

Conference Committee on HB 2244 June 26, 1991 - Page

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

CONFERENCE COMMITTEE ON HB 2244

June 26, 1991Hearing Room 137 6:00 p.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Cohen Sen. Springer

HOUSE MEMBERS PRESENT: Rep. Schroeder, Chair Rep. Josi

STAFF PRESENT: Beth Patrino, Committee Administrator Evie Redler, Committee Assistant Jeanette Holman, Legislative Counsel

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TAPE 1, SIDE A

CONFERENCE COMMITTEE ON HB 2244 Witnesses: Martha Pagel, Governor's Office Dave Barrows, Oregon Mining Council Jean Cameron, Oregon Environmental Council Gary Lynch, DOGAMI Margaret Kirkpatrick, Legal Counsel, Oregon Mining Council Larry Tuttle, Wilderness Society

CHAIR SCHROEDER: Calls the meeting to order at 7:45 pm.

MARTHA PAGEL: Discusses the HB 2244 B31 amendments (EXHIBIT A). Solves issues raised on the House floor on June 25 and discusses issue of irreparable harm done to environment.

CHAIR SCHROEDER: Would the stay in section 21 be for up to 12 months?

PAGEL: Yes. It would end when the judicial review ends. Starts on the date of filing.

042 DAVE BARROWS, OREGON MINING COUNCIL: Oregon APA is fair. Balancing harm between the agency and the company. Under this provision there is an irrefutable, mandatory stay. Discusses an example of what would happen under this provision. Would like to propose an amendment (EXHIBIT B). Not an absolute mandatory stay.

120 JEAN CAMERON, OREGON ENVIRONMENTAL COUNCIL: If you were to go with no stay, any appeals should go through the regular judicial review process. Are comfortable with the agreement we have come up with on the Senate side. The original language from the House had a 12 month stay attached.

150 BARROWS: Have prepared two other amendments. Inaccurate to say that this is a one year permitting process. This would be at least a three year process.

SEN. COHEN: Thought this was one year after the permit is appealed.

PAGEL: The timing is within the control of the company. The state doesn't have control.

GARY LYNCH, DOGAMI: From the time the letter of intent is filed, there is approximately a three year wait.

CHAIR SCHROEDER: Within that three year period there is a chance for public input.

Discussion with the witnesses on stays and the burden of proof.

SEN. SPRINGER: The consolidated permit provides a shorter process than if you are outside of this system.

257 PAGEL: Trying to clarify and simplify the process while pointing out environmental concerns. Have taken many different permitting processes and put them into one step. Have set up a great appeal process. Reflects a fair balance.

REP. JOSI: What would be the purpose of the company appealing a permit?

BARROWS: If the company did not like a backfill requirement for example.

303 REP. JOSI: Asks question about irreparable harm.

329 PAGEL: Clarifies irreparable harm.

359 REP. JOSI: It looks like this is an effort to not allow heap leach mining in Oregon.

389 CAMERON: Discusses the appeal process and putting a stay on the permit. Clarifies that it is a maximum of 12 months, however could happen in less time.

TAPE 2, SIDE A

002 SEN. SPRINGER: My sense is not that the judges are just going to roll over and agree that there is irreparable harm. You are asking citizens to prepare and petition the courts and it will not be taken lightly.

MARGARET KIRKPATRICK, LEGAL COUNSEL: Discusses irreparable harm standard. There have been no natural resource cases of this kind in the State of Oregon.

048 SEN. SPRINGER: There is not a problem with stays being granted inappropriately. Doesn't see that as a problem to hold the committee back.

REP. JOSI: The timber industry has been subject to stays quite frequently but in this situation there could be a case with irreparable harm. -For example: Every vehicle track in the desert will not take

water. Have ruined those lands for many years. That is a case of irreparable harm. -No one is going to like heap leach mining because of what it does to the environment. Due to the benefits, we are going to allow it.

CAMERON: If you agree that there is a likelihood of irreparable harm, then the burden of proof should be on the business which would be causing the harm.

