

HOUSE HIGHWAY COMMITTEE MINUTES:

Mar. 7: p. 2, 3 & 4

Exhibits attached:

1. Highway Dept. statement in support. 3 pages.
2. Statement of State Parks & Recreation Advisory Comm. re HB 1600 & 1601. 2 pages.

Mar. 23: p. 1, 2, 3 & 4

Exhibits attached:

1. Statement of Rep. Ouder Kirk re HB 1600 & 1601. 1 page.
2. Statement of Stewart, State Parks & Recreation Advisory Comm. 5 pages.
3. Ltr. to Tom McCall from Lawrence Bitte, Portland, Aug. 25, 1966 re Surfsand Motel, Cannon Beach. 2 pages.
4. Memo of Wm. Nokes, Investigator, Hiway Dept., to Chief Counsel re investigation of Surfsand Motel, Aug. 15, 1966. 2 pages.
5. Ltr. to Highway Comm. from J. Richard Byrne, Portland, July 14, 1966 re Surfsand Motel. 1 page.
6. Unsigned statement, undated, of Mr. DeBernardi, against bill. 3 pages.

Apr. 6: p. 1 & 2

Apr. 13: p. 2 & 3

Apr. 18: p. 2 & 3

Apr. 27: p. 3

Exhibits attached:

1. Ltr. from Lawrence F. Bitte, Portland to Rep. Bazett, Apr. 27, 1967. 2 pages.

May 2: p. 1, 2 & 3

May 11: p. 1, 2, 3 & 4

Exhibits attached:

1. Recommendations of Gov. McCall for preservation of beaches. 2 pages.
2. Statement of Treasurer Straub. 3 pages.

Exhibits filed in separate section of minute book, at end of book:

1. Exhibit A of May 11, 1967: proposed amendments, marked presented by Rep. Johnson, not adopted. 6 pages.

May 12: p. 1

Exhibits filed in separate section of minute book, at end of book:

1. Exhibit A of May 12, 1967: proposed revision of HB 1601, marked presented by Rep. Redden, not adopted. 3 pages.
2. Exhibit B. of May 12, 1967: proposed amendments to HB 1601, marked presented by Rep. Johnson, not adopted. 5 pages.
3. Exhibit C of May 12, 1967: proposed amendments to engrossed HB 1601, marked presented by Rep. Hanneman, not adopted. 4 pages.

May 16: p. 1, 2 & 3

Exhibits attached:

1. Unidentified drawing, USC & GS Sea Level Datum, average predicted winter high tide, etc. 1 page.

Exhibits filed in separate section of minute book, at end of book:

1. Exhibit A of May 16, 1967: proposed amendments to engrossed HB 1601, marked adopted and amended. 6 pages.
2. Exhibit B of May 16, 1967: proposed amendment to HB 1601, marked adopted. 1 page.
3. Exhibit C of May 16, 1967: proposed changes in May 15, 1967 HB 1601, marked adopted & amended. 2 pages.

May 18: p. 2 & 3

Exhibits attached:

1. Statement of House Highways Comm. May 18, 1967. 1 page.

Exhibits filed in separate section of minute book, at end of book:

1. Exhibit A of May 18, 1967: proposed amendments to Engrossed HB 1601, marked "the bill now reads as follows.....". 7 pages.
2. Exhibit B of May 18, 1967: proposed amendments to HB 1601, marked adopted. 4 pages.
3. Exhibit C of May 18, 1967: proposed amendments to HB 1601, marked adopted. 1 page.

NOTE I: HB 1600 was always discussed with HB 1601 when relevant; there are no additional minutes on it other than those shown above for HB 1601.

NOTE II: exhibits filed with minutes for a given date and those filed separately in back of minute book may sometimes duplicate one another; check this when xeroxing.

No separate exhibit file, no tape recordings.

SENATE JUDICIARY COMMITTEE MINUTES:

May 26: p. 1, 2, 3, 4, 5, 6, 7 & 8

Exhibits attached:

1. Xerox copy of bill. 2 pages.

May 30: p. 1, 2 & 3

Exhibits attached:

1. Proposed Senate amendments. 2 pages.

May 31: p. 1, 2, 3 & 4

Exhibits attached:

1. Appear to be changes proposed by Sen. Burns. 2 pages.

June 1: no minutes but attached is: initialed statement of votes on "approval to replace title of bill". 1 page.

Minutes: 42

Exhibits: 79

Total Pages: 121

Compiled by: M. Keillor, Reference Archivist

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Mr. Carl Wendt distributed to the committee members data indicating population of the various counties and cities, Motor Vehicle Revenue for 1966, estimated revenue under HB 1043, estimated revenue under HB 1078, and estimated revenue by combining the bills, using the allocation formula of HB 1043 and the tax structure of HB 1078. Mr. Wendt stated that the City of Portland did not have favoritism of one bill over the other.

Chairman Bazett pointed out that earlier testimony on HB 1043 had criticized the bill claiming that it gave a large portion of the funds to the largest city in the state; he observed that, according to Mr. Wendt's data, it apparently was much closer than had been believed.

Mr. Wendt stated that the majority of the cities, on the whole, would get more money under HB 1043 than they would under HB 1078. He testified further than with the combined figures of the 1078 tax formula and the 1043 distribution formula then this holds true not only for the cities, but also for the counties and the state.

The following witness, Mr. Ray Beeler, distributed copies of a legislative bulletin that had been sent to members of the Oregon-Columbia Chapter, A.G.C., a copy of which is attached and made a part of the minutes. He stated that the Assoc. of General Contractors favored HB 1078 over HB 1043 because the tax would be paid by the user, and the tourists would be paying their fair share of the tax.

REP. ANUNSEN MOVED that HB 1043 be tabled. The motion passed with Reps. Anunsen, Elder, Hanneman, Howard, Leiken, McKenzie and Bazett voting in favor, and Reps. Holmstrom and Meek opposed.

REP. HOLMSTROM MOVED that the Chairman should appoint a Sub-Committee to study the contents of both HB 1078 and HB 1043, which Sub-Committee should report back to the full committee within two weeks with a proposal. The motion passed unanimously.

HB 1601 - Recognizes public rights to easements in shore lands

Mr. David Talbot testified in favor of HB 1601, and a copy of his testimony is attached and made a part of the minutes.

Rep. Ouderkirk stated that he did not believe much effort had been put into HB 1600 or HB 1601 by the Highway Department. He suggested that these bills be put into an Interim Committee study for careful review.

Rep. Meek asked what the problem was, to which the witness replied that in some areas of the coast there are miles of area before reaching the vegetation line, and that if the Parks Department is allowed to take over eroded lands then any number of people would stand to lose their property.

Chairman Bazett pointed out that the intent of the bill was to protect these lands for the people, and that the longer

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the state waited to purchase the land the more it will cost.

Rep. Howard called attention to the fact that, because of a money shortage, many people who own land on the coast are now selling.

Mr. E.R. Fatland distributed a statement by Mr. L.L. Stewart, Chairman of the State Parks and Recreation Advisory Committee, which favored passage of both HB 1600 and HB 1601. A copy of Mr. Stewart's statement is attached hereto and made a part of the minutes.

Rep. Meek asked Mr. Lloyd Shaw to provide the committee with copies of studies made with regard to the public's right to the ocean beaches; Mr. Shaw agreed to comply with this request.

The following witness, Mr. A.D. Dority, Jr., a real estate broker from Lake Oswego, stated that he was 100% opposed to HB 1601 because it would destroy property rights on the coast. He stated further that the bill would allow the Parks Department to harass private individuals while acquiring property rights.

Mr. DeSelms, attorney-at-law representing various residents and property owners in Lincoln County, testified that, in his opinion, HB 1600 and 1601 extended the meaning of the high tide line. He defined the high tide line as the point which is 8 feet above the average mean high water; and stated that this line has nothing whatsoever to do with the vegetation line. Mr. DeSelms stated that the bills would extend the high tide line back to the vegetation line; and pointed out that in some parts of the coast there are miles between the high tide line and the vegetation line. He went on to say that the state would, in effect, be confiscating private land without compensation. Mr. DeSelms urged that more time and study be made on this legislation; he cautioned the committee that lawsuits could evolve. The witness referred the committee members to a University of Oregon study entitled "Some Recent Physical Changes of the Oregon Coast" by Samuel M. Dickens, dated November 15, 1961.

Mr. Donn DeBarnardi also urged that a survey be made before the committee made a decision, with respect to these bills. He cited examples of cases where private properties would be owned by the state if these bills went into effect. Rep. Meek asked Mr. DeBarnardi if he meant that the vegetation line was going too far back from the beach, to which the witness replied in the affirmative.

The following witness, Mr. Henry Baldwin, testified that he had no objection to public use of land between the mean high tide and the low water lines, but stated that above the mean high tide line was private property and that he intended to defend his rights. Mr. Baldwin stated that he had no objection to selling his property at the going rate.

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Mr. Geo. Rhode testified that the law provides specifically, unless previously sold, the state only owns between the ordinary low and the ordinary high tide. He pointed out that this was not the entire portion of the ocean shore that the people have been enjoying; and that the portion under discussion was the part of the beach that the public has been using for many years, almost as a matter of right. Familiar practice of law says that the public may acquire rights, even in a persons private property, if they have used it over a period of time--it may come by prescription or by dedication, Mr. Rhode stated. He testified further that the bill purports to recognize these rights of the public, and put into a specific agency the protection of these rights. The witness called attention to the fact that the bill was not written to take any private rights but "that which the public has acquired through prescription or dedication."


Rep. Smith asked whether land owners had been paying taxes on property abutting or adjacent; to which Mr. Rhode replied in some cases maybe, but in some cases not, and stated his belief that the assessors were probably assessing the acreage which is upland, or useable land.

Chairman Bazett announced that further hearings would be held on HB 1600 and 1601.

Rep. Howard, (Chairman) and Reps. Elder, Anunsen and Elder were appointed to the Sub-Committee to study HB 1043 & HB 1078 by Chairman Bazett.

The meeting adjourned at 2:55 p.m.

Respectfully submitted,


Pamela Tupper, Clerk

Dave Tallents
Statement

STATE HIGHWAY DEPARTMENT STATEMENT

In Support of H.B. 1601
March 7, 1967

H. B. 1601 is basically a declaration of legislative intent to preserve all public rights in the Oregon beaches, places the responsibility for their protection in the State Highway Commission and clarifies the question of legislative policy regarding future sale or transfer of beach lands.

Oregon, upon admission as a State, reserved the beaches in state ownership. The 1899 Legislative Assembly declared the Clatsop County beaches a public highway and stopped the policy of state sale of beach lands in that county. Through Governor Oswald West's leadership, the 1913 Legislature expanded the 1899 law to include all of the unsold beaches from the Columbia River to the California line as highways and thus for permanent public use. The 1947 Legislature corrected an error in the 1913 law and further clarified legislative policy on the public rights to beaches. Finally, the 1965 Legislative Assembly declared all the state beaches to be state recreation areas and placed these recreational areas for the first time, under the State Highway Commission.

Since this legislative reclassification of the beaches two years ago, the Highway Department has been studying and developing a program toward fulfilling the purposes of the act. The expanded beach access program currently under way and proposed for the next biennium, is a part of the over-all beach program of the Highway Commission.

During the last two years, several problems have been identified which restrict the Commission in carrying out the wishes of the Legislature as expressed in the 1965 law. First of all, the Commission

has come to recognize public rights which exist between the "vegetation line" and the line of ordinary high tide. Such public rights have come to exist through dedication, prescription, and grant. Although legislative history manifests an intent to protect all public rights below the vegetation line and place such areas beyond the reach of encroachment by private interest, nevertheless, the 1965 Act limits the area to below the line of ordinary high tide. Secondly, the Department feels that difficulty could be encountered in the interpretation of the provision or alienation contained in the 1965 Act, wherein it provides that no portion of the above shall be alienated by any state agency, except as provided by law.

H. B. 1601 accomplishes two primary objectives:

1. It declares, through legislative action that public rights acquired through prescription and implied dedication below the "vegetation line" do exist, and vests in the Highway Commission, the responsibility to protect, administer, and supervise such public rights. As the laws read now, no specific governmental agency is charged with this responsibility, so in the event the public rights were somehow threatened, an individual, not the State must take the appropriate legal action.
2. The 1965 Act amended the Oswald West legislation which read that no portion of such shore, referring to the beach, shall be alienated by any agency of the state, to read "no portion of such shore shall be alienated by any state agency, except as provided by law." Such wording erodes the firm policy statement of the old law and tacitly implies that the

Legislature, either specifically or generally, can sell parts or all of the beach. H.B. 1601 amends the wording to read "except as provided by special law," which, in the opinion of the Department, is more in keeping with the Legislature's long-standing concern for permanent dedication of the beaches for public use.

Several important points should be emphasized:

1. The Highway Commission and its Parks and Recreation Advisory Committee have given long and detailed attention to this problem.
2. The assumption of these expanded responsibilities will by no means be easy or inexpensive. In the years ahead, the Commission will have to initiate beach patrol and fire protection, to name but two of many future needed programs to meet expanded responsibilities.

The 1967 Legislature has an opportunity to take a historic step further in its 108-year interest in the beaches by enacting H.B. 1601.

The Highway Commission has managed the coastal beaches for many years and has always sought to carry out the intent of the beach laws enacted by the various legislative assemblies which gave limited jurisdiction to the Highway Commission. We believe that H.B. 1601 is necessary at this time to enable the Highway Commission to adequately protect and manage the beaches for permanent public enjoyment, and we respectfully request your favorable consideration of the bill.

Statement by L. L. Stewart, Chairman of the State Parks and Recreation Advisory Committee, Oregon State Highway Commission, on House Bills 1600 and 1601.

The Honorable Sidney Bazett
Chairman of the House Highway Committee

Mr. Chairman and Members of the Committee:

As Chairman of the Highway Commission's State Parks and Recreation Advisory Committee, I had planned to appear before the Committee today in support of House Bills 1600 and 1601.

The Parks and Recreation Advisory Committee, consisting of eight members appointed by the Highway Commission with the approval of the Governor, includes an impressive membership list as follows: Donald G. McGregor, Chairman of the Josephine County Commissioners; Alfred D. Collier, President, Swan Lake Moulding, Co., Klamath Falls; former State Senator and Speaker of the House, E. R. Fatland of Condon; Lestle J. Sparks, former head of the Physical Education Department at Willamette University, Salem; George D. Ruby, Counsel for Jantzen, Inc., Portland; Eric W. Allen, Jr. Editor of The Mail Tribune, Medford; and P. M. Stephenson, former Assistant State Highway Engineer, besides myself.

Through the years, the Committee has played an important role in shaping Highway Commission policy in the field of State parks and recreation, and we are proud that Oregon's state park system enjoys the reputation of being among the best in the nation. The Committee has given long and detailed study to the

many problems associated with the proper administration of Oregon's greatest recreational resource - the Oregon coastline. During our studies, the Committee found several opportunities to strengthen the public's rights to the ocean beaches. The most important opportunities are expressed in House Bills 1600 and 1601.

The State Parks and Recreation Advisory Committee unanimously endorses both bills and urges your committee to take favorable action.

House Committee on Highways

March 23, 1967

1:00 p.m.

Rm. 6 State Capitol

Members Present: Reps. Bazett, Chairman; Howard, Vice Chrmn.; Elder, Hanneman, Holmstrom, Leiken, Meek, McKenzie, and Turner

Excused: Reps. Anunsen and R. Smith

Witnesses: Mr. Loran L. Stewart, Eugene, Chairman of the State Parks & Recreation Advisory Com.
Mr. Lloyd P. Shaw, Asst. State Hwy. Engineer
Mr. Wm. H. Hedlund, Petroleum Suppliers
Mr. John G. Wilson, Oregon Wildlife Federation
Mr. Geo. Rhode, Atty. for State Hwy. Dept.
Mr. G.W. Kanoff, Jr., Tillamook Cty. Tourist Facilities Assn.
Mr. L. Eugene Crampton of Lake Oswego, representing himself & other property owners in Lincoln County, Attorney.
Mr. H.R. DeSelms, Atty., Newport, Oregon
Mr. Lester E. Fultz, Cloverdale, Ore.
Mrs. Theo Dority, property owner S. of Newport
Mr. Donn DeBernardi, Lincoln Co. Bd. of Realtors

Chairman Bazett called the meeting to order.

HB 1601 - Recognizes public rights to easements in shore lands.

Rep. W. (Stan) Ouderkirk, co-sponsor of the bill, could not be present at the meeting, therefore, Chairman Bazett read Rep. Ouderkirk's statement on the bill, a copy of which is attached hereto and made a part of the minutes.

Mr. Loran L. Stewart testified in favor of the bill, and a copy of his testimony is attached hereto and made a part of the minutes. Mr. Stewart also stated that he would prefer to have HB 1600 considered in an Interim Committee.

Maps, diagrams and photographs were exhibited throughout Mr. Stewart's testimony. Rep. Holmstrom expressed concern with regard to the definition of the vegetation line, and Mr. Stewart suggested the following amendment: On page 2 of the printed bill, line 17, delete "Where there is no" and delete lines 18 through 21, and insert "Where there is no clearly marked line of such vegetation the vegetation line shall be determined by a connecting line run between the clearly marked lines of vegetation on each side of the unmarked area. Said connecting line shall follow the elevation of natural ground in such a manner as to reflect the difference in elevation of the clearly marked lines of vegetation at its terminal points in direct proportion to the length of the said connecting line."

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Mr. Lloyd Shaw briefed the committee members on the proposed amendment, explaining that the vegetation line, where it is determined artificially, would vary in elevation directly in relation to the length of the line between an identifiable point of vegetation. Mr. Shaw utilized diagrams to emphasize the meaning of the amendment.

A question and answer period followed. Rep. Holmstrom asked if the bill would allow the present private property owners to maintain ownership of their property as they know it today. Mr. Stewart replied that they would retain property as they are using it today, and that the public would retain property as they are using it today. He emphasized that there would be no change in title. Rep. Holmstrom pointed out that the problem evolves around the fact that many deeds use the words "to mean high water." He asked if the bill would be confiscating private property if the vegetation line was 50 feet back from the mean high water line. Mr. Stewart replied in the negative, and explained that the bill would maintain the existing prescriptive rights of the public.

Mr. Stewart suggested the following amendment: On page 3 of the printed bill, line 15, delete "In any action," and delete lines 16 through 22.

