

Senate Committee on Water Policy  
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SENATE COMMITTEE ON  
WATER POLICY

April 4, 1991Hearing Room 137  
3:30 p.m. Tapes 38 - 39

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 742 - Allows consolidation of up to five appropriations into  
one  
permit, PPW

SB 233 - Limits exemptions to submerged and submersible land lease  
requirements, WRK

SB 240 - Requires hydroelectric project permit applicant to pay costs,  
WRK

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.

TAPE 38, SIDE A

003 CHAIR HILL: Calls the meeting to order at 3:40 p.m..

(Tape 38, Side A)

SB 742 - PUBLIC HEARING AND WORK SESSION

Witnesses:Senator Kitzhaber, District 23

Webster Briggs, Private Citizen

Bev Hayes, Water Resources Department

Steven Applegate, Water Resources Department

Ron Yochim, Douglas County Water Advisory Board

John Youngquist, Douglas County Water Resources Coordinator

Doug Myers, WaterWatch

004 HILL: Opens public hearing on SB 742.

007 SENATOR JOHN KITZHABER, DISTRICT 23:

Submits and summarizes written testimony in support of SB 742. (EXHIBIT A)

086 WEBSTER BRIGGS, CITIZEN:

Submits and summarizes written testimony in support of SB 742. (EXHIBIT B)

Our real problem is twofold: The expense of filing fees in two places. First we have to file for the pond and then file to divert water from the stored pond; we want to eliminate that extra cost to us.

140 HILL: The water you impound in the ponds doesn't impact the streams or downstream uses?

143 BRIGGS: That is correct. It will help the streams in the future by filling the aqueducts from underground seepage. Distributes photographs of ponds on his land.

148 KINTIGH: In the unfenced areas shown in the photographs, do the cattle go in and drink from them directly? Would you have to get a permit?

152 BRIGGS: The cattle drink from the unfenced ponds directly and you wouldn't have to get a permit.

153 KINTIGH: But if you run the water out to a trough 100 feet away, then you have to pay a large fee?

154 BRIGGS: That is correct.

155 KINTIGH: How long do these ponds have water in them in the summer?

156 BRIGGS: The larger fenced area has never been dry.

WRD has missed an underlying obligation that they have to encourage storage of excess water.

WRD is blocking beneficial projects by the expenses brought up earlier. If we were to ask the Agricultural Stabilization Committee (ASC) for help, they would cost share in the construction costs, not the fees. We have one agency helping us and another blocking us.

195 BEV HAYES, WATER RESOURCES DEPARTMENT:

Submits and summarizes written testimony on SB 742. (EXHIBIT C) WRD is not opposed to SB 742, but would oppose the drawing up of final proof surveys, which would have some fiscal impact on the Department.

280 HILL: Your main concern is that the records be adequate for resolving disputes that may occur years from now. You don't feel confident that the records would be adequate to decide a dispute down the road if these particular water rights were exempt from those surveys and we just relied upon maps and descriptions provided by the applicants?

290 STEVEN APPLGATE, WATER RESOURCES DEPARTMENT:

That is correct. The Department is responsible for determining to what extent the water was

actually used and developed under the terms of the permit. It is the final proof survey process that enables us to make that determination.

302 HILL: Do you charge the applicant for that?

303 APPLGATE: No, there is no charge by WRD other than the cost of hiring the surveyor to do the final proof survey and site report.

306 HILL: You might be able to make a visual inspection, without surveying the property, on a small storage pond. We can talk about alternatives later.

312 HAYES: The application fees are set in statute, therefore we don't have much flexibility there.

315 SPRINGER: How many stock watering storage structures/facilities exist?

319 APPLGATE: We don't have any figures on that. Approximately 5 - 10 percent of the applications we receive are for these kinds of projects and we are averaging 1,000 applications a year.

330 SPRINGER: Before World War II wasn't there a federal program to encourage small stock watering or storage facilities?

