

Senate T&E Committee
May 03, 1991
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Exec Appts
SB 1192 - PH & WKS

SENATE LEGISLATIVE COMMITTEE
ON TRADE AND ECONOMIC DEVELOPMENT

May 03, 1991Hearing Room 343
3:00 P.M.State Capitol
Salem, OR

Tapes 106 - 107

Executive Appointment/Reappointments - Port of Portland
Robert R. Ames
George M. Miller
Darryl S. Tukufu
Commodities Commissions

MEMBERS PRESENT: SEN. WAYNE FAWBUSH, CHAIR
 SEN. SCOTT DUFF
 SEN. JEANNETTE HAMBY
 SEN. JIM HILL
 SEN. PEG JOLIN
 SEN. EUGENE TIMMS

MEMBERS EXCUSED:

STAFF PRESENT: JOSEPH CORTRIGHT, EXECUTIVE OFFICER
 TAMIRA MILLER, POLICY ANALYST
 JERI CHASE, OFFICE MANAGER
 HOLLY BROWN, COMMITTEE ASSISTANT

WITNESSES: ROBERT R. AMES, PORT OF PORTLAND BOARD OF
 COMMISSIONERS
 GEORGE M. MILLER, PORT OF PORTLAND BOARD OF
 COMMISSIONERS
 DARRYL S. TUKUFU, NOMINEE TO THE PORT OF PORTLAND
 BOARD OF COMMISSIONERS
 DAVE NELSON, OREGON SEED COUNCIL
 PHIL WARD, ASSISTANT DIRECTOR, DEPARTMENT OF
 AGRICULTURE
 STEVE SANDERS, ASSISTANT ATTORNEY GENERAL

NOTE: These minutes contain materials which paraphrases and/or summarizes statements made during this meeting. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 106, SIDE A

000 CHAIR FAWBUSH convenes the meeting at 3:17 p.m.
Executive Reappointment (Port of Portland) - Robert Ames

010 CHAIR FAWBUSH: Give us some information on what the Board has been doing, what you have personally been interested in seeing the Board do, and where you would like to see it go during the next four years.

014 ROBERT AMES: This has been a very effective Commission for the past four years. I am proudest of the kind of discipline that has been installed at the Commission level and the staff level. One outfall of this is that the port today, from a fiscal point of view, is very healthy. It had previously gone through some years of mixed returns - even though cash flow was not a problem because of its assets. But it really did not have an operating profit for a long period of time. Measure 5 will cost us about \$3 million per year in terms of property tax income. The port will not be restricted in any capital improvement or investment that we should make in behalf of our constituency. That may not last very long. In the next few years we are going to spend a lot of money - the airport renovations, marine terminal challenges, other job issues, etc. The port will continue to be an engine for economic growth in the whole state. It is an extremely well-run organization with a lot of built-in efficiencies and innovations occurring, but there are a lot of challenges.

071 CHAIR FAWBUSH: Is the dry dock breaking even?

074 AMES: No. We have sufficient reserves and cash flow from other activities to maintain that.

080 CHAIR FAWBUSH: That is a hard one - it is an important service.

084 AMES: Yes. It provides between 2,500 and 3,000 jobs.

086 SEN. DUFF: I am concerned about the possible economic consequences of listing the salmon as a threatened or endangered species. I want people in the state to understand the potential economic impacts.

093 AMES: The port will be very involved in this whole issue. We have been discussing channel dredging to the depth we need for the types of ships that are being built. We know we are going to have to deepen the channel. That makes this even more controversial. This dredging is a massive, very costly project and the one that will potentially strain the finances of the Port of Portland.

105 SEN. TIMMS: I am nervous about the process being set up to address that problem. What do you envision as the best way to review this issue?

114 AMES: I don't feel that I know enough to make any statement about that.

119 SEN. TIMMS: MIKE THORNE said that we should get all of the people together that are involved economically, because they are the ones who are going to have to pay for it. I don't see that happening

yet. I hope that the Port Commissioners will work with the Governor and voice their economic concerns.

136 AMES: You can count on us having a voice. Our new Port Director will help us with the leadership and he is used to dealing with a much broader constituency than a lot of us have been used to.

Executive Reappointment (Port of Portland) - George M. Miller

142 GEORGE MILLER: I have served on the Marine Task Force; visited with the Port's customers in the Far East. The Japanese and Chinese were very interested in what the State of Oregon has done to enhance shipping through Portland and we are hoping to get some new customers. Serving on the Port Commission is the most educational thing I have ever done. I am looking forward to some exciting new years with the new Port Director.

179 CHAIR FAWBUSH: When you first were appointed to the Commission, the labor relations between the Commission and the Union were not harmonious. How are those relations now?