Rep. Leiken asked Mr. Stewart why an emergency clause had not been included in the bill, to which the witness replied that there was no need for an emergency clause.

Mr. Stewart urged passage of HB 1601 in this session of legislature, explaining that the longer the delay of action, the harder it will be to retrieve the land for the public. He made available to the committee copies of the maps to which he had referred throughout his testimony, copies of letters which had been sent to the Secretary of State, and the Oregon Highway Commission Chairman, etc., (attached) and a book entitled "Public Use Study--Oregon's Coastal Beaches, June 1966" which was published by the State Parks and Recreation Division.

Rep. Hanneman asked Mr. Stewart if he would object to having 2 additional members placed on the State Parks and Recreation Advisory Committee, with the thought in mind that there is not a member from the Oregon coast on the committee. Mr. Stewart replied that the Advisory Committee is limited to 9 people, and that there are 8 members now; he stated he would have no objection whatsoever to a member from the coast joining the Committee.

Rep. Hanneman then observed that the four existing advisory committees in the natural resources area, composed of a total of 67 members, only had three committee members from the coastal areas. He asked Mr. Stewart if he would object to a recommendation to the Highway Department that

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the membership of the committees be increased. Mr. Stewart replied that he had no objection.

The following witness, Mr. William Hedlund, Pacific Coast Petroleum Suppliers, pointed out that in 1961 the legislature passed a law relating to submerged tidelands, in which the State Land Board was allowed to give rights of way and easements for the purpose of putting pipelines under the beach for oil transport or gas transport. He referred the committee members to page 3 of the printed bill, lines 10 through 12, and stated that he construed this to mean that at any time the Highway Commission wanted to alienate the portion of the property rights, they would have to ask legislature to enact a special law allowing the Highway Commission to grant an easement for a pipeline.

Mr. Hedlund suggested the following amendment to handle this problem: On page 3 of the printed bill, line 12, delete and period and insert a comma, then insert "provided that rights of way and easements for oil and gas pipelines can be granted when there is no unreasonable interference with the use of such lands for recreational purposes."

Mr. John G. Wilson testified emphatically in favor of HB 1601 on behalf of the Oregon Wildlife Federation. He stated that he had not had an opportunity to study the effect of the amendments offered at this meeting, but said that if they did not change the bill substantially the Oregon Wildlife Federation's support of the bill would continue.

Mr. Geo. Rhode, Attorney for the State Highway Department was the following witness. Rep. Meek asked Mr. Rhode his legal opinion of a hypothetical case, if a property owner should go to court to claim his land that the public had been using for many years. Mr. Rhode explained that if the public had used the property for a long period of time, then the ruling would probably be that they would have the right to continue to use the land. He stated that this was the purpose of the bill. He emphasized that, under the bill, the state would not be acquiring any property that had already been taken or appropriated by the public.

Rep. Leiken asked Mr. Rhode if he could supply the committee with a copy of the letter which replied to Mr. J. Richard Byrne's inquiry dated July 14, 1966, which inquiry had been directed to Mr. Glenn L. Jackson, Chairman of the State Highway Commission.

Rep. Holmstrom expressed concern with regard to areas of the coast that the public had not been commonly using for many years. Mr. Rhode replied that if the property was privately owned, and the man had retained possession of it, and the public had gained no interest in the property, then the bill would give the public nothing. He stated

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further that if, in the future, the Highway Department wanted to acquire the property for the public they would have to compensate the owner.

Rep. Elder asked Mr. Rhode if a positive statement could be made in the bill to the effect that it was not the intent to take lands away from owners where no public right was established. He asked Mr. Rhode if this would clear up the legal problems involved, to which the witness replied that it possibly would, but that he could not personally see this in the bill. Mr. Rhode said that if this could be worked into the bill it could possibly handle the problem.

The following witness, Mr. G.W. Kanoff, Jr., testified that the Tillamook County Tourist Facilities Assn. wished to go on record as opposing HB 1600 and HB 1601. He pointed out that the mean high tide line deals with averages, and during the summer time the high tide line is a great deal further out than it is in the winter, therefore, it is a rare situation where there is a lack of dry sand above the mean high tide line in the summer. He stated that the line of vegetation can change very rapidly during the winter storms.

Mr. Eugene Crampton, Attorney from Lake Oswego, and property owner in Lincoln County, testified in opposition to HB 1601, stating that half of his lot at Pacific Shores, Surfland, was oceanward of the vegetation line; therefore, Mr. Crampton claimed, the state would own that portion of his land. He stated that there was a great deal of question as to whether or not this bill was constitutional.

The following witness was Mr. H.R. DeSelms, and a copy of his testimony is attached hereto and made a part of the minutes.

Mr. Lester Fultze and Mrs. Theo Dority both testified in opposition to HB 1601 verbally, and Mr. Donn DeBernardi supplied the committee with a written copy of his testimony in opposition to the bill, a copy of which is attached hereto and made a part of the minutes.

Chairman Bazett announced that the sponsors of HB 1600 wished to have the bill put before the Interim Committee for further study.

The meeting adjourned at 3:10 p.m.

Respectfully submitted,

Pamela Tupper
Pamela Tupper, Clerk

STATEMENT ON HOUSE BILLS 1600 and 1601

By Representative W. (Stan) Ouderkirk, Newport, Lincoln County

Mr. Chairman and Members of the House Highways Committee:

I am Representative W. S. Ouderkirk of Lincoln County. I appear before you here this afternoon not in opposition to House Bills 1600 and 1601 but to ask the Committee to consider an Interim Committee Study on both of these issues.

In previous testimony by another witness the allocation has been made that the people in the coastal area become deeply concerned with our beach and shore lines to the point where they consider them as their own, while in reality they belong to everyone within the State. This may perhaps be true, but I assure you that because we are so closely associated with all coastal problems we do consider them as our own. The State as a whole has charged the peoples within this area with the responsibility of protecting their rights.

Since the introduction of these bills, the correspondence from property owners all over the State has raised so many technical issues that I think it would be unfair to take definite action on this type of legislation without a really thorough study. The technical problems are, for example:

One piece of property with a deed reading, "to the low-water line", next door to a lot with a deed reading, "to the meander line", while the deed to the next piece of property might read, "to the mean high-water line."

It is for these reasons that I ask this Committee to consider recommending that these two bills be considered in an Interim Committee Study.

Thank you.

Testimony of L. L. Stewart on House Bill 1601

I am Loran L. Stewart of Eugene, Oregon, speaking as Chairman of the State Parks and Recreation Advisory Committee. I want to speak in favor of House Bill 1601.

First, let me give a little history and the facts that lead up to the necessity of this bill. In 1913, the Legislature passed the so-called Os West Act (ORS 274.070) which declared the land between ordinary high and extreme low tide to be public, except for about 23 miles which had been deeded from the State of Oregon prior to the date of the Act. (Exhibit roll map of the alienated beach area in Oregon.)

Over the course of the years, the public and adjacent landowners have accepted the fact that the part of the beach extending from ordinary high tide to the vegetation line (which I refer to later as the dry sand area) was a part of the public beach area and is being treated as such today in most instances.

Let's be sure that we all understand what we are talking about and get our definitions straight. ~~charts~~ I have a few charts here and pictures that visually highlight the problem. ~~charts~~ The problem arose out of some action taken by an upland landowner less than a year ago. This resulted in the letters to the then Secretary of State Tom McCall and a report to the State Highway Department. I am passing out these letters to the Committee.

In short, everybody treated the dry sand area along the beach as a public recreation area, the same as the portion between ordinary high and extreme low tide.

Here was an action which could jeopardize the public's rights and interests in the vast beach recreation resources and much of that area could be barred to public use as it is in California and on the Atlantic Coast.

The State of Texas, in 1959, faced with this same problem, passed a law similar to House Bill 1601, and this law was tested in the Texas Supreme Court. The following are excerpts taken from the Supreme Court Decision.

"The 56th Legislature of Texas at its Second Called Session of 1959 enacted what is popularly know as the 'Open Beaches Bill'. This, among other things, declared it to be the public policy of this State that the people of the State should have the free and unrestricted right of way of ingress and egress to and from the State-owned beaches bordering on the seaward shore of the Gulf of Mexico or such larger area extending from the line of mean low tide to the line of vegetation in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continued right in the public. The Article made it an offense against such public policy for anyone to obstruct the way of ingress and egress or the use of the beaches. The Attorney General of Texas, a County, District, or Criminal District Attorney were given authority to bring suits on behalf of the people of Texas, and it was made their duty to do so, to require removal of any obstructions that may interfere with such right of ingress and egress."

The decision stated further that..."Apart from the presumption that we think the only effect of the Act is to declare it to be the

policy of the State that the public shall have the unrestricted right of ingress and egress to the State-owned beaches or such larger area extending from the line of mean low tide to the seaward side of the line of vegetation as defined in the Act in the event the public has acquired an easement by dedication, prescription, or has retained a right by virtue or continuous right in the public. There is nothing in the Act which seeks to take rights from an owner of land. Apart from the presumption, it merely furnishes a means by which the members of the public may enforce such collective rights as they may have legally acquired by reason of dedication, prescription or which they may have retained by continuous right. *End of Quote*

Many of you are familiar with the impossible beach situation in California where most of the beach is in private ownership and public access is severely limited. This same condition can occur in Oregon. California is now trying to go back and pick up needed beach lands. During a recent telephone conversation with an official of the California State Parks Department, we learned that their agency has just favorably considered the purchase of one acre of beach land at Santa Monica for development of a beach parking lot for a price of one million dollars.

*see show up
in the future*

In Oregon, the State Highway Commission is responsible by law to provide outdoor recreation for both the citizens of Oregon, as well as the people who travel through the state.

The Parks and Recreation Advisory Committee was given the question of what to do about the problem and what policy action should be taken by the Commission.

The Bill before you gentlemen is their answer, ~~to the problem~~. There seems to be a great deal of misunderstanding as to what the Bill

does or does not do. Let me explain the Bill:

1. It does not create any public rights of ownership beyond those now existing, nor does it take from the property owner any rights he now possesses.
2. It does not lower the value of the adjacent land.
3. It does not change the rights of the people who actually have title to the land between high and low tide which was sold by the State prior to 1947.

The Bill does:

1. Protect the rights of the public in what they have been using.
2. Gives the Highway Department the responsibility to protect the public interest.
3. Recognizes the principle that the dry sands are a part of the beach which the public has been using as a recreational area.
4. It does establish that no rights in beach areas can be alienated except by special law.

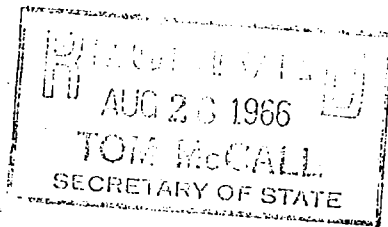
There are some additional benefits to the adjacent landowner by the enactment of this legislation. The State would become responsible where jurisdiction had been established for protection of the dry sand area from a fire standpoint, policing, and such occurrences as dead whales and other articles floating in the area.

If the Bill doesn't pass, more people are going to put up "no trespassing" signs and build structures on the dry sand area, and a great recreational resource will be gradually lost to the people of Oregon and the nation.

House Bill 1601 is not a land grab. We have the finest beach recreation areas in the nation; and the Highway Commission, through this Bill, wants to keep it that way, *for the public.*

*In short this bill maintains
the status quo.*

March 23, 1967



Lawrence F. Bitte
3104 N.E. 77th Ave.
Portland, Oregon

August 25, 1966

Tom McCall
Secretary of State
State Office Building
Salem, Oregon

Dear Mr. McCall:

Allow me to apologize for troubling you at a time when you are very busy; however, I feel that the item of my concern is serious enough to warrant your direct attention.

Tuesday morning, August 16, while visiting the Oregon coast near Haystack Rock (South Cannon Beach) I came upon an area of beach outlined with driftlogs and posted with signs claiming this particular section of beach was reserved for guests of the Surfsands Motel. Upon venturing into this "restricted" area on the assumption that the Oregon beaches were public property (under supervision of the state highway department), we were confronted by an employee of the motel who told us that the beach was owned by a Mr. Bill Hays and that we would have to leave. Proceeding next to the motel office, I was confronted by a lady at the desk who informed me that Mr. Bill Hays was not available. She also stated that Mr. Hays did own the beach down to mean high tide. I asked her how and when this ownership was acquired; and she said that Mr. Hays won it in an Astoria court case. When questioned further on the details of the case, such as when it was heard, she refused to give me any more information; however, she did add that I wasn't the only one who had made such inquiries.

After reassuring me that Mr. Bill Hays did indeed own the beach to mean high tide, the lady at the desk asked me to leave. This request was reasonable because I had obviously obtained all of the information from the Surfsand Motel that was publicly accessible.

Upon observing this gaudy, modern Surfsand Motel, one notices that the natural bank which terminates the rest of the beach has been removed. The Surfsand Motel is built on a man-made earth fill extending seaward over what was previously sandy beach.

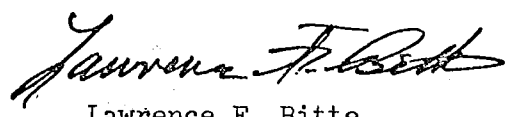
This brings several questions to mind:

1. Does ownership of the beach property extend seaward to a point of mean high tide?
2. Does the owner of beach frontage have, with his title, the right to build earth fills out over previously sandy beaches?

3. Who issues building permits which allow a private structure to be built on a previously sandy beach beyond a point of natural terrain?
4. What legally constitutes a beach and can this term be widely interpreted?

I am greatly disturbed by the situation at the Surfsand Motel, because I feel it establishes a precedence which will lead to the eventual defacing of all Oregon beaches and the take-over by commercial enterprises which profit from public use of the sandy areas of the beach. Since tempers are presently running high among those who are aware of the situation, at the Surfsand Motel, would you please answer my questions at your earliest convenience.

Respectfully,



Lawrence F. Bitte

OREGON STATE HIGHWAY DEPARTMENT

INTER-DEPARTMENT CORRESPONDENCE

Salem, Oregon

August 15, 1966

SUBJECT:

To: G. E. Rohde
Chief Counsel

Office

On August 11, 1966, at 9:30 a. m., I arrived at the Surf Sand Motel in Cannon Beach, Oregon. It is the newest and nicest motel in Cannon Beach.

The beach itself is in fact somewhat closed off, an area which measures approximately 40 paces east and west and 80 paces north and south (see attached diagram), which appears to extend from the east-west property lines of the Surf Sand Motel property to a point about one half way from the sea wall to the high tide line, as of the time I was at the beach. The sea wall of the motel is itself about 50 feet seaward or west of the adjacent vegetation lines on the north end. Its south end is contiguous with the very old sea wall of the adjacent property. This sea wall belongs to the Ecola Restaurant Apartments which, I am told, was constructed about 40 years ago. The sea wall of this property is about 50 feet ahead of adjacent vegetation lines.

The closing off of the beach area has been accomplished by the placing of drift logs so as to form a very low but easily identifiable perimeter. On the west side and south end of this enclosure there were two signs, measuring about 12 inches by 15 inches and which were mounted on poles which were merely stuck into the sand by hand, which signs said "Surf Sand Guests Only Please". During the time I was there these signs blew over nearly constantly. They were taken down in the evening and replaced on the beach about 11 o'clock each morning by an employee of the motel who worked from about 11 a. m. to 8 p. m. The signs were not up when this employee was not working... On two occasions I observed his rather belligerently informing two persons that this enclosure was private beach.

G. E. Rohde
August 15, 1966
Page 2

While in Cannon Beach I asked several residents about this closed section of beach. One was a service station attendant, about 18 years of age, employed at the Cannon Beach Standard Station on Highway 101. This youth said that the motel did not actually own the beach and that anyone could go in there. The motel enclosed the beach so that it would be more private for their guests.

The next party I asked about it was a waitress at the Cannon Beach Restaurant and Lounge. Her opinion was that there was plenty of beach for everyone, but that the beach itself belonged to the Highway Department and not to the motel. She said they had closed the beach to provide an exclusive area for guests, but that the signs were just a bluff and didn't mean that the motel owned or was claiming to own the beach.

I also asked the motel manager why the beach was closed. Her reply was in a very defensive manner as if they anticipated or had already encountered some difficulty as far as maintaining a private beach. She said that "the beach belonged to the Highway Department, but that frontage owners can claim up to the mean high tide line." She further stated that claiming the beach cannot be done in most places on the coast but can here. I asked her whether or not their logs were down to the mean high tide line. She said she thought they were and further said that the motel does own this section of the beach.

Original Letter Signed By

William G. Nokes
Investigator

Mr. Cooper

July 14, 1966

Mr. Glenn L. Jackson
Chairman
Oregon State Highway Commission
Salem, Oregon

Dear Commissioner Jackson:

A matter has come to my attention which I believe to be one of public concern. I hope that you will agree.

The owner of the Surfsand Motel at Cannon Beach has divided off a section of the sandy beach in front of his motel which appears to extend some 115 feet west of his property line as shown on the plot plan of the tracts in that area. A man is posted in the enclosure who tells people to leave unless they are motel patrons. The owner says he has the rights to this portion of the beach.

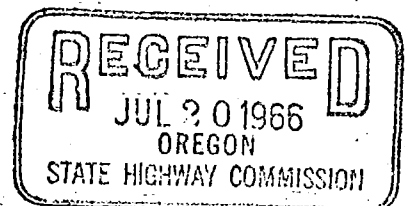
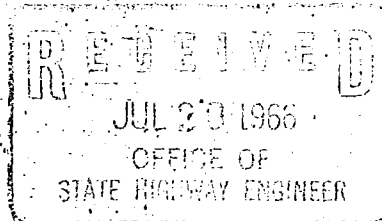
Port-

The question I would put to the State Highway Commission is this: Is he within his legal rights to close off this portion of the sandy beach which has (to my knowledge) been used by the general public for over fifty years?

I would greatly appreciate an opinion of the State Highway Commission on this matter.

Sincerely yours,

J. Richard Byrne
J. Richard Byrne
1925 N. E. 25th Ave.
Portland, Oregon 97212



Dann De Bernardi

It is my feeling that if this proposed legislation becomes law that the State of Oregon will appropriate private property without due process of law.

Further, there are numerous land owners who have purchased their ocean-front property in good faith, with full assurance that they were acquiring the property they paid for. They have built fine ocean front homes and commercial developments on it.

I am an investor who ~~has~~ will be adversely affected if this bill becomes law.

