

HOUSE COMMITTEE ON SMART GROWTH AND COMMERCE

April 30, 2001
3:15 PM

Hearing Room 50
Tapes 131 - 132

MEMBERS PRESENT: Rep. Bill Chair Witt, Chair
Rep. Betsy Vice-Chair Johnson, Vice-Chair
Rep. Tim Rep. Knopp, Vice-Chair
Rep. Alan Rep. Bates
Rep. Alan Rep. Brown
Rep. Janet Rep. Carlson
Rep. Richard Rep. Devlin
Rep. Bill Rep. Garrard
Rep. Laurie Rep. Monnes-Anderson
Rep. Vicki Rep. Walker

MEMBER EXCUSED: Rep. Jerry Krummel

STAFF PRESENT: Dan Clem, Administrator
Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: HB 3925 Work Session
HB 3424 Work Session
HB 2980 Work Session
SB 268-A Public Hearing and Work Session
SB 580-A Public Hearing and 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 131, A		
004	Chair Witt	Calls the meeting to order at 3:30 p.m. Opens a work session on HB 3925.
<u>HB 3925 WORK SESSION</u>		
008	Dan Clem	Committee Administrator. Gives a brief description of the bill. Indicates that the -2 amendments (EXHIBIT A) have been submitted for the committee's consideration. Describes the -2 amendments. Mentions that the Association of Oregon Counties (AOC) (EXHIBIT B) and League of Oregon Cities (LOC) (EXHIBIT C) have submitted testimony for the committee's consideration.
031	Chris Crean	Testifies in support of the -2 amendments to HB 3925. Indicates that the -2 amendments build upon the previous -1 amendments and reflect changes made in response to concerns raised by AOC and LOC. Clarifies that the measure as amended by the -2 amendments will be retroactive only to a single instance.
042	Chair Witt	Requests confirmation that the -2 amendments clarify the measure is prospective only, with the single exception.
045	Crean	Replies affirmatively. Describes the case for which the exemption is retained and explains that the bill's passage will not overturn the result of the current appeal. States that the bill seeks only the extension of the right of landowners to seek a land use determination in circuit court as opposed to the Land Use Board

		of Appeals (LUBA).
060	Rep. Garrard	Asks whether a circuit court can currently override a LUBA decision on the same issue.
063	Crean	Responds that in most cases the two are mutually exclusive and do not interact or conflict with one another.
070	Rep. Garrard	Asks whether a landowner can take their issue to circuit court in the event that LUBA hands down a decision that they do not like.
073	Crean	Replies affirmatively.
074	Rep. Bates	Concludes that the bill offers the circuit court process as an alternative to LUBA.
077	Crean	Confirms Rep. Bates' conclusion and adds that the original bill required this type of claim be sent to circuit court.
086	Rep. Bates	Requests confirmation that the bill as amended by the –2 amendments provides the landowner with the choice of pursuing the matter through either LUBA or circuit court.
089	Crean	Replies affirmatively. Indicates that under current law the only way to get one's case into circuit court is if the local government issues an order to cease work on the project. Notes that local governments can currently choose circuit court as a venue for settling disputes and says HB 3925 extends the same ability to landowners.
098	Chair Witt	Asks if it is standard procedure for local governments to implement an enforcement action.
100	Crean	Answers that LUBA is generally given strong deference. States that deference is lost in circuit court but adds there are other reasons why circuit court may be seen as a more attractive option, such as cost.
112	Rep. Devlin	Says that under the existing system some local governments have a two- or three-tiered process. Asks how long it can take to adjudicated disputes through the current process.
120	Crean	Answers that the length of conflict resolution can be anywhere between 60 days to a year, depending upon the nature of the dispute.
128	Rep. Devlin	Remarks that local governments are usually reasonable about such disputes, but acknowledges this is not always the case. Wonders what sort of position a builder is placed in when up against a belligerent local government.
133	Crean	Answers that if the project is already underway a local government can halt work while the builder has liabilities already in place. Reiterates that HB 3925 does not change substantive land use law or criteria, but merely provides that disputes may be adjudicated in a different venue.
158	Kathryn Beaumont	City of Portland. Testifies in opposition to HB 3925 (EXHIBIT D). States the bill is unnecessary and does not address a serious problem. Asserts the measure undercuts local processes and eliminates citizen participation. Opines the process set forth by the bill would be problematic for those who cannot afford lawyers. Comments on the risk of inconsistent determinations being handed down from county to county. Mentions that both sides sought compromise but were unable to reach one.
212	Vice-Chair Johnson	Asks whether the individual case that is affected retroactively is located in Multnomah County.
214	Beaumont	Answers yes.
216	Rep. Bates	Inquires whether the circuit court process allows testimony to be