186 MILLER: Relations have been good - we have had no problems that have not been resolved.

Executive Appointment (Port of Portland) - Darryl S. Tukufu

206 CHAIR FAWBUSH: What are your impressions of the Port and what can you contribute to the Commission?

200 DARRYL TUKUFU: I have had several briefings with different people since my appointment was announced. This is a job that I believe I am capable of doing. I have previously been involved in several different boards, commissions, advisory committees, etc., in six states. My public service background and management and planning background is extensive. I am pleased with the make-up of the Commission - the business and union representation. I would like to offer a different perspective to the Commission - that of community. I will work hard to assist the Port to achieve its mission and vision statement.

236 CHAIR FAWBUSH: Do you think there is a role the Port could be playing in the community that it is not currently?

241 TUKUFU: I don't know yet what the Port is specifically doing. I do know that if there is a representative of the community on the Commission that will only help add the additional perspective and the community representative can make the Commission aware of things that may not be happening.

252 SEN. J. HILL: What is being done currently to interact with the immediate community of

North/Northeast Portland?

262 AMES: Discussions on that are ongoing. I think some of the needs of this community are a need to repopulate and make people want to live there again. The Port can contribute to that with safety and jobs. We need the kinds of jobs that bring the immediate adjacency to the community. If we are going to solve those kinds of problems we need to all be involved - the port especially because it owns most of the land.

291 MILLER: The Commission is willing to do all it can to expand its involvement in these issues.

310 CHAIR FAWBUSH: We want to know what can be done on a proactive basis.

321 AMES: Hopefully, people like DARRYL TUKUFU will be able to help us to that. We need to have someone tell us what they need and then we can decide if we have the resources and if it is possible.

327 TUKUFU: I think that us being able to discuss those issues will be very helpful.

336 MILLER: The three employers (NW Marine, Cascade, and WSI) are working with the port about a training program.

345 SEN. HILL: What is the record of the port in affirmative action hiring and what kinds of public contracts have they been trying to give to the area? Have they made the effort to provide contracts to minority-owned businesses in the North/Northeast Portland area?

360 AMES: We are in compliance. The record on affirmative action hiring is good. We could do more. The port does very well with minority contracting. The Commission sees every contract and that is a basic part of our charge.

373 SEN. HAMBY: With respect to local community relationships, the port has a satellite facility in Hillsboro and the relationship is very good.

410 AMES: When the air show first came up, the port was reticent. Now the port is a big advocate and the investment has been a winning deal.

435 SEN. DUFF: The port is tied to the whole region and all of the small ports and communities on the Columbia River all depend upon your capacity. We cannot propel our regional economic development without a successful Port of Portland.

456 CHAIR FAWBUSH: What do you see as your relationship in the future (10 years from now) with the downriver ports - particularly Astoria?

461 MILLER: We have to assure that they feel comfortable with us and that they succeed. What we want, we should want for them.

470 CHAIR FAWBUSH: This has been an ongoing issue. What potential do you see? What specific relationships do you see developing within the next few years?

482 MILLER: We need more one-on-one contact so as to develop more fellowship.

TAPE 107, SIDE A

033 AMES: I agree. We need more dialogue. There has been some during the past four years and I think that under the new director (with a broader perspective) we will have even more success. The Port of Portland can be a lot of help to the Port of Astoria. The Port of Portland is unique because it has been in business so long and it has such an advantageous location. A lot of business comes our way because of those two things along. That is not all true of the Port of Astoria. Its scale is smaller. One thing that has traditionally happened that is wrong is the competition. I think it is a matter of the greater public good to decide where certain operations will occur. That is what I think should happen along the whole Columbia River - including Washington ports.

070 CHAIR FAWBUSH: What is the future of container traffic at the port?

072 MILLER: We just went on a trip to the Far East and we spoke to customers and potential customers. We have done the things to create new business and containers but it will be a tough and continuous sell.

082 AMES: The business is very unpredictable. The intermodel service is very successful. We have to maintain the level we have and achieve a higher level if possible or we will lose out to the Ports of Seattle and Tacoma. These ports basically subsidize their traffic now because they cover the difference of shipping by rail from this area to there. If we do not have this ability, the tariff charges on the goods produced downstate and manufactured goods produced in Portland are increased. That has a negative effect on wages rates, etc. That is one good argument for channel dredging so that the larger container traffic can get to the Port. We have to continue to sell ourselves to these customers.

125 CHAIR FAWBUSH: Can you cross-subsidize within the Port? Can you shift funds between port activities?

130 AMES: There is a line drawn between aviation and everything else.

142 MILLER: The dry dock has brought us jobs that we would not have had before.

148 CHAIR FAWBUSH: What is your biggest liability?

153 MILLER: The ship repair portion. But, on the other hand, it provides jobs for the community.

148 AMES: Three thousand family wage jobs. We have not made a profit in that for a while. We are hoping that the cash flow will enable us to replace facilities soon. Some facets of cargo handling are not profitable but has to be done for the business.