I have obligated myself in the sum of over One Million Dollars to construct motels and developments on the ocean front in Lincoln County. Myself and associates now have under construction a Million Dollar motel in the Lincoln City area, which is on the ocean front. When we purchased this property we acquired it in good faith; the seller sold it in good faith; the mortgage lenders loaned us money in good faith; the title insurance company issued the title insurance in good faith, and Lincoln County has collected many dollars of taxes from us in good faith.

Surely it is obvious what this legislation will do to us. It will make a playground out of our front yard and utterly destroy our property values.

You propose to take by easement all lands to the vegetation line. I wonder if you realize what problems this will present to the people who own property along the ocean front. We have a serious erosion problem which is a very expensive thing to combat. The primary cause is people walking up and down the banks and children digging in them. Surely you can see how this problem will be magnified if the proposed legislation becomes law.

H. R. DeSalvo

We believe that this committee should refer these bills 1600 and 1601 to the Interim Committee for further study.

One of the primary reasons is to consider the tax impact upon the counties involved. 1601 takes property which has a high valuation at the present time. The impact can be seen as follows: In Lincoln County 52% of land is owned by the State and Federal Government. 40% is in the hands of Rex Clemmens of Georgia Pacific, Longview Fiber and Boise Cascade Timber companies. The remaining 8% is privately owned. As you know the 40% owned by the timber companies receives separate and special treatment in tax matters. So out of the remaining 8% Lincoln County must generate sufficient taxes to support the schools and county government. Now the state by this proposal proposes to further reduce this 8% and by taking some of the more valuable and higher taxed lands in the county. This is a problem that is serious as the Legislature well knows and should be considered at length. In addition the Constitutional question under bill 1600 the State proposes can take rights that have been in the riparian owner. These rights have existed prior to 1100 A.D. Now the State proposes to take these without due process of law or without payment. Again a serious study is needed.

I would like to point out that there has been a proposal to study and revamp this whole area of water rights, submerged property. In fact these ~~proposals~~ bills that you are considering today are in direct conflict with a bill in the Senate, SJR 11. It seems therefore logical that a thorough study is needed.

I would like to point out specifically under 1601 that in Section 1 the State has beautiful conclusions but no facts have been presented to this committee to support or explain them. The recitations are pure conclusions and without any foundation in fact. Section 2 is purported to clarify the existing line between property owners. This provision as given is not to clarify and to add land to the state. There is an easier and simpler way to clarify this problem by making a prima facialy the Coast Geodetic bench marks as such dividing line. There are certain and without question and easily found. Sec. 3 is taking away power and rights from the State Land Board and the title to this act does not reveal to you this fact. Therefore it is an unconstitutional act to amend the law. Sec. 4 takes property belonging to another without any hearing or without any compensation whatsoever. In view of all the foregoing objections it would seem logical that this committee could do nothing further or better than to refer this to an Interim Committee for a study in depth.

Respectfully submitted,
Attorney for Port of Newport & others

There are many public access ways to the ocean beaches to accommodate the public and more are constantly being made available. Under the present law the public has free use of all lands lying below the high water mark, and this has fully accommodated the thousands of visitors we have each year.

This legislation, if passed, will have a very detrimental effect on our ocean front properties. Many people who have purchased this type of property will suffer great loss when they try to re-sell.

Who has asked for this legislation? Has it been our visitors who are clamoring for it? No!

Oregonians have long been recognized as the champions of the rights of the individual private enterprise. I trust that the Socialistic Bug that has bitten our Federal Government will not take over our Oregon.

I strongly urge you members of this Committee to reject this proposed detrimental legislation!

House Committee on Highways

April 6, 1967.

1:00 p.m.

416 State Capitol

Members Present: Reps. Bazett, Chairman; Howard, Vice-Chrmn.; Elder, Hanneman, Leiken, Meek, McKenzie, Smith, R. and Turner.

Delayed: Rep. Anunsen

Excused: Rep. Holmstrom

Witnesses: Capt. Mogan, Oregon State Police
Mr. Ralph Sipprell, State Liaison Engineer
Mr. L.L. Stewart, Chrmn., State Parks and Recreation Advisory Committee
Mr. Vern Hill, Director, Dept. of Mtr. Vehicles
Mr. Ray Beeler, Assoc. General Contractors
Mr. Don Neave, Department of Mtr. Vehicles

SB 68 - Authorizes police officers to stop vehicle for inspection of equipment

Capt. Farley Mogan briefed the committee members on the bill.

REP. SMITH MOVED that SB 68 be sent to the floor with a "do pass" recommendation. The motion was approved with Reps. Elder, Hanneman, Howard, Meek, Smith and Bazett voting in favor, and Reps. Leiken, McKenzie and Turner in opposition. Rep. Smith will lead the floor discussion.

Rep. Hanneman was then excused from the meeting.

HB 1599 - Prohibits use of freeways for processions, etc.

Capt. Mogan pointed out that the Highway Department has the option to post which type of processions would be prohibited from the freeways. He stated that there had been an objection in Eastern Oregon to disallowing funeral processions.

Rep. Meek suggested that funeral processions and motorcycles should be excluded from the bill.

Chairman Bazett asked Rep. Elder, Mrs. Jane Gearhart and Capt. Mogan to draft proposed amendments for HB 1599.

Mr. Ralph Sipprell pointed out that this statute is a combination of the California statute and the Uniform Code. He suggested an amendment to delete motor scooters but allow motorcycles.

HB 1601 - Recognizes public rights to easements in shore lands

Mr. L.L. Stewart read to the committee members a copy of a letter that he had forwarded to each of them as a means of explanation on his stand with regard to HB 1601. He again urged passage of the bill.

House Committee on Highways

April 6, 1967

Rep. Smith expressed concern with regard to Section 2 of the bill. Mr. Stewart suggested that Section 2 could be deleted.

Rep. Elder asked who would provide fire protection; to which the witness replied that the state would become responsible. Rep. Elder suggested that this should be written into the bill.

The committee members offered several suggested amendments to the bill. Chairman Bazett suggested that perhaps the bill could be amended, and that the matter could be submitted to an Interim Committee for further consideration.

REP. SMITH MOVED that the following amendments to HB 1601 be adopted, and that the bill be printed engrossed & referred to com.:

On page 2 of the printed bill, line 13, after the word "resources" insert "and to recognize and protect the rights of private owners to those lands that are not subject to such public easements." Delete Section 2 completely. Delete all amendments in Section 3. Retain Section 4 up to line 15, and after the word "area" insert a period. Delete the remainder of Section 4.

The motion was approved with Reps. Elder, Howard, Leiken, McKenzie, Smith, Turner and Bazett voting in favor; and Reps. Anunsen and Meek voting in opposition.

HB 1083 - Relating to operator's license fees

Mr. Vern Hill briefed the committee on the bill, stating that the deficit of driver licensing amounted to approximately \$1,600,000 a biennium.

REP. HOWARD MOVED that HB 1083 be sent out of Committee with a "do pass" recommendation, and be referred to the Committee on Ways and Means. The motion was unanimously approved.

HB 1645 - Reduces annual license fees on house trailers

Chairman Bazett, sponsor of the bill, briefed the committee members on the bill, and suggested that perhaps HB 1645 should have been referred to the Committee on Taxation.

REP. ELDER MOVED that HB 1645 be referred to the Committee on Taxation, without recommendation. The motion was unanimously approved by voice vote.

HB 1090 - Relating to maximum vehicle speeds on public highways

REP. SMITH MOVED that HB 1090 be sent to the Committee on Ways and Means without recommendation.

REP. ANUNSEN MOVED to amend Rep. Smith's motion in order to recommend HB 1090 to Wvs. & Mns. with a "do pass" recommendation.

Rep. Elder asked Mr. Rhode if there was any reason why the bill could not specify more than the Constitution specifies; to which the witness replied that there was no reason, and that this could be done.

REP. HOWARD MOVED that subsection (2) on page 1, and subsection (3) on page 2 of the proposed amendments dated March 14, 1967, be adopted. The motion failed with Reps. Elder and Howard voting in favor, and Reps. Anunsen, Hanneman, Holmstrom, McKenzie, Meek, Turner and Bazett voting in opposition.

REP. HOLMSTROM MOVED that the proposed amendments to HB 1078, dated April 12, 1967, be adopted (see Exhibit A in file.) The motion was approved with Reps. Anunsen, Holmstrom, Howard, Meek, Turner and Bazett voting in favor, and Reps. Elder, Hanneman and McKenzie voting in opposition.

REP. MEEK MOVED to send HB 1078 to the Committee on Ways and Means with a "do pass" recommendation.

REP. MCKENZIE MOVED to amend this previous motion and to include a \$5 increase in registration fees on vehicles in HB 1078. The motion failed with Reps. Holmstrom and McKenzie voting in favor, and Reps. Anunsen, Elder, Hanneman, Howard, Meek, Turner and Bazett voting in opposition.

Roll call was taken on Rep. Meek's motion to send HB 1078 to the Committee on Ways and Means with a "do pass" recommendation. The motion was approved with Reps. Anunsen, Holmstrom, Howard, McKenzie, Meek, Turner and Bazett voting in favor, and Reps. Elder and Hanneman voting in opposition.

HB 1090 - Relating to maximum vehicle speeds on public hways.

REP. MEEK MOVED that HB 1090 be amended as follows: On page 3 of the printed bill, line 19, "the" should be underscored. The motion was unanimously approved by voice vote.

REP. ANUNSEN MOVED that HB 1090 be sent to the Committee on Ways and Means with a "do pass" recommendation. The motion failed with Reps. Anunsen, Elder, Meek and Bazett voting in favor, and Reps. Hanneman, Holmstrom, Howard, McKenzie and Turner voting in opposition.

HB 1601 - Recognizes public rights to easements in shore lands

Printed engrossed copies of HB 1601 were distributed to the committee members, and they were briefed by Mrs. Jane Gearhart.

Rep. Hanneman expressed concern with regard to lines 13, 14 and 15 of the engrossed bill. Mr. Rhode explained that this portion of the bill merely stated that it would protect the land which has been used, and also would protect the private property owner. Insofar as the private property

House Committee on Highways

April 13, 1967

owner is concerned, Mr. Rhode said, it will not take or use that in this Act, only to the extent that the public has, in fact, acquired a right to use it.

The committee decided to defer action on HB 1601 until a later meeting.

HB 1504 - Limits liens for delinquent house trailer lic. & registration

Rep. Howard stated that he would like to have HB 1504 taken off the table if possible.

Mr. Don Neave distributed copies of proposed amendments to the committee members which related to both electric vehicles used for pleasure (golf carts) and to house trailers. He stated that golf carts which were powered by gasoline had a license plate fee of \$5, but carts powered by electricity had a fee of \$25.

Rep. Holmstrom questioned whether or not, under House Rules, these two unrelated subjects of golf carts and house trailers could be covered in one bill. The committee decided to defer action until this controversy could be checked.

HB 1379 - Increases weight for tandem axle vehicles to 34,000 pounds


REP. ANUNSEN MOVED that HB 1379 be sent to the floor with a "do pass as amended" recommendation.

Rep. Anunsen then read a portion of a memorandum to Mr. Forrest Cooper, State Highway Engineer, from Mr. A.W. Parsons, Division Engineer for the Bureau of Public Roads. The memorandum related to crossroads under and over the Interstate System, and a copy is attached hereto and made a part of the minutes.

Roll call was taken on Rep. Anunsen's motion, which was approved with Reps. Anunsen, Elder, Hanneman, Holmstrom, Howard, McKenzie and Turner voting in favor, and Reps. Meek and Bazett voting in opposition.

The meeting adjourned at 2:30 p.m.

Respectfully submitted,


Pamela Tupper, Clerk

House Committee on Highways

April 18, 1967

car donated by an automobile dealer in Woodburn; at the Deaf School they are using a state car; at Hillcrest there is no program at the present time.

Rep. Holmstrom asked Mr. Wood which institutions the Board of Control was contemplating providing driver training; to which the witness replied the Deaf School, MacLaren and Hillcrest. Rep. Holmstrom then asked what impact, based on these three institutions, this would have on the Driver Training Fund; to which the witness replied that he estimated \$5,000 to \$6,000 at the maximum.

REP. HOLMSTROM MOVED that HB 1016 be taken from the table. The motion was approved with Reps. Anunsen, Elder, Holmstrom, Howard, McKenzie, Smith and Bazett voting in favor, and Reps. Hanneman, Leiken, Meek and Turner voting in opposition.

REP. HOWARD MOVED that HB 1016 be amended, as proposed in the amendments dated April 13, 1967 (see Exhibit A in file).

REP. SMITH MOVED to amend the previous motion, so that the amendments would specifically name the Oregon State School for the Deaf, MacLaren School for Boys and Hillcrest School of Oregon. The motion was approved by voice vote, with Rep. Meek voting in opposition.

REP. SMITH then MOVED that HB 1016 be sent to the Committee on Ways and Means with a "do pass as amended" recommendation. The motion was approved with Reps. Anunsen, Elder, Hanneman, Holmstrom, Howard, Leiken, McKenzie, Smith and Bazett voting in favor, and Reps. Meek and Turner voting in opposition.

Rep. Hanneman explained that his "no" vote on the motion to take HB 1016 from the table was to indicate his opposition to tabling bills, and then taking them off the table.

HB 1090 - Relating to maximum vehicle speeds on public hways.

REP. SMITH MOVED that HB 1090 be sent to the Committee on Ways and Means with a "do pass as amended" recommendation. The motion was approved with Reps. Anunsen, Elder, Howard, Meek, Smith and Bazett voting in favor, and Reps. Hanneman, Holmstrom, Leiken, McKenzie and Turner voting in opposition.

HB 1601 - Recognizes public rights to easements in shore lands

Mr. Warren McMinimee, Attorney-at-Law, testified that he believed HB 1601, in its present form, was innocuous; and that it would be a step forward in progress. Mr. McMinimee said that he personally favored HB 1601, and recommended its passage.

Rep. Holmstrom asked Mr. McMinimee if there was any way in which the bill could be amended so that the people who

had bought, and paid taxes on, their property could be justly compensated for being deprived of the use of their property. Mr. McMinimee replied that it was his personal belief that if people have property rights now, then legislation cannot take it away from them; he stated further that if people lost their property by prescriptive rights this was another matter.

Rep. Smith asked Mr. McMinimee if it was possible to take private property by prescription, without compensation, for public benefit or use. The witness replied that he thought it would have to be in the nature of an inverse condemnation for the public to take it.

Rep. Smith asked Mr. McMinimee whether, if it were determined that there was a public easement across a piece of property that was owned by deed, the state would have a case against the property owner to take land by prescription without compensation. The witness replied that if the state could show that the property owner did not care enough about his property, and let people walk across it, then conceivably, the owner could lose it.

In response to questions from Rep. Howard, Mr. McMinimee explained that in order to acquire property through adverse possession an individual would have to establish himself on the property for a period of ten years, openly, notoriously, exclusively, adversely and hostilely in order to claim title. He explained further that the original owner of the property must not have paid taxes on it, nor set foot on it. He stated that permissive use of property was a different matter, and that he did not believe anyone was going to lose anything by HB 1601, but that it was merely a statement of policy.

Rep. McKenzie asked Mr. McMinimee if he had any objections to this matter going into an Interim Committee for study; to which the witness replied that if the bill was passed it should, without a doubt, be a subject for Interim Committee study to see if there were any abuses in it. Rep. McKenzie then asked Mr. McMinimee if, in essence, the committee would be taking effective action by putting this matter into an Interim Committee for study; the witness replied that he did not believe this to be true, and that ground would be lost.

REP. HANNEMAN MOVED to table HB 1601, and put the subject into an interim committee for study. The motion failed with Reps. Anunsen, Elder, Hanneman, McKenzie and Turner voting in favor; and Reps. Holmstrom, Howard, Leiken, Meek, Smith and Bazett voting in opposition.

REP. HOWARD MOVED to send HB 1601 (engrossed) to the floor with a "do pass" recommendation. The motion failed with Reps. Howard, Meek, Smith and Bazett voting in favor, and Reps. Anunsen, Elder, Hanneman, Holmstrom, Leiken, McKenzie and Turner voting in opposition.

House Committee on Highways

April 27, 1967

equipment had been removed from an older trailer, probably pre-1961. He pointed out the deficiencies of the equipment to the committee members.

Mr. Warren Pool stated that there was an implied warranty on used units in the state of Oregon, and that if there was no true code approval given, the customer could come back on the dealer. He urged the inclusion of a grandfather clause.

Chairman Bazett asked Rep. Howard to have amendments drafted for HB 1576, and announced that the bill would be re-scheduled for next Thursday's meeting, May 4, 1967.

HB 1601 - Recognizes public rights to easements in shore lands

Mrs. Diane Bitte read a statement from her husband, Lawrence Fred Bitte, (a copy of which is attached hereto and made a part of the minutes) which urged passage of HB 1601. She then read a letter from Mr. Alvin Fitzgerald, which requested further public hearings on HB 1601 so that he, a proponent of the bill, could have an opportunity to prepare his presentation.

Chairman Bazett announced that a further hearing on HB 1601 would be held at the next Tuesday meeting, May 2, 1967.

The meeting adjourned at 2:50 p.m.

Respectfully submitted,


Pamela Tupper, Clerk

3104 N.E. 77th
Portland, Oregon
April 27, 1967

Representative Sid Bazett
State Office Building
Salem, Oregon

RE: House Bill # 1601

Dear Mr. Bazett:

I should like to submit this statement in support of any provisions in this bill which would guarantee the continued use of the Oregon beaches by the public. Public access to the coastal beaches, regarded as a right rather than a revocable privilege, is a well established integral part of Oregon life. This attitude and expectation of the citizens of the state is preceded by the existing law which claims public ownership from extreme low tide to ordinary high tide.

The intent of this existing law is clear: it is to preserve Oregon's unique natural resource of coastal beaches for the public, as opposed to the existing situations in neighboring states, such as California where one must pay some enterprising property owner for the privilege of sunbathing by the ocean. An example of a threat to Oregon's public beaches is found at the Surfsand Motel at Cannon Beach, Oregon. Last summer while visiting this section of the coast I was greeted by the sight of a destroyed sea cliff which has been pushed out over previously sandy beach and upon which has been constructed the Surfsand Motel.

To view this defaced coastline was a sad experience: the area of beach between the motel and the ocean was barricaded with logs and posted with signs claiming that this area was reserved only for guests of the motel. This reminded me of the desperate situation in other states. Further investigation revealed the following: the desk clerk of the motel informed me that Mr. Bill Hay, the owner, claimed his title was seaward to mean high tide. Needless to say, this interpretation now applies to California; and if allowed to prevail here, forecasts Oregon's future.