336 APPLGATE: I don't have any knowledge of that program. But I do know that ASCS and SCS Federal agencies provide a great deal of assistance in terms of designing these kinds of structures/facilities for the farmers; that may be an offshoot of that program.

345 SPRINGER: What other stock watering options are there in these kinds of locations?

355 APPLGATE: Another option is groundwater when available, which is an exempt use.

368 HILL: Is the intent to have off-stream impoundments? This wouldn't impact running water because it would catch the rain runoff near the top. Mr Briggs is indicating agreement.

381 TIMMS: What about federal lands? Do they need to apply for applications for water storage?

385 APPLGATE: The requirements on federal agencies are the same as they would be for anyone else.

395 TIMMS: Are applications for storage permits often received from private citizens for sites on federal land?

399 APPLGATE: Yes. Occasionally a private citizen will apply for a permit that involves a facility

on federal land. All we need is concurrence from the federal agency that they don't have an objection to that application; usually they don't.

405 TIMMS: And the private party pays the \$50.00 fee on federal land?

407 APPLGATE: They would if they chose to file themselves.

408 TIMMS: What are the limitations on federal land?

413 APPLGATE: The restrictions may come about from our inability to issue additional permits because of the lack of water availability. We are concerned about maintaining instream flows or minimum flows or perhaps the rights that have already been issued on that stream system.

423 TIMMS: Do you hope to gather some water to feed the stock in the late summer?

427 APPLGATE: If water is not captured in those ponds, it would find its way to a stream and contribute to stream flows; potentially only during surplus water times.

435 TIMMS: Is there a minimum stockwater pond size?

437 APPLGATE: No, not as such.

445 TIMMS: What is the maximum for a pond on the \$50.00 permit?

447 APPLGATE: It is five acre feet.

452 HILL: (Asking Mr. Applegate to look at the photos Mr. Briggs offered) Are these typical ponds?

460 APPLGATE: Yes.

TAPE 39, SIDE A

015 RON YOCHIM, DOUGLAS COUNTY WATER ADVISORY BOARD:  
Gives brief history of the bill. About two years ago, the Douglas County Water Advisory Board developed about 4 or 5 concepts to do away with the permit requirement on small stock water impoundments. We saw these as both a riparian benefit and a benefit to the rancher (better cattle distribution on the land). A couple of certified water right examiners both agreed that there was some value in continuing to have certified water right examiners on some larger appropriations. We took a standard that fit with the dam safety law and within what the soil conservation service was allowed to design; that was where the small size came in.

Prior to the 1950s, a program called the Rural Rehabilitation Program was designed to promote activities such as this. What is left of that fund went to DSL and is under the direction of the Land Board. About four years ago a proposal was made to the State Land

board on how to spend those monies (education, farm migrant housing, or stockwater impoundments). Many impoundments were built and it was a very useful program and is worth giving it a new recharge.

079 JOHN YOUNGQUIST, WATER RESOURCES COORDINATOR OF DOUGLAS COUNTY:

Douglas County's Water Management Plan supports off-stream livestock watering. The ponds need to be affordable; the filing fees are reasonable. But the certified water right applications for the permit application for Douglas county is between \$250.00 and \$700.00. To get the certificate of water right or proof of appropriation done is between \$400.00 and \$1,000.00 a pond. We think that WRD could come up with a method of accepting these ponds for identification, proof of appropriator forms for the certificate of water right, by utilizing the county assessors map or perhaps ASCS aerial photos. One thing that is not in the bill that should be, is the ability to take the water from the pond and put it into a stock tank in an adjoining area someplace.

111 HILL: Your intent would be to use it on the same property?

113 YOUNGQUIST: That is correct. Contained within a one range unit.

114 HILL: As long as we think of it as a local use or system, we will understand what you are trying to accomplish?

115 YOUNGQUIST: That is correct. One pitfall is the definition of a stream. References to pictures sent around by Mr. Briggs, notes a depression near the pond. In January that depression may appear to be a stream. Therefore, when we say off-channel most of these are located on depressions which are stream channels during heavy rains; they are seasonal draws.

