

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 12, 1991Hearing Room B
3:00 p.m. Tapes 30 - 31

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

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

MEASURES CONSIDERED:
SB 203 -- Establishes maximum water use standards for specified new plumbing fixtures -- Work Session
SB 233 -- Limits submerged or submersible land lease requirement exemption to riparian owners -- Work Session
SB 236 -- Authorizes Director of Division of State Lands to suspend permits to remove material from bed or banks of state waters pending hearing -- Work Session

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TAPE 30, SIDE A

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

SENATE BILL 203 -- WORK SESSION

Witnesses:Jeanne McKeever, Water Services Officer, City of Portland Water Bureau
Terence Thatcher, City Attorney's Office, City of Portland
Jeanette Holman, Legislative Counsel
Gary Wicks, Administrator, Building Codes Agency

CHAIR L. HILL: Opens the Work Session.

-The City of Portland brought us some additional language to clarify the bill.

-We have 203A-3 amendments (EXHIBIT A) and a couple of Hand-Engrossed

versions.

019 LISA ZAVALA: We have two Hand-Engrossed versions of the bill.

-The SB 203A-3 amendments are what came from Legislative Counsel.

-The Hand-Engrossed SB 203A-3 highlighted in yellow has been numbered SB 203 A-3(b) (EXHIBIT B) and is the version agreed to by the Building Codes Agency. This is the version we will be working off of.

(EXHIBIT C) -- Hand-Engrossed SB 203A-3

029 SEN. KINTIGH: Why were these changes made?

032 JEANNE MCKEEVER, Water Services Officer, City of Portland Water Bureau: We've supported the bill at the onset.

-There was an interest in having some of the language clarified so there would be no ambiguity in the future.

054 CHAIR L. HILL: We solicited your participation and advice.

055 MCKEEVER: We consulted with our own Bureau of Buildings, the Water Resources Department and the Building Codes Agency on this language.

071 TERENCE THATCHER, City Attorney's Office, City of Portland: Discusses the amendments (EXHIBIT D).

090 SEN. KINTIGH: Could you elaborate on the toilets that meet the 1.6 gallon requirements--the way they flush, the way the water runs isn't satisfactory?

THATCHER: Correct. Waste carrying is a good point. That may be the primary concern.

-There are other hydraulic performance standards.

MCKEEVER: Believes that products manufactured in the U.S. meet these standards.

-The intent is if we require these, we want them to work.

THATCHER: We have indicated that to be approved fixtures have to meet two standards; the efficiency standard and the performance requirements.

110 CHAIR L. HILL: That includes hydraulic performance and some other performance standards.

THATCHER: Correct.

-We include all performance requirements of the American National Standards Institute (ANSI) or other equivalent nationally recognized standards. We didn't want to take away the agency's discretion.

132 SEN. KINTIGH: Does the standards institute have to put a stamp of approval on imported fixtures?

THATCHER: There is no discrimination on imported fixtures if they meet the standards.

-There will now be a labeling requirement.

-He continues with his description of the amendments, page 1, line 7c (EXHIBIT B).

-"Subsequently" is back in so that Oregon can use the current standards as they get better.

151 CHAIR L. HILL: The intent is to allow the standards as they are changed to be the standards at any point in time.

-We want to make sure we don't inadvertently cause the current standards to be locked in on the day the bill goes into effect.

SEN. KINTIGH: That precludes making it retroactive.

THATCHER: Believes this language accomplishes your intent.

-He continues with describing page 1, lines 15a and 16.

194 CHAIR L. HILL: The change on page 1, line 17 makes it clear that we are addressing the installation of new fixtures. We are not forcing the conversion.

THATCHER: Continues with page 1, lines 17 and 18.

-He describes the changes on page 2, lines 1 to 4a.

232 CHAIR L. HILL: The intent is if you can't achieve a satisfactory performance you can't require the water saving toilets.

THATCHER: Continues with page 2, lines 5 and 6.

259 SEN. KINTIGH: What is a blowout fixture?

THATCHER: Explains.

279 CHAIR L. HILL: Let's go back to the question of the standards. Page 1, lines 7a to 7d and page 2, lines 3 to 4a.

-Our intent is that we will implement the new standards as they change over time.

-Does this language allow us to use the then current standards at some point in the future?