I am of the opinion that the intent of the existing law is better represented by an interpretation of "Ordinary High Tide" as the landward limit of beaches defined by Francis Shepard in his book "Submarine Geology", as opposed to that of the commercial developers such as Mr. Bill Hay. Since notification of the public hearing of H. B. #1601 April 27, 1967 was not received with sufficient time to organize a more complete statement, I request that another public hearing be scheduled in the near future.

Respectfully yours,

Lawrence Fred Bitte
Lawrence Fred Bitte

House Committee on Highways

May 2, 1967

1:00 P.M.

321 State Capitol

Members Present: Reps. Bazett, Chairman; Howard, Vice Chairman; Anunsen, Elder, Hanneman, Holmstrom, Leiken, Meek, McKenzie, Smith, R. and Turner.

Witnesses: Dr. James A. McNahb, Professor, P.S.C.
Dr. Don Giles, Professor, O.C.E.
Mr. Lawrence Bitte, Graduate Student U of O Medical School
Dr. Ivan Pratt, Professor of Zoology, O.S.U. & teacher of Marine Biology
Dr. Joel Hedgpeth, Professor of Oceanography, & Director, Marine Science Center, Newport
Dr. Wm. McNeil, Head of Fisheries Research, Marine Science Center, Newport, Ore.
Dr. Robt. L. Bacon, U. of O. Medical School & Professor of Anatomy
Dr. Selmo Tauber, Professor of Mathematics at P.S.C. & Manzanita Beach Property Owner
Dr. J. Richard Byrne, Professor of Mathematics at P.S.C. & Cannon Beach Property Owner
Mr. Kenneth W. Fitzgerald, Property Owner at Tolovana Park
Mrs. Ralph Buckner
Mrs. Mary Sommer, Cannon Beach Property Owner
Mr. Frank Chase (skin diver)
Mr. Bill Hay, Owner, Surfsand Motel, Cannon Beach

Chairman Bazett called the meeting to order.

HB 1601 - Recognizes public rights to easements in shore lands

Chairman Bazett announced that numerous telegrams had been received with regard to HB 1601, and that photographs indicating that barricades had been erected over on the coast as late as March 26, 1967, had been submitted for review by the committee members.

Dr. James A. McNahb reflected the past glories of the Oregon beaches in days gone by, when access and freedom of use was no problem. He stated that in the Lighthouse Beach area much of the property was built up and access no longer available; however on the beaches that are still accessible sometimes hundreds of students show up on study trips.

Rep. Smith asked Dr. McNahb if he had ever been denied the opportunity to traverse North or South on the Oregon beaches because of fences; to which the witness replied no, because he took care to avoid that sort of confrontation.

Rep. Hanneman asked Dr. McNahb where he had heard of North-South access being denied, or that dry sand area was not available for the public use; the Dr. replied Lighthouse Beach, Cape Arago, Cannon Beach and Whale Cove.

May 2, 1967

The following witness, Dr. Don Giles, stated that he had been denied access to the beach while on a collecting trip for the college. He asked how long usage of an access route is required before public easement is recognized.

Mr. Lawrence Bitte recalled a personal experience that occurred in August, 1966, at Cannon Beach. He stated that he had been asked to leave the beach because he was not a guest of the Surfsand Motel. Mr. Bitte said that he had written to Mr. McCall at that time (now Governor Tom McCall), and he read part of the reply he had received to the committee members. He then briefed the committee on the historical background with regard to public rights on the beaches.

Rep. Hanneman asked Mr. Bitte where he was located when he was ejected from the Surfsand Motel area; to which the witness replied that he was directly West of the motel on the dry sands area.

Dr. Ivan Pratt stated that he was interested in travelling from north to south on the beaches, without interruption, for two purposes; first, to take his family where he chooses on public lands, and secondly, for demonstration purposes for his classes.

The following witness, Dr. Joel Hedgpeth, emphasized that many research problems involve access and use of the beach as far as the ocean can reach. He stated that he believed denial of access was also denial of use. He pointed out that any heavy dike or structure on the shore could interfere critically with the shape of the beach, because it could interfere with the movement of sand.

Dr. Wm. McNeil, of the Marine Science Center in Newport, stated that their interest was to assure that their students and researchers would have an area to undertake their work without any social or political difficulties involved with use of the beaches. Rep. Hanneman asked Dr. McNeil where he had been denied use of the beaches; to which the witness replied that he was concerned about future use of the beaches.

The next witness, Dr. Robt. L. Bacon, stated that he closely watched legislation dealing with the shore, and pointed out that HB 1601 was listed in the calendar as "Relating to public rights in land." The witness said that he believed this explained the absence of interested people at previous hearings, because the title was inadequate to convey the idea that the bill had anything to do with the shore. Dr. Bacon urged passage of the bill. He stated that one of his students, while diving at Whale Cove, came up on the opposite side of the beach, and was ordered off the beach before he left the water. Dr. Bacon stated that he owned a piece of property on the beach, and that he would have no hesitation about the private property from the grass line down becoming state property.

House Committee on Highways

May 2, 1967

Dr. Selmo Tauber testified that he owned a piece of property adjoining the beach, and stated that he wished things to remain as they are now. He said that he believed HB 1601 accomplished this purpose, and urged passage of the bill.

The following witness, Dr. J. Richard Byrne, testified that for twenty years he had visited Cannon Beach and made it a policy to lie in the dry sand area. He stated that last summer he noticed logs placed in front of the Surfsand Motel, and when he sat inside the area barricaded by logs he was asked to leave.

Mr. Kenneth W. Fitzgerald, Mrs. Ralph Buckner, Mrs. Mary Sommer and Mr. Frank Chase also urged passage of HB 1601.

Mr. Bill Hay, owner of the Surfsand Motel at Cannon Beach, pointed out that he had problems trying to keep the dry sand area on front of his motel cleaned up. He stated that he erected cabanas in the area he had barricaded off with logs for the use of his guests.

REP. HOWARD MOVED to send HB 1601 (engrossed) to the floor with a "do pass" recommendation. The motion failed with Reps. Howard, Meek, and Bazett voting in favor, and Reps. Anunsen, Hanneman, Holmstrom, Leiken and McKenzie voting in opposition. Reps. Elder, Smith and Turner were not present for the vote.

The meeting adjourned at 3:30 p.m.

Respectfully submitted,


Pamela Tupper
Pamela Tupper, Clerk

WITNESS REGISTRATION

House Committee on Highways
 Senate or House _____ Name of Committee _____

Date: 5/2/67 Time: 1 PM Room: 321

Public Hearing on HB 1601
 (Measure No.)

Please register if you wish to testify on the above-named measure.

Name and Address	Representing	For	Against
<u>Dr. McNamara</u> _____	Educator from Portland <i>Professor, Portland State College</i>	<input checked="" type="checkbox"/>	
<u>Dr. Don Giles</u> _____	Professor at O.C.E.	<input checked="" type="checkbox"/>	
<u>Mr. Larry Bitte</u> _____	Graduate Student--U. of O. Med. School	<input checked="" type="checkbox"/>	
<u>Dr. Ivan Pratt</u> _____	Professor of Zoology, O.S.U. <i>MARINE BIOLOGIST</i>	<input checked="" type="checkbox"/>	
<u>Dr. Joel Hedgpöth</u> _____	Director, Marine Science Center, Newport <i>OCEANOGRAPHY</i>	<input checked="" type="checkbox"/>	
<u>Dr. William McNeil</u> _____	Director, Fisheries Div., Marine Science Center, Newport	<input checked="" type="checkbox"/>	
<u>Dr. Victor Neal</u> _____	Physical Oceanographer, Dept. Oceanography, O.S.U.	<input checked="" type="checkbox"/>	
<u>Dr. Bacon</u> _____	Professor, U of O Medical School (representing Ore. <i>Oceanographic Society</i>)	<input checked="" type="checkbox"/>	
<u>Kenneth W Fitzgerald</u>	Property Owner - Solovana Park	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Mrs Ralph Buckner</u>	Myself, children General Public	<input checked="" type="checkbox"/>	
<u>Dan Dority</u> _____	BOOKER.		<input checked="" type="checkbox"/>
<u>DR. SELMO TAUBER</u>	PROFESSOR MATH. P.S.C.; REG. PROF. ENG. OWNER BEACH PROPERTY, HANANITA	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Dr. J. Richard Byrne</u>	Professor of Math, P.S.C. Property owner, Cannon Beach	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Mrs Jane Byrne</u>	Housewife & beach lover Property owner - Cannon Beach	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Mary Sommer</u>	Cannon Beach property owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Mr. Frank Chase</u>	Portland - Property Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

House Committee on Highways

May 11, 1967

1:00 p.m.

6 State Capitol

Members Present: Reps. Bazett, Chairman, Howard, Vice Chrmn.; Anunsen, Elder, Hanneman, Holmstrom, Leiken, Meek, McKenzie, Smith, R. and Turner.

Witnesses: Rep. Lee Johnson, representing House Speaker F.F. "Monte" Montgomery.
Mr. Ed Branchfield, representing Governor McCall
Dr. Fred Burgess, Civil Engineering Dept., O.S.U.
Mr. Robt. Straub, Oregon State Treasurer
Mr. Warren McMinimee, Attorney (former Senator of the Oregon State Legislature)
Sen. Don Willner
Mr. Lawrence Bitte, 3104 N.E. 77th, Portland, Ore. (Graduate Student at U. of O. Medical School)
Rep. James Redden
Maurice O. Georges, Attorney, American Bank Bldg., Portland.

Chairman Bazett called the meeting to order.

HB 1601 - Recognizes public easements in shore lands.

Proposed amendments, that had been drafted by a group of attorneys, were presented to the committee members--dated May 11, 1967 (see Exhibit A in file.)

Rep. Lee Johnson then briefed the committee on the proposed amendments. He recalled that Article 1 of the Oregon Constitution says that private property shall not be taken for public use without just compensation. He stated that there is a common misconception that the land lying between the so-called vegetation area and the ocean has always belonged to the state; and that this simply was not true. Rep. Johnson said that, under our constitution, the state could acquire lands by purchase or grant, by condemnation, or the public could acquire them by prescriptive use. He reminded the committee that the common law standards for prescriptive use say that the use must be open, notorious and continuous; and the fact that the lands have merely been used by the public is not sufficient to establish a prescriptive right. He stated that the use must also be adverse, and cited an example case of adverse use for the committee members. He said that if an individual has land, and erects on his land a "no trespassing" sign and makes an effort to keep people off the land, but still the public continues to use that land--then there is no question that a prescriptive right has been created, because the use was adverse. On the other hand, Rep. Johnson continued, if the property owner can show that he knew at all times that he had title to the land, and that he consented to the public using his land, then there is no adverse use, and there is no prescriptive right set up in the state, or any other public agency.

House Committee on Highways

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Rep. Johnson stated that the original HB 1601 was unconstitutional, and referred the committee members to Sections 1 and 4 of the original bill. He stated further that HB 1601, in his opinion, was totally inadequate to protect the beaches of this state. Rep. Johnson then thoroughly briefed the committee members on the proposed amendments dated May 11, 1967. He said that the amendments were, in effect, a substitute bill; and then he discussed the amendments section-by-section.

Mr. Ed Branchfield then testified on behalf of Governor McCall, and a copy of his statement is attached hereto and made a part of the minutes. He said that the reason for the blank space showing the elevation of feet above the high tide level, was because the civil engineers had not had an opportunity to complete their work and give the recommendations.

In response to a question from Rep. Smith, Mr. Branchfield stated that he had been told, by oceanographers, that the terms "mean high tide" and "mean sea level" had no exact meaning; that the oceanographers did not know what was intended. He said that the oceanographers were proposing other language that could be defined.

Dr. Fred Burgess, a civil engineer, answered technical questions relating to the Geodetic Survey for Rep. Hanneman.

The following witness was State Treasurer Robert W. Straub, and a copy of his testimony is attached hereto and made a part of the minutes.

Rep. Smith asked Mr. Straub whether he would favor purchase by condemnation, or any other means, if the courts should adjudge that prescriptive rights did not exist; to which Mr. Straub replied in the affirmative. Rep. Smith then asked Mr. Straub how such a plan would be financed; the witness replied that it could be done either by general fund appropriation or by a bond issue.

Mr. Warren McMinimee testified that he believed in private property rights, and referred the committee members to the Constitutions of the State of Oregon, and the United States. He told the members of the committee that they need not be concerned, because the private property owners rights would be protected in the courts. He said that, with that as a premise, they could not enact a law that violates the taking of private property. Next, he said, they should not enact a law which is unconstitutional. He stated, as an ex-legislator, that he knew the word "unconstitutional" scared most representatives and senators away from a bill: but reminded the committee members that the constitutionality is up to the courts to determine.

Mr. McMinimee urged the committee members to consider engrossed HB 1601, and expressed concern with regard to the proposed amendments. He said that the provision that the

May 11, 1967

landowner, or the commission, could litigate the existence of the easement created a real problem because it opened up an area of great potential for litigation. He said that the landowner had nothing to lose, because if he won his case he has the right to ask the state to pay his attorney fees and court costs. Mr. McMinimee stated further that the establishment of a declaratory judgment right, in Section 3, did not appeal to him.

The following witness, Sen. Willner, testified that the basic error in the proposed amendments, dated May 11, 1967, is that they entirely change the concept of the bill. He pointed out that the title of HB 1601 (engrossed) is "Relating to Public Right in Land", whereas the title of the speaker's bill is "Property in Western Oregon." Sen. Willner stated that his basic objection to the speaker's bill was that it discriminated against the public. He said that, in Section 3, the Highway Commission has the right, without a hearing, to give away public prescriptive right; and that no member of the public has the right to appeal. On the other hand, Sen. Willner continued, if the Commission does not give away the public prescriptive right, then the private adjacent landowner has the right of appeal.

Sen. Willner then referred to Section 7, and stated that he knew of no precedent where state legislature could give away future public prescriptive right.

The witness urged that there be no compromise in the following areas: (1) There is a public prescriptive right to some of the dry sand areas (2) A procedure for defending this right so that the burden is not necessarily on the private citizen to defend it (3) This legislation should not give away past, present or future prescriptive rights of the public.

Mr. Lawrence Bitte told the committee members that they appeared to be presuming to decide what rights the public has, and to be presuming to define what the limits of those rights can be. He stated that he did not believe this to be the function of the committee. He requested the committee to delegate to an agency of the state, preferably the State Highway Commission, the responsibility of protecting whatever rights the public has. He stated that his group was opposed to putting any amendments into the bill which would attempt to judge any hypothetical cases.

Rep. James Redden testified that it seemed imperative to him to delete lines 7 through 9 in engrossed HB 1601, if that was the bill the committee wished to consider. He stated that the public rights of prescriptions and easements could not be established by the legislators, but must be determined by a court of law.

Rep. Redden then referred to the Speaker's amendments; and stated that the purpose of Section 7 was because in some areas of the beaches, that had never been opened to the public, it was feared that when the areas were opened up the private owners could post them and put fences up in order to prevent the public from acquiring easements.

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Rep. Lee Johnson then clarified several points in Section 1 of the proposed amendments, and on the section relating to zoning.

The following witness, Maurice Georges, stated that his family owned a house at Cannon Beach which abutted on the ocean. He said that 7 or 8 years ago the land in front of the house became involved in litigation, and they filed suit; consequently he found out something about beach law (Mr. Georges is an attorney.) He stated that when HB 1601 came up he did a little further research on the subject, especially in the area as to whether prescriptive rights, and implied rights did exist. Mr. Georges stated that they do exist. He said that the Supreme Court gave the answer in 1965 that such prescriptive rights did exist in the public when used for a 20 year period. This case was on a lake, and against a private owner. He also cited a case of the Supreme Court of Texas deciding that easement existed by "implied grant".

Mr. H.R. DeSelms, Attorney for Lincoln City and the Port of Newport, discussed the duties of the State Highway Commission in areas of policing, upkeep, accesses, fire protection and the protection of the banks from further erosion. He stated that, at the present time, Lincoln City has undertaken these duties for ten miles of the beach area. He said that he hoped the Highway Department would undertake these duties, and suggested that the bill should include these requirements.

Mr. DeSelms said that he was not in favor of engrossed HB 1601, and stated that the proposed amendments had a great deal to speak for them, with some exceptions. He suggested that any reference to right-angular access to the beach be deleted. The witness stated that the liability portion did not meet the law, and that it placed on the landowner a prohibitive duty. Mr. DeSelms also brought up the question of venue--whether the Commission hearings would start in Salem or in the area involved; and which court would have jurisdiction. He stated that he was in favor of Section 7, and that he did not believe it to be unconstitutional.

The meeting adjourned at 3:40 p.m.

Respectfully submitted,


Pamela Tupper, Clerk

Office of the Governor
State Capitol
Salem, Oregon

5/11/67

Contact: Ron Schmidt

RECOMMENDATION BY GOVERNOR McCALL FOR PRESERVATION OF OREGON'S BEACHES

Governor Tom McCall announced today that he would personally visit the Oregon beaches Saturday with experts from the Department of Oceanography, Oregon State University.

Purpose of the trip, to start at 10 a.m. at Salishan, will be to visit five beach areas, representative of the entire Oregon coast, to see the effect of a scientific formula for beach definition described by the Oceanographer. The formula was developed at Governor McCall's request by nine experts at OSU, including engineers, oceanographers, biologists, and geologists. Dr. H. F. Frolander, and Dr. June Pattullo both from the Oceanography department at OSU met with the Governor this morning to finalize the formula.

The five areas, besides Salishan, include Manhattan, Seaside, Cannon Beach, and Garibaldi. At these five points, stakes will be set in the sands applying the formula to point up the extent of dry sands which the state is discussing in House Bill 1601.

The formula defines the beach area, and offers a definition that is scientifically determined, and which will solve the beach definition for all time. At the Governor's request, Dr. Fred Burgess, head of the department of Civil Engineering at OSU, with teams of experts, will mark all five beach areas.

Decision to make the trip, and to offer the formula to the Legislature, came following the meeting with the Oceanographers in the Governor's office this morning.

(Attached is a summary of Governor McCall's Position on HB 1601)

GOVERNOR McCALL'S POSITION AS TO THE NECESSARY
ELEMENTS OF HOUSE BILL 1601

1. Recognition by the legislature of the existence of easements acquired by dedication, prescription, grant or otherwise on some of the beach lands.