125 KINTIGH: The use of aerial photos for identification would be a good way to locate them.

130 YOUNG: Most of the state is flown every two to three years by one firm or another.

133 YOCHIM: One of the concerns of WRD was the final proof survey. By putting a definitional standard on what size limit you have on these, you have a limit that you know won't exceed. They have overstated that part of the issue because the information is there to take that type of analysis, combined with aerial type information.

140 KINTIGH: Are a number of these done with Soil Conservation Service (SCS) corporative funds?

142 YOUNG: Maybe 25 percent. It's a good practice and a lot of farmers are doing it on there own. In Douglas County I estimate 500-700 ponds that don't have water rights on them. They need to be water righted and identified.

158 DOUG MYERS, WATERWATCH:  
We essentially have no problems with the bill.

163 HILL: Closes public hearing on SB 742.

(Tape 39, Side A)  
SB 233 - WORK SESSION  
Witnesses: Janet Neuman, Division of State Lands  
Lisa Zavala, Senate Water Policy Administrator

165 HILL: Opens work session on SB 233. Submits SB 233-4 amendments.  
(EXHIBIT D)

183 JANET NEUMAN, DIVISION OF STATE LANDS:  
In SB 233-4 amendments, we ended up with a deferral to administrative rules for any exemptions from the waterway leasing requirements. By eliminating ORS 274.042, we have taken away the need for the original piece of legislation that we introduced. In section 4 and 5 of SB 233-4 amendments, we have tracked the civil penalties almost verbatim that we have in our removal fill law (for consistency and efficiency). The difference is a lower top limit or maximum on the civil penalty per day. According to my instruction from Sue Hanna at Legislative Counsel, this should be made as consistent as possible with other legislation on making civil penalties consistent throughout different statutes and programs. I think it does that.

203 HILL: Is this language consistent with what Judiciary Committee is doing? Is this the language Legislative Counsel provided you?

205 NEUMAN: Yes, this is Legislative Counsel's draft. I specifically raised that issue of consistency with SB 101.

213 LISA ZAVALA, COMMITTEE ADMINISTRATOR:  
I discussed this civil penalty language with Ingrid Swenson, the Senate Judiciary Counsel. She suggested I take it to Dave Hendricks of Legislative Counsel, who is working in the consensus bill (SB 101). He informs me that this civil penalty language represents the consensus language that is in SB 101 and therefore should not have to go to Judiciary for a subsequent referral.

221 HILL: Now we are down to the policy decision. We need to decide if we want to add Sections 3, 4 and 5, which is a policy decision to give DSL the civil penalty authority.

230 MOTION: SEN. FAWBUSH moves to adopt the dash 4 LC amendments dated

4/2/91 to SB  
233 (Exhibit D).

VOTE: Hearing no objection, Chair Hill so moved.

234 MOTION: SEN. FAWBUSH moves passage of SB 233 to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried with all members voting AYE.

242 HILL: Senator Springer has agreed to carry SB 233. Closes work session on SB 233.

(Tape 39, Side A)

SB 240 - WORK SESSION

Witnesses: Lisa Zavala, Senate Water Policy Administrator  
Denise McPhail, Portland General Electric  
Jill Zarnowitz, Department of Fish and Wildlife  
Jan Boetcher, Water Congress  
Libby Henry, Eugene Water and Electric Board  
Barry Norris, Water Resources Department

285 HILL: Opens work session on SB 240.

291 ZAVALA: Essentially we have a brand new bill from what was originally printed. Submits and summarizes SB 240-7 amendments. (EXHIBIT E)

313 HILL: Do ODFW and WRD agree to the allocation of moneys in Section 2? All in agreement.

324 DENISE MCPHAIL, PORTLAND GENERAL ELECTRIC (PGE):

In Section 4, we have moved the fees for power purposes out of this section into another section, which will be covered later.

