

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.

SENATE COMMITTEE ON
WATER POLICY

March 7, 1991Hearing Room C
3:00 p.m. Tapes 27 - 29

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Wayne Fawbush
Sen. Bob Kintigh
Sen. Eugene Timms
Sen. Dick Springer, Vice-Chair

STAFF PRESENT: Lisa Zavala, Committee Administrator
Bernadette Williams, Committee Assistant

BILL CONSIDERED:SB 233 -- Limits submerged or submersible land lease requirement
exemption to riparian owners -- Work Session

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TAPE 27, SIDE A

010 CHAIR HILL: Calls the meeting to order at 3:15 p.m.

-There are a number of people to testify so he will permit testimony.

SENATE BILL 233 -- WORK SESSION

Witnesses:Janet Neuman, Director, Division of State Lands
Dave Obern, Facilities Manager, State Marine Board
Paul Donheffner, Director, State Marine Board
Jill Zarnowitz, Assistant Chief, Habitat Conservation Division, Oregon
Department of
Fish and Wildlife

CHAIR L. HILL: Opens the Work Session.

-He discusses SB 233-1, Proposed Amendments (EXHIBIT A).

(EXHIBIT B) -- Hand-Engrossed SB 233.

035 JANET NEUMAN, Director, Division of State Lands: It appears that once the square footage exemptions have been eliminated and put into the rulemaking authority of the division, the definition language in subsections (b) and (c) and subsections (2) and (4) may be unnecessary and could be replaced with a general rulemaking authorization for exempt structures.

058 CHAIR L. HILL: The amendments work they way they are?

NEUMAN: Yes, but there may be more words than you need.

CHAIR L. HILL: We'd have to take it to Legislative Counsel.

066 SEN. SPRINGER: Likes the amendments.

-How would these amendments affect the Watery Lane issue?

NEUMAN: Does not think it would affect it. She elaborates.

092 SEN. SPRINGER: This bill says it doesn't matter what the riparian owner has to say; you can lease the property in any way you wish?

NEUMAN: It says that if there are exempt structures, that exemption is only available to the riparian owner.

-She presents testimony in support of the amendments (EXHIBIT C).

158 SEN. KINTIGH: This is speaking to only the riparian owners?

NEUMAN: Yes.

SEN. KINTIGH: Where does everyone else fit?

NEUMAN: Current law says we can't require a lease from anyone that's under these exempt sizes.

-According to an interpretation from the Attorney General's Office, we can't say that someone who doesn't live there can't put up a structure.

SEN. KINTIGH: Now when you set the rule you could set it at zero?

NEUMAN: Conceivably.

SEN. KINTIGH: You can set the limit for the riparian owners?

NEUMAN: Correct.

-She describes what they were trying to get at with the original bill.

-We wanted the exemptions limited to the riparian waterfront owners.

-The amendments go beyond that.

189 SEN. KINTIGH: It seems like you're removing all exemptions.

NEUMAN: We're removing them and deferring them to a rulemaking process, which could pick whatever level seemed appropriate after public input.

195 SEN. SPRINGER: Might you apply different size limits to different bodies of water depending on the characteristics, other uses and demands placed on that waterway?

189 NEUMAN: That's very possible.

-It's likely we'd use different size limits for different structures. She elaborates.

204 SEN. SPRINGER: Doesn't know why we exempt commercial structures at all.

CHAIR L. HILL: We haven't heard any reason why they're exempt.

223 DAVE OBERN, Facilities Manager, State Marine Board: Presents and narrates a video tape illustrating the issue addressed by SB 233.

236 SEN. FAWBUSH: There is no limit on the number of those things to be put on the riverbank?

OBERN: Not at this point.

SEN. FAWBUSH: A person can put anything on the land they own?

244 OBERN: If you are the riparian owner and it's under 1,000 square feet you can place a structure without any regulatory review.

-He continues his narration.

256 CHAIR L. HILL: Is the lower Willamette the greatest problem area?

OBERN: It is a problem, but not the only one. The problem is widespread.