164 MOTION: J. HILL moves (en bloc) the committee approve the reappointments of ROBERT R. AMES and GEORGE M. MILLER and the appointment of DARRYL TUKUFU and that these reappointments/appointment be confirmed by the full Senate.

170 VOTE: Passed 6-0. Carriers: SEN. J. HILL will carry DARRYL TUKUFU's nomination; SEN. TIMMS will carry ROBERT AMES' nomination, and SEN. JOLIN will carry GEORGE MILLER'S nomination.

Committee Discussion

185 SEN. JOLIN: Weyerhouser is shutting down its sawmill in Springfield permanently. This will affect about 275 employees.

220 SEN. HAMBY: Overviews concerns about 1989-91 community college equipment expenditures. (Notes on these expenditures submitted as EXHIBIT A.) EXHIBITS B and C were also submitted.

300 SEN. HAMBY: I shared this information with the House T&E Committee at their meeting this morning. REP. KATZ noted that this should not be a problem during the 199 1-93 biennium because we have requested a list of proposed expenditures for this biennium. I have reviewed this listing and also do not find several of these proposals acceptable - fitness centers, saunas, large screen TV's, computer systems for campus services, motor pool vans, maintenance equipment, athletic equipment, etc.

335 SEN. DUFF: I requested this information a while back and have reviewed this same list. My community college only received \$185,000 last biennium and they are in need of computers for their computer center. These expenditures make no sense at all.

354 SEN. TIMMS: We do have the opportunity here to watch it and take care of it. It also points out the importance of reviewing what the funds were allocated for.

365 SEN. HAMBY: I am having an amendment drafted that would add audit requirements for every lottery-funded program.

375 SEN. TIMMS: The more programs we get into, the harder is it to audit them.

415 SEN. TIMMS: We have looked at the economic development side of programs but we have not always audited the outcome.

438 SEN. DUFF: The report done by the Legislative Fiscal Office on Job Training Programs proves that we have no idea what the outcome is of the expenditure of \$250 million in various job training programs.

455 SEN. HILL: I think we need to have this kind of information but a lot of this comes back to the fact that we have not defined what economic development is. We have abdicated our role in defining economic development.

TAPE 106, SIDE B

030 SEN HILL: We need a clear definition of economic development, it has become so broad that it doesn't mean anything.

050 CHAIR FAWBUSH: When we allocated that money it was supposed to be for equipment with the understanding that it would be directed toward cooperating with Workforce 2000. That was not written into the bill, but that was the intent. Obviously they did not get the message. I have been criticized for suggesting that the requested \$6 million for this coming biennium be program or need oriented rather than allocated on a per capita basis. This reinforces my position that we need training funds for all of the efforts we are making for workforce. It ought to be program oriented and nobody guaranteed a piece of it. We need to make it very clear that this next allocation be dedicated for workforce training on a performance basis. We cannot afford to have this happen. That is the issue that we need to address. What direction should we be responsible for giving them?

SB 1192 (Commodities Commissions) - Public Hearing and Work Session

085 CORTRIGHT: Reviews issues. The first issue relates to the provision that Commodity Commissions would be independent contractors for the purposes of unemployment compensation. Submits EXHIBIT D. The recommendation be that the exclusion from these laws needs to be worded so it is consistent with federal law. Submits a sample of how these same type of amendments were used in another bill (HB 2047B) to resolve this same issue (EXHIBIT F).

178 DAVE NELSON: We believe that this amendment does would resolve the situation.

180 CORTRIGHT: Overviews second issue that relates to contracting. Submits proposed legislative counsel request that contains two alternatives to resolve this issue (EXHIBIT E).

195 SEN. DUFF: That would allow the Department more than their current authority - they currently only review contracts of \$10,000 or more.

197 CORTRIGHT: I believe that the Department of Agriculture has the legal authority to approve contracts of any limit. It has only been their practice to review contracts of \$10,000 and more.

202 PHIL WARD: STEVE SANDERS from the Attorney General's Office is here and has reviewed this.
What is the exact question?

206 CHAIR FAWBUSH: The specific question is if this amendment is broader than current authority because you only can currently review contracts of \$10,000 and up?

212 WARD: The current limit is \$25,000 and under.

215 STEVE SANDERS: The question this raises is what the Department would be reviewing the contract for. Because the bill would exempt Commissions from complying with public contracting laws, it could leave the Department only able to review whether or not a common law contract has been created, but would not be able to review whether the contract was otherwise lawful. Under the current system, the Department reviews whether the contract complies with other requirements (i.e., state law governing retroactivity, constitutional appropriation limits, workers compensation coverage, state tax law compliance, whether the contract was for a lawful purpose, etc.).