328 HILL: Is that the one dollar for each theoretical horsepower? It is not extinguished, just moved?

331 MCPHAIL: That particular method of calculation is revised in the bill we are proposing to you.

332 ZAVALA: I believe it was something that Mr. Norris and Jeannette Holman discussed at one

point about clarifying the language for the fees for power purposes and where it fit in the statutes.

Is that a fair statement? All in agreement. Continues summary of SB 240-7 amendments (Exhibit E).

362 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE:

Submits additional proposed amendments to SB 240-7. (EXHIBIT F)

Summarizes proposed

amendments to Section 6 (See Exhibit F).

379 HILL: You are trying to track them both at same time?

379 ZARNOWITZ: That is correct.

381 HILL: Asks if everybody is in agreement to that. All are in agreement.  
Considers this an amendment to the SB 240-7 amendments.

394 ZAVALA: Continues summary of SB 240-7 amendments (See Exhibit E). Asks Bev Hayes of WRD if Section 6, Subsection 3 does not allow the Water Resources Commission to defer to FERC because of Constitutional requirements? Does it clarify that?

409 HAYES: Yes it does. Our attorney General advises us that we can't delegate our authority to the Federal governments. All we can do is say that at the Commission's discretion they can accept studies done for FERC as studies done for the state.

416 ZAVALA: As long as we are complying with our statutes.

422 HILL: ORS 543.017 is the basic statute that says you have to look at the fish, wildlife and recreational uses and other beneficial uses. Is that correct?

424 HAYES: I think that is all HB 2990 (1985) standards.

430 MCPHAIL: I think the comparable language later in the bill is ORS 543 .225, which is the broader responsibilities of the WRD rather than just the fish standards. Are we intending just fish standards here?

436 HAYES: No, these are the minimum standards for development of hydroelectric power.

437 MCPHAIL: Is that ORS 543.017?

437 HAYES: Yes.

438 MCPHAIL: How about ORS 543.225? You don't want ORS 543.225, the broader standard, to apply?

443 HAYES: It is not just fish, but the minimum standards for development of hydroelectric power. It does have the one dead fish standard in it.

447 MCPHAIL: Look at ORS 543.225 and see if that is what you want. Because I think we have put ORS 543.225 in other places in SB 240-7.

448 HAYES: ORS 543.225 is a hearing on the application and notice in policy. This is a general policy statement.

454 MCPHAIL: That is okay if you are satisfied with that. We may want to look at it later when we reference ORS 543.225.

TAPE 38, SIDE B

015 HILL: There are standards in .225 for determining whether the proposed



project would impair  
or be detrimental to the public interest. And they are in relation to the  
hearing and they imply  
a finding that would need to be heard. We want to specifically reference  
543 .017. The  
Commission in order to grant the license has to take into consideration the  
requirements of ORS  
543 .225 also. But if we omit .225 here, would it apparently take from or  
prevent the  
Commission from requiring a study addressing some of those things that must  
be reviewed in  
.225.

028 HAYES: I think this is talking about the kind of studies...

030 HILL: I'm satisfied referencing ORS 543.017, rather than trying to  
broaden it. I don't know  
what effect that has on studies, it might require more studies and a much  
broader range of studies  
and I don't know what fiscal impact that would have.

032 JAN BOETCHER, WATER CONGRESS:  
Actually, our legislative counsel also preferred ORS 543.017 indicating  
there were no standards  
in ORS 543.225.

034 HILL: Stays with ORS 543.017. Is there any comment on the cumulative  
impact question on  
top of page 8? (See Exhibit E) Is it satisfactory?

044 HAYES: I think that Libby Henry of EWEB would agree that in 1985 when  
HB 2990 passed,  
we assumed that we would have to do a cumulative impact analysis on  
municipal projects as well  
as private development projects. Somehow it was unclear whether they were  
indeed subject to  
that cumulative assessment. It was intended that they be. This clarifies  
it.