NEUMAN: There is some regulation by local land use authorities and the Corps of Engineers regulates structures in the water, but they allow these with very little review.

277 CHAIR L. HILL: The intent is not to forbid these, but to control their proliferation?

NEUMAN: Correct.

280 SEN. TIMMS: You do not need to own the property?

NEUMAN: Currently, you don't need to own the property.

SEN. TIMMS: You don't need to own the riparian area?

OBERN: Most go off of their own property.

SEN. TIMMS: Anyone could put a boat or facility in front of someone else's property.

OBERN: Correct.

NEUMAN: Technically you could do that.

291 CHAIR L. HILL: On a lake or river, where there is a public ramp, you could put a floating dock or commercial establishment under these amounts and not have to pay a lease or consult the landowner on the shore as long as the structure doesn't touch the shore.

NEUMAN: Correct.

305 OBERN: Continues his narration.

321 SEN. TIMMS: Don't people need a lease on the Brownlee Reservoir?

NEUMAN: Correct. The state ownership may be on the original bed of the stream.

CHAIR L. HILL: The coastal lakes are state owned.

NEUMAN: Yes and there has been a boom of development there.

349 PAUL DONHEFFNER, Director, State Marine Board: Presents testimony in support of SB 233 (EXHIBIT D).

412 OBERN: Presents "Pictorial Review" (EXHIBIT E).

-He refers to "Known Small Structure Permit Applications" (EXHIBIT E).

430 CHAIR L. HILL: What is this permit?

OBERN: Explains.

TAPE 28, SIDE A

003 OBERN: Refers to chart of leased and nonleased items.

-He discusses concerns of the Marine Board.

-He discusses the increase of structures since 1964.

037 SEN. TIMMS: What rivers can you put these on? What are the limits?

DONHEFFNER: These are found on the navigable rivers of the state; rivers that support large boat traffic.

SEN. TIMMS: Could you put it on the John Day River?

DONHEFFNER: You could.

048 SEN. TIMMS: Could you put one on a wild and scenic river?

DONHEFFNER: A different set of standards apply. They aren't part of our concern.

SEN. TIMMS: These pictures show beautiful rivers screwed up by these

structures.

DONHEFFNER: It's frustrating to note all the pictures of the Willamette River Greenway.

058 SEN. KINTIGH: What changes would be made if the Marine Board was granted this authority?

DONHEFFNER: Describes the authority they were seeking with HB 2157.

-The proposed amendments to SB 233 take care of our concerns. We are working with the Division of State Lands to pursue this.

077 SEN. KINTIGH: With this proposal would one landowner be able to get a dock while another wouldn't?

DONHEFFNER: In HB 2157 we want to effectively zone or designate areas of the rivers where these structures would be allowed.

-We wanted to raise this issue this session.

-Something needs to be done.

093 SEN. KINTIGH: How would the administration of this be funded?

DONHEFFNER: HB 2157 has a dock permit fee associated with it.

SEN. KINTIGH: Would the fee be on new or on existing structures?

100 DONHEFFNER: It would apply to current structures.

098 JILL ZARNOWITZ, Assistant Chief, Habitat Conservation Division, Oregon Department of Fish and Wildlife: Submits testimony in support of SB 233 (EXHIBIT F).

135 SEN. FAWBUSH: How far south of Sunriver do you have a problem?

ZARNOWITZ: There is a lot of development between two bridges.

-Slips are also built into the shoreline.

SEN. FAWBUSH: That's permitted?

ZARNOWITZ: As long as they're under 50 cubic yards.

156 SEN. FAWBUSH: They've raised many issues the bill doesn't address.

-Putting up structures on a small stream destroys it.

-Are we missing an opportunity?

167 SEN. SPRINGER: Would this language permit the division to prohibit those structures in certain reaches if they felt the adverse impact was significant?

CHAIR L. HILL: Would you be able to adjust the way you handle the permits and prove or disapprove

a permit based on whether or not the construction of a structure would damage the stream, fisheries or stream-site vegetation?

