

Conference Committee on HB 3343 June 13, 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 3343

June 13, 1991Hearing Room C 12:30 p.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Springer Sen. Kerans Sen. Kitzhaber

HOUSE MEMBERS PRESENT: Rep. Parkinson, Chair Rep. Campbell Rep. Whitty

STAFF PRESENT: Kathryn Van Natta, Administrator, House Environment and Energy Committee Peter Green, Administrator, Senate Agriculture and Natural Resources Committee Andy Sloop, Assistant, House Environment and Energy Committee

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TAPE 1, SIDE A

05CHAIR PARKINSON: Opens work session at 12:45. Notes absence of DEQ officials and requests their presence.

WORK SESSION - HB 3343 Witnesses:Chuck Craig, Department of Agriculture Dave Nelson, Oregon Seed Council Steven Crane, Department of Environmental Quality

30CHAIR PARKINSON: Entertains discussion about which version of the bill to refer to as the working version during conference committee deliberations.

33SEN. KERANS: Difficult to sort out responsibilities of Department of Agriculture and the Environmental Quality Commission in the A-engrossed bill. For purposes of discussion, would serve committee to use B-engrossed bill, which sets out line of authority. Section 4 of A-engrossed bill sets up vague relationship between the DOA and EQC using "in conjunction with" language.

63CHAIR PARKINSON: Prefers the A-engrossed version for the reasons Sen. Kerans just stated. Specifically, the DOA and DEQ seem to have worked out a harmonious relationship.

70SEN. KERANS: SB 425 used the same process as HB 3343-B, which delineated how the DEQ was going to give authority for the Smoke Management Program to the DOA, leaving the DEQ as the monitor and enforcer.

81SPEAKER CAMPBELL: Suggests looking at differences between two bills, and not which one should be the vehicle. Find out how far apart opinions are.

91SEN. KERANS: Substantive question in Section 4 is that the Director of the Department of Agriculture would, by rule, be able to set any acreage he chose.

105 CHAIR PARKINSON: Entertains background information on how system is working now.

107 CHUCK CRAIG, DOA: DEQ has all statutory authority over the Smoke Management Program, and contracts with the DOA for all aspects except air quality enforcement.

112 CHAIR PARKINSON: Didn't that shift start by executive order?

118 CRAIG: That shift was effected in July 1988 through an administrative act by the Governor.

121 CHAIR PARKINSON: Do either of these bills change that process?

124 CRAIG: The end result isn't different, but the mechanics in the two bills is different.

127 DAVE NELSON, OREGON SEED COUNCIL: The B-engrossed version doesn't provide for the transfer of authority between DEQ and DOA. The A-engrossed version, on the other hand, puts the 1988 system into statute, and the gives the EQC and the Director of the DOA a responsibility to agree on what the rules are going to be, since those rules affect agriculture and air quality. In short, the A-engrossed version formalizes that agreement process that occurs on the side line now.

137 SEN. KERANS: Mr. Craig, please elaborate on the "mechanical" differences between the two versions of the bill.

140 CRAIG: The EQC has full rule making authority, with some consultation of the DOA director. In some cases, however the DOA director appears to be the principal rule-making authority, while in other cases the EQC does. The guiding principal with respect to authority is that the DOA director adopts rules pertaining to those portions of the program that are most directly related to agriculture and the EQC adopts rules pertaining to those portions of the program that are most directly related to air quality and enforcement.

152 SEN. KERANS: Proposes moving on to discussion of specific issues. Notes, for record, that both versions of HB 3343 are mechanically different than the current structure. The A-engrossed version also doesn't provide a paramount role for the DEQ in the rule-making process, but rather gives lead agency authority to the DOA "in conjunction with" the EQC. "In conjunction with" isn't defined adequately, however, and is a matter of "significant substance" and is a "material defect in the process that would be used to manage the field burning program". Advocates status quo for administration.

177 SPEAKER CAMPBELL: Sen. Kerans, your question pertains to rule making?

180 SEN. KERANS: It's in providing for an amalgam between the DOA director and the EQC. That's irregular. Usually coordinate director-to-director or agency-to-agency. "In conjunction with" doesn't specify a lead agency. Under Section 4, for example, believe the DOA director could write the rules, send a copy of them to the EQC and that could be considered "in conjunction with". The criteria in those rules to determine if a need exists to burn additional acreage is very loose. "So it's substantive problem, and it is a material and fatal flaw in the process."