050 LIBBY HENRY, EUGENE WATER AND ELECTRIC BOARD (EWEB):  
I testified on the witness stand on HB 2990 that it was okay with us.

052 HILL: If somebody gets a preliminary permit, can they currently go out  
and start bulldozing  
rock?

056 BARRY NORRIS, WATER RESOURCES DEPARTMENT (WRD):  
When the Commission awards a preliminary permit, it allows the applicant a  
date of priority for  
the project and allows them to do the additional, necessary studies to  
prepare the applicant to  
submit an application for the license. Construction cannot be done.

060 HILL: At what point is construction permitted to begin?

061 NORRIS: Construction is permitted when the applicant is awarded a  
license. The applicant is  
allowed up to two years maximum to begin construction.

063 HILL: So construction may not begin under a preliminary permit.

064 NORRIS: That is correct.

064 MCPHAIL: This is why it's only the private developers (tape inaudible) it is not a requirement on the public developers. That will surface later on in some language that we will look at.

067 ZARNOWITZ: Also in Section 8, subsection 1 is where ODFW is proposing the second amendment. (See Exhibit F)

073 HILL: This will be an additional amendment to our amendments.

There is a typographical error on page eight, line 28 and 29. Strike one "the" on a double occurrence.

089 ZAVALA: Continues summary of SB 240-7 amendments. (See Exhibit E)

095 HILL: Currently the terms of the state and federal licenses may or may not be the same? What determines the length of the state license term? Is it statutory?

098 NORRIS: By statute the Commission can issue a license for up to 50 years.

099 HILL: How long can FERC issue a license?

100 NORRIS: I don't know.

100 HILL: If FERC's license wasn't longer than 50 years, the State can already match FERC's license. Where does this get us?

106 HAYES: We need to better understand how FERC makes the decision about the length of the license. It at least allows us to set the term at the same length.

112 HILL: There is no reason to object, there is no harm done.

114 MCPHAIL: Suggests that they start and stop at the same time. That is not the case now, there is up to 10 years difference between the expiration of a FERC license and a state license.

125 HAYES: It is important for relicensing as well.

127 ZARNOWITZ: Summarizes proposed amendments to Section 9. (See Exhibit F) This was to require the WRD to lay out the procedures that would then be paralleling FERC as closely as possible. That may already be taken care of in ORS 243.280, where it also requires the Commission to adopt rule (page 11, lines 7 - 10).

143 HILL: We need something broader. Asks Bev Hayes if the Commission has laid out the process by rules so that everyone can understand it?

145 HAYES: We have two sets of rules: projects that were around in the application phase before HB 2990 passed and rules that apply after.

149 HILL: Asks Jill Zarnowitz if there is a particular problem with the current rules that ODFW is seeking to address here?

150 ZARNOWITZ: I was trying to require them to address the changes in this bill with their rules.

154 HILL: You might want to do it by a date certain. How long did it take to adopt the instream water right rules?

155 ZARNOWITZ: About two years.

155 HAYES: That situation had a lot of controversy and disagreement about what the legislature in fact meant when the bill passed. I don't think this would be a problem for us and it would be done without much difficulty. There would be some minor amendments to our existing rules.

162 HILL: Asks Jill Zarnowitz if this is acceptable.

163 JILL: Either way is fine with us.

164 HAYES: I think this bill is going to allow us to have 1.5 additional FTE and probably the first thing they would do would be to revise the hydroelectric rules.

167 HILL: I think we should have a date certain to modify rules so everyone knew what the date was. Would a year be too long?