		submitted from neighbors to disputes.
219	Beaumont	Replies negatively. Says locals may petition the court if they have a lawyer, but the court is not obliged to accept the petition to participate.
228	Rep. Bates	Mentions that landowners in his district have had numerous dealings with LUBA. Asks whether disputes should be settled through local planning groups.
243	Beaumont	Answers that the current process for vested rights claims works that way, with appeals being heard by LUBA. Asserts that this type of land use issue impacts neighbors and says those neighbors should have the right to be heard.
254	Rep. Bates	Wonders whether an appeal is allowed when an individual disagrees with a LUBA decision.
260	Beaumont	Replies that currently an individual can take their case to the court of appeals if they disagree with the decision. Says the timetable for such decisions vary greatly depending upon the particular facts of the case.
278	Rep. Garrard	States that constituents in his district have little confidence in LUBA. Agrees that LUBA provides a statewide perspective in applying state rules, but says many people prefer local control in such matters, something LUBA has failed to acknowledge in the past.
292	Beaumont	Clarifies that LUBA reviews cases and makes determinations based upon local code as it applies to state standards. Emphasizes that LUBA takes into account case law from the particular jurisdiction.
308	Rep. Devlin	Requests a definition of "vested right."
311	Beaumont	Defines vested right as the right to complete a use that was permitted or lawful at the time it was started.
319	Rep. Devlin	Asks what is the proper role of public input and participation in such a process.
326	Beaumont	Replies that neighbors may provide important testimony regarding what has and should occur with regard to a piece of property. Mentions that some proceedings are held without opening them up for public testimony.
341	Rep. Devlin	Asks whether a city would have the right to present evidence to support its position in a circuit court proceeding.
350	Beaumont	Replies that the city in question would be allowed to present any information it believed to be relevant to its case.
359	Rep. Knopp	MOTION: Moves to ADOPT HB 3925-2 amendments dated 4/25/01.
361		VOTE: 10-0-1
		EXCUSED: 1 - Krummel
	Chair Witt	Hearing no objection, declares the motion CARRIED.
363	Rep. Knopp	MOTION: Moves HB 3925 to the floor with a DO PASS AS AMENDED recommendation.
366	Rep. Bates	Indicates he will be looking further into the matter.
370	Rep. Garrard	Opines that the bill restores local control in that referral of land use decisions to circuit court leads to local judges making determinations rather than state agencies.
384	Rep. Devlin	Notes that the Division of Land Conservation and Development (DLCD) has taken no official position but is neutral with regard to the bill. States he supports the motion.

391 Chair Witt Emphasizes the need to be mindful of the cost to landowners of delaying building projects. Opines that circuit court is the appropriate place to make vested right determinations.

397 **VOTE: 8-2-1**
AYE: 8 - Bates, Brown, Carlson, Devlin, Garrard, Knopp, Monnes Anderson, Witt
NAY: 2 - Johnson, Walker V
EXCUSED: 1 - Krummel
Chair Witt The motion CARRIES.

