line 6 (EXHIBIT J), words "and facilities" have been inserted. >Intent: to allow any small office type structure needed to be constructed to administer and run the museum and to allow for structures as parking lots. > Per legislative council: "authentic" would be allowed. Explains further. > Lines 14 -20 (EXHIBIT J) move the living history museum into ORS 215.283 to expand it to counties other than marginal counties.

359 CHAIR PARKINSON: Could you explain again about the word "authentic"?

361 VAN NATTA: Legislative council said that it would permit the recreation of buildings.

374 DENNIS MULVIHILL, Washington County: Washington County letter, (EXHIBIT I) made specific request that this definition be put into Section 2 instead of Section 1. > Would make it a permitted use and require counties to go through a public hearing. > The proposed amendments don't provide for as much standardization for the process.

400 VAN NATTA: Do you want it to go under Subsection 2 of ORS 215.213 and under Subsection 2 of ORS 215.283?

406 MULVIHILL: ORS 215.213 for sure.

408 CHAIR PARKINSON: Would this make it a conditional use rather than a permitted use?

411 MULVIHILL: Was unclear about the language.

429 RUSS NEBON, Association of Oregon Counties: Issue about Living History Museum is whether or not it should be in both the marginal lands EFU statutes and the regular EFU statutes under the Category 1 list. > Category 1 list: Approved uses with a building permit and no local land use review. > Category 2 list: Uses requiring local land use review. Explained in more detail.

TAPE 102, SIDE B

011 CHAIR PARKINSON: In Washington County's case, is it necessary that it be under both the marginal lands law and the EFU law?

013 NEBON: Referred to the Chair's earlier comments that the marginal lands counties are Washington and Lane county. > For these two counties, ORS 215.213 needs to be amended and can either be put into Category 1 or Category 2. > The other 34 counties are in ORS 215.283, Category 1 or 2.

017 CHAIR PARKINSON: So it needs to be in ORS 215.213 and in ORS 215.283 and these amendments don't do that.

020 NEBON: Yes they do, but in preparing the dash 1 amendments (EXHIBIT J), the references on Lines 3, 4, 13 & 14 insert this wording into Category 1 in both marginal lands and in EFU statutes. > If it was going to be put into Category 2, the page and alphabetical references would

need to be changed.

025 CHAIR PARKINSON: Has no problem with it being a conditional use. > Asked for committee discussion.

030 REP. VAN LEEUWEN: Should be a conditional use because of the uncertainty of the success of the project implemented without enough scrutinization.

039 CHAIR PARKINSON: How would this need to be changed to conditional.

041 NEBON: On line 3 (EXHIBIT J):change page 2 to page 3 instead of line 18, you would insert line 42. Line 4: the alphabetic record would be changed to (v) instead of (u). > Line 13: Page 6 is changed to page 7; "after line 6" is changed "after line 17". > Line 14: the letter (t) would be changed to (u).

055 WOLF: The conditional use category is acceptable to him but would like to see some provision in the amendment indicating that these kinds of living history museums related to agricultural activities.

064 CHAIR PARKINSON: Would a logging museum be considered a agricultural activity?

065 WOLF: It could say resource-based activities or something to that effect.

067 REP. REPINE: No problem with this because of the different resources in through out the state.

089 SUE HANNA, Legislative Council: Responds after Mr. Nebon explained his suggestion to change the wording on HB 2745-1 proposed amendments. > The changes are acceptable to her. > Responds to testimony about "authentic/something". Slashes can't be used. As long as you legislative history on the definition of authentic that it includes replication, language is fine.

105 Committee and witnesses discussed further the language used and the possible abuse of leaving it unclear.

125 REP. NORRIS: Asked for definition of marginal land county. > After explanation from Mr. Wolf asked if resolving the secondary land's issue, would "wipe out the marginal lands counties?"

131 WOLF: Several bills relating to secondary lands, some would and other wouldn't. > Explained a bit further after comments from Rep. Norris.

139 HANNA: All the secondary land bills would allow these uses. If these amendments were approved, when she codifies and carries them over, they will also be allowed on secondary lands.