173 HAYES: No.

173 HILL: How about six months? Three months?

175 HAYES: If you want to set the date from the year that we have our FTE hired, I wouldn't have any problem with that.

177 HILL: If we go with a year, we are still within the time frame that people are counting on. What shall we go with?

180 ZARNOWITZ: A year would be fine with ODFW.

182 MCPHAIL: We ought to give these new FTEs time to adjust. A year is fine with PGE.

194 HILL: We will set the outside limit for a year. A year from July 1, 199 2? That is plenty of time to adopt the rules, have public hearings and work sessions. We will amend that into this new language that you have in Section 9.

215 ZARNOWITZ: Regarding Section 10, lines 10 to 17, there is a nearly

identical paragraph here  
to one that is in Section 6. I didn't catch this when I wrote up my  
amendments and it may be  
appropriate to add the amendment in Section 6 prior to Line 10 in Section  
10 on page 10. See  
second amendment (Section 8) of Exhibit F.

231 HILL: We should insert "State" on line 10 and insert it after line 13?

236 MCPHAIL: We've already done that once in Section 8.

237 ZARNOWITZ: But it is referring to a different statute.

239 HILL: Insert "State" right after the (1) on line 4 of page 10. Lets  
consider that an amendment.

247 ZAVALA: Continues summary of SB 240-7 amendments. (See Exhibit E)

254 JAN BOETCHER: Summarizes the fee schedule as proposed in SB 240-7  
amendments. (See  
Exhibit E) This draft doesn't pick up a cap for a preliminary permit. We  
are looking at a cap  
for a preliminary permit or stage one at \$2,500.00. We did expect to have  
a cap on a  
preliminary permit because that is the part of the beginning process of  
discovering what is out  
there. We are still maintaining the 50 percent schedule up to 50 percent  
at the end of the second  
stage.

295 HILL: We incur only 50 percent of the costs to WRD and ODFW at the  
second stage. Is the  
payment related to the cost of the state agencies at that stage?

301 ZARNOWITZ: That is an adequate breakdown and ODFW is comfortable with  
that.

303 HILL: If the project reaches the second stage and then the applicant  
drops it, will the state be  
left with a hole in their budget because we are not recovering the costs  
from the other stages?

308 ZARNOWITZ: These fees aren't going to be covering our entire costs;  
those will be covered  
partly by the hydroelectric operating tax base. Therefore, it is enough  
representation of our costs  
at this point.

315 BOETCHER: Continues summary of fee schedules of SB 240-7 amendments.  
(See Exhibit E)

343 HILL: As they pay each stage fee, there is a 30 percent surcharge upon  
that amount, which will  
total 30 percent on the total fees. It is incremental.

348 ZARNOWITZ: In our work group we talked just about threatened and  
endangered species. I  
would rather have "fish" taken out because there are a lot of upland  
impacts of hydroelectric  
projects and in some cases there are spotted owls or bald eagles in the

drainage that need to be considered. (See Page 11, Line 20 Exhibit E)

355 HILL: Your charge is to protect wildlife and fish; not specifically fish?

356 ZARNOWITZ: That is correct.

357 HILL: I would like to take fish out. I don't think that is consistent with what ODFW has to look at and the price will remain the same.

368 MCPHAIL: Passes along a comment from PGE's hydroelectric manager. He says that if anybody is trying to do this where there is anadromous or T&E fish, that you are going to be into so much money for screening and paying this extra stuff. He wonders why they need another 30 percent up front also. Is it because there is more work for ODFW?

381 ZARNOWITZ: There is definitely more work for us if there is anadromous fish species or T&E species that we have to make special considerations for. Also for the very fact that he mentioned fish screening, which would have to be a no-kill fish screen and would be more work on our part.

389 MCPHAIL: Is this "more work" making sure that we've done our work properly or is it dealing with anadromous fish and telling us to put in a fish screen? It doesn't sound like a 30 percent increase on your part, it sounds like a 100 percent increase...

393 HILL: It is the studies and the review that is expensive, not just the screen.

400 HENRY: If you take out the word "fish", would the developer be put in the situation of paying for T&E species studies that aren't relative to the hydroelectric project?