170 NEUMAN: I think this would give us that authority. She elaborates.

-The one problem we had was there was an explicit exemption that prohibited us from doing anything with these structures.

-Leasing authority would give us a broad range of tools.

202 CHAIR L. HILL: How about the concerns of keeping floats from grounding, treated wood should be dry, no concrete should be poured in the water, styrofoam blocks must be sealed. Does the permit process take any of that into consideration?

NEUMAN: We are moving towards much more involvement with other agencies to approve our leases.

Once we can lease some of the small structures our own rule-making could set the conditions or we could ask for Fish and Wildlife and the Marine Board to suggest conditions.

221 CHAIR L. HILL: Your rules do not now address those question?

NEUMAN: Not in that level of detail. We are in the process of revising our waterway leasing rules.

CHAIR L. HILL: Are you or ODFW giving any input to the Division of State Lands regarding new rules that would help address these problems?

230 ZARNOWITZ: Yes we have been working with the wetlands rules. We intend to work with them on any of these rules that would protect wildlife habitat.

235 CHAIR L. HILL: The purpose of the bill is to address environmental degradation and obstacles to sports and recreation.

-We should make it clear the problems have been identified and this rulemaking authority should be utilized to address the range of problems.

-It should be a comprehensive approach, rather than a single purpose approach.

249 NEUMAN: We won't just require leases. It will be a different rulemaking proceeding to get at how many of these small structures we will tolerate. We will have to use other agencies to get at this.

CHAIR L. HILL: There are reasons to regulate these structures.

-People whose structures fall apart should be made to take responsibility for them.

-Hopefully this will also address that issue.

272 NEUMAN: The issue of houseboats is one we've started to address in our rewriting of the rules.

SEN. TIMMS: There are many lagoons south of Sunriver and property values are rising. Would you require them to have permits to build on the lagoons?

NEUMAN: We'd have to make sure the water body is within the navigable river.

SEN. TIMMS: You'd require a permit or lease?

-The problem is that people are dependent on that area for the property values.

-He would be uncomfortable if we took away the historical privilege of boating for people who have bought riparian land.

-This would be difficult to administer because of the different situations throughout the state.

322 NEUMAN: A lot of the lagoons have been artificially constructed and are not a part of the state-owned waterway.

329 SEN. KINTIGH: Why should speeding boats be a factor?

NEUMAN: The public trust purposes are navigation, recreation and fisheries. That balance is difficult to maintain.

CHAIR L. HILL: We are headed for conflict in this area and may be able to head off part of the conflict.

351 SEN. SPRINGER: Responds to SEN. KINTIGH: The more you restrict certain lengths of the river the more pressure is put on the unrestricted areas.

-Could you totally prohibit uses of the river if the adverse impact outweighed any benefit?

-Would you be able to apply the restrictions to existing structures?

381 NEUMAN: The first is true.

-The second question needs more exploration. When this statute was passed, there were questions regarding the right of the state requiring leases. A major Attorney General's opinion and court case said there wasn't an absolute right to build all over the state-owned riverbed. The Legislature could require leasing and payments. The Legislature chose to exempt this set of structures. We need to explore this with the Attorney General's Office.

-It would become an administrative nightmare to grandfather everything that now exists.

SEN. SPRINGER: It's time to reexamine this issue.

430 CHAIR L. HILL: The latest revision appears to be 1967.

-He temporarily recesses the Work Session in order to consider LC drafts.

TAPE 27, SIDE B

CONSIDERATION OF LC DRAFTS

010 CHAIR L. HILL: The drafts are LC 2946 (EXHIBIT G), LC 3119 (EXHIBIT H), and LC 2947 (EXHIBIT I).

-Introduction does not indicate support or opposition.

Hearing no objection the bills are introduced as Committee Bills.

SENATE BILL 233 -- WORK SESSION

Witnesses: Frank Elardo, Property Owner
Lita Sale, Property Owner
Maggie Nelson Deisz, Property Owner
Kathleen Wisdom-Winthers, Vice Chairman, Aurora, Butteville, Barlow
NeighB orhood
Association
Virginia Francis, Property Owner
John Latta, Property Owner
John Bornkamp, Property Owner

CHAIR L. HILL: Reopens the Work Session.

