

**HOUSE COMMITTEE ON LAND USE**

**January 31, 2005 Hearing Room 50**

**1:30 PM Tapes 9 - 10**

**MEMBERS PRESENT: Rep. Bill Garrard, Chair**

**Rep. Gordon Anderson, Vice-Chair**

**Rep. Mitch Greenlick, Vice-Chair**

**Rep. Robert Ackerman**

**Rep. Mary Nolan**

**Rep. Patti Smith**

**Rep. Mac Sumner**

**STAFF PRESENT: Sam Litke, Committee Administrator**

**Lindsay Luckey, Committee Assistant**

**MEASURES/ISSUES HEARD & WITNESSES:**

**HB 2268 - Public Hearing**

**Wendy Johnson, Oregon Law Commission**

**Greg Mowe, Oregon Law Commission**

**HB 2355 - Public Hearing**

**Rep. Chuck Burley**

**Joe Willis, Attorney at Schwabe Williams**

**Albert Depenbrock, Department of Justice**

**Greg Mowe, Oregon Law Commission**

## Wendy Johnson, Oregon Law Commission

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 9, A</b>		
002	Chair Garrard	Calls the meeting to order at 1:33 PM.
022	Chair Garrard	Opens public hearing on HB 2268. Discusses the 2 bills to be heard, noting their similarities and the possibility of combining the 2 bills. Notes the difference between the relating clauses as a consideration.
<b><u>HB 2268 – PUBLIC HEARING</u></b>		
036	Sam Litke	Committee Administrator. Summarizes the content of HB 2268.
052	Wendy Johnson	Deputy Director, Oregon Law Commission. Explains the background and functioning of the Commission. Describes HB 2268 as a consensus bill recommended by the Law Commission. Introduces Commissioner Greg Mowe who chaired the Commission and defers to him to discuss the details.
078	Greg Mowe	Commissioner, Oregon Law Commission. Notes his background in eminent domain cases. Explains the significance of HB 2268 and describes the process one must go through. Asserts that most instances are settled out of court and there are incentives for condemner and condemnee to do so.
114	Mowe	Explains importance of appraisal documents exchanged. Mentions results of <i>State v. Stallcup</i> (2004). Relays advantageous elements of HB 2268 to all parties involved.
133	Rep. Ackerman	References Section 8 and inquires about the consistency of naming the author in both written and unwritten reports.

145	Mowe	Explains his assumption that the person giving a report would be identified. Declares his acceptance of amended language if that point were in question.
153	Rep. Greenlick	Asks if the witness is familiar with the other bill being proposed.
156	Chair Garrard	States his interest in having the witnesses stay for the hearing on HB 2355 with the possibility of combining the two bills.
160	Johnson	Submits written testimony <b>(EXHIBIT A)</b> .
170	Chair Garrard	Closes public hearing on HB 2268 and opens public hearing on HB 2355.

**HB 2355 – PUBLIC HEARING**

170	Rep. Chuck Burley	Representing HD 54 and sponsor of HB 2355. Gives overview of HB 2355. Introduces Joe Willis and mentions Edward Fitch, who requested the bill.
185	Joe Willis	Attorney, Schwabe Williams. Submits proposed amendments <b>(EXHIBIT B)</b> . Gives background of his law practice on eminent domain cases. Has been working on amended language.
210	Willis	Gives his interpretation of the intent of Ed Fitch. Describes the perspective of the process from a “landowner’s lawyer point of view”. Describes expenses incurred.
249	Chair Garrard	Clarifies that the property owner has no choice whether or not to sell but only at what price.
252	Willis	Notes the difference in condemnation sales and extra expenses incurred. Continues explanation of process. Asserts that there is not enough language “to control what happens after the initial appraisal.” References <b>(EXHIBIT B)</b> .
280	Rep. Ackerman	Expresses concern with the lack of clarity in the amended language because it does not reference the final draft of the bill.
291	Sam Litke	

Administrator. Explains that Mr. Willis' amended language corresponds to the LC Draft, not the printed bill.