404 ZARNOWITZ: That shouldn't be the case. It would have to be pertinent to the project.

411 HILL: You can't use it to study something off-site and not impacted by the project.

412 HENRY: You could have an eagle that has nothing to do with the project but...

413 HILL: If you've got an eagle up on the bluffs and it is not going to be affected by the project, unless it feeds on something that would be affected...

415 ZARNOWITZ: That is affected.

417 HILL: Lisa Zavala pulled out working paper that indicates T&E species. It seems to be that language is better.

428 ZARNOWITZ: I believe that "anadromous" is misspelled. It should say "anadromous fish or threatened or endangered species".

434 HILL: By levying the 30 percent surcharge on these projects, the net effect will be to reduce the need to exert money out of the balance of the project. You are allocating the charge for these more difficult studies to the people who want to build dams on the more difficult streams. The other builders don't have to carry this load; there is an equity there.

Continues summary of SB 240-7 amendments (See Section 10, Subsection 6 of Exhibit E). Asks if members agree with this section; all in agreement.

What happens if you can't agree on the work?

488 ZARNOWITZ: We would go to contested case hearing.

491 HILL: Is that the preferred alternative? The language before said that ODFW would choose the consultant if an agreement couldn't be reached.

499 MCPHAIL: That is not the preferred language.

500 HILL: You would rather go to contested case hearing?

TAPE 39, SIDE B

028 ZARNOWITZ: The federal process is comparable to that, where you tried to reach an agreement as much as possible and then at that point you go to a neutral body to make the decision.

031 HILL: Asks if everyone is in agreement. All are in agreement.

034 HAYES: In practice if you have PGE hiring a well qualified engineering firm, we are not likely to object to it.

037 HILL: Why wouldn't you agree to that in the first place?

038 HAYES: There are such things as fly-by-night developers...

039 HILL: Those are the ones I'm worried about; I'm not worried about PGE or PPL or EWEB. This meets my personal minimum requirements.

Continues summary of SB 240-7 amendments (See Section 10, Subsection 7 of Exhibit E). Is one percent an adequate penalty?

051 MCPHAIL: This is one percent a month. That would be 12 percent.

052 HILL: Why don't we make that prime rate? Is this a disincentive? Asks if this sounds fair? All in agreement.

057 BOETCHER: We did not amend this to indicate that \$2,500.00 would be the

maximum  
preliminary fee and we should have an amendment to that affect.

061 HILL: Asks if everyone is in agreement. All in agreement.

061 MCPHAIL: That would go somewhere on or about line 10 on page 11 of Exhibit E.

064 HILL: Something to the effect of "the maximum fee that may be charged any preliminary permit applicant is \$2,500.00". That is not contingent upon the size of the proposed project; that is the ceiling?

067 MCPHAIL: Our original idea was \$ 0 - 2,500.00 and it did range according to size.

070 HILL: If there are no objections, we will consider that an amendment. Continues summary of SB 240-7 amendments (See Section 10, subsection 7 - 9 of Exhibit E).

082 BOETCHER: We would like to add language at the end of Section 9 that says "if the applicant does not prevail", because we feel the applicant should not have to pay all those additional costs. If there was a frivolous suit or a suit in which the applicant prevailed and was correct...

087 HILL: Your intent would be that if the applicant wins the contested suit, the losing party would pay excess costs incurred by the applicant? Asks for a restatement.

092 BOETCHER: Place a comma at the end of Section 9 and add "if the applicant does not prevail".

096 HILL: If the applicant prevails, they are not hit with Department or State agency costs?

097 BOETCHER: That is correct.

099 HAYES: I would like to clarify that you are suggesting that WRD would have to eat those costs if there was a contest of a public interest group on a project and had a lengthy process?

103 MCPHAIL: We would support whoever brings the losing suit paying the Departments expenses. We don't think it is fair for the applicant to have to shoulder third parties' problems and costs.

