

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 21, 1991Hearing Room 137
3:15 p.m. Tapes 35 - 36

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

MEMBER EXCUSED: Sen. Dick Springer

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

WITNESSES: Janet Neuman, Division of State Lands
Paul Donheffner, State Marine Board
Bev Hayes, Water Resources Department
Jill Zarnowitz, Fish & Wildlife Department
Barry Norris, Water Resources Department
Libby Henry, Eugene Water & Electric Board
Denise McPhail, Portland General Electric

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TAPE 35, SIDE A

003 CHAIR HILL: Calls the meeting to order at 3:30 p.m.

SB 233

005 CHAIR HILL: This is the submersed and submersible land lease bill. The SB 233-3 (EXHIBIT A) amendments seem to be a simpler approach to reach the goals of our last discussion. Current statute has a specific set of exemptions. The bill proposes to restrict those exemptions. We discussed amendments which would allow flexibility in granting these exemptions to the leasing requirements. It got so complicated, it was thought that this (SB 233-3) would be a simpler approach. The amendments allow the Division of State Lands to provide exemptions by rule. This allows the Division to respond to local conditions, but also to changing pressures and demands. Section 2 (2) provides that the lease allowed under this chapter shall be consistent with applicable statutes, comprehensive plans and land use regulations. Those would be the regulations already in existence in the county or city, so the lease would not be inconsistent with the plan.

038 TIMMS: It appears that state authority is needed for adequate protection; otherwise crossing a

county line or city limit, a different set rules may apply. The state doesn't have overall management of the river.

051 JANET NEUMAN: States that her interpretation of section 2 of the amendments, disallows the Division from acting inconsistently with applicable statutes, comprehensive plans and land use regulations. However, through the body of law dealing with state agency coordination, the DSL can always be stricter, as a state ownership and regulatory agency, on a particular piece of property than the locals, but DSL can't try to violate their land use regulations by allowing something they would not allow.

060 TIMMS: DSL doesn't have civil penalty authority, so the locals don't really have to do anything they don't want to.

063 NEUMAN: There is still a violation of statute if there is a lease required, and they don't have one. They we can exercise trespass remedies.

069 TIMMS: What would that penalty be?

071 NEUMAN: An action for ejection or eviction, basically. We can still be more strict than local governments but not less strict.

080 TIMMS: So regulations on a river could be strict in one county, then lax in another because that county's laws aren't as strict.

085 NEUMAN: This still gives DSL the ability to manage the waterway to certain standards even if a local government would allow additional building.

090 TIMMS: The Willamette Greenway is not that impressive.

091 HILL: Does section 2 (2), simply restate what DSL would do anyway? Would you always grant a lease consistent with state statute?

092 NEUMAN: Yes; DSL would always grant a lease if it was consistent with the local land use plan and zoning requirements.

094 HILL: Maybe this caluse doesn't need to be put into statute, then.

095 NEUMAN: Two sessions ago the legislature made some effort in this regard with the state agency coordination law which specifies procedures that every state agency must go through to make sure that DSL is consistent with local land use regulations. That whole structure allows DSL to be more strict but not less strict. DSL must consider local plans. DSL will not allow something to happen on the river, even if the local government may have zoned it to allow it.

115 KINTIGH: One of the problems appears to be the numbers of players - the Land Board, the county, the Marine Board, the Army Corps of Engineers, Fish & Wildlife. How can a person who wants to do this go about it? Is there any way to coordinate this? Could you be a lead agency?

125 NEUMAN: That is still a problem. DSL has been trying to take it on in a pilot project basis in the Lower Willamette River Management Planning Area. DSL has been trying to pull together all those diverse interests and coordinate that effort. There are legitimate, different responsibilities that will always be assigned to different agencies.

133 HILL: Currently DSL adopts rules to implement the leasing program - you have rule making authority. There's a thrust on all government levels to consolidate permits and create "one-stop" shops for permits. This is a good direction. We may be able to assist in this, by naming a lead agency, which would logically be the Division of State Lands. Could we ask you to report back to the legislature following this coordination effort, establishing a one-stop permitting opportunity for state-owned submerged and submersible lands, with the Division of State Lands as the lead agency.

156 TIMMS: The problem is that the Division doesn't have any authority; you should give them civil penalty authority. How many times has DSL enforced a trespassing charge?

162 NEUMAN: Only half a dozen times, and usually it garnered results. It's very time consuming. That has been a difficulty for DSL - it's such a big threat that it is not credible. Civil penalties would be better.

179 HILL: If the committee put civil penalties in, the bill would have to go to Judiciary and a whole other round of discussions would be required. It is a useful tool, but I'm not sure that we should burden this particular proposal with this. Maybe we have another vehicle in committee for civil penalties.

190 NEUMAN: There are some things the Division could work on, during the interim, such as cleaning up the leasing program, generally, some of the exempt uses which have proliferated and caused problems, and investigating the one-stop permit process. If the situation doesn't improve, we can seek civil penalties next session.