200 SPEAKER CAMPBELL: On the Smoke Management portion, which is beyond the rule making authority, one of the versions of this bill requires that portion to be handled by the DEQ and the other has it handled by the DOA. Both identify one as responsible.

205 SEN. KERANS: Advocates status quo.

208 NELSON: The Forestry Department slash burning program may be model with respect to the interagency relationship. The Forestry Department develops rules for the Slash Burning Program, and those rules are then approved by the EQC.

230 SEN. KERANS: There has to be a lead agency, and with respect to the environmental aspects of field burning, it should be the DEQ. On the A-engrossed, Section 13, page 5, subparagraph 2 (a) through (c), the years run on. "It says from 1992 to 1996, 1996 140,000 acres, and then in (b) it says from 1996 to 1999 125,000 acres, and then in 1999 and thereafter 50,000. It seems to me it can't be both. Is it 1992 to 1996 140,000 and then 1997 to 1999 125,000?" Where are the cutoffs?

247 CHAIR PARKINSON: The first cutoff would run until December 1995. Could consult with Legislative Counsel.

252 NELSON: The limit changes January 1, 1996.

258 SEN. KERANS: This needs to be clarified so this committee knows what it is talking about, because this could become a material issue when we're talking about years and acreages in the phase down schedule.

260 CHAIR PARKINSON: Directs committee administrator to discuss phase down cutoffs with Legislative Counsel.

262 CHAIR PARKINSON: "It appears to me, Committee, looking at the matrix (EXHIBIT A), that about three lines down on the acres, we could draw a line across there, and, if we discussed the 250,000 figure, that we would be part way there, at least theoretically." Believe the A-engrossed version of the bill doesn't have an emergency clause so that the phase down wouldn't affect 1991.

270 NELSON: That's correct.

272 CHAIR PARKINSON: Mr. Nelson, do you have any problem making this effective in 1991?

274 NELSON: Farmers need time to implement changes, and this year's harvest will begin in a couple of weeks.

284 SPEAKER CAMPBELL: Would it be reasonable to look at a comparable level in 1991 as the actual acreage burned last year?

290 NELSON: There is an arbitrary limit, and actual burning historically has been about 15 percent less than that limit. Other factors make statutory limits problematic.

307 CHAIR PARKINSON: So, establishing a statutory limit in 1991 comparable to last year's actual acreage burned would result in actual burning of 140,000 acres?

310 SEN. KERANS: "I rather like the suggestion of the Speaker." Notes that the B-engrossed version of the bill does have an emergency clause and would begin the phase down in 1991.

318 CHAIR PARKINSON: What does the abbreviation HEL on the matrix (EXHIBIT A) stand for?

320 KATHRYN VANNATTA, COMMITTEE ADMINISTRATOR: Highly Erodible Lands.

322 CHAIR PARKINSON: And why isn't that included in the House column on the matrix?

324 VANNATTA: Because the House didn't address those lands.

327 CHAIR PARKINSON: What is the additional 25,000 acres listed on the matrix?

330 VANNATTA: The additional acreage listed on the matrix compare the amounts of acreage that could be burned under the two versions of the bill. 335 SEN. KERANS: The B-engrossed, Section 5 (5), explains circumstances for allowing emergency burning acreage.

TAPE 2, SIDE A

02SPEAKER CAMPBELL: Sen. Kerans, point of clarification: The 50,000 acres for emergency burning after 1987 appears to allow for close to the same acreage as the A-engrossed version of the bill during that time period.

08SEN. KERANS: Yes, the exception acreage goes up as the regular acreage allowed goes down under the B-engrossed version. The exception acreage is twice as large in the B-engrossed as in the A-engrossed because it incorporates both the highly erodible lands and the need for some emergency open burning for disease and insect control.

15CHAIR PARKINSON: The matrix indicates that the level of emergency acreage jumps after 1994. Is that a misprint?

18SEN. KERANS: It provides for a larger area of exception. Actually, the matrix is incorrect. The 1994-1995 row in the matrix should be 100,000 + 50,000, not 100,000 + 25,000 as printed. So the right hand column should read: 25, 25, 25, 50, 50, 50, 50, 50, 50. The idea is that as total acreage comes down, it would be unfair to squeeze emergency burning beneath a low and shrinking ceiling, so shifted 25,000 acres outside the regular limit.