149 CHAIR PARKINSON: Insert living history museum related to resource-based activities.

160 VAN LEEUWEN: Asked for a definition of resource.

165 HANNA: If this became an issue they would probably be looking at forest, mining agriculture etc.

170 REP. NORRIS: Could a country store that had many historical objects, be considered a living history museum if it didn't have anything to with resources. > Would this proposal eliminate the possibility of other places, such as this store, to be considered living history museums?

186 CHAIR PARKINSON: Explained why this type of situation wouldn't apply.

196 NEBON: The wording in HB 2745 allows for any structure to be included as long as it relates to the resource and it is run in non-profit manner.

209 REP. NORRIS: His concern was that places like these stores (not necessarily a store) could be considered as part of the living history museums.

222 CHAIR PARKINSON: Under this bill you couldn't go out and set up a store like this because it is not a resource-based structure, right?

224 WOLF: In the context that we have been talking about here, it would be covered under the provision that they have here. > They have limited commercial activities that would be allowed to fall under this provision.

232 REP. COURTNEY: Asked for clarification on the necessity of this bill.

240 WOLF: Discussed Washington County's concern about approving this facility under the current provision, and then being subject to litigation.

261 NEBON: The problem with state law being the zoning ordinances is that they don't have definitions for many of the terms making it more subject to litigation.

281 WOLF: The down side of this is that local discretion is limited.

288 CHAIR PARKINSON: Closed work session on HB 2795 and reopened the work session on HB 2745.

WORK SESSION ON HB 2745 Witnesses: Sue Hanna, Legislative Council Russ Nebon, Association of Counties Mike Dewey, Oregon Cable Television

MOTION:Rep. Repine moved that the dash 1 amendments as proposed HB 2745 with the following amendments: Line 3, substituting "3" for "2", substituting "42" for "18". Line 4, substituting "u" for "v", inserting "related to resource-based activities", after museum. Line 13, substituting "7" for "6" and substituting "17" for "6". Line 14, substituting "u" for "t" and inserting "related to resource-based activities" after museum.

346 REP. BURTON: What does "in conjunction with" mean?

351 HANNA: Didn't want to have just "cemetery", a church and a cemetery was alright but not a cemetery by itself.

357 REP. BURTON: Would this be a physical description that would mean immediately adjacent to or could it be separated by a separate tax lot?

360 HANNA: It could be separated by a separate tax lot. > "In conjunction with" will be somewhat loose, too far away would cause problems.

371 CHAIR PARKINSON: Would it take two applications if it wasn't contiguous?

374 HANNA: Needs to look at the county requirements. > Existing churches may want to put in a cemetery, requiring a separate application.

383 REP. LEEUWEN: Gives response to Chair Parkinson's question.

392 REP. NAITO: What about a church that is within the boundaries but would want to have its own cemetery?

398 HANNA: That would be pushing it.

406 REP. NORRIS: If you said churches "and" cemeteries, would that mean that you could only approve the church if it had a cemetery?

408 HANNA: It means churches can be approved by themselves but cemeteries can't be approved by themselves.

VOTE: Hearing no objection, Chair Parkinson so moved.

429 CHAIR PARKINSON: Asks for Russ Nebon's opinion on HB 2745.

435 RUSS NEBON, Association of Counties and Marion County: > On behalf of AOC, with regard to HB 2796, the flexibility of approving a cemetery in conjunction with a church is in the county's general interest and they support. > On behalf of AOC, with regard to HB 2745, they have not taken a position on. > Marion County has decided not to take a position either way on HB 2745.

TAPE 103, SIDE B

012 CHAIR PARKINSON: Marion County's case go to LUBA: McKaw vs. Marion County.

018 REP. BURTON: Was whether a cable company is a utility or not, ever clarified?

019 CHAIR PARKINSON: Mr. Dewey testified that they want to be considered a utility company and other times they don't.

026 REP. BURTON: Because we are allowing cable television to be considered as a utility we are allowing a convenience activity to be allowed in an EFU zone. > Provisions were initially made public protection.

035 WOLF: Under Goal 11, communication facilities were considered to facilities in services. He didn't testify about the matter of whether cable television is a utility or not.

043 NEBON: Cellular phones were the utility facility and the case turned on the interpretation on what the word necessary meant.