111 HILL: This language is targeted to recover the state's cost excluding legal expenses from going through a contested case and prevailing. If the state instigates a contested case or the applicant instigates a contested case, and the state loses, then the state should eat the excess costs. If the state prevails, then the applicant should pay the excess costs.

119 MCPHAIL: What we are trying to provide for here is that it doesn't have to be a state agency

that brings this suit; it could be anybody. If, after going through the process and doing studies, then someone contests the fact that we will get a license, that will impose expenses on a lot of people (e.g. the applicant, the agency). We would also be happy with prevailing party language.

128 HILL: You are talking about interveners?

129 MCPHAIL: Yes.

130 HILL: It is my impression that this is regulated by civil law and civil cases and by contested case law. I don't think I want to get into that in this bill.

133 MCPHAIL: Can we just drop that whole section?

143 HILL: Continues summary of SB 240-7 amendments (See Exhibit E)?

145 ZARNOWITZ: Section 12 allows ODFW to get fees from projects that are pending right now, such as Blue River. We talked with EWEB about it and there were no problems.

151 HILL: And Section 12 is repealed on July 1, 1993?

152 ZARNOWITZ: That is correct.

157 HILL:What are we repealing in Section 14?

159 ZAVALA: Those are Legislative Counsel's amendments.

160 HAYES: We've looked at them and they are fine.

162 HILL: If we don't have Subsection 9 of Section 10, then how can the State recover its cost if they prevail?

163 HAYES: Why don't we try the prevailing party language and if this goes to Ways and Means and turns out not to work, we can check with everybody.

167 HILL: I'm not interested in including interveners at this point. So we are referring to the primary parties.

172 HAYES: It is not the prevailing party but the losing party who pays.

173 HILL: I'm interested in only applying this to the State and the applicant at this point.

174 MCPHAIL: If that is what we are trying to do, that is taken care of in Section 10, subsection 8.

176 ZARNOWITZ: Section 9 is a third party contest.

177 HENRY: What if you said "however, if the issuance of the license of the project is contested, the contesting party shall pay any excess costs excluding the legal



expenses." You are putting  
it on the person that is raising the contest.

182 HILL: Let's get rid of Subsection 9. Subsection 8 will deal with the  
cost between the primary  
parties. I'm prepared to pass it if it comes back better, but won't pass  
it if it is worse.

194 MCPHAIL: We would like to express our appreciation to Lisa Zavala who  
has worked very hard  
and tirelessly. Also to Jeannette Holman who has put in a lot of time.  
They both have been very  
responsive to all of our concerns.

199 HILL: I assume that the State parties feel that the money is adequate.  
This will do the job and  
you will be able to accomplish your minimum requirements.

MOTION: SEN. FAWBUSH moved to adopt SB 240-7 amendments as further amended  
by the  
Committee.

VOTE: With no objection, the motion carried. Senators Timms and Springer  
were excused.

MOTION: CHAIR HILL moved that SB 240 as amended be returned to the  
President's desk  
pursuant to SR8.50, and that a letter be attached recommending that the  
subsequent referral to  
Judiciary be rescinded.

VOTE: With no objection, the motion carried. Senators Timms and Springer  
were excused.

MOTION: CHAIR HILL moved SB 240 as amended to the Ways and Means Committee  
with  
a "do pass" recommendation.

211 HILL: Adjourns meeting at 5:20 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                      Administrator

EXHIBIT LOG:

A            -            Testimony on SB 742 - Sen. Kitthaber - 4 pages  
B            -            Testimony on SB 742 - Webster Briggs - 1 page  
C            -            Testimony on SB 742 - Bev Hayes, WRD - 1 page  
D-Amendments to SB 233 - Sen. L. Hill - 3 pages  
E-Amendments to SB 240 - Lisa Zavala, Administrator - 14 pages  
F-Amendments to SB 240 - Jill Zarnowitz, ODFW - 1 page