404 Chair Witt **REP. GARRARD will lead discussion on the floor.**
Closes the work session on HB 3925 and opens a work session on HB 3424.

TAPE 132, A
HB 3424 WORK SESSION

005 Dan Clem Committee Administrator. Gives a brief description of the bill. Indicates that the -2 amendments (**EXHIBIT E**) have been submitted for the committee's consideration. Provides a description of the -2 amendments.

017 Jeff Carlson Iron Workers Union Local 29. Testifies in support of HB 3424 and the -2 amendments. Says the -2 amendments specify that the bill deals solely with first-year subcontractors.

030 Rep. Monnes-Anderson Asks where the public may obtain access to the contracts.

037 Carlson Replies that the public has access to contracts through the Bureau of Labor and Industry (BOLI).

044 Rep. Monnes-Anderson Wonders whether BOLI will be able to handle any additional workload related to the provision of copies of contracts to the public.

046 Carlson Replies affirmatively, adding that Commissioner Jack Roberts does not oppose the bill.

055 Chair Witt **MOTION: Moves to ADOPT HB 3424-2 amendments dated 4/27/01.**

057 **VOTE: 10-0-1**
EXCUSED: 1 - Krummel
Vice-Chair Johnson Hearing no objection, declares the motion CARRIED.

058 Chair Witt **MOTION: Moves HB 3424 to the floor with a DO PASS AS AMENDED recommendation.**

066 **VOTE: 10-0-1**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 1 - Krummel
Vice-Chair Johnson The motion CARRIES.

074 Vice-Chair Johnson **REP. BATES will lead discussion on the floor.**
Closes the work session on HB 3424 and opens a work session on HB 2980.

HB 2980 WORK SESSION

080 Dan Clem Committee Administrator. Gives a brief description of the bill. Indicates that the -1 amendments (**EXHIBIT F**) have been submitted for the committee's consideration. Mentions the measure has a subsequent referral to the House Committee on School Funding and Tax Fairness/Revenue (Revenue

		Committee).
087	Jon Chandler	Oregon Building Industries Association (OBIA). Testifies in support of the –1 amendments to HB 2980.
097	Michelle Deister	LOC. Testifies in support of the –1 amendments to HB 2980. Says that the parties to the bill have succeeded in addressing their mutual concerns. Acknowledges that there may be some minor changes that need to be made to the bill once it moves to the Senate. Assures that the bill accomplishes what it sets out to do.
107	B.J. Smith	Government Relations Director, Clackamas County. Testifies in support of the –1 amendments to HB 2980. Asserts that the bill is important for relations between builders and local communities. Indicates that work groups have refined the measure to make it amenable to all sides, and the resulting –1 amendments create a good bill.
123	Chander	Provides a section-by-section analysis of the –1 amendments.
174	Chandler	Continues the section-by-section review of the –1 amendments. Says it is important to local governments that systems development charges be put through a review process. Indicates the bill clarifies that the application of the methodology can be challenged, but not the methodology itself.
218	Chair Witt	Wonders what happens if the local government has not adopted a procedure.
221	Chandler	Replies that local governments must make it clear up front as to whether one has been adopted.
226	Rep. Bates	Asks whether this double charge is accepted by LOC.
230	Deister	Replies that LOC opposed it in the original bill but supports the bill as amended.
240	Chandler	Clarifies that the original bill is replaced by the –1 amendments. Comments that it was simpler to replace the original than to amend it.
250	Rep. Monnes-Anderson	Requests explanation as to whether there is no other recourse.
262	Smith	Replies that the original bill allowed only judicial review, and that the language deleted does not change this.
269	Chandler	Continues reviewing the –1 amendments. Explains the difference between reimbursement fees and improvement fees.
300	Rep. Monnes-Anderson	Remarks that the process seems cumbersome. Wonders how the cost of improvements is calculated.
316	Chandler	Describes the current process for calculating reimbursement fees, acknowledging that it complex.
332	Rep. Monnes-Anderson	Asks who makes the calculation of reimbursement fees.
335	Smith	Replies that each county has a methodology expert who calculates the reimbursement fees. Explains that costs are known with regard to reimbursement fees, while improvement fees require estimates to be made for work that will be performed in the future.
365	Chandler	Continues reviewing the –1 amendments.
TAPE 131, B		
020	Chandler	Continues reviewing the –1 amendments.
038	Chair Witt	Asks whether all parties agree on the language of the –1 amendments, save for the small technical changes mentioned earlier.
041	Chandler	Answers yes.

