

Office of the Speaker

May 10, 1967

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 ^{deed} grant, ^{by filing plans} dedication or ^{use} 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. *give up something - limit to paths -*
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.

? may sound fair but just another guise of state treasury

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.

- Allowed by subject permit state law

Created amendments

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.

Votes on HB 1601 to date, May 10/67

- April 6 Amended & Recommended Prtd. Engrossed: (motion by Smith)
In Favor: Elder, Howard, Leiken, McKenzie, Smith
Turner and Bazett
Opposed: Anunsen & Meek
(Hanneman & Holmstrom not present for vote)
- April 18 Table & Put in Interim Committee (motion by Hanneman)
In Favor: Anunsen, Elder, Hanneman, McKenzie & Turner
Opposed: Holmstrom, Howard, Leiken, Meek, Smith &
Bazett
(On this motion Leiken originally voted "Aye"
& the motion was carried--he then changed his
vote to "No")
- April 18 Do Pass (motion by Howard)
In Favor: Howard, Meek, Smith and Bazett
Opposed: Anunsen, Elder, Hanneman, Holmstrom, Leiken,
McKenzie & Turner
- May 2 Do Pass (motion by Howard)
In Favor: Howard, Meek & Bazett
Opposed: Anunsen, Hanneman, Holmstrom, Leiken & McKenzie
(Elder, Smith & Turner not present for vote)