

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 WATER POLICY

May 9, 1991Hearing Room D 1:15 p.m.Tapes 65 - 67

MEMBERS PRESENT:Rep. Chuck Norris, Chair Rep. Bill Dwyer, Vice-Chair Rep. Bill Markham Rep. Larry Sowa

MEMBER EXCUSED: Rep. Walt Schroeder

STAFF PRESENT: Beth Patrino, Committee Administrator Pat Zwick, Committee Assistant

WITNESSES:Sen. Bill Bradbury Kip Lombard, Oregon Water Resources Congress Eldon Hout, Land Conservation and Development Janet Neuman, Division of State Lands Sandra Bishop, League of Women Voters Paul Donheffner, State Marine Board John Latta Bill Young, Water Resources Department

MEASURES CONSIDERED:HB 2926 - Allows irrigation districts to provide water for domestic, municipal, and industrial use. - Work Session

SB 233 A - Allows Division of State Lands to establish exemptions to land lease requirements of state-owned submerged or submersible lands. - Public Hearing

SB 162 A - Replaces Oregon Ocean Resources Management Task Force with Ocean Policy Advisory Council. - Public Hearing

SB 499 A - Prohibits Division of State Lands from entering into contracts for private or public exploration or development of hard minerals on state-owned submersible and submerged lands within territorial sea and navigable bays subject to division's jurisdiction. - Public Hearing and Work Session

HB 3465 - Requires agency applying for in-stream water right to give public notice of application. - Work Session

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005 CHAIR NORRIS: Calls the meeting to order at 1:20 p.m.

Opens work session on HB 2926.

Closes work session on HB 2926.

Opens public hearing on SB 162-A.

PUBLIC HEARING SB 162-A

025 SEN. BILL BRADBURY: Speaks in support of SB 162-A, paraphrasing written testimony (EXHIBIT A).

065 CHAIR NORRIS: If Oregon policy allowed no exploration or drilling in the three mile limit would that automatically restrict it out 200 miles?

068 SEN. BRADBURY: Yes. Understands the newly reauthorized Coastal Zone Management Act says that federal activities outside the three mile limit must be consistent with an adopted and federally approved state Coastal Zone Management Plan, which is what this proposal does.

The plan would be subject to federal approval, but indications are that federal agencies are supportive of our ocean planning effort and it is highly likely that the plan will get federal approval.

SB 162 expands the local government role in ocean planning.

Proposes to further expand the local role by amending the bill with SB 162 -A5 amendments (EXHIBIT B) to require that the state plan developed through SB 162 be consistent with any local acknowledged coastal plan of a county or city.

We need the Ocean Policy Council to develop the plan, collate important ocean resource data, and coordinate state agencies so that Oregon speaks with one voice when speaking with private, state, or federal proponents of various ocean activities.

125 CHAIR NORRIS: Is there evidence that local coastal governments have been active in this activity?

130 SEN. BRADBURY: The Curry County Commissioners have been very active. Coos County Planning Director has been involved. There has been active involvement from the North Coast.

There is a common concern that we make good use of our ocean resources and support for state policy to put a priority on the development of renewable resources and only allow the development of non-renewable resources if it can be shown that that development will not damage renewable resources.

167 CHAIR NORRIS: Closes public hearing on SB 162-A.

Opens public hearing on SB 499-A.

PUBLIC HEARING SB 499-A

175 SEN. BRADBURY: Reviews provisions of SB 499-A and testifies in support of the bill, paraphrasing written testimony (EXHIBIT C).

240 REP. SOWA: If the federal government decides to allow mining in its waters, can they preempt state law?

248 SEN. BRADBURY: If the state adopts a clear policy, within the territorial sea, to not allow mineral mining, the federal government is required to act consistently with that policy out to 200 miles.

256 REP. SOWA: Can an executive order be written by the President overriding that directive?

260 SEN. BRADBURY: Does not believe the President has the authority to override a congressional decision.

270 REP. MARKHAM: What does the governor think about overriding the authority of the Land Board?

275 SEN. BRADBURY: Janet Neuman can answer that.

Do not think they opposed this bill. SB 499 has no fiscal impact. SB 162 is subsequently referred to Ways and Means. It does not have to have a fiscal impact because there is currently money in the offshore program of the state to do most of the activities. Thinks there is an additional potential impact from SB 162 and would like to see if that can be taken care of by maintaining Fish and Wildlife Department's role in the planning effort and the Department of Geology and Mineral Industries role.

295 CHAIR NORRIS: Closes public hearing on SB 499-A.

Reopens work session on HB 2926.

307 KIP LOMBARD, OREGON WATER RESOURCES CONGRESS: Reviews provisions of 292 6-3 amendments (EXHIBIT D).

TAPE 66, SIDE A

LOMBARD: Multiple ownership does not mean you are allowed multiple voting. Statute says that first vote cast is the vote counted in the case of multiple ownership.

039 MOTION: REP. DWYER: Moves adoption of HB 2926-3 amendments.

VOTE: Without objection, amendment is adopted.

MOTION: REP. DWYER: Moves HB 2926, as amended, to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes. Rep. Sowa votes No. Rep. Schroeder is excused.

050 CHAIR NORRIS: Will carry the bill.

Closes work session on HB 2926.

Reopens public hearing on SB 162-A.

PUBLIC HEARING SB 162

070 ELDON HOUT, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: Speaks in support of SB 162.

Local government officials would be represented on the policy council itself as well as having the opportunity to participate in the process.

107 REP. MARKHAM: Is there opposition to the bill?

109 HOUT: No. League of Women Voters' wording concerns were worked out on the Senate side and the League has signed off on the bill.

120 REP. SOWA: Is not sold on the policy council representation listed. Would like the opportunity to talk with Sen. Bradbury about that.

Testimony of Martha Pagel, Governor's Senior Policy Advisor of Natural Resources in support of SB 162 is submitted for the record (EXHIBIT E).

130 JANET NEUMAN, DIRECTOR OF DIVISION OF STATE LANDS: Testifies in support of SB 162 A, summarizing written testimony (EXHIBIT F).

164 CHAIR NORRIS: Do you think that the seabeds of the territorial sea are the property of the state of Oregon and that Division of State Lands is responsible for that seabed out to three miles?

167 NEUMAN: Yes. We think that gives us real obligations and responsibilities, but we think that some of the most complicated issues have to do with the water column above that seabed and how the resource will be used by the whole state to support all of the different groups and industries that rely on the ocean. It is better to have a process that involves all the interest groups.

180 REP. SOWA: What is the justification for a representative of Parks and Recreation on the council?

187 NEUMAN: They have concurrent responsibility with the Land Board for management of the beach zone and public beaches. They also have been discussing with us, and working with interest groups, on the possibility of setting up marine parks.

197 REP. SOWA: Why is the State Marine Board absent from the council membership?

205 HOUT: There is no pride of authorship in the council membership list. Realizes that legislature would want to have involvement. Marine Board was involved in a consultive way in development of the plan.

220 REP. MARKHAM: Who has authority to allow disposal of the old Alsea bridge in the ocean?

229 NEUMAN: The Division of State Lands has authority to regulate artificial reefs through our proprietary management of the seabed. Have had permit requests to create artificial reefs. Had not heard that was going to be done with the Alsea bridge. We have not completed the permit process because people do not to go through with their projects for funding reasons.

260 REP. SOWA: Not sure that the Alsea bridge should be used in that manner. Advises that be checked if it is planned.

268 SANDRA BISHOP, LEAGUE OF WOMEN VOTERS: Reads written testimony in support of SB 162-A (EXHIBIT G).

315 REP. SOWA: What was your problem with the original bill?

320 BISHOP: Language and nuances. SB 162-A is a very good bill and the League would appreciate its passage.

330 CHAIR NORRIS: Closes public hearing on SB 162-A.

340 REP. SOWA: Would prefer to wait on a work session until he has had an opportunity to confer with Senator Bradbury.

345 CHAIR NORRIS: Appoints Rep. Sowa a subcommittee of one to meet with Sen. Bradbury and work out an acceptable amendment.

Opens public hearing on SB 499-A.

PUBLIC HEARING SB 499-A

370 JANET NEUMAN, DIVISION OF STATE LANDS: Summarizes written testimony addressing SB 499-A (EXHIBIT H).

TAPE 65, SIDE B

CHAIR NORRIS: Has there been exploitation within the territorial sea?

005 NEUMAN: We are thinking of prevention. There has been no marine mining activity off the Oregon Coast. There has been some primarily scientific exploration. There was oil and gas exploration activity a number of years ago.

015 REP. MARKHAM: What is the reason for the bill?

017 NEUMAN: To express the fact that the activity is not wanted by a large group of the public in Oregon.

As the ocean planning process continues, we may need to come back in a few years and suggest from the perspective of the Common School Fund managers that we think there is a resource there that could be economically and environmentally developed.

The explicit authority to issue marine mineral leases was only given two sessions ago. SB 499 would take it away. Do not think the data is currently available to suggest that there is much opportunity.

037 CHAIR NORRIS: If this bill becomes law, will any mineral exploitation within the territorial sea be prohibited?

038 NEUMAN: Yes.

040 CHAIR NORRIS: Asks about mineral exploration within the last year.

042 NEUMAN: An Oregon State University study, under contract to Division of State Lands, found fairly extensive areas with the right composition to indicate the presence of minerals. Further studies concluded that minerals are not present in sufficient quantities to be an economically feasible deposit.