2. Declaration that the public rights are included within state recreation areas, so that the highway commission can legally spend money for policing and improvements.

3. Authorization to the highway commission to administer, protect and preserve the rights of the public.

4. Definition of that portion of the beach to which prescriptive rights of the public shall be defended by the state:

(a) All lands that lie between the sea and the sea cliffs;

(b) In the absence of sea cliffs, all lands between the sea and the elevation of _____ feet above the high tide level. High tide level is defined as the average of the annual highest tides, predicted by the U. S. Coast and Geodetic Survey, averaged over the years 1955 through 1964. In determining the recreation area, natural contour lines, excluding bays and estuaries, shall be followed. The position of the landward boundary line shall be interpolated to follow natural contour lines whenever interrupted by manmade structures.

Provision should be made for retaining in private ownership those permanent private structures existing on January 1, 1967.

5. Opposition to any amendment or language that would in any way adversely affect the public's legal and traditional rights to use of the beach areas.

HB 1601 should be approved without compromise. It is vital that this bill be enacted if the public right to use the dry sand section of the Oregon beach is to be preserved.

HB 1601 is a useful, reasonable bill that accomplishes two needed things:

First, the bill emphasizes the fact that the public, because of its long usage of the dry sand areas as a playground, has acquired certain prescriptive rights to use these lands and that whatever these rights are, they should be protected and preserved.

Second, HB 1601 directs the State Highway Commission to be the public agency charged with the responsibility to protect and preserve whenever rights have been acquired through usage in the area between the natural vegetation line and mean high tide.

These clarifications weren't needed earlier because we Oregonians all "knew" that the beaches were public. Now, however, we are abruptly and shockingly faced with the fact of fences on the beach and "KEEP OUT" signs being posted, and the prospect that barriers and signs will spring up all along our coast. We have to move now to stop this or we will lose our precious heritage of open beaches. HB 1601 is the simplest, most direct way to prevent a beach take-over by private interests. Its passage now will give us the time we must have to solidify our claim upon the beaches for all Oregonians.

Now, I have had a number of telephone calls from property owners on the coast. I have been impressed by the fact that almost every one of them has favored keeping the dry sand beach area open to the public. But they have three genuine and legitimate concerns:

One, they want better policing enforcement and maintenance of the area.

Two, they want to be protected against liability suits brought by persons using the dry beach area.

Three, they feel they should not be taxed for the beach portions used by the public.

I agree with their position in each respect, and though these are not proper matters for legislation I think the Legislature should make clear its intent that these three points be taken care of administratively.

A few coastal interests say HB 1601 endangers private property rights. I'm sure that some of the people who make this charge know better than that, but they are using it as a smoke screen to divert attention from their real intention, which is to seize important sections of the beach for commercial exposition. To them I say: "You won't get away with it." But other owners have a genuine and understandable concern about their private property. I can only say to them: "Read the bill. It does nothing to take away your rights."

Some problem is encountered in the use of "natural vegetation line" as a definition line. I recognize the problem, but there appears to be no better term to apply to the situation. Let me point out that the bill has been carefully and wisely worded and does not say that the State Highway Commission "must" enforce these public rights up to the natural vegetation line. Rather, it says that the Highway Commission shall have the authority to seek prescriptive rights within this area. In a few instances, it would be unreasonable to do so, and in these few instances the Highway Commission would have

not only the authority but also the duty to use judgment and discretion in their application of this law. In any event, the courts would remain to protect those who felt unfairly treated.

The issue has now been joined on whether the public of Oregon is to continue to enjoy the recreation of the magnificent Oregon beach. Either we must win this fight by passage of HB 1601 without compromise, or the public will lose the natural heritage which all Oregonians have felt they have.

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WITNESS REGISTRATION

House Committee on Highways

Senate or House _____ Name of Committee _____

Date: 5/11/67 Time: 1 PM Room: 6

Public Hearing on HB 1601

Rep. Ed. Olds (measure No.) Lane County ✓ ✓
 Please register if you wish to testify on the above-named measure.

Name and Address	Representing	For	Against
<u>Sen Don Willner</u>		✓	✗
<u>Rep. Wally Brewster</u>			
<u>Edward Branchfield</u>	<u>Governor McCall</u>	✓	
<u>John D. DeBernard</u>	<u>President Lincoln County Board of Realtors & chamber of commerce</u> <small>20 miles - 10 miles</small>		Amendments
<u>James O Goodwin</u> Atty	<u>Mrs Tom Malloy of Road End and and Pacific Coast Land Co.</u>		✓
<u>Amy Reiz</u> <u>Jo Gardiner</u>	<u>Ainsworth School Portland Oregon</u>		
<u>Maurice O Georges</u> <u>Am. Bank Bldg Portland</u>	} <u>Attys.</u> <u>speaking against proposed amendments</u>		
<u>Wm S McLenahan</u> <u>Public Service Bldg Portland</u>			
<u>Kenneth Bates</u>	<u>Self.</u> <u>41 N E Fargo St. Portland</u>	✓	
<u>Fitchell Anderson</u>			✓
<u>James L. Overholser</u> <u>Corvallis, Ore.</u>	<u>Myself</u>	✓	
<u>Diane L. King</u> <u>Albany Ore</u>	<u>Oregon Council of Dining Clubs</u>	✓	
<u>H. R. De Selms</u>	<u>atly for Lin. city & the Port of Newport</u>	✓	✗
<u>Harry Z Bonome</u>	<u>myself</u>		✗
<u>Eugene Richardson</u>	<u>atly for HF Balmain, Jr.</u>		✗
<u>William Gray</u>	<u>CANON BEACH WTC OWNER</u>		✗

Special Meeting of House Committee on Highways

May 12, 1967

2:00 P.M.

416 State Capitol

Members Present: Reps. Howard, Vice Chairman; Anunsen, Elder, Hanneman, Holmstrom, Leiken, Meek, McKenzie, Smith, R. and Turner.

Excused: Rep. Bazett

Witnesses: Rep. James A. Redden, D-Jackson County, Attorney.
Mr. Geo. Rhode, Attorney for State Highway Dept.
Rep. Lee Johnson, R-Multnomah County, Attorney.

Vice Chairman Howard called the meeting to order.

HB 1601 - Recognizes public easements in shore lands

REP. SMITH MOVED that because nine members of the Highway Committee legally called this meeting and, for verification, anything that transpires at this meeting is valid as a legally constituted meeting of the Highway Committee. The motion was unanimously approved.

Rep. James Redden presented the committee members with copies of a revised HB 1601, as it would read if amended (see Exhibit A in file). He then briefed the committee on his revised bill.

Rep. Lee Johnson then presented the committee members with copies of proposed amendments to HB 1601, dated May 12, 1967, (see Exhibit B in file.) He then briefed the committee on his proposed amendments.

Rep. Paul Hanneman also presented the committee with a draft of proposed amendments to engrossed HB 1601, dated May 12, 1967, (see Exhibit C in file.) Rep. Hanneman then briefed the committee members on the proposed amendments.

Reps. Redden and Johnson, and Mr. Geo. Rhode, Attorney for the State Highway Department were invited to sit at the witness table together. After considerable discussion and exchange of ideas between the committee members and the three attorneys, Vice Chairman Howard asked Rep. Redden, Rep. Johnson and Mr. Rhode (or some other attorney representing the State Highway Department) to draft compromise amendments to HB 1601 for presentation to the committee at their next meeting.

REP. SMITH then MOVED that Rep. Johnson, Rep. Redden and an Attorney from the Highway Department work on amendments, and bring their report back to the Committee at its next meeting. The motion was unanimously approved by voice vote.

The meeting adjourned at 4:20 p.m.

Respectfully submitted,


Pamela Tupper, Clerk

House Committee on Highways

May 16, 1967.

1:00 p.m.

321 State Capitol

Members Present: Reps. Bazett, Chairman, Howard, Vice Chairman; Anunsen, Elder, Hanneman, Holmstrom, Leiken, Meek, McKenzie, Smith, R. and Turner.

Witnesses: Rep. James Redden
Rep. Lee Johnson
Mr. Robt. Shultz, Assoc. Professor, Engineering Dept., O.S.U.
Dr. June Pattullo, Professor of Physical Oceanography, O.S.U.
Dr. LaVerne D. Kulm
Mr. Ed Branchfield, Governor's Legal Counsel

Chairman Bazett called the meeting to order.

HB 1601 - Recognizes public rights to easements in shore lands

Rep. Redden presented to the committee members copies of proposed amendments dated May 15, 1967 (see Exhibit A in file.) These amendments had been drafted by Reps. Redden and Johnson and an attorney from the Highway Department jointly. Rep. Redden then briefed the committee members.

Rep. Johnson also briefed the committee members on the proposed amendments, pointing out some of the advantages of the new amendments over those previously offered for the committee's consideration. Rep. Johnson then distributed to the committee members a proposed amendment to Section 9, dated May 16, 1967 (see Exhibit B in file.) He then briefed the committee on the amendment proposed to Section 9.

Mr. Robert Shultz distributed to the committee members a copy of a graph with regard to the sea level datum, a copy of which is attached hereto and made a part of the minutes. He then explained the technicalities of the U.S. Coast and Geodetic Survey Datum line to the committee. He explained that the oceanographers had visited five coastal beaches, with the Governor, and after taking measurements they were recommending a 16 foot level.

Rep. Hanneman presented, to the committee, photographs that had been certified by an engineer named Lester Fultz. These photographs indicated where elevation measurements of 13.7 feet, etc. came to along various parts of the coast. Mr. Shultz commented on the photographs, and then he, Dr. Pattullo and Dr. LaVerne Kulm answered technical questions for the committee members.

REP. ANUNSEN MOVED that the amendments dated May 15, 1967, be adopted (Exhibit A in file.) The motion was unanimously approved by members present; Rep. Smith was not present for the vote.

REP. MEEK MOVED that on page 1 of the adopted amendments, line 6, the words "and uninterrupted" be deleted; and that on page 2 of the adopted amendments, line 23, the elevation be changed from 16.00 feet to 12.00 feet; and on line 25, after "1947," insert "or 300 feet shoreward, whichever is less."

Roll call was taken on Rep. Meek's motion to delete the words "and uninterrupted" on page 1 of the proposed amendments. The motion failed with Reps. Anunsen, Elder, Hanneman, Holmstrom, Howard, Leiken, McKenzie, Smith, Turner and Bazett voting in opposition; and Rep. Meek voting in favor.

REP. HOWARD MOVED to amend Rep. Meek's motion, so that the elevation reference on page 2 of the adopted amendments would read 15.00 feet. The motion failed with Reps. Anunsen, Elder, Hanneman, Holmstrom, Leiken, McKenzie, Meek, Smith, Turner and Bazett voting in opposition; and Rep. Howard voting in favor.

Roll call was then taken on Rep. Meek's motion for an elevation of 12.00 feet or 300 feet shoreward, whichever is less. The motion was approved with Reps. Elder, Hanneman, Holmstrom, Leiken, McKenzie, Meek and Smith voting in favor; and Reps. Anunsen, Howard, Turner and Bazett voting in opposition.

REP. HANNEMAN MOVED that on page 1 of the adopted amendments, line 7, the words "on and about" be deleted, and the word "abutting" be inserted. The motion was approved with Reps. Elder, Hanneman, Holmstrom, Leiken, McKenzie, Meek, Smith and Turner voting in favor; and Reps. Anunsen, Howard and Bazett in opposition.

REP. HOLMSTROM MOVED that the adopted amendments be amended on page 1, line 7 by deleting the words "the shore of the Pacific Ocean" and after the word "abutting" inserting ", adjacent and contiguous to those lands described in ORS 274.070". The motion was unanimously approved.

REP. HOLMSTROM MOVED that the proposed amendments to Section 9 of HB 1601, dated May 16, 1967, be adopted (Exhibit B in file.)

REP. SMITH MOVED to amend Rep. Holmstrom's motion, so that the language of the proposed amendments to Section 9, lines 2 and 3, would conform to the newly-adopted language in Section 1 of the amendments.

Roll call was taken on the adoption of the proposed amendments to Section 9, with conforming language. The motion carried unanimously.

REP. LEIKEN MOVED to add the emergency clause to Section 6 of the adopted amendments. The motion was unanimously approved.

House Committee on Highways

May 16, 1967

Mr. Ed Branchfield then distributed to the committee members copies of proposed amendments drafted by the Highway Department (see Exhibit C in file.) He then briefed the committee members on the proposed amendments to Sections 6 and 12.

REP. HOWARD MOVED to adopt the proposed amendments, deleting Section 12. The motion was unanimously approved; Rep. Smith was not present for the vote.

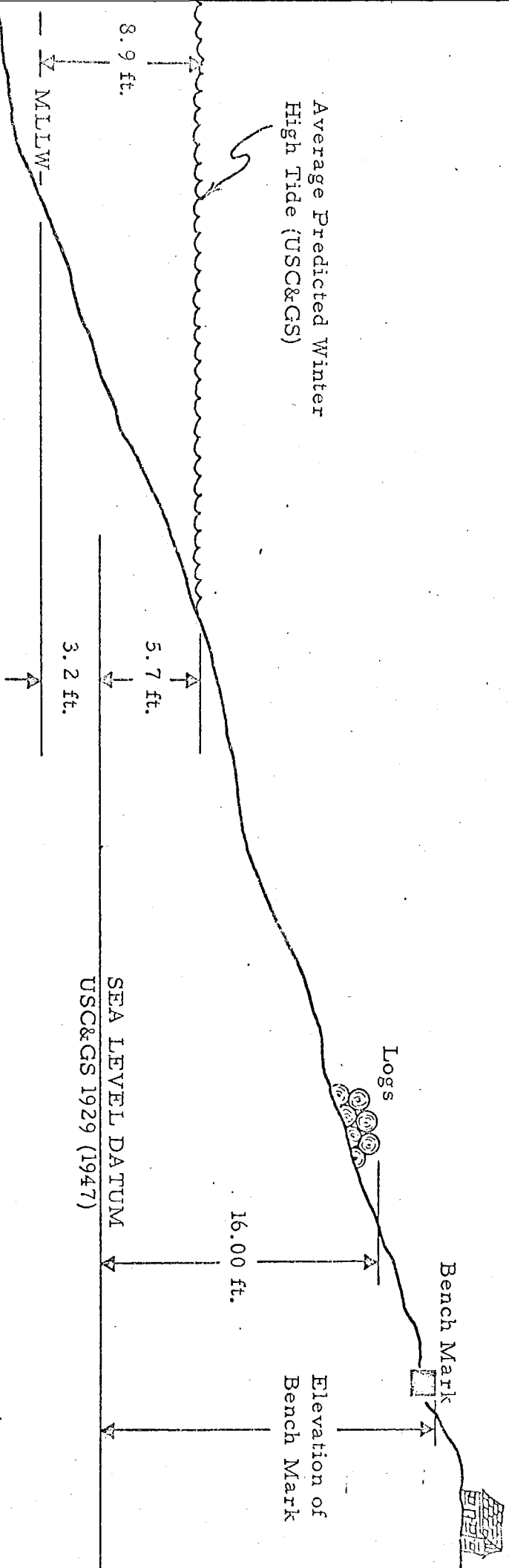
Rep. Holmstrom suggested that copies of the bill, as now amended by the committee, be prepared and presented at the next meeting. The committee members concurred.

The meeting adjourned at 3:30 p.m.

Respectfully submitted,



Pamela Tupper, Clerk



(Not To Scale)

House Committee on Highways

May 18, 1967.

Mr. Carney concluded that it was the purpose of the bill to try to stabilize the dump truck industry, as all transportation industries are stabilized, by regulation.

Mr. James Singleton, representing the PUC, said that there should be some expression as to whether these carriers should be allowed state-wide authority, or whether they should be restricted as the Commissioner may find indicated, either in the grandfather credentials that are submitted or as a result of a hearing. The witness stated that the bill has budgetary implications: he estimated approximately a \$25,000 cost for the first year, and a \$10,000 cost for each subsequent year. Mr. Singleton stated that the PUC felt the bill could have an adverse effect on some of the operators in the business now.

HB 1601 - Recognizes public easements in shore lands

Rep. Lee Johnson distributed to the committee members Xerox copies of the amendments that had been adopted by the committee at their last meeting, which he had designated as #1 (see Exhibit A in file.)

He then distributed a further set of amendments to Sections 5 and 6 for consideration by the committee, which he had designated #2 (see Exhibit B in file.) He then briefed the committee, and stated that the Governor recommended retaining the 16 foot elevation, with a 300 foot lateral line.

Finally, Rep. Johnson distributed another set of proposed amendments, which added Section 14 to the bill, directing the State Highway Commission to survey the coast. He had designated these amendments as #3 (see Exhibit C in file.)

REP. HOLMSTROM MOVED that amendments #2 be adopted, inserting the following in the blank spaces provided on page 1: in line 12 insert "16", in line 17 insert "the 16", in line 20 insert "300" and "16" respectively.

REP. HANNEMAN MOVED to amend the motion so that the elevations on lines 12, 17 and 20 would read "14 feet". He then displayed photographs that had been taken at Tierra-Del-Mar and Rockaway, and he stated that he believed the 16 foot elevation to be too close to private property.

Rep. Redden pointed out to the committee members that no elevation line would be perfect, and that this was merely an interim solution.

Roll call was taken on Rep. Hanneman's motion for a 14 foot elevation. The motion failed with Reps. Hanneman and McKenzie voting in favor; and Reps. Anunsen, Holmstrom, Howard, Leiken, Meek, Smith, Turner and Bazett in opposition.

Roll call was then taken on Rep. Holmstrom's original motion for a 16 foot elevation. The motion passed with Reps. Anunsen, Holmstrom, Howard, Leiken, Meek, Smith, Turner & Bazett voting in favor; and Reps. Hanneman and McKenzie opposed.

May 18, 1967

REP. HOLMSTROM MOVED that the proposed amendments #3 be adopted, deleting the words "between ordinary high tide and extreme low tide" from lines 2 and 3. The motion was unanimously approved.

REP. LEIKEN MOVED that Section 13 be amended, so that the emergency clause could be included for all of the Act, except Sections 10 and 11. The motion was approved with Reps. Anunsen, Holmstrom, Howard, Leiken, Meek, Smith, Turner and Bazett voting in favor; and Reps. Hanneman and McKenzie voting in opposition.

