

## DISSENT AND QUESTIONABLES

Mrs. Marcella Mehl, 11870 SW Parkway, Portland 97225

Seems to object to bill as it would allow takeover of anyone's private land. Also too much now in government and off the tax rolls.

Dan Dority, Portland 636-2477

Bitterly opposed to HB 1601. I told him over the phone that if the bill got as far as the Governor's desk for signature to write the governor. He called May 5

Jerry Parks, Pixie Kitchens, Lincoln City

"Regarding beaches, I don't own any beach front and I support your stand, but don't steal it, buy it. Raise my taxes if necessary to pay for it." (He's former mayor of LC and owns much property)

Lester and Donna Filtz, Rt. 1, Box 79, Cloverdale

Interests of people not served by passage of hastily prepared or amended legislation which does not thoroughly consider all aspects of the matter. Strongly urge the subject bill be given extensive and unemotional study by an interim committee."

Patrick Ball, Broker, Waldport, Oregon

"House Bill 1601 if passed would be a legislated license to steal by the State of Oregon." Rest of his two page letter is similar comments. . . and suggests if Oregon needs control of dry sand area, to buy it, so property owners not required to pay taxes on property on which the state has placed an arbitrary public easement

MaryEl Zumwalt, Rt. 4, Box 385Z, Albany 97321

"I am surprised to find the Republicans and particularly a Rep. governor not only countenancing such a land grab but actively encouraging and fostering it. People who have paid property taxes on land . . . surely have some rights, too"

Mr. and Mrs. Austin Bowen, Dayton 97114

Owned beach property and sold it. "We expect you to prove that your interests are Oregon's interests as we felt they were when we voted for you." (Stand is unable to determine.)

Shirley Merz, (Mr.) Merz Logging & Construction, P. O. Box 177, Florence 97439

Bill unnecessary as people are not denied access to the beach in most of the area. In fact so much of the beach is government owned we fail to see much of a problem even if some access ways are blocked.

Mr. and Mrs. Francis E. Walsh, 222 S. W. Harrison St., 7 C, Portland

Introduce a bill forbidding the public to beach front property unless posted for public use. Many miles of beach for public use and they are so bold as to look right through windows of private homes now.

Mr. John Yeon, 4305 S. W. 70th Ave., Portland 25

Objects to HB 1601 because a mark against private ownership, cars on beaches and lack of good resorts because no private beach.

Dr. R. J. Grimm, Good Samaritan, 1015 NW 22nd Ave., Portland 97210

Gave several good suggestions for changing 1601 or other developments for our beaches.

Mrs. Joanna A. Sorensen, Edgewater Motel, Waldport

Hard to tell her stand.

Mr. and Mrs. Ralph C. Carlson, 9230 S. W. Whitford Lane, Portland 97223

Always had public on beaches and besides there are plenty of public parks, etc.

jPaul W. Haviland, 1005 E. Main, Medford, 97501

Against constituion - would happen even on rivers if this is passed.

Roselyn J. Oliver, Purdy Cottages, Yachats

Public have always used beach and they have policed it but want the right to do so

Henry F. ~~K~~Baldwin, Hwy 101, South, Waldport and others

Form letter to press and legislature re trespassers and policing, etc.

Harold S. Hirsch, 1308 S. W. Wyndham Lane, Portland

Trespassers on property can now be put off. Can't if 1601 goes through

Mrs. Stan Raile, 2512 NE 50th, Portland

Highway Dept. took some of her grandmothers property on which she had been paying taxes for years.

Keep beach open for public but leave property owners some rights

Gladys Jones, Otter Rock, Oregon

Get help with putting out beach fires

C. E. Smith, 1239 SW Morrison, Portland 97205

Any beach within 50 feet of high tide belongs to anyone that wants to use it according to his father, a U. S. Marshal

Dr. Karl M. Rottluff, P. O. Box 1415, Newport

Bought property in good faith and should be paid for it

Hugh Jennings, Medford

Astounded at your action on this matter. Copy of letter to Sen. Newbry saying "The Governor's proposal to confiscate private property on our Oregon beaches can only be classed as Socialism, etc.)