Sponsors of the bill feel that other valuable resources are already being developed or exploited and this one is not desirable at this time.

065 SANDRA BISHOP, LEAGUE OF WOMEN VOTERS OF OREGON: Reads written

testimony opposing all exploration and development of marine minerals within the state's territorial sea and in federal waters off the Oregon coast (EXHIBIT I).

120 CHAIR NORRIS: What assurance do we have that scientific research would not be prohibited with SB 499-A.

125 NEUMAN: Page 1, line 10.

127 BISHOP: Understands from the Outer-Continental Shelf Natural Gas and Oil Resource Management draft plan, that no lease sales are scheduled for Washington and Oregon between 199 2 and 1997.

Believes at the federal level, it has been stated no lease sales will be considered until after 2000.

136 CHAIR NORRIS: Closes public hearing on SB 499-A.

Opens work session on SB 499-A.

WORK SESSION SB 499-A

150 MOTION: REP. DWYER: Moves SB 499-A to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes. Reps. Markham and Schroeder are excused.

Closes work session on SB 499-A.

Rep. Sowa will carry the bill.

Opens public hearing on SB 233-A.

PUBLIC HEARING SB 233-A

165 PATRINO: Reviews provisions of SB 233-A.

180 REP. DWYER: Why do we need SB 233?

185 JANET NEUMAN, DIVISION OF STATE LANDS: We were originally trying to solve the problem that the exempt structures provided in the leasing statute had no limitation as to who could build those exempt structures. The proliferation of small docks was also an issue which has been incorporated into SB 233-A.

Submits written testimony stating the purpose and background of SB 233-A, and giving a section- by-section analysis of the bill (EXHIBIT J).

220 PAUL DONHEFFNER, STATE MARINE BOARD: Submits and summarizes written testimony in support of SB 233-A (EXHIBIT K).

Presents video showing proliferation of small docks.

266 CHAIR NORRIS: Would you grandfather in existing small structures?

270 NEUMAN: Do not yet have a clear feeling for whether they could be grandfathered. Would probably grandfather some of them.

270 REP. DWYER: How would I be able to build a structure in the future after you receive the authorization you are seeking?

274 NEUMAN: The Division of State Lands would set exemptions or lack of exemptions by administrative rule. We would talk to a number of different groups to determine whether some minimal level of structure should be allowed without lease, and if there should be joint structures. Believes a lot of the issues will have to be subject to negotiation and advisory committee discussions.

295 REP. DWYER: Concerned that you may utilize this mechanism not to limit, but to lease and make money.

300 NEUMAN: These would not be looked at as revenue sources for the Common School Fund. We have responsibilities on submerged and submersible land to regulate in the best interest of the public and protect the public trust. Those trust values are as high a priority as the Common School Fund fiduciary values.

We try to obtain compensation when the public land is being taken out for private use.

315 REP. DWYER: Believes others will raise that same issue.

Will SB 233-A allow you to adopt rules that provide for exemptions in leasing requirements, and set standards of what would be covered in a public process with Parks and Recreation, Marine Board, and other affected land parties?

330 NEUMAN: Yes.

336 REP. DWYER: Do you intend to assess civil penalties for structures already in existence?

340 NEUMAN: That would have to worked out with the Attorney General's office. We are not asking for retroactive lease requirements. The penalty request is because the only remedy we have now is trespass action.

370 REP. SOWA: Believes that State Parks has authority to regulate on the Greenways.

385 NEUMAN: There is a strong feeling that the greenway is not effective in some areas because although the Parks Department has the overall jurisdiction, a lot of the implementation is done through local governments who do not always know they can regulate on the water.

397 REP. MARKHAM: How do you determine fair compensation?

TAPE 66, SIDE B

NEUMAN: It is hard to do. Cannot say that current State Land Division lease rates represent market value for the use of those resources. We intend to use very well-rounded advisory groups representing involved parties to make those determinations.

030 CHAIR NORRIS: What would be the effect on the small structures if this bill becomes law?

035 NEUMAN: Since the legislature could decide that all structures on

state waterways are subject to lease because it is public land, they could change that exemption later and from this day forward structures would require a lease.

We are asking the Attorney General's office if we could require leases from these structures already there that have been exempt for some time.

047 REP. DWYER: Can you gain title to public land through adverse possession?

050 NEUMAN: No.

When we have an ongoing use of the public submerged and submersible lands we feel that use should be regulated and managed, and compensation should come to the public for that private use.

098 CHAIR NORRIS: Will existing structures have to be torn down?

100 DONHEFFNER: This bill is an attempt to put a lid, or give us a handle, on Pandora's box. The continued proliferation of these small structures is causing real problems for recreation and navigation and other recreational uses.

Absent a lease, with standards where management can be conducted, the problem will only get worse. We think SB 233-A is overdue.