230 HILL: We can strike the subsection 2, lines 9 - 11.

264 TIMMS: I remain concerned that, as a lead agency, they need more authority, and the only authority they have now is to charge trespassing, which completely does away with the operation and so, is not used often.

283 FAWBUSH: The penalty needs to be great enough to get their attention.

284 HILL: We will work on the civil penalties, and have the Division work on consolidating the permit process.

305 NEUMAN: We did look at civil penalties last week but might need some more time to speak to counsel and other boards.

310 HILL: We will schedule it again next week.

MOTION: Sen. Fawbush moves to adopt the -3 amendments, striking lines 9 - 11.

VOTE: Hearing no opposition, Chair Hill so moved.

330 DONHEFFNER: We support the intent behind this, and will work with the Division in its implementation and development of rules. However, we would like to go on record as supporting the continuation of exemption for launch ramps and boarding floats when they move to rulemaking. The current adopted amendments would eliminate the statutory exemption for these structures and we would hope that it is the legislature's intent to continue with this

exemption.

343 HILL: That is my intent; we want to give the Division some flexibility in how they are managed.

356 NEUMAN: DSL will consult closely with the Marine Board while rule writing, and it is not our intention to eliminate the exemption for public boat ramps. In our existing program we have tried to made allowances for public use facilities, and we will continue to do that.

367 KINTIGH: Under what circumstances might a person have to deal with the Marine Board, and when they might have to deal with the Corps of Engineers?

373 DONHEFFNER: The Marine Board is a reviewing agency, with a variety of others in the permit process, so when someone applies for a Corps of Engineers permit, that's circulated to our agency along with other agencies who are interested in the state's waterways and we comment as a part of that. That's probably as close as you get to a one-stop circulation of permits. No specific permits are required from my agency.

386 KINTIGH: What things would cause you to disapprove the request?

390 DONHEFFNER: We look at it from the perspective of navigation and boating safety, where a structure may extend too far into the channel.

395 KINTIGH: When are the Army Corps of Engineers involved?

401 NEUMAN: The federal authority is two part: structures in federal waters (under their definition of navigable waters) and dredging or filling waters under federal control. So there is duplication to some extent, but there is separate authority between federal and state. We do have a pretty good one-stop permit system with the Corps coordination - there is one joint application for both federal and state permits, then the Division handles the circulation to all the reviewing agencies. There are other kinds of permits - building permits, local permits, etc.- that still complicate the process.

421 HILL: Please come back and give us a report on current efforts to coordinate and see if the committee can do something this session to advance that.

SB 240

450 HILL: This bill is the hydroelectric fee bill. Please refer to the SB 240 -4 hand engrossed bill (Exhibits B and C).

TAPE 36, SIDE A

023 BEV HAYES: Our understanding of our assignment was to transfer more of the cost of processing new applications to the applicant and not rely so much on the operating fund to fund all the activities that we undertake in hydroelectric licensing; and keep the Dept. of Fish & Wildlife and Water Resources whole; and met the Governor's recommended budget. We attempted to do that. We do have some preliminary fee proposals, which would be charged to new developers, which would raise about \$200,000, and the rest would be funded through the operating fund. The fee would get someone in the state process at the same time they are in the federal process, it would pay Fish & Wildlife's costs to a great extent,

and would pay for our licensing costs. So the benefit to the project applicant is that s/he in both systems at once and he's paying all of his costs.

044 JILL ZARNOWITZ: The proposal attempts to tie the fees to the FERC process. She then explained the FERC process (EXHIBIT D) and reviewed theoretical scenarios with various project sizes and the fees that would be charged (EXHIBIT E).

103 HILL: These fees would be for new projects, not license renewals?

104 ZARNOWITZ: Yes. It would include new municipal projects which don't have to get a license, but still have to go through a review process.

120 HILL: What is the percentage of expected study cost shown in the first column?

132 ZARNOWITZ: Refers members to page 3 of EXHIBIT F, which has a "proposed study costs (all) column. This is what the applicant estimates their study costs to be. Some estimates are realistic, and some aren't. The percentage at the bottom of Exhibit E reflects the range of study costs, shown as a percentage of the total project cost. We've heard that no hydroelectric project can be developed without a fairly substantial investment, in the neighborhood of \$500,000.

176 HILL: The original bill would have had the existing utilities paying the lion's share of all these new development project costs.

182 ZARNOWITZ: Essentially they would pay all of the costs.

183 HILL: What does the other chart represent?

186 ZARNOWITZ: The other chart reflects the original fees in the -1 amendments (EXHIBIT G). It was just a comparison between the two fee levels.

187 HILL: What will fee levels will be charged for license renewal?

191 ZARNOWITZ: This doesn't include relicensing facilities; re-licensing is paid for by operating fees. This figure is not always less than the original fee.

199 HAYES: We are proposing to take both the fee money and the operating fund money and put it into one fund, and we would collect the money and disperse it to Fish & Wildlife.