252 SEN. HILL: That is not much of a review.

254 CHAIR FAWBUSH: What has the Department been reviewing for in the past? We want to continue current practice in that area - no more or less.

257 WARD: That is our objective also. It appears that this would be a reduction of the ability of the Department to look at contracts.

264 CHAIR FAWBUSH: Is it possible to write language so we can replicate current practice?

266 SANDERS: Yes.

268 CHAIR FAWBUSH: Is the Committee interested in that? There is no disagreement with that.

273 SEN. DUFF: Current practice has been re-interpreted recently to expand the authority of review. That is what has caused this problem.

275 CHAIR FAWBUSH: In what way?

278 SEN. DUFF: This has been working well since 1947. All of a sudden, for some unknown reason, we have difficulties with unemployment insurance, etc.

281 CHAIR FAWBUSH: You are referring to the Attorney General's opinion of last year. We are talking about prior to that - that is what we are after. Current practice prior to the Attorney General's opinion.

287 SEN. HILL: As part of that opinion, was it considered how we could avoid the problems that were identified in the opinion?

292 SANDERS: Conceptually, it is certainly possible to address all of the issues that have concerned the Department of Justice with respect to how the Commodity Commissions are currently contracting with one exception. That is that we have been concerned that some of the projects that have been contracted for are discretionary functions of the Commission. That raises an unconstitutional delegation of governmental authority to a private person problem. We do not believe the Legislature can change this problem (a constitutional one) by statute.

308 SEN. HILL: Can you give us an example of improper delegation?

311 SANDERS: If the Commission were to delegate authority to pick an advertiser for the commission product. The one that they pick can affect the state's taxing authority.

328 SEN. HILL: It is a matter of limiting this authority to administrative functions?

331 SANDERS: Yes. If those functions are administrative, we do not believe there would be any constitutional problem.

333 SEN. HILL: Is that what you, as contractors, want to have done - purely administrative things.

335 NELSON: That is exactly what we want. We don't know of any administrators that make discretionary decisions that are considered governmental decisions. Those decisions are reserved for the Commission. Those issues are what we have been trying to resolve.

362 SEN. DUFF: Is there a technical difference between a tax and an assessment? Does that technical difference influence the state's taxing authority?

363 SANDERS: Yes there are technical differences. It influences whether that money has got to go into the General Fund and be appropriated by the Legislature. An assessment for a particular purpose means that the Commission can have those funds directly into their own budget and don't come to the Legislature for a re-appropriation of those funds. There may be other differences.

382 SEN. TIMMS: Are we changing this because we have gotten into other areas that contractors are being used for as non-governmental employees? Why has this issue risen?

387 SANDERS: I don't believe that laws have changed. We have more people who are contracting now. Legal issues have been raised.

407 CORTRIGHT: The third issue is that the way the bill is currently drafted it is a very sweeping exemption of commodities commissions and contractors from the laws. For instances, on lines 14 and 15 the bill states ". . . the contractors shall not be considered employees for the purposes of Oregon law . . .". They are thus exempted from all chapters of Oregon law.

420 CHAIR FAWBUSH: Let's get a clean bill in front of us that does what we think we want done and then we will continue to review it.

430 SANDERS: We have agreed to meet with MR. NELSON and MR. WARD to draft a bill that accomplishes what is wanted.

435 CORTRIGHT: To summarize: You want to write a provision that incorporates the same sort of language incorporated in HB 2047 to deal with unemployment insurance taxation; you want to give the Department of Agriculture the authority to review contracts for the same set of issues that they reviewed them for prior to the Attorney General's opinion; you want to narrow to scope of exemptions for commodities commissions sufficiently to accommodate their objectives without making it so broad that it creates constitutional and other problems.

455 SEN. HILL: If the issue is administerial versus improper delegation can we have an understanding about this so it does not happen again?

461 SANDERS: We would intend to draft in language that would only permit delegation of administerial duties.

471 CHAIR FAWBUSH adjourns the meeting at 4:44 pm.

Submitted by,

Jeri Chase
Office Manager

EXHIBIT SUMMARY

EXHIBIT A -Community College equipment purchase notes, submitted by Senator Jeannette Hamby, 3 pages

EXHIBIT B -Community College Equipment Purchases 1989-91, submitted by Tami Miller, 1 page

EXHIBIT C - Letter to Office of Community College Services, submitted by Tami Miller, 6 pages

EXHIBIT D - Letter from Employment Division, submitted by Joe Cortright, 2 pages

EXHIBIT E -Draft LC Amendment Request, submitted by Joe Cortright, 1 page

EXHIBIT F - HB 2047, submitted by Joe Cortright, 1 page