30CHAIR PARKINSON: Assume decisions to allow burning of any of those 50,000 exception acres would be very objective.

33SEN. KERANS: Assume the process being used for those determinations now would continue, and if there were a problem, the Legislature would address. "The intention is to permit the burning of those [exception] lands, especially on the non-till acreage."

36CHAIR PARKINSON: Aren't there provisions for the highly erodible land in the House bill?

40NELSON: Senate bill lays out HEL criteria in statute, while the House bill leaves HEL up to the DOA director. Probably two thirds of the acres in the Silverton Hills would qualify as HEL. HEL is not the term used in the House version. Relevant language is contained in Section 6.

81SEN. KERANS: DEQ is given more authority to provide more acreage for emergency burning under the B-engrossed version than under the A-engrossed. Material difference between the two bills isn't large; it's a question of how acreage is quantified and identified.

96CHAIR PARKINSON: Appears that criteria for emergency burning would have to be very objective, and that a very good case would have to be made to allow emergency burning.

104 SEN. KERANS: Yes, there would have to be a demonstration of need for that emergency acreage based on soil condition or terrain. "I don't have a that much problem with steep terrain, if we define what 'steep terrain' is by degree . . . as long we would reference the erodible soils definition within the definition of steep terrain, and say that the director could then permit that, and that would become regularized."

117 CHAIR PARKINSON: Entertains discussion on fees.

123 SEN. KERANS: One significant difference between the two versions of this bill are the open burning and propaning fees to provide revenue for research. The B-engrossed version creates the Field Burning Alternatives Research and Development Committee to allocate those revenues for research. In past, fees have been too low for breakthrough research. Need to do away with advisory committee and move toward research and development. The advisory committee doesn't have any money for research. Need to create new committee, free of any special interest, to administer research and development fund from this bill. Have discussed possible lottery appropriation to "jump start" research and development.

163 CHAIR PARKINSON: Entertains discussion of Eastern Oregon and stack burning.

168 SPEAKER CAMPBELL: Not sure committee system is appropriate way to manage research and development. Need specific plan targeting specific areas, especially finding a seed that isn't susceptible to insect, and an alternative way to dispose of waste straw. One research and development requirement should be to develop a plan targeting these two areas.

188 CHAIR PARKINSON: Mr. Nelson, did we ever have a plan?

190 NELSON: No. Advisory committee in early 1970s did have a kind of plan that was partially implemented. That has generated significant data which has been used for research and development. The results of that R & D is leading to reasonable phase down in reasonable length of

time. This bill would provide funds from variety of sources. Need non-political system for directing funds.

214 SEN. KERANS: Yes. Need a public committee, with four citizen members and three industry members. Current committee membership has been unacceptable. Appears everyone on this conference committee wants the same thing; the question is how to achieve an acceptable comfort level for the most people. In fact, the current advisory committee doesn't have to have any pure public representation.

253 SPEAKER CAMPBELL: Senate proposal is political to extent that appointments are made by the Governor with Senate confirmation.

258 SEN. KERANS: "Before we raise fees, and spend money, or allocate regional strategy money, or strategic reserve money, or general fund money, or any other fund, this issue's got to be resolved."

260 CHAIR PARKINSON: From what you read out of statute, it sounds like the existing advisory committee has fairly broad representation.

263 SEN. KERANS: Not at all. Current appointment criteria aren't' specific enough to prevent partisan appointments.

280 REP. WHITTY: What money is generated through acreage fee, and what is it used for?

294 NELSON: In recent years collections from that fee have totaled about \$675,000 annually. A portion of that revenue is paid back to fire districts. The DOA retains about half for the Smoke Management Program. And the balance of that fee revenue goes to the DEQ for enforcement.

309 REP. WHITTY: Who would do research proposed under this bill?

315 CHAIR PARKINSON: There is a provision addressing that in the House version.

328 SPEAKER CAMPBELL: Not sure that either approach here is appropriate. R & D committee should determine how research and development should be done. The Legislature should make it possible for them to do it. R & D should have experts.

