

F. J. ...

JOINT STATEMENT ON AMENDMENTS TO ENG. HB 1601

5/15/67

Governor Tom McCall
State Treasurer Robert W. Straub
Speaker F. F. (Monte) Montgomery
Representative Lee Johnson
House Minority Leader James A. Redden

We have today agreed upon amendments to Engrossed House Bill 1601 to be offered to the House Committee on Highways--amendments which in every way strengthen and in no way compromise the public interest with regard to Oregon's beaches.

Our purpose is to supply all the statutory authority needed to maintain Oregon's beaches as a permanent recreational and scenic resources open to the public, and to maintain the natural beauty of the seashore.

We believe that the Legislature can enact the measure as amended, with full confidence that it protects and preserves both public and private rights along the Oregon Coast, and that it actually will help to enhance the esthetic and economic value of this magnificent resource to the benefit of all.

The proposed amendments provide for:

1. Preserving the status quo with regard to public use of the beaches.

This can be accomplished by:

- A. Retaining the basic language and goals of Eng HB 1601, which declares legislative intent to protect and preserve any public easements that have been acquired on the Oregon Coast through dedication, prescription, grant or otherwise, and authorizes the State Highway Commission to serve as the public agency to carry out this responsibility.

*about
the
substantive*

--more--

H.C. take legal action whenever it appears public rights have been infringed upon

- B. Designating such easements as state recreation areas,
- C. Acquiring whatever additional rights might be needed to keep the beaches open to the public. This intent is carried out by a provision for acquiring property, or interests in property, by purchase, agreement, donation or condemnation.

Stronger: can be it whenever it equals something public use preservation

2. Authorizing the State Highway Commission to police, protect and maintain the lands made available for public use. *Could be 4 provisions*

3 bills done JB 39

3. Zoning to prevent construction on the beach which would mar its recreational and scenic values. This provision includes a new, precise and easily located contour line as the shore boundary of the zoned area-- a line beyond the beach, striking the shore slightly above the point where the highest winter waves toss logs.

16 feet - was suggested 11' around all existing residences above 16 - now below 18-20

4. Relieving private property owners by:

- A. Exempting them from liability for personal injury or property damage occurring on property subject to public easement or zoning, unless they cause the injury or damage. *by digging hole*
- B. Allowing them to make a simple declaration of their private property rights, to be filed with the county recorder. [This would preclude the necessity of posting their property with notices or of building barriers, and would let them allow public use of their property without losing private rights.
- C. Exempting them from property taxes on land subject to public easement.

Solution to entrance point 7 is proposed

May 15, 1967

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1601

On page 2 of the printed engrossed bill, line 1, after "public" delete the rest of the line and insert "and private rights relating to land."

On page 2, delete lines 3 through 18 and insert:

"Section 1. The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of lands on and about the shore of the Pacific Ocean; and where such use has been sufficient to create easements in the public through dedication, prescription, grant or otherwise, the Legislative Assembly hereby declares that it is in the public interest to protect and preserve such public easements as a permanent part of Oregon's recreational resources. The Legislative Assembly further declares that it is in the public interest to acquire additional rights and to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's beaches.

"Section 2. Ownership of public easements on or about the shore of the Pacific Ocean hereby is declared vested exclusively in the State of Oregon. Such easements are state

recreation areas to be held and administered in the same manner as state recreation areas declared in ORS 274.070.

"Section 3. The State Highway Commission is authorized to administer, protect and preserve public easements declared state recreation areas by section 2 of this Act and for that purpose, if necessary, to undertake appropriate court proceedings.

"Section 4. The State Highway Commission, in accordance with ORS 366.345, may acquire property, or interests in property, for use in connection with state recreation areas along the Pacific Coast.

"Section 5. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas recognized and declared by section 2 of this Act and by ORS 274.070, to protect 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 6 of this Act, erect, make or place any appurtenance, structure or improvement on any property that is within the area along the Pacific Ocean located between the extreme low tide and the elevation of 16.00 feet above the United States Coast and Geodetic Survey Sea-level Datum of 1929 through the Pacific N.W. Supplementary Adjustment of 1947, following natural topographic contour lines, excluding estuaries. The position of the landward

boundary line shall be interpolated to follow natural topographic contour lines whenever interrupted by man-made structures.

"(2) This section does not apply to appurtenances, structures or improvements existing on May 1, 1967.

"(3) This section and section 6 of this Act do not apply to appurtenances, structures or improvements subject to easement or license granted by the State Land Board under ORS 274.075 or to rule, regulation or permit of or from the State Land Board under ORS 274.080.

"Section 6. (1) Any person who desires a permit to erect, make or place an appurtenance, structure or improvement on any property subject to section 5 of this Act shall apply in writing to the State Highway Commission, on a form and in a manner prescribed by the commission, stating the kind of and reason for the appurtenance, structure or improvement. Prior to the next regular meeting of the commission held after the date of receipt of an application satisfactory to the commission, the commission shall cause notice of the application to be posted at or near the location of the proposed appurtenance, structure or improvement; and at the next regular meeting the commission shall announce the receipt of the application. The notice and announcement shall include the name of the applicant, a description of the appurtenance, structure or improvement and its proposed location and a statement that any interested person may file a request with the commission for a hearing on the application.

"(2) Within 30 days after the date of the regular meeting at which the commission announces the receipt of a satisfactory application, the applicant or any other interested person may file a written request with the commission for a hearing on the application. If such a request is filed, the commission shall cause a hearing to be held by the State Highway Engineer or his authorized representative. The commission shall cause notice of the hearing to be posted and announced in the manner provided in subsection (1) of this section. The notice shall include the time and place of the hearing.

"(3) After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the commission shall grant the permit if approval would not be adverse to the public interest in preserving the recreational and scenic resources. If the commission does not act on a satisfactory application within 90 days after the date of receipt thereof or, if a hearing is held thereon, within 60 days after the date of the hearing, the application shall be considered denied.

"(4) Any person is entitled to appeal to the circuit court of the county where the property is located for judicial review of the action or failure to act by the commission under this section. Except as provided by this subsection, ORS 183.480 to 183.500 apply to proceedings under this subsection.

"Section 7. The State Highway Commission is hereby authorized to police, protect and maintain property that is subject to section 5 of this Act and property on or about the shore of the Pacific Ocean that is available for public use, whether such use is obtained by easement, condemnation or permission of a private owner.

"Section 8. The owner or person in control of any property subject to a public easement declared a state recreation area by section 2 of this Act or any property subject to section 5 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 5 of this Act, unless the injury or damage results from a condition that he created or 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 9. (1) In any court proceedings involving prescriptive rights of the public over property on or about the shore of the Pacific Ocean, an instrument executed and filed as provided by subsection (2) of this section shall be an act and declaration admissible as evidence of the intent of the owner or person in control of property to exercise dominion and control over his property.

"(2) The declaration shall describe the property and shall be signed and witnessed as provided by ORS 93.410. It

shall state that the public is granted permission to use the property, or a specifically described portion of the property, that the public use may be for certain purposes which shall also be described, that the permission granted may be revoked at any time by the grantor, and that the permission granted shall terminate upon the assignment, grant, devise or other transfer or conveyance of the property or any interest therein by the owner or person in control of the property. The declaration shall be filed in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property.

"Section 10. For purposes of assessment and ad valorem taxation, whenever real property is held subject to a public easement declared a state recreation area by section 2 of this Act, 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 11. Section 10 of this Act is first operative on January 1, 1968."