024 FRANK ELARDO, Property Owner: Has property on the Willamette and a 1250 sq. ft. structure leased with the Division of State Lands.

-He testifies in support of SB 233.

-We can put fairness and order by giving the Division of State Lands the authority to regulate these structures.

-Discipline is lacking on the river and this bill is a first step in examining the utilization of the river and structures on the river.

097 SEN. SPRINGER: It might be appropriate that these structures be required to meet certain minimum structural requirements before a lease is granted.

ELARDO: Conkurs.

113 SEN. SPRINGER: Maybe the Marine Board can tell us if there is any requirement for lighting.

ELARDO: Does not know of any requirements for lighting structures.

-When he went through the permitting process in 1977 all that was required was a drawing of the structure.

128 SEN. TIMMS: How long have you owned to land?

ELARDO: Since 1977.

SEN. TIMMS: Your property is worth more because it is on the river.

-The proliferation of structures by people who don't own the land is depreciating the value of the land.

-The first riparian owner would have more power to limit what's in front of their property.

-These owners should have the advantage.

150 ELARDO: Agrees. Property owners have certain rights and as a property owner on a river he believes he should have certain rights in regards to access to the river.

158 SEN. KINTIGH: Would this bill take away the rights of another property owner who wants to do what you've done?

ELARDO: Doesn't believe so.

-Any impediments that would restrict structures should be known. If there are no impediments than a citizen ought to have the right to build a structure that is within the limits.

174 SEN. KINTIGH: What if another owner is denied a permit, because that area of the river is designated for water skiing?

ELARDO: Thinks that would be an inappropriate reason.

-A property owner's rights should not be denied without good reason.

194 LITA SALE, Property Owner: Lives on the stretch of river shown in the video.

-This is about limits. Someone has got to accept responsibility to stop the proliferation of boathouses.

-She is concerned with the natural beauty that is being quickly destroyed.

-At this time any size structure can be built. We can't expect people to tear down what they've built, but it is a time for limits.

-Commercially sized building have a place in commercial areas, but not in private areas.

-She refers to photographs.

-Someone needs to have the authority to limit the size of boathouses and docks.

296 SEN. KINTIGH: Has no problem with limiting the size of structures. Is

it fair that you can have a dock, but someone else can not?

SALE: Is more concerned with the environmental issues and the impact a large boathouse makes in a residential area.

-We may need lighted docks, but we don't want them too bright.

344 SEN. KINTIGH: If it is shown that your dock had an adverse impact on the environment, would you be willing to get rid of it?

SALE: People can enjoy recreational uses of the river without causing damage to docks. If docks are small they don't damage the environment.

-We need limits on the size of docks and boathouses.

390 SEN. TIMMS: It doesn't look like your taking care of your homebase.

SALE: There is no one who limits the size.

TAPE 28, SIDE B

006 MAGGIE NELSON DEISZ, Property Owner: Has had a lease since 1987.

-She is surprised that not everybody is paying their lease.

-She would like to see all exemptions done away with and all facilities put on a staggered fee for size and use.

-All facilities should have insurance so the state is not liable.

-It should be put under one department, the Division of State Lands. They would be able to make sure people maintain their facilities.

-If everyone had to pay for a lease the program would support itself.

-A commercial lease is the same price as ours.

045 CHAIR L. HILL: Does State Lands have the authority to charge different fees for different leases?

NEUMAN: Yes.

-We are working on changing our rates.

-This program has not been easy or popular to administer.

062 CHAIR L. HILL: You understand MRS. DIESZ's concern about different marinas being charged the same fee? You don't think that is fair?

NEUMAN: That's been a concern of ours.

065 DIESZ: Structures seem to grow over 1,000 square feet. There is no one checking them.

080 KATHLEEN WISDOM-WINTHERS, Vice Chairman, Aurora, Butteville, Barlow
Neighborhood
Association: Has been on the river since 1939.