REP. MEEK MOVED to send engrossed HB 1601 to the floor with a "do pass as amended" recommendation. The motion passed with Reps. Anunsen, Holmstrom, Howard, Leiken, Meek, Smith, Turner and Bazett voting in favor; and Reps. Hanneman and McKenzie voting in opposition. Rep. Howard will lead the floor discussion.

Rep. Holmstrom then read a letter of committee intent, a copy of which is attached hereto and made a part of the minutes.

REP. HOLMSTROM MOVED to adopt the letter of committee intent, with the following amendments: in paragraphs 2 and 6 delete the word "adequate" and insert the word "appropriate".

REP. BAZETT MOVED to amend the motion so that in line 4 the words "may have" could be deleted, and the word "has" inserted. The motion failed with Reps. Howard and Bazett voting in favor; and Reps. Anunsen, Hanneman, Holmstrom, Leiken, McKenzie, Meek, Smith and Turner voting in opposition.

Roll call was taken on Rep. Holmstrom's original motion, to amend and adopt the letter of committee intent. The motion was unanimously approved.

Chairman Bazett then asked Mr. Shultz if the letter of intent was a fair statement of the engineers' and oceanographers' position; to which the witness replied in the affirmative.

The Chairman then asked Mr. Glenn Jackson, Chairman of the Highway Commission to respond to the letter of intent. The witness testified that he believed the committee letter of intent provided a clear guideline for the operation of the department in the areas of setting up the surveys and the regulations under which the recreational beaches would be administered.

SB 537 - Authorizes vehicles exceeding 50 feet to operate by permit

Mr. Robt. Knipe testified that the trucking industry and the Highway Department had drafted the bill cooperatively. He then briefed the committee on the bill.

STATEMENT OF HOUSE COMMITTEE ON HIGHWAYS
CONCERNING HB 1601

May 18, 1967

The House Highway Committee hereby states as a matter of legislative intent that the primary objectives of House Bill 1601 as amended are two-fold: 1, to direct the State Highway Commission to preserve the public easements the State may have acquired on the Oregon ocean beaches; 2, to protect the Oregon beaches through zoning against commercial encroachment and blight so as to preserve for the future one of our State's greatest recreational and scenic resources.

It is the intention of this committee to extend zoning only to those areas of the ocean beaches that are ^{adequate} ~~adequate~~ to public use and enjoyment. The major problem besetting this committee has been to determine a line which clearly delineates between the ocean beach area, in which the people of Oregon have a vital interest, and the area eastward.

We began first with the "vegetation line" which proved to be inadequate. We then considered the use of a sixteen foot elevation line as suggested by a group of oceanographers and engineers from Oregon State University. However these scientists were able to survey only a few beaches, and further evidence indicated that in many of the areas of the coast the sixteen foot elevation line would be untenable. Indeed, we found that in some areas such as near Neskowin and in Southern Oregon a sixteen foot elevation line extended the zoned area considerable distance eastward of the beaches (in some cases several miles).

The scientists from Oregon State University then suggested an exception to the sixteen foot elevation line for low lying areas. In those areas the line is a 300 foot lateral measurement from the shoreline. The scientists, however, still conceded that their information is incomplete and in some cases this proposed elevation and lateral line will not encompass the entire beach area and in other cases may extend beyond the beach area.

Your committee, therefore, is not satisfied with the zoning line we have adopted but believe that within the time limits of the legislative session that this is the only feasible solution. We believe that it is imperative that the State Highway Commission conduct a survey of the entire coast so that a more certain zoning line can be established. We further state that the exception to the elevation line provided for in the amended bill should be applied in all low lying areas and should be construed liberally, so that the inadequacies of the line adopted will be taken into account.

We also wish to make it clear that by zoning the coastal area we want to provide for an orderly development of these Oregon ocean beaches ^{adequate} ~~adequate~~ to public use as recreation areas. We do not wish to make our beaches into a wilderness, rather we want to encourage the public use and enjoyment thereof.

Exhibit A -
5/11/67, Mtg.

May 11, 1967

Presented by Rep. Johnson
(Not Adopted)

PROPOSED AMENDMENTS TO HOUSE BILL 1601

On page 2 of the printed engrossed bill, line 1, delete "public rights in lands" and insert "property in western Oregon".

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

"Section 1. As used in this Act:

"(1) 'Public easement' means an easement:

"(a) Acquired by the public by prescription, dedication, grant or otherwise and reasonably necessary for access or the full use and enjoyment for recreational and scenic purposes of the shore and waters of the Pacific Ocean; and

"(b) Acquired prior to the effective date of this Act.

"(2) 'Commission' means the State Highway Commission.

"Section 2. Ownership of public easements hereby is declared vested exclusively in the State of Oregon. Such easements are state recreation areas.

"Section 3. (1) 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.

"(2) Any person having a possessory interest in or title to property that may have been used by the public for access or use and enjoyment of the shore and waters of the Pacific Ocean, who believes his interest or title is not subject to a public easement, may request the commission to execute and deliver to him a release of all right, title and interest, if any, of the state in and to the property. If the commission determines that the property is not subject to a public easement, it shall on behalf of the state execute and deliver to such person an appropriate form of release of any right, title and interest of the state in and to such property. Such a release may be recorded in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property. If the commission determines the property is subject to a public easement and refuses to issue a release, the person who requested the release may commence proceedings under subsection (3) of this section. If the commission, within 90 days after the date the request is received, fails either to grant or deny a request made under this subsection, the request shall be considered denied.

"(3) Any person denied a release under subsection (2) of this section, or the commission at any time, may commence proceedings under ORS chapter 28 to determine the rights and interests of the State of Oregon or of the commission under this Act or the rights, interests and duties of any person

having property alleged to be subject to a public easement or to section 4 of this Act.

"(4) If a release is not issued within 180 days after the date the request for a release is received by the commission and a proceedings is brought by the requester under subsection (3) of this section, the plaintiff shall recover, if he prevails, such sum as the court may adjudge reasonable as attorney fees to be paid by the commission. If attorney fees are allowed as provided by this subsection and on appeal to the Supreme Court the judgment is affirmed, the Supreme Court shall allow to the plaintiff such additional sum as the court shall adjudge reasonable as attorney fees of the plaintiff on such appeal.

"(5) In any court proceedings in which one of the issues tried is the existence of a public easement vested in the state by section 2 of this Act, if the commission is a party to the proceedings, the burden of proving the existence of a public easement is on the commission.

"Section 4. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas declared by section 2 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 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.

"Section 5. Any person who wishes a permit to erect or maintain an improvement on property subject to section 4 of this Act shall apply in writing to the 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 6. 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 4 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 7. No public easement for access to or the full use and enjoyment of the shore and waters of the Pacific Ocean shall be acquired by prescription resulting from adverse use occurring after the effective date of this Act. Nothing in this section affects the rights of the public acquired by prescription prior to the effective date of this Act.

"Section 8. Nothing in this Act shall create a presumption as to the existence of any public easement in any lands used and enjoyed by the public or subject to this Act.

"Section 9. The commission may acquire property, or interests in property, suitable for use in connection with state recreation areas along 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 10. 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 11. Section 10 of this Act first is operative on January 1, 1968."

Exhibit A - 5/12/67 Mtg.
- Presented by Rep. Redden
(Not Adopted)

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.

Exhibit B-5/12/67 Mtg.-

May 12, 1967

Presented by Rep. Johnson
(Not Adopted)

PROPOSED AMENDMENTS TO HOUSE BILL 1601

On page 2 of the printed engrossed bill, line 1, delete "public rights in lands" and insert "property in western Oregon".

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

"Section 1. As used in this Act:

"(1) 'Public easement' means an easement:

"(a) Acquired by the public by prescription, dedication, grant or otherwise and reasonably necessary for access or the full use and enjoyment for recreational and scenic purposes of the shore and waters of the Pacific Ocean; and

"(b) Acquired prior to the effective date of this Act.

"(2) 'Commission' means the State Highway Commission.

"Section 2. Ownership of public easements hereby is declared vested exclusively in the State of Oregon. Such easements are state recreation areas.

"Section 3. (1) 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.

"(2) Any person having a possessory interest in or title to property that may have been used by the public for access or use and enjoyment of the shore and waters of the Pacific Ocean, who believes his interest or title is not subject to a public easement, may request the commission to execute and deliver to him a release of all right, title and interest, if any, of the state in and to the property. After a hearing in accordance with ORS 183.310 to 183.510 if requested by the applicant or any other interested person, if the commission determines that the property is not subject to a public easement, it shall on behalf of the state execute and deliver to such person an appropriate form of release of any right, title and interest of the state in and to such property. Such a release may be recorded in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property. If the commission, after the hearing, determines the property is subject to a public easement and refuses to issue a release, the person who requested the release may commence proceedings under subsection (3) of this section. If the commission, within 90 days after the date the request is received, fails either to grant or deny a request made under this subsection, the request shall be considered denied.

"(3) Any person denied a release under subsection (2) of this section, or the commission at any time, may commence proceedings under ORS chapter 28 to determine the rights and interests of the State of Oregon or of the commission under

this Act or the rights, interests and duties of any person having property alleged to be subject to a public easement or to section 4 of this Act.

"(4) If a release is not issued within 180 days after the date the request for a release is received by the commission and a proceedings is brought by the requester under subsection (3) of this section, the plaintiff shall recover, if he prevails, such sum as the court may adjudge reasonable as attorney fees to be paid by the commission. If attorney fees are allowed as provided by this subsection and on appeal to the Supreme Court the judgment is affirmed, the Supreme Court shall allow to the plaintiff such additional sum as the court shall adjudge reasonable as attorney fees of the plaintiff on such appeal.

"(5) In any court proceedings in which one of the issues tried is the existence of a public easement vested in the state by section 2 of this Act, if the commission is a party to the proceedings, the burden of proving the existence of a public easement is on the commission.

"Section 4. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas declared by section 2 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 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.

"Section 5. Any person who wishes a permit to erect or maintain an improvement on property subject to section 4 of this Act shall apply in writing to the 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 6. 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 4 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 7. No public easement for access to or the full use and enjoyment of the shore and waters of the Pacific Ocean shall be acquired by prescription resulting from adverse use occurring after the effective date of this Act. Nothing in this section affects the rights of the public acquired by prescription prior to the effective date of this Act.

"Section 8. Nothing in this Act shall create a presumption as to the existence of any public easement in any lands used and enjoyed by the public or subject to this Act.

"Section 9. The commission may acquire property, or interests in property, suitable for use in connection with state recreation areas along 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 10. 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 11. Section 10 of this Act first is operative on January 1, 1968."

Davis - Beddingfield, Sponsor

Exhibit C - 5/12/67 Mtg.

May 12, 1967

*- Presented by Rep. Hanneman
(Not Adopted)*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1601

In line 1 of the printed engrossed bill, delete "public rights in land" and insert "property in western Oregon".

Delete lines 3 through 18 and insert:

"Section 1. The Legislative Assembly finds that the beaches of Oregon along the Pacific Coast are a valuable resource for recreation of all the people of Oregon and that the opportunity for the public to use the beaches must be retained.

"Section 2. (1) The State Highway Commission shall acquire property, or interests in property, suitable for recreation purposes along 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, within the area along the coast located:

"(a) Within 100 feet inland of the line of mean high tide; and

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

"(2) In any proceedings under this section, if the property sought is subject to a public easement acquired by

prescription and the commission alleges and proves the property is subject to such an easement, evidence of the restricted use imposed on the property by the easement shall be considered in arriving at the true value of the property sought.

"Section 3. Any person having a possessory interest in or title to property that may have been used by the public for access or use and enjoyment of the shore and waters of the Pacific Ocean, who believes his interest or title is not subject to a public easement, may request the State Highway Commission to execute and deliver to him a release of all right, title and interest, if any, of the state in and to the property. If the commission determines that the property is not subject to a public easement, it shall on behalf of the state execute and deliver to such person an appropriate form of release of any right, title and interest of the state in and to such property. Such a release may be recorded in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property. If the commission determines the property is subject to a public easement and refuses to issue a release, the person who requested the release may commence appropriate proceedings. If the commission, within 90 days after the date the request is received, fails either to grant or deny a request made under this section, the request shall be considered denied."

"Section 4. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas declared by section 2 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 or other kind of improvement on any property that is within the area along the Pacific Ocean located:

"(a) Within 100 feet inland of the line of mean high tide; but

"(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.

"Section 5. Any person who wishes a permit to erect or maintain an improvement on property subject to section 4 of this Act shall apply in writing to the 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.

Exhibit A- 5/16/67 Mtg.
(Adopted + Amended)
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."

(Adopted)

May 16, 1967

PROPOSED AMENDMENT TO HOUSE BILL 1601

"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, ^{and} that the public use may be for certain purposes which shall also be described. 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.

"(3) The permission granted may be revoked at any time by the grantor and, in any event, 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."

Exhibit C - 5/16/67 Mfg.
(Adopted)
or Amended

PROPOSED CHANGES IN MAY 15, 1967 HOUSE BILL 1601

"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] Engineer, on a form and in a manner prescribed by the [commission] engineer, 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.] Upon receipt of an application satisfactory to the engineer, received not less than 10 days prior to a regular commission meeting, the engineer shall cause notice of the application to be posted at or near the location of the proposed appurtenance, structure or improvement, and shall announce the receipt of the application at the regular commission meeting. 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.

In the second line of subsection 2 change the word "commission" to "engineer".

"(4) Any person is entitled to appeal to the circuit court of the county where the property is located for a judicial review in equity 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.] Any appeal taken under this subsection shall be made within 60 days from the date of denial or the period described in subsection 3 of this section.

In the second line of subsection 2 of section 9 change the word "witnessed" to "acknowledged".

Delete "Section 12. Violation of section 6 of this Act by any person is punishable upon conviction by a fine of not more than \$400 or imprisonment in the county jail for not more than 30 days.

The bill now reads as follows - as amended by the Hwy. Committee to date:

May 18, 1967

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1601

#1

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 abutting, adjacent and contiguous to those lands described in ORS 274.070; 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 lands abutting, adjacent and contiguous to those lands described in ORS 274.070 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:

"(a) Between the extreme low tide and the elevation of 12.00 feet above the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest 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; and

"(b) Within 300 feet landward from a point adjacent to the Pacific Ocean and 5.7 feet above the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.

"(2) This section does not apply to structures 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 Engineer, on a form and in a manner prescribed by the engineer, stating the kind of and reason for the appurtenance, structure or improvement. Upon receipt of an application satisfactory to the

engineer, the engineer shall cause notice of the application to be posted at or near the location of the proposed appurtenance, structure or improvement. At the next regular meeting of the State Highway Commission held more than 10 days after receipt of the application, the engineer 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 of the time within which any interested person may file a request with the engineer for a hearing on the application.

"(2) Within 30 days after the date of the regular meeting at which the engineer announces the receipt of a satisfactory application, the applicant or any other interested person may file a written request with the engineer for a hearing on the application. If such a request is filed, the engineer shall set a time for a hearing to be held by the engineer or his authorized representative. The engineer 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 engineer shall grant the permit if approval would not be adverse to the public interest in

preserving the recreational and scenic resources. If the engineer 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 a judicial review in equity of the action or failure to act by the engineer under this section. Any appeal taken under this subsection shall be made within 60 days after the date of the action or after the expiration of the period prescribed for action by the engineer under subsection (3) of this section.

"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 abutting, adjacent and contiguous to those lands described by ORS 274.070 that is available for public use, whether such right to use is obtained by easement, state-ownership or by 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 abutting, adjacent and contiguous to those lands described in ORS 274.070, 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 acknowledged 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, and that the public use may be for certain purposes which shall also be described. 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.

"(3) The permission granted may be revoked at any time by the grantor by a declaration revoking the permission signed, acknowledged and filed as provided by subsection (2) of this section. In any event, 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.

"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 reduction 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.

"Section 12. Nothing in this Act shall be construed to relinquish the sovereign title of the State of Oregon in the shore of the Pacific Ocean between ordinary high tide and extreme low tide as the same may exist before or after the effective date of this Act.

"Section 13. Sections 5 and 6 of this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and sections 5 and 6 of this Act shall take effect upon passage."

Exhibit B-5/18/67
(Adopted) *WJG*

May 18, 1967

#2

PROPOSED AMENDMENTS TO HOUSE BILL 1601

Alternate amendment to sections 5 and 6 of amendments dated May 18.

"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 feet following natural topographic contour lines. The position of the landward boundary line shall be interpolated to follow natural topographic contour lines whenever interrupted by man-made structures. However, in low-elevation areas, including but not limited to sand spits and marshes and the mouth of streams, estuaries, rivers and creeks where ^{the} 16 foot contour nearest the ocean, in plan view, does not substantially parallel the shore line, the boundary line is 300 feet (but not in excess of the 16 foot elevation) inland from the contour line nearest the ocean which describes the 5.7 foot elevation. However, at the mouths of streams, estuaries, rivers and creeks in such low-elevation areas where the 5.7 foot contour nearest the ocean does

not substantially parallel the trend of the shoreline, the 5.7 foot contour line is replaced, for measurement purposes, by a straight line extending across the mouth from a point nearest the ocean on the 5.7 foot contour and proceeding in a straight line to a similar point on the opposite side. All elevations and vertical measurements are referred to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.

"(2) This section does not apply to structures, including a 25-foot yard on all four sides of a single-family residence, 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 Engineer, on a form and in a manner prescribed by the engineer, stating the kind of and reason for the appurtenance, structure or improvement. Upon receipt of an application satisfactory to the engineer, the engineer shall cause notice of the application to be posted at or near the location of the proposed appurtenance, structure or improvement. At the

next regular meeting of the State Highway Commission held more than 10 days after receipt of the application, the engineer 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 of the time within which any interested person may file a request with the engineer for a hearing on the application.

"(2) Within 30 days after the date of the regular meeting at which the engineer announces the receipt of a satisfactory application, the applicant or any other interested person may file a written request with the engineer for a hearing on the application. If such a request is filed, the engineer shall set a time for a hearing to be held by the engineer or his authorized representative. The engineer 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 engineer shall grant the permit if approval would not be adverse to the public interest in preserving the recreational and scenic resources. In acting on an application, the engineer shall take into consideration the existing uses and structures and the future recreational and scenic needs in the vicinity of the proposed appurtenance, structure or improvement. If the engineer 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 a judicial review in equity of the action or failure to act by the engineer under this section. Any appeal taken under this subsection shall be made within 60 days after the date of the action or after the expiration of the period prescribed for action by the engineer under subsection (3) of this section."

