

hearing even in circumstances where it is not needed. Referring to section 10, he said the court cannot take testimony. They handle appeals, not trial matters. He suggested deleting the last sentence of section 10.

328 KIP LOMBARD, Oregon Water Resources Congress, submitted and explained proposed amendments to SB 287 (EXHIBIT B). Those amendments also suggested deleting the second sentence in section 10.

390 **MOTION:** Rep. Harper moved that the second sentence in section 10 be deleted.

402 MS. HOLMAN explained the impact of that deletion would be that the Court of Appeals would basically follow their usual procedure that is set out in the Administrative Procedures Act.

TAPE 39, SIDE B

020 **VOTE:** Aye - Sen. Ryles, Rep. Harper, Rep. Throop, Sen. Starkovich. Motion carried.

025 CHAIR STARKOVICH referred to section 9. JUDGE GILLETTE reviewed subsection (1). He read the definition of "order" in the APA, ORS 183.310, referred to in section 2(5) of the bill. Subsection (1) provides that an order can be appealed to the commission and subsections (2) and (3) provide the degree of formality that the commission is to use in reviewing the director's order. There needs to be more careful delineation between kinds of orders. He also said there is a problem in subsection (2) with respect to what a "hearing" means as opposed to "contested case hearing" in subsection (3).

070 In response to CHAIR STARKOVICH, MS. HOLMAN said she believes it is the intention in subsection (2) to refer to contested case hearing.

080 **MOTION:** CHAIR STARKOVICH moved that in line 24, page 3, the language read: "after a contested case hearing".  
(NO VOTE TAKEN)

090 JUDGE GILLETTE, in response to SEN. RYLES, said it has to be decided whether the director or the commission is to have the final say on any order. The language in subsection (1) needs to be changed if the director is to have to final say.

139 CHAIR STARKOVICH asked MR. SADLO and MS. HOLMAN to work with JUDGE GILLETTE on that issue.

- 150 JUDGE GILLETTE said, in reference to subsection (3), that a contested case hearing is granted only in circumstances in which a statute or due process require that a hearing to that extent be held. He suggested language to the effect that the commission shall conduct such hearing as may appear necessary and appropriate, in which case the commission, having a constitutional obligation to provide due process, can be deemed by rule which ones it will hear by a full hearing.
- 165 MR. LOMBARD said he agreed with JUDGE GILLETTE's comments. He said in OWRC's proposed amendments (Exhibit B), they drafted a new section 8a to precede section 9. A major concern is due process and having an adequate evidentiary hearing and factfinding process. He will not be at the hearing tomorrow, but Dave Nelson will be able to answer questions.
- 215 CHAIR STARKOVICH referred to item 1(A) on the Policy Decisions memo (Exhibit B, 2/28/85).
- 226 **MOTION:** REP. HARPER moved leaving the language as is in section 3(1) and add a statement to the effect that two members of the commission shall reside east of the Cascades.
- 260 **VOTE:** Aye - Rep. Harper, Sen. Ryles, Rep. Throop, Sen. Starkovich. Motion carried.
- 265 MS. HOLMAN said there are provisions in the bill now that the board makeup stays the same when it is changed to the commission. She asked if the subcommittee wants a provision to state the makeup will be changed as members are replaced. The subcommittee agreed that they did not want to bump anyone off the board. Discussion on term expirations coming up.
- 303 SEN. RYLES suggested saying by a date certain there has to be two members. Staff will check on this question for tomorrow's meeting.
- 328 MR. SADLO reviewed item 1(B) of the memo (Exhibit B, 2/28/85).
- 335 **MOTION:** REP. THROOP moved to retain the policy decision that is written into the bill that the Governor has the authority to remove a member without cause.
- 375 **MOTION WITHDRAWN.** REP. THROOP said he would like to review information on how other agencies treat this issue.