295 JEANETTE HOLMAN, Legislative Counsel: Has some concerns about page 1, line 7c. There is a validation problem.

-As long as the Building Codes Agency adopts the subsequent standards by rule, that's okay. We have a problem when we try to adopt what someone may do in the future.

313 THATCHER: As he understands what MS. HOLMAN said, the amendments are not incapable of achieving our ends, but she has questions whether they are appropriate ends. She is concerned

about a delegation problem. He is not sure if she is suggesting there is a constitutional defect or if it is not a good idea?

CHAIR L. HILL: We could clarify that these will be adopted by rule. On page 1, line 7a, "shall meet according to rule adopted by the Building Codes Agency." That would cover our bases.

HOLMAN: It is not uncommon for the Building Codes Agency to adopt national standards.

CHAIR L. HILL: They do it by rule.

HOLMAN: We should refer to our Building Codes Agency adopting by rule based on an ANSI standard.

346 THATCHER: The Chair suggested some simple language. The alternative would be to draft an entirely new section.

CHAIR L. HILL: On page 1, line 7a after "meet" what if we insert, "as provided by rule adopted by the Building Codes Director"?

-We could insert it in 7b.

-Let's go on while JEANNETTE comes up with some language.

384 THATCHER: Continues with page 2, lines 11 to 13.

403 CHAIR L. HILL: This could allow a list to be provided for local building inspectors to ensure the fixtures meet the standards. Some fixtures may be too small for labels or some manufactures may refuse to use stickers.

420 THATCHER: That's a good idea.

-The Building Codes Administrator has general authority under ORS 447.020 to set standards for plumbing fixtures.

-There is nothing in this law that takes away the general authority to set other standards for plumbing fixtures. SB 203 makes it clear that for certain kinds of fixtures there are certain water conservation standards that must always be met.

TAPE 31, SIDE A

021 CHAIR L. HILL: GARY, do you have any corrections or suggestions?

027 GARY WICKS, Administrator, Building Codes Agency: Has nothing to add other than the discussion on the rulemaking authority on adoption of performance standards.

CHAIR L. HILL: If this bill was not before the Legislature people would pursue rulemaking through the Building Codes Agency.

-His preference is to take action through the statutes in order to shortcut that lengthy and costly

process.

-That does not mean the agency is not competent in its task. They are. They've done excellent work on the energy conservation standards and he is sure they will do excellent work on this.

040 SEN. FAWBUSH: Is confused by "other equivalent nationally recognized standards as adopted by rule." Will you be able to adopt a rule model? What is wrong with ANSI as a simple standard?

WICKS: The intent is to be able to recognize that products manufactured in another country that have equivalent standards are equal to what was intended with the ANSI standards.

SEN. FAWBUSH: Other equivalent standards have to match the standards in section 2?

056 WICKS: Correct. The flow standards cannot be modified.

CHAIR L. HILL: We might want to make the flow standards the "greatest possible" in case fixtures are even more efficient.

WICKS: My reading of the language is that if anything else came along we could adopt it.

070 HOLMAN: On page 1, line 7, after "shall" insert, "comply with rules adopted by the Building Codes Agency which". Continue with the amendment language. On line 7c, after "standards" delete, "now in effect or subsequently adopted".

078 CHAIR L. HILL: That allows the agency to update to the latest version of the standards?

HOLMAN: Yes.

CHAIR L. HILL: That's our intent and what we believe we have accomplished.

-Do you have any change on page 2?

086 HOLMAN: Thinks page 2 is okay.

CHAIR L. HILL: On page 1, line 7 after "shall" insert, "comply with rules adopted by the Building Codes Agency which meet...test procedures, established by..."

099 MOTION: CHAIR L. HILL: Moves to adopt SB 203A-3 amendments as amended.

Hearing no objection the motion passes.

103 MOTION: SEN. KINTIGH: Moves SB 203 as amended to the Floor with a do pass recommendation.

VOTE: The motion carries unanimously.

SENATE BILL 233 -- WORK SESSION

Witness: Janet Neuman, Director, Division of State Lands

CHAIR L. HILL: Opens the Work Session.

121 JANET NEUMAN, Director, Division of State Lands: Describes Hand-Engrossed SB 233 (EXHIBIT E).

-We have not been able to discuss penalties with the State Land Board. We don't feel we can impose civil penalties without discussing it with the State Land Board.

(EXHIBIT F) -- SB 233-1, Proposed Amendments to Senate Bill 233, dated 2/11/91.

214 SEN. TIMMS: What other authorities are there?

-Don't we need to preempt the counties? Aren't they permitting boat ramps?

NEUMAN: In some instances the counties have the authority to carry out the Greenway planning requirements.

-Counties and cities have asked us to fill this gap.

-Sometimes city limits end at the water line and the cities haven't extended their boundaries past the water line.

-We have begun a waterway planning effort on the Lower Willamette in Portland to try and address those problems and to try to bring together some of the various local authorities and combine everything in an overall management plan.

-This bill furthers that effort.

242 SEN. TIMMS: A person could still get a permit from a city, a county and the Division of State lands?

NEUMAN: That is true. This doesn't preempt counties from making these decisions. I don't know if you can do that.

CHAIR L. HILL: Why don't we just preempt the cities and counties and have all permitting on waterways where we own the beds of the river go through the Division of State Lands?

269 NEUMAN: That's possible.

-They have land use authority.

-We have tried to make our leasing activity consistent with their land use activity.

-Other agencies have legitimate regulatory interests; building codes, electrical codes, etc.

283 CHAIR L. HILL: It might not be unreasonable that there be several stops to this, if we think of it in the context of putting up a structure on dry land.

NEUMAN: The Lower Willamette River management plan effort is to at least make the management plan a document where you have all that information in one place. We can explain to someone who wants to do something on the state-owned waterway who

regulates different pieces and the kinds of permits and permissions are needed.

299 CHAIR L. HILL: That's more important than a one stop permit. We should do what we can to see people have the information they need to make decisions.

307 SEN. KINTIGH: What if the Division of State Lands only issued a permit if the permittee has complied with the appropriate regulations?

CHAIR L. HILL: Which comes first; the lease or the permit?

-SEN. KINTIGH has a good idea. There should be a linkage.

NEUMAN: We have tried to be last and let the local processes take place first. We don't want to offer a lease for something not in compliance with the local jurisdiction.

336 SEN. KINTIGH: Are you now checking that people are in compliance with the local requirements?

NEUMAN: We are checking with the local government to find out what the requirements are and we are at least getting the two parties together. Some of the rules we are revising say we won't issue a lease until we see all of the necessary permits.

SEN. KINTIGH: What do you do if someone has a structure that isn't permitted?

NEUMAN: We have the additional authority to throw them off of the state owned land.

-We try to make them work with the local agency first.

SEN. KINTIGH: Would you make them comply if they didn't have a permit?

NEUMAN: We're starting to do that.

368 SEN. TIMMS: What authority over aesthetic issues do you have over the Greenway or do you lose any flexibility?

NEUMAN: We don't have that much authority. We can protect the public trust interest in recreation, navigation and fisheries.

-The counties and cities implement the Greenway goal through their comprehensive plans.

-Some counties have been strict, while others have not. We have not gotten involved in aesthetic controls yet, but will be having those discussions as we go forward in rulemaking.

405 SEN. TIMMS: Is not sure of the procedure we would have to go through.

-Each county can develop their own procedure under the Willamette Greenway rather than have a complete policy for the total river.

-Can we give you that power in a bill like this or are there legal problems because of land use?

422 NEUMAN: In the past we haven't regulated the details of how we build a structure. We haven't gotten into aesthetics, but since we own the land we should have that authority.

-She doesn't know how that would conflict with the Greenway goal and how it is implemented through local plans.

SEN. TIMMS: If we gave you that authority we'd have to give you civil penalties.

445 CHAIR L. HILL: Civil penalties might raise more concerns than the bill could bear.

-On page two (EXHIBIT E), your intent is to allow the division to prohibit structures on land you own and manage.

-If we adopt this we should delete, "certain waterways or portions of waterways" and clarify that we're talking about submerged and submersible lands managed by the agency.

NEUMAN: That's a good point.

023 CHAIR L. HILL: If the committee is interested in these amendments we can have them drafted by LC.

-We'll do that.

033 SEN. TIMMS: Does the definition of "riparian owner" include any waterbody?

037 NEUMAN: Riparian owner is defined as someone next to any waterbody.

-Subsection (3) talks about a riparian owner adjacent to submerged or submersible lands. This further limits who we're talking about.

-If there is an exempt structure we want it to be tied to the waterfront property owner's land.

SEN. TIMMS: But you have control over it?

NEUMAN: Yes. Subsection (3) makes it clear it's only adjacent to state owned submerged and submersible lands.