Harvey Welch, 4155 S. W. Hillsdale Ave., Portland 1

It used to be that the property owners were the backbone of any state -- two sides of every question. How about cars and money property owners put into erosion.

J. A. Sanders, Route 3, Box 29, Lebanon

"Bill violates the right of privacy, makes the private property owners position more unbearable, and is an unnecessary approach and begins the road to communistic thinking."

R. G. Robbins, Wilcox Building. Portland 97204

Some solutions to the problem: Restrict fences, allow public use of one half distance high water to vegetation, abolish vehicle traffic, purchase of land by state for access, state owners and maintenance of access areas.

Bernard Kroner, 12619 S. E. Salmon Court, Portland

Feel dry sand area should be dedicated to public use. Would be happy to donate the use of this portion of our beach frontage.

Francis E. Walsh, 222 S. W. Harrison St., Portland

Asks questions regarding easements and the maintaining of such

Frank P. Bell, 2144 NE 25th Ave., Portland 97212

Owns property and people have no respect for property rights. Spent money for erosion.

Thos. M. Stevens, Box 35, Wheeler, Oregon 97147

Worried about 13.7 ft definition effecting many of businesses

Gordon Bennett, Beach Properties, P. O. Box 273, Oceanlake 97367

Sent clippings about man at Cannon Beach who fenced off his motel

Fred Buchwalter, Dennis Uniform Manufacturing Co., 135 S. E. Hawthorne Blvd. , Portland 97214

State purchase land

Frank German, 31 NW 22nd Place, Portland 97210

When you get mixed up with that Hwy Dept. etc.

Alex Eischen, Rt. 1, Box 213, Cornelius 97113

Has home at Roads End and feels homeowners developed beach

Dick Spomer, P. O. Box 579, Medford 97501

Very opposed to stand

SUMMARY OF AMENDMENTS TO HOUSE BILL 1601

After very careful consideration and deliberation with property owners, members of the public, geologists, and lawyers, the following amendments are being offered to the Highway Committee for their consideration on HB 1601.

The amendments are designed to accomplish two principal objectives.

I. Public Easements

It is clear under the common law that the public may have acquired beach and related property by grant, dedication or prescription. There should be little difficulty in ascertaining these easements that have been acquired by grant or dedication. The problem arises with respect to those easements that have been acquired by prescription. In general terms, an easement by prescription is acquired if the property has been used by the public for a period of ten years in an open, continuous and notorious manner adverse to the ownership rights of the person holding the fee simple title.

The proposed amendments provide:

1. Any public easements heretofore created and that are reasonably necessary for access to and the full use and enjoyment of the State-owned beaches are vested in the State and under the jurisdiction of the State Highway Commission.
2. The Commission is empowered to bring legal proceedings where necessary to establish that such easements have in fact been created.
3. A simple procedure is provided whereby either the landowner or the Commission may litigate the existence of the easement.
4. In accordance with common law principles the burden of proving the existence of any such easement is placed upon the Highway Commission.

5. If the landowner prevails, he will be reimbursed for his expenses including attorney fees.

6. The amendments specifically provide that by enactment of this bill the Legislature is not creating any presumptions regarding the existence of the easements. It is my belief this is a judicial question and not legislative. We are merely trying to provide an orderly procedure for ascertaining those public rights that have already been created and not to create any new rights either for the State or for the property owner. Let me reemphasize the purpose of these amendments is to preserve the status quo.

7. The amendments further provide that no new easements may be created as a result of adverse use by the public occurring after the effective date of the act. The purpose of this provision is to prevent the necessity of landowners erecting structures in order to preserve their property rights and to encourage them to permit public use of their property.

## II. Zoning

The amendments provide that no structure or improvement may be erected within the area that is 200 feet from the mean high tide or 7 feet above mean sea level (whichever is the lesser) without a permit from the State Highway Commission. The only exceptions are for those structures erected prior to May 1, 1967, or structures within city boundaries.

