

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

June 29, 2005 Hearing Room 357

3:00 P.M. Tapes 12 -13

(Corrected 7/15/05)

MEMBERS PRESENT: Rep. Wayne Krieger, Chair

Rep. Jeff Barker, Vice-Chair

Rep. Brian Boquist, Vice-Chair

Rep. Linda Flores

Rep. Greg Macpherson

STAFF PRESENT: Joe O’Leary, Counsel

Sam Litke, Committee Administrator

Cletus Moore, Committee Administrator

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

SJR 10 – Work Session

SB 424A – Work Session

SB 1047A – Work Session

SB 591 – Work Session

SB 1059A – Work Session

SB 955A – Work Session

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.

TAPE/# Speaker Comments

TAPE 12, A

003 Chair Krieger Calls the meeting to order at 3:10 p.m. and opens a work session on SJR 10.

SJR 10 – WORK SESSION

007 Cletus Moore Committee Administrator. Explains the -3 amendments to SJR 10 **(EXHIBIT A)** which replace the contents of the bill and deal with private property that shall not be taken for public use or for particular services of any man.

013 Sen. Jason Atkinson Senate District 2. Testifies in support of the -3 amendments. Refers to the book *Why Capitalism Works*. Refers to the recent U. S. Supreme Court decision that threatens infringement on private property.

037 Sen. Bruce Starr Senate District 15. Testifies in support of the -3 amendments. Discusses the U. S. Supreme Court ruling on *Kelo v City of New London* where the government can take private property from one owner and give it to another. Points out that the Oregon constitution has a decent private property rights clause, but it is imperative to make it clear to Oregonians what private property ownership means. Quotes from the dissenting justices' statements.

108 Sen. Floyd Prozanski Senate District 4. Testifies in support of the -3 amendments. Explains the use of eminent domain and the taking of property and transferring it to another private property owner. Urges placing safeguards in the state constitution against similar actions.

134 Rep. Boquist Refers to the decision. Notes that it was a 5-4 decision; however, Justice Kennedy wrote a separate concurring opinion that questions if they went too far.

147 Rep. Macpherson Asks if a statutory change might be more appropriate than amending the constitution.

153	Sen. B. Starr	Responds they didn't contemplate a statute change.
164	Chair Krieger	Refers to the original wording of the Declaration of Independence: life, liberty and property. Has been suggested to do a piece of legislation immediately to place this in statute as it will be nearly a year before an election can be held.
177	Sen. B. Starr	Offers that perhaps a ballot title can be drafted.
183	Sen. Prozanski	Responds to Rep. Macpherson that a "fix" could be done either way. Believes placing in the constitution would disallow future legislatures from making changes that might erode general principles. Doesn't think a special election would be appropriate.
209	Dave Hunnicutt	Oregonians in Action. Testifies in support of the -3 amendments. Discusses the <i>Kelo case</i> and the concurring and dissenting opinions. Continues that the government cannot take property for private use, only public use. Explains the circumstances of the case. Cites an example of what can happen. Asserts the -3 amendments prevent private property from being condemned and transferred to another private party. Suggests the language should be placed with the existing "taking clause" in the Oregon Constitution.
293	Dave Heynderickx	Acting Legislative Counsel. Believes this is a narrow provision. Advises that "public use" is difficult to define and involves more than should be done in a constitutional amendment. Mentions that language as currently written is limited to public bodies. Offers that some private parties have the power of eminent domain under Oregon law. Points out that there is a second condemnation provision in Article 11, Section 4 of the Oregon Constitution that says private property shall not be taken for public use by corporations. Discusses the definition of "corporation."
370	Hunnicutt	Comments that the proposed amendments deal with the "takings" clause and nothing in the measure would prohibit a municipality from condemning a property for nuisance abatement.

TAPE 13, A

012	Rep. Macpherson	Asks if this responds to any cases in Oregon where properties are being taken under the power of eminent domain and then turned over to private parties.
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015	Hunnicutt	Answers yes and describes two cases in the City of Keizer.
045	Rep. Macpherson	Assumes existing constitutional language “shall not be taken for public use” applied to the situations described.
051	Hunnicutt	Responds that is correct but reminds the committee that the public use language also appears in the U. S. Constitution and yet the Supreme Court ruled that “public use” really means “public purpose.”
063	Rep. Macpherson	Observes that the proposed new language focuses on the title to the property rather than use of the property. Asks about mixed-use occupancies.
077	Heynderickx	Replies that in most large developments, if property is condemned to build mixed-use space it is usually a lease arrangement rather than title. Is unaware of a situation where there is mixed use.
097	Rep. Macpherson	Believes a lease-hold interest is a form of ownership in real property. Cites some examples.
114	Heynderickx	Does not know of entire buildings being taken by eminent domain. Continues it is usually land to be used for a different purpose. Needs to review that issue.
129	Rep. Macpherson	Points to a “double negative” in Section 18.
146	Heynderickx	Suggests different language for clarification.
165	Rep. Boquist	Wants to insure permissive wording.
171	Heynderickx	Responds that “may not” eliminates any discretion that the public body would have.
185	Rep. Boquist	Quotes into the record from the U. S. Supreme Court opinion.

The following written material is submitted for the record without public testimony:

Cletus Moore	Committee Administrator. Submits copy of the <i>Kelo v City of New London</i> U. S. Supreme Court opinion (EXHIBIT C).
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195 Chair Krieger Closes the work session on SJR 10. Requests Sen. Starr and Sen. Prozanski meet with Rep. Boquist to clean up wording.

208 Vice-Chair Boquist Opens a work session on SB 424A.

SB 424A – WORK SESSION

210 Joe O’Leary Counsel. Explains SB 424A which amends the statute that currently requires the court when granting a Family Abuse Prevention Act restraining order award temporary custody of the children to the petitioner and allows the court to hold a hearing if exceptional circumstances affecting the children’s safety or welfare required additional information.

237 Rep. Barker **MOTION: Moves SB 424A to the floor with a DO PASS recommendation.**

VOTE: 5-0-0

AYE: In a roll call vote, all members present vote Aye.

242 Vice-Chair Boquist **The motion CARRIES.**

REP. MACPHERSON will lead discussion on the floor.

243 Vice-Chair Boquist Closes the work session on SB 424A and opens a work session on SB 1047A.

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SB 1047A – WORK SESSION

245 Joe O’Leary Counsel. Explains SB 1047A which provides local public safety coordinating councils the authority to form multi-disciplinary teams to review domestic violence fatalities in their jurisdictions and make recommendations to prevent such fatalities in the future. Advises of discussion on confidentiality provisions of SB 1047A and the exemption to the public meetings laws.

254 Rep. Barker **MOTION: Moves SB 1047A to the floor with a DO PASS recommendation.**

VOTE: 5-0-0

AYE: In a roll call vote, all members present vote Aye.

264 Chair Krieger The motion CARRIES.

REP. BARKER will lead discussion on the floor.

267 Chair Krieger Closes the work session on SB 1047A and opens a work session on SB 591.

SB 591 – WORK SESSION

268 Joe O’Leary Counsel. Explains SB 591 which clarifies a driver is not liable for a traffic violation for failing to stop for a pedestrian where the pedestrian is in the bicycle lane or the part of the roadway where the vehicle stops, stands or parks.

281 Rep. Boquist **MOTION: Moves SB 591 to the floor with a DO PASS recommendation.**

VOTE: 5-0-0

AYE: In a roll call vote, all members present vote Aye.

288 Chair Krieger The motion CARRIES.

REP. MACPHERSON will lead discussion on the floor.

293 Chair Krieger Closes the work session on SB 591 and opens a work session on SB 1059A.

SB 1059A – WORK SESSION

296 Joe O’Leary Counsel. Explains SB 1059A which gives the Department of Human Services statutory authority to place youth who have been found guilty except for insanity or who have been found mentally incompetent to stand trial in secure intensive community in-patient facilities as opposed to placement in the Oregon State Hospital as required under current law. Refers to the -4 amendments (**EXHIBIT B**) which make conforming changes with SB 39A which has already passed both chambers and amends the same section of statute.

339 Rep. Boquist **MOTION: Moves to ADOPT SB 1059A-4 amendments dated 6/23/05.**

VOTE: 5-0-0

342 Chair Krieger **Hearing no objection, declares the motion CARRIED.**

344 Rep. Boquist **MOTION: Moves SB 1059A to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 5-0-0

AYE: In a roll call vote, all members present vote Aye.

352 Chair Krieger **The motion CARRIES.**

REP. BARKER will lead discussion on the floor.

355 Chair Krieger Closes the work session on SB 1059A and opens a work session on SB 955A.

SB 955A – WORK SESSION

357 Sam Litke Committee Administrator. Explains SB 955A which deals with condominiums and planned communities and requires that they have a 30-year plan that includes maintenance, repair and replacement common elements of the association appropriate for the size and complexity of the property and elements within it.

367 Rep. Boquist **MOTION: Moves SB 955A to the floor with a DO PASS recommendation.**

VOTE: 5-0-0

AYE: In a roll call vote, all members present vote Aye.

374 Chair Krieger **The motion CARRIES.**

REP. MACPHERSON will lead discussion on the floor.

376 Chair Krieger Closes the work session on SB 955A and adjourns the meeting at 4:02 p.m.

EXHIBIT SUMMARY

- A. **SJR 10, -3 amendments, staff, 1 p**
- B. **SB 1059, A4 amendments, staff, 4 pp**
- C. **SJR 10, supreme court opinion, 58 pp**