- 302 Willis Expresses willingness to provide Committee with corrected proposed changes. Has interest in continuing explanation focusing on concepts. Would like to include a time limit for appraisal amendments.
- 320 Chair Garrard Questions how many times the government could make a counter offer to the landowner during the specified amount of time.
- 325 Willis Responds that the government can make offers at any time.
- 340 Chair Garrard Asks that Mr. Willis come back with prepared amendments.
- 346 Willis Responds that he will send proposed amendments in writing and says he will briefly summarize content of changes:
- Create a timeline for process.
  - “Stop both sides from making dramatic changes in theory on their appraisals”.
- 359 Rep. Greenlick Suggests that what Willis is describing is taken care of in Section 9.
- 360 Willis Agrees but clarifies issues he has with the bill as printed:
- No explicit timeline.
  - Does not have appropriate limits on what amended or revised appraisals can do.
- 387 Willis Introduces another concept helping landowner's decide if they should go to trial or not. Notes a final provision he'd like to include.
- 437 Willis Wants to comment on concerns on HB 2268.
- 445 Chair Garrard Expresses desire to focus on HB 2355.

#### **TAPE 9, A**

- 036 Rep. Ackerman Asks if he's suggesting changes to the proposed amendment (Section 9) or if he supports the bill as printed.

038	Willis	Responds that there would be changes to the language of Section 9.
042	Rep. Ackerman	Asks if there would be a time limit included.
044	Willis	Responds that there would be a 10-day before trial limit.
045	Rep. Ackerman	Asks how he plans to define “substantial change” in the proposed legislation.
046	Willis	Answers that he identified things that should not be included.
053	Chair Garrard	Questions if they would be opposed to combining bills.
057	Rep. Burley and Willis	Both respond they have no opposition.
070	Albert C. Depenbrock	Assistant Attorney General, Department of Justice. Submits written testimony against HB 2355 ( <b>EXHIBIT C</b> ).
085	Depenbrock	Discusses Department of Transportation as principal agency which makes use of eminent domain. Notes statistics on small percentage of cases that were filed as condemnation cases.
105	Depenbrock	Believes that process has been improved by exchange of appraisals amongst parties involved and notes that most cases settle.
110	Depenbrock	Believes that the language of HB 2355 takes away the discretion a judge may have had in the past. Takes issue with the ability to make changes without the trial judge which he believes loosens the requirements of the parties to adequately disclose what they have.
117	Depenbrock	Recommends HB 2355 does not pass, and recommends HB 2268 does pass.
130	Greg Mowe	Commissioner, Oregon Law Commission. Notes that his comments are focused on the procedures and he would like to reconvene the work group, look at the proposed changes by Mr. Willis, and discuss HB 2355.
148	Mowe	Defers to Wendy Johnson on the issue of which bill goes forward.

152	Wendy Johnson	Deputy Director, Oregon Law Commission. Discusses unique position of the Law Commission. Submits that they try to present consensus bills. Expresses complications to the Law Commission if the bills are combined.
171	Rep. Greenlick	Notes that HB 2268 seems non-controversial. Wonders about the possibility of passing the bill and then if necessary an amendment later in the session. Barring no problems, he recommends passing HB 2268 and making other changes later if necessary.
185	Chair Garrard	Expresses desire to reconvene work group and use HB 2268 as primary bill. Asks the witnesses if they would be open to that suggestion.
192	Mowe	Responds affirmatively and asks about time.
195	Chair Garrard	Asks if 30 days would be sufficient.
199	Mowe	Responds affirmatively.
219	Rep. Nolan	Agrees that the work group should reconvene but expresses her hope that if the group is not able to reach consensus, the bills could be considered individually.
216	Chair Garrard	Agrees that the Committee will bring back HB 2268 and asks Rep. Burley and Willis to return to the stand.
219	Chair Garrard	Asks if Rep. Burley and Willis would be open to participating in the work group.
224	Rep Burley and Joe Willis	Both concur.
226	Chair Garrard	Asks for a report back in 30 days from the work group on HB 2268.
230.	Chair Garrard	Closes public hearing on HB 2355.
235	Chair Garrard	Discusses the upcoming meeting with Lane Shetterly, DLCD, in which he will discuss the State's direction to the counties in dealing with Measure 37 (2004) claims. Distributes a copy of letters from

DLCD to counties. Elaborates on the concerns in dealing with Measure 37 and the future actions of the Committee.

330 Chair Garrard Adjourns the meeting at 2:23 PM.

**EXHIBIT SUMMARY**

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- A. **HB 2268, written testimony, Wendy J. Johnson, 5 pp.**
- B. **HB 2355, proposed amendments, Joe Willis, 2 pp.**
- C. **HB 2355, written testimony, Albert Depenbrock, 1 p.**