360 SEN. KERANS: Committee appointees need to have credibility and confidence of citizens and industry. Would never entertain allowing DOA to administer R & D.

375 NELSON: If this bill passed, it would set the industry on an irreversible track, so the make up of the R & D technical committee is essential to the industry. Once the industry is on the R & D track, need reasonable assurance alternatives will be successfully developed.

402 SEN. KERANS: So, we need a scientific committee.

407 NELSON: The Seed Council has sought to attach this R & D function to the administrative services of the DOA to facilitate rapid transition.

TAPE, 1, SIDE B

05CHAIR PARKINSON: Mr. Craig, did your department prepare these fiscal impact figures?

08CRAIG: Yes.

10CHAIR PARKINSON: There appear to be dramatic differences between the estimates for the A-engrossed and the B-engrossed versions of the bill. Was it anticipated somewhere that the DOA would collect funds and then allocate them?

15CRAIG: We have discussed the possibility of assisting the advisory committee in dispersing those funds to the projects that the advisory committee wanted.

35CHAIR PARKINSON: Mr. Nelson, what are the arguments involved in setting the stack burning fee? Notice that the industry has never paid a registration or burning fee for stack burning, and that both the House and Senate versions of the bill include fees for stack burning.

39NELSON: The industry believes that "everybody that lights a match ought to be paying a fee to support both the regulatory function and the research function because a major effort will be in straw utilization, and that becomes very necessary."

44SEN. SPRINGER: Mr. Nelson, there isn't any effective regulation of stack burning now, is there?

46NELSON: The DOA does set standards in that regard, but technically the department doesn't have the authority to enforce stack burning regulations.

63CHAIR PARKINSON: Growers in my district say stack burning results in very little smoke if done properly. Can you comment?

68CRAIG: Industry historically has not wanted open burning and stack burning to compete during acceptable weather for burning. Consequently, stack burning typically has not been allowed until the end of the burning season when the first rains come, so the stacks progressively got wetter and deteriorated as they were burned. Over the last two or three years, the department has tried to move the stack burning schedule progressively forward into the season so that it's burned when it's in the best burning condition possible and produces the least smoke.

79CHAIR PARKINSON: Appears that if burning fees are high, farmers would pile waste straw and let it rot. Would a high fee be self-defeating with respect to raising revenue?

83CRAIG: Hard to say at what level a fee becomes a disincentive, but the cost and effort involved in removing straw and keeping it so that it could be utilized is already a "substantial expense" incurred by growers. To add a very high fee on top of existing high expenses might be a disincentive.

90SEN. KERANS: "Disincentive to what?"

92CRAIG: "To burning it."

94SEN. KERANS: "What's your point? I'm sorry. I'm being facetious." The other side to an exorbitant burning fee is that waste straw will pile up on farmland. How long can a farmer stack up waste straw without eating up growing acreage?

102 CRAIG: This is part of why it's being burned. Composting is one alternative that is being explored.

107 SEN. KERANS: "I certainly would like to see more of that (composting) myself. Mr. Chairman and Mr. Craig, there's also the question over a fee per acre of stack burning, that is to say a fee based on the acreage from which the stack came, as opposed to the tonnage. Is that, as a matter of fact, possible to accomplish on a tonnage basis?"

114 CRAIG: The DOA felt it would be most practical to base stack burning fee on the acreage from which the straw was gathered because the grower doesn't have a good way to assess the tonnage in the stack until it's bought and hauled away.

117 SEN. KERANS: Without regard to how much acreage is burned, should use acreage as unit for fee.

125 CHAIR PARKINSON: Done.

127 REP. WHITTY: Seems industry should be anxious to set up R & D rather than spending money on public relations.

143 NELSON: With demise of DEQ fees for R & D, the industry took it upon itself to boost R & D. Industry has focused about \$350,000 a year on R & D into chemical efficacy for seedling and disease control, on re-registration of materials that are specifically useful to grass seed production, on composting, and on straw board and straw log manufacturing. Simply have run into bottom of bank account. Nice thing about industry funded research and development is that it is less cumbersome than with government oversight.

182 SPEAKER CAMPBELL: The industry has looked at just about all alternatives, and should be targeting research areas to give this body assurance that public research dollars will get spent wisely. Approaches in these proposals aren't good because they give money to people who don't know how to spend it.

