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Re: SB 928 – Testimony for Hearing before the Senate Environment and Natural Resources Committee, April 8, 2019

Chair Dembrow and Committee Members:

I represent no entity, group or stakeholder, but I have served on the initial Oregon Land Conservation and Development Commission, later on The Oregon Energy Facility Siting Council, and still later as organizing board chair of the Energy Trust of Oregon. As a lawyer with an administrative and environmental practice I have had considerable experience with Oregon’s administrative law, including dealing with State agencies and have published articles¹ on Climate Change and Oregon law. My purpose is to assist in structuring this new state agency, and my focus is on what I deem to be the public interest. I provide below suggestions for changes in SB 928 in what I deem to be in the public interest, based on my prior service to Oregon.

Your work in crafting the new Climate Authority to implement Oregon’s Green Jobs cap and trade bill, HB 2020 will have lasting impact on Oregon, and I believe it is the most important of the measures before this Legislature. This agency will be a strong force in moving Oregon toward achieving its climate change reduction goals. It should be voted out by this committee and passed by the legislature

Sequestration Goal by 2021. The IPCC and climate experts such as James Hansen tell us that annual reductions in global warming gas emissions will not be enough to reduce our carbon impacts sufficiently. Because carbon dioxide, once released into the atmosphere, will last hundreds of years, it is necessary to remove some of this gas. Oregon needs to use its forestry resource, its agricultural lands improvements processes, and its urban and transportation planning, not only for commercial purposes and to lower annual emissions, but also to remove carbon dioxide from the atmosphere. A State goal for this removal needs to be recommended by the Oregon Policy Board to the Joint Committee on Climate Action for the purpose of being set by the Legislature in 2021.

From my experience in creating the Land Conservation and Development Commission and the Energy Trust of Oregon, as well as my service on the Energy Facility Siting Council, I offer three suggestions for improvement of the Climate Authority.

¹E.g., <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/23295/Schell%20--%20final.pdf?sequence=1&isAllowed=y>

Make the Voting Policy Board Members not stake holders but geographically dispersed and responsible for the public interest. Whether from political expediency or from belief that all stakeholders should be at the table, the idea of stakeholder controlling the decisions of the Policy Board is a mistake. Stakeholders represent their parochial interests not the public interests of the state as a whole. A better arrangement is to retain the two at large voting members and then have the Governor appoint 5 more voting members, each from a congressional district, all 7 to receive the consent of the Senate, with staggered terms, serving without pay, and removable by the Governor for cause. The stakeholders should still be asked to participate, but as non-voting members.

Strengthen the Policy Board's relationship with the Executive Director. Oregon's traditional pattern of Boards and Commissions has been to require a commission to appoint the executive director. The original reason for this was to avoid corruption and favoritism. SB 928 instead, requires the Governor to appoint the Director. The role of the Climate Authority is such that a governor appointed executive may have better clout to marshal collaboration among state agencies than would an Executive Director selected by the Policy Board. Still, it is likely that the Policy Board will have a close working relationship with the Executive Director and may well be able to be the best judge of whether the charge of the Climate Authority is being fulfilled. A way to get maximize performance from both the Director and the Policy Board is to enable the Policy Board to recommend dismissal to the Governor. I suggest that this act be authorized in the charge to the Policy Board.

Require specific Acts to ensure inter-agency collaboration. If Oregon is to meet its goals inter-agency cooperation is essential. However, because of budget limitations, expressions of statutorily listed duties in agency charges, and turf battles, my experience is that adequate collaboration among agencies as set for the in Sections 2(b), -(c), and -(d) of SB 928 will not happen without more. A new section is needed in the bill that sets forth the mechanisms for collaboration to obtain climate change adaptation, mitigation and sequestration. It needs to include: rules jointly adopted by each affected agency and the Climate Authority, a statement that will cause inclusion in the agency's duties the requirement for collaboration with the climate authority, a requirement for a joint collaboration budget with the agency's budget focusing on the collaboration and implementation, metrics toward achieving the State's goals, and an audit trail to assure performance.

Strengthen the public interest by increasing the post-employment limits. SB 928 uses the ODOE restriction on the Director's employment after leaving office. The times have changed, and frequently the most lucrative opportunities for post-office holding are those of consulting and/or serving as a board director in an affected industry. That provision should be strengthened to exclude those positions-relationships as well.

Attachment: Proposed Amendments

PROPOSED AMENDMENTS TO SENATE BILL 928

(Schell 4/8/2019)

Collaboration between Climate Authority and state agencies

In SB 928, page 4, after Line 8, add the following:

[(3) To enhance coordination, collaboration and clearing house functions, the Climate Authority, acting separately with each of the following agencies, shall, as additional duties, by January 1, 2021 adopt joint budget proposals, enforcement mechanisms and audit trail metrics for shared plans for climate change adaptation, mitigation and sequestration, as appropriate within the otherwise statutorily mandated duties of the agency involved. The agencies shall be:

Department of Environmental Quality

Department of Forestry

Department of Agriculture

Department of Transportation

Department of Land Conservation and Development

Department of State Lands

Department of Economic Development

Department of Administrative Services

Building Codes Division

Department of Housing and Community Services]

Sequestration Goal by 2021.

In SB 928 Page 6, add to the existing language a new sentence which shall read: In its first biennial report the Oregon Climate Board shall recommend to the Legislative Assembly for its adoption a sequestration goal for the year 2050 with interim goals as the Climate Board deems appropriate..

Make the Voting Policy Board Members not stake holders but geographically dispersed and responsible for the public interest.

In SB 928 Page 5

After line 2 add:

(3) The Governor shall appoint the following as non-voting members, who shall be residents of this state, shall be representative of their interest groups, and shall be well informed in energy and climate issues:

- (a) One member who is a tribal representative
- (b) Two members who are representatives of the energy sector;
- (c) One member who represents environmental interests;
- (d) One member who is an economist or who has experience and expertise in that finance;
- (e) One member who represents industrial energy users; and
- (f) One member with expertise in Transportation issues.

Line 3, change ~~(3)~~ to (4) and ~~nine~~ to seven

After Line 3 add:

- (a) One member from each Congressional District in Oregon; and
- (b) Two at-large members

Lines 7 thru 14: delete entirely

Line 41 delete ~~Three~~ and replace it with One.

No consulting or directorships for two years

In Section 85

SECTION 85. ORS 469.050 is amended to read: 469.050.

(1) A person who has been the Director of the [State Department of Energy] Oregon Climate Authority shall not, within two years after the person ceases to be the director, be an employee, director, or consultant to of:

- (a) An owner or operator of an energy facility;
- (b) An applicant for a site certificate; or
- (c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) ~~Employment of any individual~~ Any relationship in violation of subsection (1)(a) or (b) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual.