

PUBLIC HEARING & WORK SESSION

SB 267, 268, 269, 270

TAPES 168 A-B, 169 A

HOUSE REVENUE COMMITTEE

MAY 23, 2005 1:00 PM STATE CAPITOL BUILDING

Members Present:

- Rep. Tom Butler, Chair
- Rep. Vicki Berger, Vice-Chair
- Rep. Mark Hass, Vice-Chair
- Rep. Brian Boquist
- Rep. Sal Esquivel
- Rep. Larry Galizio
- Rep. Betty Komp
- Rep. Andy Olson
- Rep. Chuck Riley

Witnesses Present:

- Judge Henry Breithaupt, Oregon Tax Court
- Rep. Jeff Kropf, District 17
- Douglas Ebner, Marion County Assessor
- Karen Gregory, Property Tax Administrator, DOR

Staff Present: Paul Warner, Legislative Revenue Officer
Mary Ayala, Economist
Barbara Guardino, Committee Assistant

TAPE 168, SIDE A

- 010 Chair Butler Calls meeting to order and opens public hearing on SB 267 as a subcommittee.
- 020 Paul Warner Explains that the committee will look at four bills from the Tax Court today. SB 267 establishes jurisdiction for the tax court to determine the real market value of specially assessed property. It gives the courts additional flexibility. See staff measure summaries (**EXHIBITS 1 and 2**).

PUBLIC HEARING, SB 267

- 032 Chair Butler Opens public hearing on SB 267 with a quorum.
- 034 Judge Henry Breithaupt Submits written testimony in favor of SB 267 (**EXHIBIT 3**). Gives brief history of Magistrate Division of the Oregon Tax Court. It was created in 1995 to offer inexpensive (\$25) dispute resolution. Over 90% of cases that come to that division are resolved there. If parties are dissatisfied, they can begin a new case in the regular Tax Court. Prior to establishment, Tax Court could find value in valuation controversies regardless of what the parties had pleaded. That statute was inadvertently repealed. This bill is a return to pre-1995 status of the law.

- 086 Chair Butler Clarifies, tax cases move from the local level to the Magistrate to the Regular Division of the Oregon Tax Court.
- 104 Breithaupt Responds with further clarification.
- 115 Chair Butler Closes public hearing on SB 267. Opens work session.

WORK SESSION, SB 267

- 120 Vice Chair Berger **MOTION: MOVES SB 267 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION.**
- 122 Chair Butler Asks for any objection or discussion.
- ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER**
- 125 Vice Chair Berger **MOTION: MOVES SB 267 TO THE CONSENT CALENDAR.**
- 127 Chair Butler Asks for any objection.
- ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER**
- 129 Chair Butler Closes work session on SB 267. Opens public hearing on SB 268.

PUBLIC HEARING, SB 268

- 133 Warner Gives overview of SB 268 (**EXHIBIT 4**), which eliminates the statute that refers to the Tax Court procedure for small claims. Introduces SB 268-1 amendment (**EXHIBIT 5**), which deals with the timing of the appeals process for centrally assessed property. It clarifies and speeds up the present process.
- 147 Breithaupt Testifies in favor of SB 268. Submits written testimony, paraphrased (**EXHIBIT 6**). Gives brief review of before the Magistrate Division was formed. Taxpayers' first level of hearing took place at the Dept. of Revenue before coming to the Regular Division. In 1961 a small claims division was created. In 1995 the initial hearing process was moved from DOR to the court. He has found that when taxpayers are offered an opportunity to pay \$25 for the Magistrate or elect small claims court at \$10, they check the \$10 box. Unfortunately, it's not that easy to determine what a small claim is. The confusion has led people to the wrong court. There is no appeal in small claims.
- 201 Vice Chair Berger Clarifies, the bill takes away the small claims option. Asks, how would a newcomer to the current system know where to go?
- 226 Breithaupt Responds, this is a problem that the Tax Court deals with regularly. Explains the problems and process in finding which court to file in. Removing the small claims option simplifies this situation.
- 289 Rep. Jeff Kropf Testifies in favor of SB 268-1 amendment. It is an outgrowth of conversations with Marion County Tax Assessor Doug Ebner and Karen Gregory from DOR. Norpac is the poster child of why reforms are needed. They went through a six-year property tax appeal and were successful. The result was that interest of 12% per year was granted and added to the refund and the taxing districts had to bear the cost. Discussed how to remedy this with Ebner, and came up with some solutions, including the SB 268-1 amendment.

- 349 Rep. Kropf Explains section 13 of the SB 268-1 amendment, which streamlines the process and substantially shortens the length of litigation. Explains section 15, which consolidates various claims. Urges the committee to adopt SB 268-1 amendment.
- 385 Chair Butler Asks, what will make certain these will occur faster than in the past?
- 393 Rep. Kropf Responds, he has the word of the DOR that they will adopt these rules. Second, "I'm going to be looking over their shoulder."
- 429 Vice Chair Butler Asks, if this had been on the books 10 years ago, what would have been different in the Norpac case?
- 439 Douglas Ebner Responds, five years ago when it came up the request was a 50% reduction. DOR at that time felt that they could defend it. Five years later they settled at 50 cents on the dollar. This bill gives the assessor some say in the process. The state spent \$1.2 million in interest for Norpac.

TAPE 169, SIDE A

- 025 Ebner Continues, with this new law Norpac could have been settled five years ago with no refund, just the value. This bill opens a door. A group will meet during the interim to come back with legislation next session.
- 030 Rep. Hass Asks whether Norpac was current its property tax bills.
- 035 Ebner Responds yes, but the district lost money anyway. Fire districts such as Sublimity ask why they have to pay a refund for something that

has nothing to do with them. The reason is, if one district had to pay, it would have been devastated. So, it costs all taxing districts 2% because of all the appeals on refunds.

- 060 Chair Butler Asks if this is how all counties do this.
- 065 Ebner Responds yes, on appeals. Assessors will meet with taxing districts. We have to be communicating with taxing districts and the public. There is certain information that is confidential, so how do you communicate?
- 074 Chair Butler Asks how local governments will be able to drive this process. Does not share Ebner's optimism. Comments on page 1, lines 18-22. Comments on page 2, lines 23-30 and page 3, line 1. "Nowhere do I read that this is going to speed this process along," unless DOR gets dismissed.
- 109 Ebner Responds, he shares the Chair's concerns, but "we have to start someplace." They were limited in time to put this bill together. Feels good that the assessor has a say in the process. Had he had this in place five years ago, Norpac would have been settled then at 50%.
- 114 Chair Butler Follow-up on what weight the county assessors' input would carry.
- 129 Ebner It comes down to trust. Voices hope for progress in the 2007 session.
Asks lawmakers to be involved in this process, along with League of Oregon Cities and Association of Oregon Counties and Board of Commissioners.
- 135 Chair Butler

Responds, this sounds like an agreement to agree, which is probably not worth a lot.

- 149 Breithaupt Tax Court hosted the talks and participated in them. Agrees with Chair Butler that this bill does not contain mandatory language. He heard an honest discussion on how to solve the problem. Someone asked the court what it could do. These cases were all settled out of court. Judge committed that tax court will identify cases and make sure the communication system is open and people continue talking.
- 176 Chair Butler Asks Judge Breithaupt, had he not become involved, how much longer could the Norpac case have gone on? Follows up.
- 180 Breithaupt Responds, were the parties in agreement that they needed more time, he would have given it to them.
- 218 Karen Gregory Testifies in regard to the interest of DOR for the bill. DOR values over 3000 accounts annually and has a limited staff. Maintaining these cases is staff intensive. DOR pays Dept. of Justice attorney costs. Also, DOR is by and large interested in settling cases, and it continues working toward settlement. Suggests tax court, magistrate, DOR and DOJ all sit at the table and get these cases through so they won't have another case like Norpac. That's where the amendment came in. DOR and assessors are also working on an appeal timeline. Anticipates legislation for the 2007 session to address these issues.
- 280 Chair Butler Is troubled that this appears to be "an agreement to agree" and is unenforceable. Asks Gregory to consider follow-up legislation as a way to get cases resolved, not just an agreement to agree.
- 340 Ebner Agrees with Butler's assessment. A situation like Norpac is beyond a local issue, it's national and international. Hopes to come back next session and talk about whether there is another alternative. Taxing

districts need to understand how the process works. Will meet with them Thursday (May 26).

371 Chair Butler Appreciates Ebner's and Gregory's testimonies, and looks forward to progress over the interim.

384 Kropf "The intention of this agreement is to provide quick and efficient resolution to appeals. That does not mean, for the record, business as usual. It means something less than a 5- or 6-year or 12-or 15-year appeal process on a piece of property. For the record we are saying we intend everyone to work together to dramatically shorten the appeals process."

420 Chair Butler Closes public hearing on SB 268. Opens work session.

WORK SESSION, SB 268

430 Vice Chair Berger **MOTION: MOVES ADOPTION OF SB 268-1 AMENDMENT.**

433 Chair Butler Asks for any discussion.

434 Vice Chair Berger Comments, does not see much requirement in the amendment, but believes a clear statement needs to be made.