048 REP. BURTON: Why are we amending it if it is not to allow cable television because it is not a necessary utility?

053 NEBON: The McKaw case affected all utilities because of the word "necessary" and how it is interpreted.

064 There was more discussion among the committee members about the word necessary.

078 REP. BURTON: Original question was if anyone had made a motion with regard to the word "necessary"?

079 CHAIR PARKINSON: No. If HB 2745 relates to all utilities, why aren't the other utility companies here to support it.

090 MIKE DEWEY, Oregon Cable Television Association: After talking to other utility companies and they have not voiced any opposition.

MOTION:REP. WHITTY moved that HB 2745 as amended to the floor with a {"do pass" recommendation}.

109 REP. COURTNEY: Not comfortable with utility part of the bill, would like more information from the other utilities. I am going to be a no vote.

132 REP. VAN LEEUWEN: Made suggestions about changing the wording on HB 274 5.

150 MOTION:REP. WHITTY withdrew his earlier motion.

152 CHAIR PARKINSON: They will leave HB 2745 as it is amended but it won't be sent out. Doesn't want to jeopardize the chances of the other parts of the bill.

177 CHAIR PARKINSON: Closed work session on HB 2745 and recessed the meeting.

** TESTIMONY RESUMES ON TAPE 104, SIDE A

001 CHAIR PARKINSON: SB 184 will be taken out of order.

PUBLIC HEARING ON SB 184: Witnesses: Fred Hansen, Director, Department of Environmental Quality. Holly Duncan, Enforcement Section, DEQ.

012 HANSEN: Submits and explains testimony (EXHIBITS K,L & M). > Refers to copy of Enforcement Policy (EXHIBIT L). > Wanting to get away from how precedent setting controls assess penalties. > They decided that it was much better to put it into explicit language within the rule to be clear on the amount of the penalty and for what classification. > Continues with testimony from (EXHIBIT K), page 2. > Provides clarification on maximum penalty and continues with testimony.

079 CHAIR PARKINSON: Regarding specific violation from earlier testimony (EXHIBIT K, p. 3), besides the civil penalty, was there other recourse for the state?

081 HANSEN: Yes, an authority to be able to recover what is called damages to natural resources administered by the Department of Fish and Wildlife.

084 HOLLY DUNCAN: In this particular case, this hasn't been recovered yet. It is the Department of Interior coordinating with the state.

087 REP. NAITO: What was the penalty imposed in that particular case?

089 HANSEN: Imposed an \$8000 civil penalty for two days of release to the waters of the state. Explained further.

099 REP. REPINE: Was this a two-day action?

103 HANSEN: Initially, concluded that there were two days of release. Upon review in the negotiations with the party, concluded that this evidence was weak, eliminated the aggravating factor which lowered the penalty.

107 REP. REPINE: How much can be fined for a gross negligence?

108 HANSEN: Up to \$10,000 per day for each violation. > The penalty amount is listed in ORS 468.135. > Section 2, line 6 -14 SB 184 A-Engrossed (EXHIBIT N): creates new class violation for gross negligence and the fine would be raised to \$100,000.

120 REP. BURTON: Is this a total assessment or is there a per day fine?

124 HANSEN: No per day language in this part of the statute.

128 REP. VAN LEEUWEN: Is Section 2 entirely new? And what about the other sections?

133 HANSEN: Section 2 is new and Section 3 is amending ORS 459 and Section 9 is the only other new section of this bill.

140 REP. WATT: Asked for more clarification on Section 6 (EXHIBIT N).

142 HANSEN: Described what language referred to in ORS 468.140.

162 REP. WATT: If Section 6 is not being amended, this penalty would continue to be in force?

171 HANSEN: This statute proposes the creation a new class of penalty. If there is gross negligence, intentional extreme damage to public health or environment, then this new penalty would apply. > Responds to more questions about the penalty. > Almost all violations of statute are at \$10,000 per day schedule with two exceptions: solid waste and noise prevention area. > Want to amend the language in Sections 3 and 4 (EXHIBIT N) so that they would apply at the standard amount applied to civil penalties in other areas. > Continues with testimony from page 5, (EXHIBIT K).

277 CHAIR PARKINSON: Is there a larger civil penalty for oil spills and if so how does SB 184 relate to it?

281 HANSEN: Specific language tying to petroleum released into state water which is \$20,000 maximum penalty. > SB 184 would not change that language but could apply to petroleum if the conditions mentioned before were met.