May 18, 1967

Exhibit C -
5/18/67 Htg

(Adopted)

PROPOSED AMENDMENTS TO HOUSE BILL 1601

New Section 14 to Amendment Dated May 18

#3

Section 14. The State Highway Commission is directed to survey the land on the shore of the Pacific Ocean [between ordinary high tide and extreme low tide] from the Columbia River on the north to the Oregon and California state line on the south for the purpose of locating the boundaries of the area zoned by section 5 of this Act and also for the purpose of obtaining information and material suitable for a re-evaluation and redefinition, if necessary, of such boundaries so that the public rights and interests in the lands along the shore of the Pacific Ocean shall be preserved. The Commission shall complete the survey and present its report to the Fifty-fifth Legislative Assembly.

MINUTES OF MEETING

SENATE JUDICIARY COMMITTEE
Room 112 Capitol Building
May 26, 1967
1:00 p.m.

Present: Mahoney, Chairman; Yturri, Vice Chairman;
Boivin, Burns, Cook, Eivers, Fadeley, Husband, Lent, Willner;
Paillette

Excused: McKay

Witnesses: Representative Sid Bazett, Josephine County
Mr. Willis West, Chief Civil Deputy District Attorney, Portland
Representative James Redden, Jackson County
Representative Lee Johnson, Multnomah County
Mr. Charles Knox, Gold Beach
Mr. Dan Dority, Lake Oswego
Mrs. Thea Dority, Lake Oswego

House Bill 1601

Representative Sid Bazett stated he was Chairman of the House Highways Committee which had worked on House Bill 1601 in the House and provided the committee with background information on the measure. He reported that three hearings were held prior to the time the bill was amended and engrossed after which it had been considered four separate times. After the May 7 meeting Representative Bazett said he was informed by the Speaker that he should discontinue hearings on the measure because the Speaker indicated he had received complaints from committee members that too many meetings were being spent on the bill. He noted that the Speaker had asked him to dismiss his committee clerk as of May 12.

Representative Bazett read a long list of names of individuals, firms, and organizations who had contacted the House committee expressing support of Engrossed House Bill 1601, totaling a representation of some 32,000 people. He urged the Senate committee to invite Mr. Bill Tugman to testify as he could relay to them first-hand information resulting from conversations with former Governor Os West as evidence that it was the Governor's intention that the entire beach area be preserved for the public.

Senator Yturri asked if, with the possible exception of section 9, Representative Bazett felt Re-Engrossed House Bill 1601 was satisfactory and was told by the witness that he had voted for the bill as it appeared before the Senate committee.

Senator Fadeley asked Representative Bazett if he would object to amendments making it more clear that present public or future acquired rights be preserved. Representative Bazett replied they were only endeavoring to let the people retain their present rights.

Senator Fadeley thought the problem had to do with the fact that the original statutory description was between ordinary high tide and extreme low tide, which area was described in the statutes, whereas people generally had assumed that a larger area was included. He expressed concern over the

language in section 10, page 8, and thought it sounded as though the state were not relinquishing anything. Representative Bazett agreed this section should be amended. He noted that the original draft by Legislative Counsel and the Highway Department used the language of the Texas legislation which referred to the "vegetation line."

Mr. Willis West was the next witness and identified himself as a nephew of the late Governor Os West and noted that as a boy he had lived in the Warrenton area and had been in a position over the years to observe the gradual changes, growth and development of Oregon beaches. He stated that he had discussed this bill with Governor McCall and Chairman Mahoney and felt this proposed legislation was aimed in some respects at settling property interests. He said he was not appearing in opposition to the bill but rather to see if he could be of assistance in drawing a better bill. He felt that everyone was cognizant of the fact that there was a question as to titles to both dry and wet sand areas and that nothing had been done to collect those titles and vest them in the State of Oregon.

Mr. West thought it was the intent of this legislature to preserve all of the rights the state had by virtue of its sovereignty and by prescriptive rights. With this thought in mind, he had some suggested amendments which dealt with the first four sections of the bill. A copy of the proposed amendments is attached hereto as Appendix A.

Mr. West cited the case of Bowlby v. Shively, 22 Oregon 410, and the appeal to that case, 152 U.S. 1. This case, he said, comprised the leading law on defining the legal status of title to the Oregon beaches. Oregon's sovereignty fixed the ownership of the beach areas from high tide (not ordinary high tide) to low tide (not extreme low tide). When Oregon became a state, it gathered in the sovereignty of the beaches, the rights and titles to the land from high tide to low tide and the Act of admission extended title to three miles out to sea. This sovereign right, he said, would be superior to any homestead rights under federal Acts and also gave the state the right, if it so desired, to sell all the beaches. The state had at times exercised this right to sell title; for example, it had contracted for the removal of sand from certain beaches many years ago.

In 1962 Mr. West said he had proposed to the Constitutional Revision Committee an amendment to the Constitution for protecting the beaches. Governor Os West believed that the Constitution was the proper place to insert a guard against sale of beach property and Mr. West expressed agreement.

Senator Husband asked if the tidelands on some of the rivers were included in House Bill 1601 and was told that the term "seashore" was used as much as possible but the same law applied to the tidelands of rivers emptying into the ocean.

Mr. West noted that Oregon first recognized that there should be public beaches in 1899 by passing an Act stating that "the area between ordinary high water and extreme low tide shall be a public highway." The original Act only applied to Clatsop County. In 1913 new legislation closely copying the 1899 Act was enacted extending the boundaries to the California border. In 1947 the legislature defined the beaches as "recreational areas." Mr. West pointed out that when we now talk about "ordinary high tide" and "extreme low tide", we are speaking of the present, and what was ordinary high tide in 1899 is not ordinary high tide now. Mr. West felt the 1899 Act defined a definite area of the beach to be deemed a public highway and even though the lines changed position over the years, the area remained the same. He also felt that since the beaches were public highways, this encompassed the right to widen such highways if the public deemed it necessary as well as to discontinue the right of use if the public abused its privileges.

Since Oregon had claimed all prescriptive rights, Mr. West thought that legislation should not be enacted which would take away any of these rights nor lessen their strength. House Bill 1601, he said, should contain nothing to leave the impression that it referred only to the high and low water marks of today, but instead should state distinctly that the state recognized all of the prescriptive rights it had gained under any state law and vest all of those prescriptive rights in the State of Oregon.

To bear out his point further, Mr. West gave a short resume' of the history of the Peter Iredale, pointing out that through the years the ship had not moved but that the wet sand line had definitely altered. He presented pictures which he had obtained from the Oregon Historical Society to illustrate his point. These illustrations showed the Peter Iredale a few days after she was beached in about eight to ten feet of water whereas today she sits on dry sand even though her position had not changed.

Senator Husband asked if accretion applied in this case and Mr. West replied that accretion had no application to this situation. Whatever rights the state had were applied not by reason of accretion but by reason of prescriptive rights.

Mr. West indicated that the people of the state had always exercised their prescriptive rights by using the complete area between high and low water lines and that House Bill 1601 should accordingly contain the language of Section 2 of his proposed amendments to indicate there was no intent of abandoning prescriptive rights.

Mr. West felt it was time to settle once and for all the titles to beach properties. He was of the opinion that the number of instances in which the state would be involved in litigation would be very limited since the prescriptive right of the public was so well established and suggested that the Attorney General be given the responsibility of defending the state's prescriptive rights. He also proposed in section 4 of his amendments that the state should buy back any of these areas that had been sold.

Senator Yturri questioned the value of declaring the state's rights when those rights were evidently well established. Mr. West concurred, adding

that even if the bill failed to pass the rights would be retained but the bill with this declaration would strengthen the point. He called attention to the fact that over the years the beaches had risen and the water had moved back. The land that was originally under sovereign control at the high water mark was public land. The 1899 Act used the term "ordinary high tide" which was different than "high tide" and he noted that there had been no adjudication on the point of whether or not the state's line had moved out with the high tide but as the beach had grown and risen, the public had continuously used the area so that by prescriptive use, the state could claim every inch of that ground. He urged that this bill be made to apply to the original high water mark.

Mr. West contended that now was the time to begin gathering old photographs of the beaches, to get the "old timers" who were personally acquainted with the beaches to come in and perpetuate their testimony with regard to the use of the beaches in the areas they were familiar with and to try to establish the ordinary high water mark Oregon had by sovereignty. He recommended that the Attorney General be given this assignment.

Senator Yturri referred to the language on page 4 of the bill having to do with the United States Coast and Geodetic Survey Sea-Level Datum of 1929 and asked if the legislature had the right to establish such a line. Mr. West's analysis was that the section was related to zoning and building restrictions and under the state's police power this authority was already granted since the Highway Department was empowered to control recreational areas.

Senator Yturri asked if there were many cases in Oregon which involved the acquisition of title by a governmental body and Mr. West answered that several cases had touched on this subject. The Supreme Court, he said, seemed to distinguish between the case in which the governmental body was trying to establish prescriptive rights and the case of a suit to quiet title brought by a private individual. In such instances the burden of proof would lie with the public body which he felt was as it should be.

Senator Yturri next asked for Mr. West's opinion of the constitutionality of an Act which would declare that all beach lands belonged to the state and was told that such an Act would be meaningless and ownership would still need to be judicially determined.

Senator Cook asked Mr. West how he would amend House Bill 1601 and was told that he would substitute sections 1 through 4 as set forth in his proposed amendments. In section 7, line 21, he suggested insertion of "prescription" before "easement." Section 8, he said, recognized control of property subject to a public easement and noted that control of the land was important in establishing prescriptive use. He proposed to eliminate the section entirely.

Senator Yturri recited a hypothetical situation in which a private individual owned beach rights to a piece of property where the public was permitted to use the land for recreational purposes. If a member of the public were injured in these circumstances, he asked whether the owner's responsibility would be to a trespasser or to an invitee. Mr. West thought there was a statute to cover such an instance which resolved the owner's liability but, in answer to a further question, said no harm could be done by spelling out this protection in the bill.

Mr. West was critical of section 9 which, he said, appeared to invite the filing of a declaration of rights to the beach areas and was of the opinion that the section would accomplish nothing. Senator Lent thought section 9 was designed to permit the property owner to allow the public to use his land for a temporary period of time. Senator Burns remarked that if the owner failed to make the declaration prescribed in section 9, it might imply that he was giving up his property rights. The section, he said, would put an undue burden on the property owner and might inure against him. Mr. West indicated there was probably no intent to either create or destroy legal rights but recommended deletion of the section because he felt that property rights were fully protected under existing law.

Senator Cook expressed the view that the purpose of section 9 was to permit a private owner to prevent prospective accumulation of prescriptive rights by the state by some means other than physically blocking property from public use with a chain or fence. Mr. West observed that such a requirement would invite the fencing of beaches but Senator Cook did not agree and said the declaration could prevent the necessity for fences by giving the individual an alternative method of protecting his property rights.

Mr. West expressed approval of sections 10 and 11.

In reply to a question by Senator Fadeley, Mr. West explained that the logs deposited on the beaches were carried into the ocean from the rivers and were subsequently washed ashore.

In reply to further questions by Senator Fadeley, Mr. West said that the beach had been used to carry mail in the early days and the wet sand had been used at that time because horses could pull easier there than in the dry sand.

Senator Fadeley called attention to Mr. West's proposed section 4 and asked what method of payment was advocated for acquiring private property rights. Mr. West suggested the use of gas tax and Highway Commission funds.

Senator Husband noted that sometime between 1900 and 1910 a statute had been enacted providing that no prescriptive right could be obtained against the state of Oregon although adverse rights against the state had been permitted prior to that time. He asked Mr. West if this situation had been taken into consideration and if anyone could claim rights under the law as it existed originally. Mr. West doubted that claims of this kind would occur in areas set aside for public recreational purposes. Very little could be done, he said, to set up an adverse claim in these areas.

Representative Lee Johnson was the next witness and explained that he had been called in to work with Representative Redden in preparing the final draft of House Bill 1601. He criticized the manner in which Representative Bazett had handled the bill and outlined some of the events which led to the Speaker's asking him to work on the measure.

It was Representative Johnson's opinion with respect to Senator Husband's question regarding adverse rights that these rights would not be as easily settled as Mr. West anticipated. If the property owner showed that he had always permitted the public to use his land, the Highway Commission would

have difficulty proving that the use was not adverse. It was common law, he said, that once a public easement had been acquired, it could not be taken away by adverse use.

Mr. Johnson explained House Bill 1601 section by section as it appeared before the Senate committee. Section 1 of Mr. West's proposed amendments, he commented, said no more than did the House's version.

In section 2 he noted that the original bill discussed easements west of the vegetation line. Since they were public easements, he contended there was no need to establish a definite line.

Representative Johnson disagreed with Mr. West's amendments to section 3 and expressed the view that responsibility for administration of section 2 rested more properly with the Highway Commission than with the Attorney General.

Section 4, he said, made clear that the Highway Commission had the power to condemn beach property.

Section 5, he explained, was the zoning provision and provided the police power and the necessary exemptions for existing structures, dwellings, pipelines, etc. and was necessary to protect public interests. He noted that there were bench lines all the way down the coast from which to develop the 16 foot contour line.

Section 6 made provision for variance from the zoning section through application to the Highway Commission. The authors attempted to make certain there would be adequate notice given to the public through the provisions of this section.

Section 7 was not in the original bill but was designed essentially to give the Highway Commission jurisdiction to protect the property known as the beach area.

With respect to section 8, Representative Johnson recommended that lines 3, 4 and 5 on page 7 be deleted by placing a period after "created" on line 3.

He expressed disagreement with Mr. West's interpretation of section 9. The purpose of the section, he said, was to make it unnecessary for a property owner to fence his property or to post a sign. He concurred with Senator Burns' comment and suggested an amendment which would state that failure to execute an instrument as described in section 9 would not inure against the owner's property rights.

Representative Johnson agreed that "between ordinary high tide and extreme high tide" should be deleted on lines 6 and 7 of page 8. This, he said, was a drafting error.

In reply to a question by Senator Burns, Representative Johnson suggested that on line 5, page 8, "in" be deleted and "on or about" be inserted which would make the section as broad as possible.

Representative James Redden commented that there was another approach to the problem of rights which had not been mentioned and that was that people were more likely to have acquired rights through dedication than through prescription. He noted that Mr. West's amendments limited acquired rights to prescription whereas the House version included grants, prescription and dedication. Rights, he said, could be acquired through dedication without adversity, whereas prescriptive rights had to have an adverse element and urged the committee to adopt language which would preserve all the methods of acquiring rights.

Opponents

Mr. Charles Knox presented material expressing the position of a large number of private beach property owners in Curry County together with pictures showing where the proposed boundaries would fall. In essence, the group he represented opposed any changes in existing ownership rights of privately owned beach frontage and objected to removal of beach properties from the tax rolls. The bill, he said, would materially affect existing appraisals and would acutely affect the tax base.

Mr. Knox said his group would like to see a bill passed establishing a line halfway between the mean tide line and the seaward side of the drift line which would always assure the public use of the dry sand and would also assure the private owner of some dry sand. The boundaries set forth in House Bill 1601 would, he observed, in his area include many acres of pasture land and would include a subdivision which he had opened last year.

Senator Fadeley asked Mr. Knox if it was his opinion that the owner of the beach frontage was the owner of the dry sand and received an affirmative reply. Mr. Knox added that the frontage owner probably owned down to the high tide line and while the public should be free to use the dry sand area, the owner should have control over it.

Senator Fadeley asked how much of the taxable value of ocean frontage was contributed by the dry sand area and Mr. Knox was unable to answer precisely but he thought it would be a proportion of the valued difference of a lot with ocean frontage and one without -- probably about half the taxable value. In reply to a further question, he said he did not know what the county assessor's policy was with respect to establishing these values.

Mr. Knox was of the opinion that passage of House Bill 1601 would be a dangerous precedent and it would not be long before the state would be claiming tideland areas in rivers and estuaries.

Mr. Dan Dority was the next witness to appear in opposition to House Bill 1601. He explained that he owned property at Newport and the Highway Department had condemned about a mile of it and in doing so had used lies, deceit and intimidation. He believed this bill would permit them to use the same methods with other property owners in the area. He said he had attended every hearing held on this measure in the House and, except for one two-minute period, had been denied the opportunity to speak in opposition to the bill as was an attorney he had hired.

Mr. Dority believed House Bill 1601 would take away individual rights in a socialistic and bureaucratic manner; he objected specifically to section 8 and commented that there was discrimination against beach property owners as opposed to property owners in other parts of the state since prescriptive rights obtained in other areas as well.

Senator Fadeley asked Mr. Dority if his property included dry sand and received a negative reply.

Mrs. Thea Dority confirmed that time had not been allowed for opposition testimony at House hearings and said that she and other interested individuals were writing to the Governor, the Speaker of the House and to the general public to make this fact known. She too objected to the discrimination factor in the bill and noted other instances where prescriptive rights could be enforced for possible public benefit. She further objected to the Highway Department being given more power by this measure and urged that the land buying practices of that department be investigated.

Mr. Dority called the committee's attention to pictures taken in Tillamook County belonging to Representative Hanneman which showed that the 16 foot line was behind the vegetation line and in some cases would take in parts of motels.

The meeting was adjourned at 3:35 p.m.

Respectfully submitted,

Mildred E. Carpenter, Chief Clerk
Senate Judiciary Committee

A BILL FOR
AN ACT

Declaring and confirming the prescriptive rights of the State of Oregon in the Oregon seashores as established by public use, authorizing the attorney general to participate in the adjudication of prescriptive rights, and providing for the acquisition of additional seashore lands.

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

Section 1. It is the declared public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state over the seashore and ocean beaches of Oregon from the Columbia River on the North to the Oregon-California state line on the South, so that the public may have free and uninterrupted use thereof for public travel, fishing, navigation and recreational purposes.

Section 2. All prescriptive public rights and easements on the Oregon seashore established and existing by public use, of land areas contiguous to the public highways and state recreation areas heretofore created by any state law, are approved, and confirmed, and shall be considered vested in the State of Oregon.

Section 3. The attorney general shall institute and defend such legal actions that may be required to protect, settle, and confirm all such prescriptive rights and public easements in the State of Oregon.

Section 4. The State Highway Commission and the attorney general shall proceed immediately to acquire such seashore areas between ordinary high tide and extreme low tide including contiguous beach areas appropriate for recreational use, now held in private ownership and where a public use thereof has not established a prior prescriptive right in the state or public.