436 Chair Butler Asks if there are any objections to the motion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER

440 Vice Chair Berger **MOTION: MOVES SB 268 AS AMENDED TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION.**

442 Chair Butler Asks if there are any objections to the motion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER

448 Chair Butler Closes work session on SB 268. Opens public hearing on SB 269.

TAPE 168, SIDE B

PUBLIC HEARING, SB 269

030 Warner Explains SB 269, which eliminates statutory requirement for taxpayers appealing to the Tax Court to file certified copy of complaints and petitions (**EXHIBIT 8**). The process is not consistent due to taxpayers' lack of knowledge.

040 Breithaupt This is a housekeeping measure. Tried to gather statutory requirements that no longer have a purpose and sit as stumbling blocks. Opponents have not tried to take advantage of this, but he wants to be sure they don't.

054 Chair Butler Asks why there were three "no" votes on the Senate floor on this bill.

058 Warner Does not know why.

065 Chair Butler Closes public hearing on SB 269. Opens work session.

WORK SESSION, SB 269

067 Vice Chair Berger **MOTION: MOVES SB 269 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION.**

070 Chair Butler Asks if there are any objections to the motion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER

072 Vice Chair Berger **MOTION: MOVES SB 269 TO THE CONSENT CALENDAR.**

074 Chair Butler Asks if there are any objections to the motion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 9-0-0. MEMBERS VOTING AYE: BOQUIST, ESQUIVEL, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER

076 Chair Butler Closes work session on SB 269. Opens public hearing on SB 270.

PUBLIC HEARING, SB 270

078 Warner Gives overview of SB 270. Grants Tax Court authority to establish rules for selecting person to represent taxpayers before a Tax Court magistrate (**EXHIBIT 10**). Rules are designed to be consistent with the nature and use of the court.

- 085 Breithaupt Some situations can't be dealt with easily under the statutes. Gives an example of an elderly taxpayer who cannot afford an attorney or accountant. They want a son or daughter to represent them. This bill gives the court authority to provide for additional representation. Would exercise this authority to deal with family members who show the ability and have the consent of the taxpayer.
- 098 Vice Chair Berger Describe how you'd get there, if you can't list it in statute? Are you looking at someone who would only trust a family member?
- 101 Breithaupt Responds, it can be listed in statute. This is only relevant with respect to the Magistrate Division, the easy access section.
- 123 Rep. Hass Asks, wouldn't it be more beneficial for the taxpayer to have someone who knows what they're doing?
- 128 Breithaupt If they had an attorney, yes, but these people won't get an attorney. They either don't know how to get one or can't afford one. These are small income tax cases.
- 148 Rep. Riley Asks, are you asking for ad hoc rulemaking authority?
- 150 Breithaupt We are asking for authority to make rules to describe the kind of additional representatives. Will make sure they will provide protection for people and with consent of the taxpayer.
- 163 Chair Butler Gives example of elderly people in his experience as an accountant who would prefer not to have an attorney, but a minister or friend.

171 Breithaupt There would be a clear statement that the taxpayer understands that this person would speak for them.

175 Rep. Olson Can see that this is a streamlining process. Judge Breithaupt must have experienced a lot of these situations.

194 Chair Butler Closes public hearing on SB 270. Opens work session.

WORK SESSION, SB 270

196 Vice Chair Berger **MOTION: MOVES SB 270 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION.**

198 Chair Butler Asks if there are any objections to the motion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 8-0-1. MEMBERS VOTING AYE: BOQUIST, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER. EXCUSED: ESQUIVEL

210 Vice Chair Berger **MOTION: MOVES SB 270 TO THE CONSENT CALENDAR.**

212 Chair Butler Asks for any objections or discussion.

ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 8-0-1. MEMBERS VOTING AYE: BOQUIST, GALIZIO, KOMP, OLSON, RILEY, BERGER, HASS, BUTLER. EXCUSED: ESQUIVEL

215 Chair Butler

Closes work session. Adjourns meeting at 2:10 p.m.

Tape Log Submitted by:

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 267, Staff Measure Summary, Ayala, 5/23/05, 1 pp.
2. SB 267, Staff Measure Summary for Senate Revenue Committee, Ayala, 2/16/05, 1 pp.
3. SB 267, testimony of Judge Henry C. Breithaupt, 5/23/05, 2 pp.
4. SB 268, Staff Measure Summary, Warner, 1/26/05, 1 pp.
5. SB 268, Amendment SB 268-1, 5/23/05, Legislative Counsel, 3 pp.
6. SB 268, testimony of Judge Henry C. Breithaupt, 5/23/05, 2 pp.
7. SB 268, testimony of Douglas Ebner, 5/23/05, 1 pp.
8. SB 269, Staff Measure Summary, Warner, 2/7/05, 1 pp.
9. SB 269, testimony of Judge Henry C. Breithaupt, 5/23/05, 1 pp.
10. SB 270, Staff Measure Summary, Warner, 2/7/05, 1 pp.
11. SB 270, testimony of Judge Henry C. Breithaupt, 5/23/05, 1 pp.