297 CHAIR PARKINSON: So the maximum penalty would be \$20,000 even for a whole tanker load off the Oregon Coast or the Columbia River?

300 HANSEN: Depending on the conditions and the days that the release took place.

310 CHAIR PARKINSON: Has there been or is there presently legislation to raise the penalty for oil spills?

312 HANSEN: There is legislation dealing with oil spills, but didn't recall any change to the existing authority on oil relative to the civil penalty enforcement other than SB 184.

319 REP REPINE: In the case of an negligent oil spill, would Section 2 new language apply or would the present language of \$20,000 maximum penalty still apply?

327 HANSEN: This would allow discretion.

333 REP. REPINE: If you used the proposed fees and applied them to the 128, 199 0 violations (EXHIBIT L, p. 8), how much would that be in penalties.

347 HANSEN: Went through examples from (EXHIBIT L, p. 9) re: noise violations and on Solid Waste Management and Permit violations (EXHIBIT L, p.10). > Amounts depend on the matrix level (EXHIBIT M, p. 5).

373 REP. REPINE: You've referred to those two areas as possible fee increase areas, but SB 184 would allow the increase to be applied to anyone of the categories mentioned (EXHIBIT L).

380 HANSEN: Those increases apply only to those two categories.

390 REP. COURTNEY; Why isn't there an emergency clause?

393 HANSEN: Generally don't have one, and did not feel that the lack of one would inhibit the rate of their actions.

400 REP. COURTNEY: Gives an example of needing to have an emergency clause.

417 HANSEN: Attorney General has indicated that there are some such settings that they would be able to act under the statute without administrative rule. Need to research more.

426 REP. VAN LEEUWEN: Would the proposed change from \$500 to \$10,000 would only apply to noise and solid waste? > What does Section 4 (EXHIBIT N) do?

435 HANSEN: Yes to first question. Explains what Section 4 would do.

** TESTIMONY RESUMES WITH TAPE 103, SIDE B, AT 181**

196 REP. VAN LEEUWEN: Asked for an example: Untreated waste goes into a river in the City of Salem, what category would that be applied to?

206 HANSEN: Explains what would be applied. > Responded to question about negligence definition.

224 CHAIR PARKINSON: What is current law maximum per day charge in the city?

227 HANSEN: Water discharge is \$10,000 per day.

229 REP. NORRIS: Asked about the penalties going into the general fund.

> Is this money related to any remediation or is it just punishment?

235 HANSEN: There is other regulatory authority so that if there is, for example, an illegal disposal of hazardous waste, that might be subject to civil penalty which would be repaid to the general fund, they also may be required under other statutes to clean up that hazardous waste which would be remediation. > The don't think it is a good idea to be in "bounty hunting" position.

243 REP. NORRIS: So this is non-judicial punishment?

244 HANSEN: Responded and discussed appeal procedure, further.

252 REP. NORRIS: Explain SB 184 "intentional" language (EXHIBIT K, p.7).

260 HANSEN: Describes what intentional means and when there would be advance warning.

277 REP. WATT: If something like the Exxon Valdez incident occurred in the Columbia River, would Section 2, SB 184 apply?

285 HANSEN: Yes it would. > Second part of Section 2 is clear, the "gross negligence" language is not.

296 REP. WATT: Wouldn't the \$100,000 penalty, limit the state in possible additional penalties, if something like this happened, where the cost would be much more?

301 HANSEN: It should be higher than what it is now, but there should be a cap. > Extraordinary cases, \$100,000 would not be enough, but otherwise it is appropriate. > Adds additional comments about possible federal remediation and state penalties that might be imposed as well.

333 REP. VAN LEEUWEN: Would the \$100,000 be the total amount fined by the state or is there a possibility of other fines?

340 HANSEN: Other violations will be treated separately. > Their department would use the statute from SB 184.

355 REP. BURTON: Makes comments about difference between penalties imposed by the department and remedies available to the state to rectify damage. > When was the last time the penalty amount increased? > Between 1988 and 1989, you have had an increase (EXHIBIT L) in number of civil penalty notices issued of 23 and in 1990 there was an increase of 48. > The total in money collected: increases greatly between 1988 and 1989 but in 1990, even though the penalty assessed was increased the amount of dollars didn't increase very much, asked for clarification.