211 HILL: There would be a base level - and that's the charge paid by the operating licenses, and both agencies would be able to draw from this fund. Additionally, there would be money coming in on a per project basis, and you are proposing a new schedule to charge for those new license applications and renewals. Will that come on a reimbursement basis, or a flat fee basis? Will you ask for reimbursement based on the level of work required for a new license application, or would it be a flat fee, based upon the size?

213 ZARNOWITZ: We are proposing a flat fee based on what stage of development the project is in. If a developer drops out they don't pay it all.

234 HILL: So the developer mitigates their losses, which seems reasonable.

223 HAYES: Some projects won't go through the FERC process, and another category may have to be developed.

237 HILL: How would the money be split between Fish & Wildlife and Water Resources?

230 HAYES: We would use the figures in the Governor's budget; \$201,000 would come to us and \$1.4 million would go to Fish & Wildlife.

233 HILL: I think this process sounds fairer, rather than putting the burden on the utilities that are already in place.

241 TIMMS: When you are setting up a standard process, it benefits the expensive projects, but not the less expensive ones. The problem addressed is that we need money to offset the cost of developing these hydro projects. In this process, we are asking everybody to pay the average. I never realized that there were so many small megawatt projects.

260 DENISE MCPHAIL: In the original fee proposal we did have this range to accommodate this kind of complexity and a great deal of work was spent on arriving at these averages. We are probably looking for more certainty than is possible. PGE would like to see a range that would show the complexity of the studies.

284 TIMMS: I guess we can't ascertain how much development is going to be done.

301 LIBBY HENRY: Because our hydro policy is so restrictive, fewer projects are being built. Now we are power short and we will need new power and sources. So there may be an influx of environmentally benign hydro projects. We want to put this funding issue to rest.

316 HILL: This bill deals with an equity question. They don't help or hinder the development of hydro projects, but doing nothing would hinder the Water Resources Department, which may hinder development. We need to do something to bring in the money to pay the costs so they critique the project proposal. Then it becomes a question of what is the most equitable way to charge for the costs.

329 KINTIGH: Referring to Exhibit F, pump storage, is someone really interested in putting one on Abert Rim? That's a long hill.

357 TIMMS: Yes, and that's a beautiful project. They pump the water up from the rim, out of the lake, and store it, and bring it down when power is expensive.

364 NORRIS: I've reviewed two pump storage projects. These projects are off-stream reservoirs and are as environmentally benign as they can be. They a penstock, and during the peak hours they will allow water to go down through the turbines and generate power, and during the night and nonpeak time they buy the power back at cheaper rates. As I understand it, FERC requires hydro power companies to keep a certain amount of power in reserve for emergency times. This would give them that buffer so they can go on line with their full generating capacity.

427 KINTIGH: So it is economically feasible.

428 NORRIS: Well, it is done in other places in the U.S.

433 HILL: Australia has a great new energy source. It looks like a sled on pontoons, and you anchor it in the river, and it has a propellor under it, and the flow of the river turns the

propellor. It doesn't effect the fish at all.

450 NORRIS: Hydro projects like to be located near existing power lines, so they don't have to construct new power lines, which is an environmental problem, too.

TAPE 35, SIDE B

015 HILL: Do you need a couple more weeks to develop this proposal?

023 HAYES: The Department's budget is coming up next week and it would be best if we could appear before this committee next week.

025 HILL: We will try to schedule you for next week.

027 LIBBY HENRY: Ms. Zavala and I jointly called FERC, and stated that it was our intent in this bill to make the state process and the FERC process mesh, so that an applicant may be billed ahead of time for consultation fees, and if that applicant does not pay, then Fish & Wildlife can refuse to consult with them, then when the applicant goes to FERC, FERC will say there is no consultation, and we wanted to know if FERC would honor that application? FERC stated that it was doubtful that they would; it would depend on the reason why the applicant did not pay them. FERC will be changing their rule for when there is a contested case process, so when the state and the applicant disagree on what studies need to be done there is a process to deal with that. In conducting studies, I can see where there could be some confusion. While we can't guarantee anything, it looks favorable that this process should work.

051 HILL: If FERC would give us an written answer we would at least have something in writing to argue with them about, later. I think that having an applicant put the money upfront for each stage of the process is a good idea.

059 HENRY: Serious developers will not have a problem with that.

062 HILL: Hearing no further business, Sen. Hill adjourns the meeting at 4:30 p.m.

Submitted by:

J.E. McComb
Assistant

Reviewed by:

Lisa Zavala
Administrator

EXHIBIT SUMMARY:

Exhibit A - proposed amendments, SB 233-3, staff, 1 pg.

Exhibit B - proposed amendments, SB 240-4, staff, 12 pgs.

Exhibit C - engrossed bill, SB 240-4, staff, 8 pgs.

Exhibit D - testimony, SB 240, Janet Neuman, 6 pgs.

Exhibit E - chart, SB 240, Jill Zarnowitz, 1 pg.

Exhibit F - testimony, SB 240, Jill Zarnowitz, 4 pgs.

Exhibit G - chart, SB 240, Jill Zarnowitz, 1 pg.