096 REP. JOSI: Why can't they do that at the beginning of the stages of the appeal process.

LARRY TUTTLE, WILDERNESS SOCIETY: If I were an applicant who was trying to appeal the conditions of the permit I could go ahead and start construction while I was bargaining in court. If a citizen files an appeal the company does not have a stay put on them while the court case is under way.

REP. JOSI: If irreparable harm is occurring during the time of the appeal, why can't you claim irreparable harm at the time of the appeal.

TUTTLE: Already been done at that point.

CHAIR SCHROEDER: Can't you immediately get an appeal and a stay if you have concerns over irreparable harm?

TUTTLE: Complicated process with substantial documentation. The one year stay is the opportunity for appeals. Permit conditions can be dealt with before the company can create irreparable harm as a result of mining activity.

PAGEL: Who does the burden fall on? Under the Senate version of the bill, the burden is on the company.

161 SEN. COHEN: What I've heard is that a company has spent three years preparing and planning regarding this site. At that point you have someone else just beginning to look for irreparable damage. That is my concern about not having a stay in place. No one without 5 million dollars behind them could come in and file an appeal.

198 CHAIR SCHROEDER: Don't think that any group is going to wait for all the permits to be in place before they make themselves known.

BARROWS: All of these processes are done with the public involved.

SEN. COHEN: Not talking about knowing it's happening. Speaking of actually filing the appeal.

BARROWS: Suggests an alternative. We would propose that the company bear the burden if any appeal is filed; the company will need to prove that harm will not occur.

241 CHAIR SCHROEDER: Concerned with wording.

SEN. COHEN: We could put a time line in place with a stay while the company is in process of proving that irreparable harm would not occur.

265 REP. JOSI: You are saying that if the permit is approved and someone files an appeal, as soon as the first day of the twelve month period starts, the company has to prove that there would be no

irreparable harm done to the environment.

BARROWS: Once an appeal is filed, the company would be stayed from doing any work until they could prove that there is no harm being done. Whatever time it takes. When you prove that harm will not be done, the stay is removed.

REP. JOSI: What if the 12 months go by.

BARROWS: The stay is in place until the company proves that no harm will be done.

307 SEN. SPRINGER: Who will say that the company has proved that there is no harm being done. The permittee would have all sorts of geologist and chemists working for them already.

SEN. COHEN: How long would these cases run. How often would you run out of time?

BARROWS: The two cases which Ms. Kirkpatrick found took from 16 months to 2 years. Is a slow process.

CHAIR SCHROEDER: Look at the B31 amendments. What does everyone think.

CAMERON: Makes sense.

BARROWS: Not totally. Permissive to the agencies, may remove the stay but not required. Does not deal with the mandatory one year stay.

TAPE 1, SIDE B

012 CHAIR SCHROEDER: Is the B31 amendment acceptable on it's own. We could still add to the bill.

CAMERON: High level of concern with this process. Cannot assume that the public is going to appeal.

REP. JOSI: The likelihood of a public body appealing is about 100 percent.

043 CHAIR SCHROEDER: Some will appeal just for the sake of appealing.

PAGEL: High level of scrutiny if the appeal is meritless.

056 BARROWS: Accepts B31 amendments if the 12 month stay turned to 3 months.

CHAIR SCHROEDER: Discusses wording.

BARROWS: Page 10, line 22, take out 12 and put in 3. Same thing on line 24.

Recess at 8:57 pm. Reconvene at 9:05 PM

PAGEL: Suggests to accept the B31 amendments as proposed. But on page 10, line 22, delete twelve and add six and on line 24 to delete twelve and add six.

MOTION: Sen. Cohen moves to adopt the B31 amendments (EXHIBIT A) as amended above.

VOTE: In a roll call vote the motion carries with all members present voting AYE.

MOTION: Sen. Springer moves that the committee adopt the committee report and recommends that the bill be repassed.

VOTE: In a roll call vote the motion carries with all members voting AYE.

Adjourned at 9:10 pm.

Submitted By: Reviewed By:

Evie Redler Edward C. Klein Committee Assistant Committee
Assistant

EXHIBIT LOG:

A: HB 2244, Martha Pagel, 1 page B: HB 2244, Dave Barrows, 1 page