383 HANSEN: None of the statutory changes accounted for that. > The administrative rules the DEQ adopted (EXHIBIT M), forced us, internally, to address the violations differently. > Two program areas that have had a number of violations which they didn't have before. Explains.

409 REP. REPINE: SB 184 deals with 2 specific areas of penalties, noise violations and solid waste management (EXHIBIT L, pp. 9 & 10). > It appears that these particular areas are the least problematic. > Why are penalties being increased in these two categories?

447 HANSEN: Most of their environmental program's maximum civil penalty

allowed is at \$10,000 per day. > The two exceptions are: solid waste and noise field. > SB 184 proposes a change so that these two fields will be treated the same as others. > Their goal is not merely to increase penalties.

TAPE 104, SIDE B

033 JIM WHITTY, Associated Oregon Industries > Support SB 184. > Language is satisfactory to them and they understand and agree with the penalties and the matrix system. > Explains some of AOI's earlier concerns which were resolved.

063 REP. REPINE: On Section 5 (EXHIBIT N), define "immediately".

073 WHITTY: This a matter of the notice requirement and would mean that it should be cleaned up immediately.

080 REP. REPINE: Concerned about what the criteria is for a clean up.

086 HANSEN: Immediate is now. > Current statute: Upon release of material, DEQ must be notified, immediately. > If the individual can't perform the clean up him/herself, s/he must take the necessary action to get the clean up underway.

102 REP. REPINE: Criteria isn't in this legislation. Should the language be more specific?

108 HANSEN: Because of the variables in doing a clean up, felt that language was adequate.

120 REP. REPINE: Concerned with possible problems that may arise because of leaving the statute open.

132 HANSEN: Other agency may be addressing these issues. > Not complete answer to what you're asking. We would be willing to address further.

142 REP. VAN LEEUWEN: Section 5 (EXHIBIT N): Would the language of "any person" apply to anyone? > How would this apply to a five gallon bucket of oil spill?

152 HANSEN: Clean up may not be possible if it spills out of a moving vehicle on to a road. > Discretion must be applied and other agencies may be involved.

165 REP. VAN LEEUWEN: Gives another example and asks how the statute would be applied.

170 HANSEN: Responds.

186 VAN LEEUWEN: Comments that is just raising potential questions that may arise which could apply to SB 184.

187 HANSEN: There are many variables to each specific situation and the each need to be looked at individually.

213 REP. NORRIS: As member of Oregon Hanford Waste Board, assumes that this

testimony would apply to any radioactive material also.

219 HANSEN: They are not cross-referencing the nuclear waste law.
Those are separate statutes.

228 CHAIR PARKINSON: Closed the public hearing on SB 184.

237 CHAIR PARKINSON: Suggests to Rep. Norris that he work on HB 2602 and
if amendments needed, bring them back before the committee.

243 CHAIR PARKINSON: Adjourns meeting at 4:02.

Submitted by:

Reviewed by:

Guadalupe C. Ramirez
Committee Administrator

Kathryn VanNatta Committee Clerk

EXHIBIT LOG:

A - HB 2796 - Staff Measure Summary - 1 p. B - HB 2796 - Fiscal Impact
Assessment - 1 p. C - HB 2745 - Preliminary Staff Measure Summary - 1 p.
D - HB 2745 - Revenue Impact Analysis - 1 p. E - HB 2745 - Fiscal Impact
Assessment - 1 p. F - HB 2795 - Preliminary Staff Measure Summary - 1 p.
G - HB 2795 - Revenue Impact - 1 p. H - HB 2795 - Fiscal Impact
Statement - 1 p. I - HB 2795 - Testimony, Rep. Meek - 1 p. J - HB 2795-1
- Proposed Amendments - 1 p. K - SB 184 - Testimony - Fred Hansen - 8
pp. L - SB 184 - DEQ, Enforcement Activities - 11 pp. M - SB 184 - OAR -
Chapter 340 Division 12 - 27 pp. N - SB 184 - A-Engrossed - 4 pp. O - HB
2795-1 - Proposed Amendments - 5 pp.