CHAIR L. HILL: A property owner on a lagoon off the Deschutes River would be fronting, but not adjacent to state owned submerged or submersible lands.

NEUMAN: Correct.

053 CHAIR L. HILL: We'll get these amendments drafted and then consider them in another Work Session.

(EXHIBIT G) -- Testimony and supporting materials from PRUDENCE LATTA in support of SB 233.

-He closes the Work Session.

SENATE BILL 236 -- WORK SESSION

Witnesses: Janet Neuman, Director, Division of State Lands
Earle Johnson, Assistant Director, Environmental Planning and Permit
Section,
Division of State Lands

CHAIR L. HILL: Opens the Work Session.

072 JANET NEUMAN, Director, Division of State Lands: Another question that came up at the previous hearing was whether this statutory change was necessary to give the director of the division the authority to make this suspension on removal parallel to the one in the statute on fill.

-She refers to a letter from the Attorney General's Office (EXHIBIT H) indicating that this authority doesn't probably exist without the statutory change.

CHAIR L. HILL: We need the bill if we want to do it.

093 SEN. TIMMS: Could you give an example of a project regarding removal where you've had a problem.

101 EARLE JOHNSON, Assistant Director, Environmental Planning and Permit Section,
Division of State Lands: Explains.

SEN. TIMMS: This process allows for protests of a permit. How long does a protest happen before the removal?

124 JOHNSON: As soon as we issue a permit the activity may commence.

-If there is a protest and we don't have the ability to stop the activity, the activity would occur at the same time as the contested review is underway.

SEN. TIMMS: This allows you to stop the removal in a contested case?

JOHNSON: Correct.

132 SEN. TIMMS: If someone wants to remove some problems affecting the proper operation of a dam and someone disputes the removal, they can't remove the problems until after the disputed case is contested.

-Is this a valid example?

NEUMAN: We expect to hear all of the major issues during the circulation process. We can ask for modifications. We expect to make a decent decision on the permit the first time around. Someone would have to show us new evidence to make us change our minds.

SEN. TIMMS: An uninterested party could protest a project in order to delay the project.

NEUMAN: That's true.

SEN. TIMMS: Evidently you haven't had many problems.

NEUMAN: Correct.

167 JOHNSON: Line 17 says the person would have to have "clear and convincing evidence...."

CHAIR L. HILL: You have to have a hearing within 30 days after receipt of a request. Within 45 days the director shall issue an order. There would be a maximum of 75 days.

178 JOHNSON: That's through the contested case process. The law also provides for the appeal of the director's decision.

CHAIR L. HILL: It allows the removal permit to be put on hold for up to 75 days.

-Currently someone could file a complaint, but the removal activity would continue until a determination.

191 NEUMAN: In order to get the suspension they must show clear and convincing evidence the removal would cause "irremediable damage."

-There is a three part "stiff" test before suspension of a permit.

202 SEN. TIMMS: Seventy-five days could be important to someone if they have a project.

-The way the process works now a permit is issued and the project commences while the project is contested?

NEUMAN: Correct.

212 CHAIR L. HILL: Now the law errs on the side of the person doing the removal. This bill achieves a balanced approach to protect the public's interest versus the fill or removal interest.

231 SEN. KINTIGH: Does this come up very often.

JOHNSON: Maybe once every five years.

CHAIR L. HILL: Did one particular instance cause you to bring the bill forward?

JOHNSON: Nothing in particular.

246 MOTION: SEN. SPRINGER: Moves Senate Bill 236 to the Floor with a do pass recommendation.

VOTE: The motion carries 4 to 1.

NAY: SEN. TIMMS.

CHAIR L. HILL: Adjourns at 4:40 p.m.

Submitted by, Reviewed by,

Edward C. Klein, Lisa Zavala
Committee Assistant Committee Administrator

EXHIBIT LOG:

A - Amendments to SB 203 - Staff - 2 pages
B - Hand-Engrossed SB 203 - Staff - 2 pages
C - Hand-Engrossed SB 203 - Staff - 2 pages
D-Testimony on SB 203 - Terence Thatcher - 2 pages
E-Hand-Engrossed SB 233 - Janet Neuman - 2 pages
F-Amendments to SB 233 - Staff - 1 page
G-Testimony on SB 233 - Prudence Latta - 16 pages
H-Attorney General's Opinion on SB 236 - Staff - 2 pages