MINUTES OF MEETING

SENATE JUDICIARY COMMITTEE
Room 113 Capitol Building
May 30, 1967
4:00 p.m.

Present: Mahoney, Chairman; Yturri, Vice Chairman;
Burns, Cook, Eivers, Fadeley, Husband, Lent, Willner; Paillette
Excused: McKay, Boivin

Executive Session

House Bill 1111

Senator Lent moved that the printed Senate amendments dated May 18 be deleted. Motion carried. Voting for the motion: Burns, Cook, Eivers, Fadeley, Lent, Willner, Mr. Chairman. Voting no: Husband, Yturri.

Senator Yturri moved that the bill be amended to this effect: "provided that the court shall assign the same weight to the findings and decisions of the hearings officer as to findings and judgments in equity cases." He suggested this amendment might be an area of compromise acceptable to both sides. He pointed out that since passage of the Workmen's Compensation bill at the last session of the legislature, in practically every case where an award was made, there had been an appeal, the case had been tried by a jury and in each case there was a compromise with the net result being an increase in the award. The industry, he said, had complained about this situation and was now afraid that in virtually every case there would be an appeal and the judge would hear the matter anew, in effect. If industry's fears were well founded, he explained they would be facing the same situation under House Bill 1111 except that there would be no jury.

Senator Lent said that when Mr. Moshofsky testified before the State and Federal Affairs Committee, he admitted that Judge Burns' interpretation was exactly what the proponents wanted -- de novo on the record. He noted there had been 37 appeals taken to the courts up to the previous week and on this basis they were asking the legislature to back away from the compromise they had agreed to in 1965. He expressed the view that the system had not been given a fair trial.

Vote was then taken on Senator Yturri's motion which failed. Voting for: Eivers, Husband, Yturri, Mr. Chairman. Voting no: Burns, Cook, Fadeley, Lent, Willner.

Senator Willner moved that the bill be reported out do pass as amended and the motion carried. Voting no: Husband, Yturri.

House Bill 1601

Mr. Paillette explained the amendments which he had prepared in accordance with the suggestions made at the hearing on May 26, a copy of which is attached hereto as Appendix A.

Senator Lent pointed out that "between ordinary high tide and extreme low tide" should be deleted from page 8, lines 6 and 7, and others agreed.

Senator Willner suggested the following revisions:

The language of section 2 on page 2 might cut off the right of a private individual's suit and he suggested deletion of "Ownership of" on line 17 and deletion of "is declared vested exclusively in the State of Oregon. Such easements" on lines 19 and 20.

He felt the notice provisions were not adequate on page 5 because they merely required posting notice and suggested that provision be incorporated that any person or group who filed a request with the State Highway Commission would receive and be notified of applications, hearings and decisions of the commission.

Page 6, subsection (4), should read "Any person who has participated in the hearing". He said the extent of review was also unclear and preferred a provision requiring a de novo proceeding.

Section 7, he felt, made it clear that the State Highway Commission would continue to police and maintain property but local authorities were not relieved from whatever policing they were currently doing.

On page 8, line 25, he said he would prefer "taken into consideration" rather than "subject to".

Senator Yturri asked if the preamble said that the Legislative Assembly declared it to be the public policy of the State of Oregon, regardless of any private ownership of beaches that might exist, to forever maintain the sovereignty of the seashore. Chairman Mahoney pointed out that regardless of that statement, a person could not be deprived of his private property rights and Senator Yturri suggested that the bill should acknowledge this fact. He also suggested that the bill be distorted from the House version as little as possible and suggested Representatives Redden and Lee Johnson be invited to work with the committee in considering this matter.

Chairman Mahoney said he did not read the preamble to mean the same as Senator Yturri's interpretation and thought it implied that the public policy existed in so far as it was legally possible to do so. Senator Yturri thought it was better to express this than to leave it to implication.

Senator Fadeley said he would rather start with Mr. West's preamble than the House version. He said he would start with Mr. West's suggestion and add the implication in section 1 that there may be some lands that need to be acquired.

Chairman Mahoney suggested adding to section 1 "to which the state is lawfully entitled".

Senator Fadeley said it was possible there might be a difference between the state's title and the state's sovereignty and indicated there were several places where he would insert ownership "of the State of Oregon and the public". He also suggested that the title include prescriptive "or dedicatory" rights.

He advocated deletion of "between ordinary high tide and extreme low tide" where the Highway Commission was being directed to acquire the land.

Chairman Mahoney asked Mr. Paillette to prepare further amendments for the committee's early consideration.

House Bill 1635

Senator Lent had procured amendments from Legislative Counsel to accomplish the purpose described at the meeting on May 25. A copy of the amendments is attached hereto as Appendix B.

Senator Fadeley suggested after "discretionary" on page 3, line 19, the following language be inserted: "; however, the board shall not authorize payment unless the conditions of subparagraphs (a) or (b) of subsection (1) of section 6 of this Act have been found to exist".

Senator Willner suggested that in subsections (a) and (b) of the amendment after "dishonest conduct" the "or" be deleted and "which caused the" be inserted.

Senator Lent suggested in subsection (b) after "proceedings" delete "involving" and insert "arising out of".

Senator Fadeley moved adoption of the proposed amendments with the revisions described above. Motion carried unanimously.

Senator Husband expressed the view that the losses would far exceed the amount of money in the fund.

Senator Yturri moved that the bill be reported out do pass as amended and the motion carried with Senator Husband voting no. Senator Yturri was assigned to lead the floor discussion.

House Bill 1738

Senator Fadeley suggested that the last sentence of House Bill 1738 be amended to read "may not be used for any purpose". Senator Lent pointed out that the reports could not then be used for the purpose of the bill and suggested placing a period after "evidence". Senator Fadeley so moved and the motion carried unanimously.

Senator Fadeley moved the bill be reported out do pass as amended. Motion carried unanimously.

House Bill 2017.

Senator Cook said he had received some figures from Ward Armstrong but they were not substantially different from the Ways and Means figures. He recommended the bill be sent out without further amendment.

Proposed Senate amendments to Re-Engrossed HB 1601:

On page 2 of the printed re-engrossed bill, delete lines 1 and 2 and insert:

"Relating to the rights of ownership of the State of Oregon in the Oregon seashores as established by prescription or otherwise; declaring and confirming such rights; authorizing the Attorney General to participate in the adjudication of prescriptive rights; providing for the acquisition of additional seashore lands; and declaring an emergency."

On page 2, delete lines 4 through 22 and insert:

"SECTION 1. The Legislative Assembly hereby declares that it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state over the seashore and ocean beaches of Oregon from the Columbia River on the North to the Oregon-California state line on the South, so that the public may have free and uninterrupted use thereof for public travel, fishing, navigation and recreational purposes.

"SECTION 2. (1) All public rights and easements on the Oregon seashore established by prescription, dedication, grant or otherwise, of land areas contiguous to the public highways and state recreation areas heretofore created by any state law, are confirmed and declared vested exclusively in the State of Oregon.

"(2) No portion of the seashore, including the area covered only by extreme high tides, or any interest therein now or hereafter owned by the State of Oregon or any political subdivision thereof may be alienated except as expressly provided by state law."

On page 3, delete lines 1 through 9 and insert:

"SECTION 3. The Attorney General, when necessary, shall undertake appropriate court proceedings to protect, settle and confirm all such public rights and easements in the State of Oregon.

"SECTION 4. The State Highway Commission, in accordance with ORS 366.345, and the Attorney General shall proceed immediately to acquire such seashore areas between ordinary high tide and extreme low tide including contiguous beach areas appropriate for recreational use, now held in private ownership and where a public use thereof has not established a prior prescriptive right in the State of Oregon."

On page 4, line 17, delete the period and insert ", or to publicly-owned appurtenances, structures or improvements made with the approval of the State Highway Engineer for the safety or convenience of the public."

On page 6, line 21, after "by" and before "easement" insert "prescription".

On page 7, line 3, after "created" insert a period and delete the rest of the line.

On page 7, delete lines 4 and 5.

On page 8, after line 3, insert:

"(4) Failure of the owner or person in control of property to execute and file the declaration as provided in subsection (2) of this section shall not imply an intent to relinquish dominion and control over his property."

On page 8, line 5, delete "the sovereign" and insert ", impair or limit" and in the same line, after "title" insert "or rights".

MINUTES OF MEETING

SENATE JUDICIARY COMMITTEE
Room 113 Capitol Building
May 31, 1967
4:00 p.m.

Present: Mahoney, Chairman; Yturri, Vice Chairman;
Burns, Eivers, Fadeley, Lent, McKay, Willner
Delayed: Cook; Paillette
Absent: Boivin, Husband

Executive Session

House Bill 1601

Senator Willner explained that he had discussed with Representative Redden the amendments he had suggested to the committee on the previous day and would now propose only the revisions satisfactory to Representative Redden.

Section 6 of re-engrossed bill. Senator Willner moved that language be inserted at the end of section 6, subsection (1), to provide that any person who filed a written request with the Highway Commission would receive notice of any application, hearing or decision of the commission. He recommended this insertion to insure some method of centralizing notice to the public. Motion carried unanimously. Voting: Burns, Eivers, Fadeley, Lent, McKay, Willner, Yturri, Mr. Chairman.

Section 10 of re-engrossed bill. Senator Willner then moved that section 10 be amended to read: "Nothing in this Act shall be construed to relinquish, impair or limit the sovereign title or rights of the State of Oregon in the shores of the Pacific Ocean as the same may exist before or after the effective date of this Act." Motion carried unanimously with the same members voting as on the previous motion.

Section 12 of re-engrossed bill. Senator Willner next moved on page 8, line 25, to delete "subject to reduction" and insert "taken into consideration". Motion carried unanimously with the same members voting.

Section 1 of Appendix A. Senator Burns had prepared amendments to House Bill 1601 which he distributed to the committee, a copy of which is attached hereto as Appendix A. Senator Burns explained that section 1 of his amendment was identical to Willis West's section 1 except for the underlined words and the deletion of "public travel, fishing, navigation and" before "recreational purposes" at the end of the section which, he explained, had been removed because it might involve use of the land for commercial purposes such as fishing or tourism.

Chairman Mahoney questioned the use of "established" in the section and Senator Burns explained that section 1 was a legislative policy declaration. Senator Fadeley suggested "heretofore existing" rather than "heretofore established" and other members agreed this revision would be an improvement.

Senator Willner questioned the use of the term "sovereignty of the state" because, he said, there were rights of the public beyond the rights of state sovereignty and this term might limit the rights which were in addition to public rights. Senator Burns noted that section 2 embodied all the language of the printed bill with respect to policy as far as public rights were concerned and felt there was no diminution of public rights by the policy declaration in section 1. Senator Fadeley called attention to the policy declaration in section 2, subsection (2), of Senator Burns' amendments.

Senator Yturri moved that section 1 of Senator Burns' amendment be revised to "heretofore existing" rather than "heretofore established" and the section be adopted. Motion carried. Voting for: Burns, Eivers, Fadeley, McKay, Yturri, Mr. Chairman. Voting no: Cook, Lent, Willner.

Senator Willner moved to strike "for recreational purposes" at the end of section 1. The West amendments, he said, listed several purposes and this language limited it to one. Motion carried. Voting for: Cook, Eivers, Fadeley, Lent, Willner, Mr. Chairman. Voting no: Burns, McKay, Yturri.

Section 2 of Appendix A. Senator Fadeley called attention to subsection (4) of section 2 and asked if it imposed a limitation. Senator Burns said a strict interpretation of the House bill would limit the Act to state recreation areas and might take away rights with respect to these lands when they were public highways. The subsection was intended to broaden the construction. At one time, he pointed out, the legislature had declared that the seashore was a public highway.

Senator Cook moved to amend subsection (1) of section 2 by deleting "heretofore created by state law" on line 4 of the Burns amendment. He explained that these words might impose a limitation. Vote was taken on the motion and it carried unanimously.

Senator Willner moved to insert "and other parts of the Oregon seashore" after "recreation areas" in line 4, subsection (1). He explained that the public might have easements that were not "abutting, adjacent and contiguous to" these areas and those rights would be waived without some kind of catch-all language. Senators Cook and Burns spoke in opposition to the motion stating that this language would go far beyond the original intent of the bill. Vote was taken on the motion and it failed. Voting for: Fadeley, Willner. Voting no: Burns, Cook, Eivers, Lent, McKay, Yturri, Mr. Chairman.

Senator Yturri moved subsection (1) of section 2 of the Burns amendment as previously revised be adopted. Motion carried. Voting no: Willner.

Senator Fadeley moved the adoption of subsection (2) of section 2. Motion carried unanimously.

Senator Willner noted that public use was the alternative of scenic and recreational use and raised the question of whether "scenic and recreational"

imposed a limitation on what public use might be. Chairman Mahoney asked if such a right might be lost through lack of use and Senator Burns agreed that changing this language could create the problem posed by the Chairman. He pointed out that these lands would be administered as recreation areas and if this language were deleted, some authority under the existing statute might be lost.

Senator Yturri moved that subsection (3) of section 2 be adopted and the motion carried unanimously.

Senator Cook moved adoption of subsection (4) of section 2. Motion carried unanimously.

Section 3 of Appendix A. In response to a suggestion by Senator Burns, Senator Yturri moved that "Attorney General" be changed to "State Highway Commission" and the section be adopted. Motion carried. Voting for: Burns, Cook, Eivers, Lent, McKay, Willner, Yturri. Voting no: Fadeley, Mr. Chairman.

Section 4 of Appendix A. Senator Burns explained that Mr. West's amendments stated that the state should proceed immediately to acquire the seashore areas but he thought the cost of doing so would be prohibitive. His amendments coincided with the House bill which was permissive in this respect. He explained that his amendments were also broader than Mr. West's proposal in that they included "dedication, prescription, grant or otherwise."

Senator Cook moved to delete all language in section 4 after "ownership" on the fifth line of the section. He said he was concerned that the Highway Commission might have authority to pay the owner something less than the full price of the land. Motion carried.

Senator Cook moved that section 4 be adopted as amended and the motion carried unanimously.

Section 8 of re-engrossed bill. Senator Burns said he and Senator Yturri had discussed an amendment to section 8 with the two House members and they had concurred in the amendment. He then moved that on line 3, page 7, all language in the section after "created" be deleted.

Senator Lent suggested the entire section be stricken, the result being to leave common law liability. Senator Cook contended that the section as printed stated the common law and proposed to leave the section without amendment.

Senator Burns withdrew his motion and Senator Cook moved the section be adopted without amendment. Motion carried unanimously.

Section 7 of re-engrossed bill. Senator Yturri moved to insert "prescription," before "easement" on page 6, line 21. Motion carried unanimously.

Section 9 of re-engrossed bill. Senator Burns moved adoption of subsection (4) on page 9 as shown on Mr. Paillette's amendments. (Note: See Minutes, Senate Judiciary Committee, 5/30/67, Appendix A.) Motion carried unanimously.

Section 5 of re-engrossed bill. Senator Yturri called attention to the additional language on line 17, page 4, as suggested by Mr. Paillette's amendments. Mr. Paillette explained that this language was the result of a letter written to the Governor's office by George D. Dysart, an attorney with the Department of Interior in Portland. Senator Yturri moved it be adopted and the motion carried unanimously.

Senator Eivers called attention to the May 1 date on page 4, line 17, and raised the question of the Cannon Beach situation where the motel owner had erected a barrier on the beach.

Senator Cook felt the date should be deleted and moved that "the effective date of this Act" be inserted in lieu of the date. He said he did not believe this provision could be made retroactive. Motion failed. Voting for: Cook, Lent, Yturri. Voting no: Burns, Eivers, Fadeley, McKay, Willner, Mr. Chairman.

Severability clause. Senator Cook moved that a severability clause be attached to the bill. Senator Fadeley read ORS 174.040 to the committee. Vote was then taken on the motion which carried. Voting no: Fadeley.

Senator Burns moved that House Bill 1601 be reported out do pass as amended and the motion carried unanimously.

The meeting was adjourned at 5:00 p.m.

Respectfully submitted,

Mildred E. Carpenter, Chief Clerk
Senate Judiciary Committee

West, Sec. 1

SECTION 1. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the State heretofore established over the seashore and ocean beaches of the State from the Columbia River on the North to the Oregon-California line on the South so that the public may have the free and uninterrupted use thereof for recreational purposes.

p2, Lines 4-12

SECTION 2. (1) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of lands abutting, adjacent and contiguous to the public highways and state recreation areas heretofore created by state law and recognizes, further, that where such use has been sufficient to create easements in the public through dedication, prescription, grant or otherwise, that it is in the public interest to protect and preserve such public easements as a permanent part of Oregon's recreational resources.

West, Sec 2 (1)

(2) Accordingly, the Legislative Assembly hereby declares that all public rights and easements in those lands described in Subsection (1) of this Section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered in the same manner as those lands described in ORS 274.070.

Compare p2,
Lines 17-22

p2, Lines 12-16

(3) 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 seashore and ocean beaches.

West, Sec 2 (2)

(4) No portion of those lands described in this Section or any interest either therein now or hereafter acquired by the State of Oregon or any political subdivision thereof may be alienated except as expressly provided by state law.

Sec 3 on p3 is unnecessary in view of Sec 2 (2) above

SECTION 3. The Attorney General, when necessary, shall undertake appropriate court proceedings to protect, settle and confirm all such public rights and easements in the State of Oregon.

Sec 3, here, is same as West, Sec 3

FROM THE DESK OF
JOHN D. BURNS
STATE SENATOR
MULTNOMAH COUNTY

West, Sec 4 and
p5, Sec. 4

SECTION 4. The State Highway Commission, in accordance with ORS 366.345, may acquire ownership or interests in such lands abutting, adjacent or contiguous to the Oregon seashore and beaches as may be appropriate for recreational purposes where such lands are held in private ownership and where no prior right therein has been established in either the State or the public through dedication, prescription, grant or otherwise.

I approve the following wording to replace the title of HB 1601:

On page 2 of the printed bill, delete lines 1 and 2 and insert:

"Relating to the rights of the State of Oregon and the public in the Oregon seashores as established by prescription or otherwise; declaring and confirming such rights; providing for the acquisition of additional seashore lands; and declaring an emergency."

<i>AM</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<i>SM</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<i>SR</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<i>MS</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<i>MS</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<i>MS</i>	Aye <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Aye <input type="checkbox"/>	No <input type="checkbox"/>
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	Aye <input type="checkbox"/>	No <input type="checkbox"/>
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6/1/67