200 SEN. KERANS: The industry has been in charge of the advisory committee for years, and the industry has been researching for years. Need element of necessity to get action, as well as a fee level to provide adequate income to fund research.

229 CHAIR PARKINSON: Entertains discussion of DEQ field burning program.

231 STEVEN CRANE, DEQ: Explains relationship between DEQ and DOA with respect to the Smoke Management Program.

>DOA operates Smoke Management portion of program, while DEQ administers enforcement and public education.

252 CHAIR PARKINSON: Does DEQ identify parties subject to enforcement?

254 CRANE: DEQ does have field enforcement personnel.

262 SEN. KERANS: DEQ enforcement and DOA contracting to manage the Smoke Management Program isn't an issue, is it?

264 CHAIR PARKINSON: "I thought it was an issue. I thought you didn't

want the Department of Agriculture to have much authority. You wanted everything vested in DEQ."

274 SEN. KERANS: The B-engrossed version permits status quo by interagency agreement. DEQ should be lead agency. If DEQ has lead authority, the Senate is willing to allow split rule-making authority to continue.

299 CHAIR PARKINSON: What you're saying makes sense, but doesn't it also make sense to have DOA as lead agency for research?

308 SEN. KERANS: Not prepared today to give DOA authority over research.

329 CHAIR PARKINSON: Entertains discussion on statewide application of the program.

333 SEN. KERANS: Currently have voluntary program in Central Oregon. Does that also extend to Union County and that area?

335 CRAIG: It started as voluntary. Central Oregon now has county ordinances that govern their program. Union County appears to be moving in that direction. "People in Union County are as much Oregonians as people in Yamhill County, and people in Jefferson County are just as much Oregonians as people in Lane County. It just seems fair to me. What's good for the goose is good for the gander."

360 SEN. SPRINGER: What is the funding mechanism for voluntary smoke management programs in Eastern Oregon now?

373 NELSON: There are small fees in Central and Eastern Oregon. Issue is should Eastern counties share in statewide burning acreage?

390 REP. WHITTY: Doesn't make sense to have one part of the state pay all fees for whole state, when whole state would benefit from research.

TAPE 2, SIDE B

06SEN. SPRINGER: Mr. Nelson, can you elaborate on problem with "in conjunction with" language used in establishing rule-making relationship between DOA and DEQ.

08NELSON: Legislative Counsel introduced the "in conjunction with" language into this bill to indicate that both parties would be in agreement and working closely together since they both had functions of specific responsibility. Representatives from the DOA and DEQ both agreed that such a relationship would be workable. The Seed Council envisioned that these two departments would be communicating with each other regularly on the implementation of this phase down. Rule making would be primarily a DEQ function, while ongoing operations would be a DOA function. Under this concept, both departments would have opportunities for input, they would just have to decide when that should be.

23SEN. KERANS: "The problem is that the words themselves don't do that. 'In accordance with' means two things: one is an administrative thicket into which we would go and never come out; and two, in my opinion, would then result in my having been snookered because we would be lost in that thicket and find that the power 'in accordance with' the bill would have been given, by default, lead agency, to the Department of Agriculture."

34CHAIR PARKINSON: But the process seems to be working.

38NELSON: As far as this package, the rules are in place as far as what will occur, and the rules governing operation and enforcement of the program can't get much stricter than they already are. "This package tends to be very heavily oriented to being a research and development package that happens to put us [industry] on an irreversible schedule that says you're going to be out of the burning business, by and large, by the end of this decade. Whichever year you pick, we're going to be out of the burning business, and we better have ways in place to produce grass seed in the absence of that burning. That's what this package really says. We tend to believe that we can do that if we can craft a reasonable schedule that provides an income stream with a committee that can function without a lot of constraints and bureaucracy."

48SEN. KERANS: "I'm not interested in either constraints or bureaucracy, Mr. Chair; I'm interested in credibility and confidence."

51NELSON: "We're interested in results."

56CHAIR PARKINSON: "I think we're at a stopping point. First chance we'll be working on it again. We don't have too many more weeks left. This bill sat in a committee somewhere for an awful long time. I don't know where it was." Adjourns at 2:10.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee
Administrator

EXHIBIT LOG:

A -Comparison of Field Burning Phase Down Proposals - Committee Staff
- 2 pages