The purpose of exempting cities from the provisions of this act is that, in my opinion, this is a question for the cities to determine themselves and not for the Legislature. I do not feel the Legislature should pass judgment on property that is currently taxed and zoned by the cities.

The suggested amendments would also provide that property that is under a public easement would not be subject to ad valorem taxation.

The gist of these amendments is:

1. to insure as much of Oregon's coast line for public use as possible;
2. to discourage the necessity of putting up barriers or obstacles by private landowners to prevent public use; indeed, to encourage landowners to permit public use;
3. to suggest to the Highway Commission that future use of those private-owned beach lands can be insured by common law condemnation proceedings;
4. to preserve that property which belongs to the public and to preserve that property which belongs to the landowners.

A BILL FOR

AN ACT

Relating to public rights in land

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly recognizes that over the years the public has acquired certain easements to the use of lands abutting on those lands described in ORS 274.070, for recreational purposes. Accordingly, the Legislative Assembly declares that it is in the interest of the public to protect and preserve such public easements acquired through dedication, prescription, grant or otherwise as a permanent part of Oregon's public recreational resources. The Legislative Assembly also declares it the public interest to acquire by payment of just compensation, such rights in such land as may be necessary. The rights of private owners to those lands that are not subject to such public easements shall be protected.

SECTION 2. The State Highway Commission shall have authority to protect and preserve the rights of the public in the lands described in section 1 of this Act, and shall have the authority to acquire rights in land in such area.



SECTION 3. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas declared by section 1 of this Act and ORS 274.070 and the safety of the public using such areas, and to preserve values adjacent to and adjoining such areas, the natural beauty of the seashore and the public recreational benefit derived therefrom, no person shall, except as provided by section 5 of this Act, erect or maintain any structure, barricade or other kind of improvement on any property that is within the area along the Pacific Ocean located:

(a) Within 200 feet inland of the line of mean high tide; and

(b) Not more than 7 feet above mean sea level.

(2) This section does not apply to improvements existing or under construction on May 1, 1967.

(3) This section does apply to barricades existing or under construction before or after May 1, 1967.

(1)

SECTION 4./ Any person who wishes a permit to erect or maintain a structure, barricade or improvement on property subject to this Act shall apply in writing to the highway commission, stating the reason for the improvement and the kind of improvement to be undertaken. The commission shall, after a hearing in accordance with ORS 183.310 to 183.510 if requested by the applicant or any other interested person, grant the permit if the improvement would not be adverse to the public interest in preserving the recreational and scenic resources.

(2) If the commission does not act on a request within 60 days after the request is mailed or delivered to the commission, the request shall be considered granted.

(3) If any person is aggrieved by the action of the commission under this section, he may appeal the decision of the commission to the circuit court.

SECTION 5. The owner or person in control of any property subject to a public easement or to section 4 of this Act shall not be liable for any injury to another person or damage to property of another resulting from a condition of the property within the easement or within the area subject to section 3 of this Act, unless the injury or damage results from a condition that he created and that he knew or, in the exercise of reasonable care, should have known was likely to cause injury to persons or damage to property.

SECTION 6. The absence of fences, barricades, signs, structures or improvements on lands subject to this Act shall not be deemed legal evidence of title, or lack thereof.

SECTION 7. The State Highway Commission shall police, protect and maintain, to the best of their ability, the lands made available for public use, whether such use is obtained by easement, condemnation or permission of a private owner.

SECTION 8. The commission may acquire property, or interests in property, suitable for use in connection with state recreation areas along the shores of the Pacific Coast. Such property or interests may be acquired by gift or purchase or by exercise of the power of eminent domain as provided by ORS 366.360 to 366.393.

SECTION 9. For purposes of assessment and ad valorem taxation, whenever real property is held subject to a public easement, the true cash value of the property shall be subject to deduction for the restricted use imposed on the servient property by the easement.

SECTION 10. Section 9 of this Act first is operative on January 1, 1968.

SECTION 11. Sections to of this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and sections to of this Act shall take effect upon passage.