HB 2157 was introduced in an attempt to address the issue by granting the Marine Board authority to regulate these structures, but it was felt that SB 233-A is a more workable tool.

135 CHAIR NORRIS: How will we let the general public know that construction of private docks on public waterways is not allowed?

145 NEUMAN: We have been telling people that they only own property to the high water line and it is public property beyond that. It will take a lot of discussion during rulemaking to get at the right public policy of whether that is an expectation we should foster. Maybe there should be some minimal size dock that people should be able to have if they have a riparian lot.

155 REP. MARKHAM: Legislature would be more comfortable if proposed rules were promulgated and reviewed by the legislature before authority is granted.

165 REP. DWYER: One thousand square foot docks could still cause problems. Authority has to be granted because of the proliferation of the problem.

200 CHAIR NORRIS: Do you anticipate difficulty with the native American community?

208 NEUMAN: Have dealt with some of the tribes on waterway leasing issues, and other than with some of the fishing structures, have had good cooperation. They understand their treaty rights do not give them ownership of the river bed except in certain places.

230 JOHN LATTA: Favors fair and equal administration of enforcement of any existing regulations. The proposed bill would give Division of State Lands the authority to determine leasing requirements and fees, based on size of a structure and the type of usage.

Present regulations do not provide fair and equal treatment.

Asks for favorable committee support of SB 233-A.

Has had a dock at his property since before we purchased it. We are replacing the dock and have the necessary permits.

260 CHAIR NORRIS: Do your neighbors know about this bill?

265 LATTA: Yes. All in attendance at the work session held by the Senate Committee were in support of the bill.

280 CHAIR NORRIS: What will the lease fee for your dock be?

385 LATTA: \$470 per year.

330 REP. SOWA: We have to get some sanity to this with one agency regulating rather than duplication.

350 CHAIR NORRIS: Closes public hearing on SB 233-A.

Asks for committee feeling on the bill.

370 REP. DWYER: Thinks authority should be granted to deal with an increasing problem.

400 REP. SOWA: The problem is increasing in his area.

TAPE 67, SIDE A

REP. MARKHAM: Not prepared to support the bill. Feels that proposed rules should be available to the legislature before the authority is granted.

010 CHAIR NORRIS: Asks Mr. Donheffner and Ms. Neuman to address committee members' concerns and return to the committee with suggestions.

015 REP. DWYER: We need to see examples of how you will regulate, the kinds of structures that will be regulated, and the parameters you are looking for.

020 CHAIR NORRIS: Feels that if those things are made a matter of legislative record, even without approved rules we may feel more comfortable dealing with this. Is concerned about existing structures.

Closes public hearing on SB 233-A.

Recesses at 3:13 p.m.

Reconvenes at 3:22 p.m.

Opens work session on HB 3465.

WORK SESSION HB 3465

035 BILL YOUNG, WATER RESOURCES DEPARTMENT: Presents and reviews information responding to requests at a previous meeting (EXHIBIT L).

094 REP. DWYER: Can only support something equitable. If we require agencies that reserve water for the public to advertise and pay the costs of publication, will only give support if other consumptive users pay the same costs.

100 CHAIR NORRIS: Does a private party making application to appropriate water have to pay a substantial fee?

105 YOUNG: Yes.

110 CHAIR NORRIS: Does part of that fee cover publication costs?

112 YOUNG: No. The fee we currently charge probably covers half or 60% of our costs of analyzing water rights and does not cover costs of publication of those applications.

There is currently no charge for an instream water right.

117 REP. DWYER: The only difference is that the instream water right is for public benefit.

118 REP. SOWA: The water belongs to the state, and the agency is just reserving the water for the state.

125 CHAIR NORRIS: Asks Committee Administrator to have Legislative Counsel draft an amendment that would incorporate having the Department publish notice and be reimbursed by the applying agency.

125 PATRINO: Water Resources Department proposed amendment would accomplish that.

130 YOUNG: That is the intent of the amendment.

145 CHAIR NORRIS: Closes work session on HB 3465.

Adjourns meeting at 3:31 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A-SB 162-A Testimony - Sen. Bradbury - 3 pages B-SB 499-A Testimony -
Sen. Bradbury - 2 pages C - SB 162-A5 Amendments - Staff - 1 pages
D - HB 2926-3 Amendments - Staff - 3 pages E- SB 162-A
Testimony - Martha Pagel - 4 pages F-SB 162-A Testimony - Janet Neuman -
2 pages G-SB 162-A Testimony - Sarah Bishop - 1 page H-SB 499-A
Testimony - Janet Neuman - 2 pages I-SB 499-A Testimony - Sarah Bishop -
3 pages J-SB 233-A Testimony - Janet Neuman - 3 pages K-SB 233-A
Testimony - Paul Donheffner - 3 pages L-HB 3465 Exhibit - Bill Young - 8
pages