-The Greenway has become a joke.

-A neighbor scalped the land in the greenway to build a house. The state
took some trees in the day use
park.

-She supports the bill. You should use this to protect the river and the
bank.

-There are few clear places left that can be built on. The docks protect
the river from the power boats.

-Cities and counties must follow set standards.

-The Greenway law is not enforced.

-She hopes that this bill will affect cities and municipalities as well as
the counties.

-She discusses the wild birds she has seen on the river.

-If there are rules for lighting, she hopes it would be the same red green
system that is now used.

223 SEN. SPRINGER: It would be helpful if you could distribute copies of
your testimony.

-We are overdue revisiting the subject of the Greenway.

242 CHAIR L. HILL: Feels the Greenway issue should be revisited during the
next interim if it is not dealt
with this session.

WISDOM-WINTHERS: People who have just bought property on the Greenway do
not know of the
limitations.

CHAIR L. HILL: There's no enforcement.

270 VIRGINIA FRANCIS, Property Owner: Has lived on the river since 1968.

-She is concerned with aesthetics, but she wants people to be able to use
the rivers.

-Large boathouses and docks should be in commercial areas.

-The docks help the riverbank.

307 JOHN LATTA, Property Owner: Supports the amendment.

-We have an inequitable regulation that needs correction.

-We need to control what is on the water. Structures on the water have not
been maintained.

-He asks that you recognize the rights of property owners.

-He refers to photographs of his boathouse.

-We ask to be treated fairly. We have the necessary permits. Our neighbors are objecting to the size of the boathouse, so we've agreed to modify it.

CHAIR L. HILL: Why is it so big?

LATTA: We have a big boat.

-The people who are objecting are in violation of existing regulations.

-It is not that easy to put up a boathouse. He elaborates.

TAPE 29, SIDE A

018 SEN. FAWBUSH: This is a dilemma. What would be a practical limit for a facility? What goes beyond private right?

LATTA: Currently it is up to interpretation by the body responsible for administration of the Greenway.

-Clackamas County found our modified structure acceptable, because it was consistent with what is in the area.

032 SEN. FAWBUSH: Did you put up the structure prior to approval?

LATTA: Yes.

SEN. FAWBUSH: What advice would you give us? Should people build whatever they want or can afford?

LATTA: It would take a lot of discussion. It's not a simple question.

SEN. FAWBUSH: Either there are public rights and there should be some private limit or there are no private limits? Should we try to exercise control of what goes on the banks of the rivers?

LATTA: Does not know if it would be possible for you to delve into all the regulations of the waterways.

055 SEN. FAWBUSH: We need to draw the line between private rights and public rights.

-Is it reasonable that we should look at some limits?

LATTA: We understand the process. We complied with the county's requirements.

-The Greenway is not administered.

075 CHAIR L. HILL: It is not enforced up and down the river.

-The bill won't stop riparian land owners from putting a dock on the river. It regulates the size of a structure. The bill also prohibits someone who is not a landowner from putting a dock in front of someone else's land.

095 JOHN BORNKAMP, Property Owner: You won't have to worry about too many docks, because of the flood plains. There's a lack of buildable lots.

CHAIR L. HILL: We're scheduled to have a Work Session on March 12.

-We should consider an alternative amendment.

-He closes the work session and adjourns at 5:15 p.m.

Submitted by, Reviewed by,

Edward C. Klein, Lisa Zavala
Committee Assistant Committee Administrator

EXHIBIT LOG:

A - Amendments to SB 233 - Staff - 1 page
B - Hand-engrossed SB 233 - Staff - 2 pages
C - Testimony on SB 233 - Janet Neuman
D - Testimony on SB 233 - Paul Donheffner - 4 pages
E-Pictorial Review - Dave Obern - 7 pages
F-Testimony on SB 233 - Jill Zarnowitz - 3 pages
G-LC Draft 2946 - Staff - 1 page
H-LC Draft 3119 - Staff - 29 pages
I-LC Draft 2947 - Staff - 1 page