043	Rep. Monnes-Anderson	Asks who has voiced approval for the amended measure.
046	Smith	Concedes that many who are parties to the bill have not yet seen the –1 amendments.
050	Vice-Chair Johnson	Notes that there are other bills moving through the process that relate to systems development charges but that this bill seems relatively narrow in focus.
054	Chair Witt	MOTION: Moves to ADOPT HB 2980-1 amendments dated 4/30/01.
057		VOTE: 10-0-1
	Vice-Chair Johnson	EXCUSED: 1 - Krummel
061	Rep. Devlin	Hearing no objection, declares the motion CARRIED. Asks whether the parties to the bill are continuing to work to make the necessary refinements.
062	Smith	Replies affirmatively.
064	Chandler	Expresses confidence that any changes made to the bill will be acceptable to all parties.
071	Rep. Monnes-Anderson	Asks if the measure imposes a cap on charges.
073	Chandler	Answers no.
075	Rep. Bates	Requests that the Revenue Committee solicit additional testimony from entities that will be impacted by the bill.
088	Rep. Witt	MOTION: Moves HB 2980 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the Committee on School Funding and Tax Fairness/Revenue.
090	Rep. Bates	Says he will support the motion but reserves the right not to support the bill once it moves to the Revenue Committee.
092	Rep. Garrard	Says he is glad that LOC supports the bill.
096	Chair Witt	Thanks the parties to the bill for coming to agreement on the measure.
104		VOTE: 9-0-2
	Vice-Chair Johnson	EXCUSED: 2 - Carlson, Krummel
108	Vice-Chair Johnson	Hearing no objection, declares the motion CARRIED. Closes the work session on HB 2980 and opens a public hearing on SB 268-A.
<u>SB 268-A PUBLIC HEARING</u>		
110	Rep. Al King	House District 44. Testifies in support of SB 268-A. States that under federal law states now have the option to facilitate reciprocal licensing. Says that absent such efforts at the state level reciprocal licensing will be performed at the federal level. Asserts that reciprocal licensing will make Oregon insurance companies more competitive.
160	Joel Ario	Administrator, Insurance Division, Department of Consumer and Business Services (DCBS). Testifies in support of SB 268-A (EXHIBITS G) and provides informational materials (EXHIBIT H) . Refers to a letter submitted to Sen. Tony Corcoran (EXHIBIT I) Mentions that the –3 amendments (EXHIBIT J) were prepared initially but are no longer needed. Says he is not aware of any other amendments to the bill.
222	Lana Butterfield	Professional Insurance Agents of Oregon/Idaho (PIAO/I). Testifies in support of SB 268-A (EXHIBIT K) .
232	Vice-Chair Johnson	Closes the public hearing and opens a work session on SB 268-

SB 268-A WORK SESSION

235 Rep. Monnes-Anderson
246 Clem

264 **Chair Witt**

267

Vice-Chair Johnson

270 Vice-Chair Johnson

SB 580-A PUBLIC HEARING

273 Nikki Whitty

297 Hasina Squires

302 Rep. Devlin
304 Squires
306 Rep. Monnes-Anderson
310 Whitty

325 Vice-Chair Johnson

SB 580-A WORK SESSION

330 **Rep. Knopp**

332

Vice-Chair Johnson

340 **Rep. Knopp**

342

Vice-Chair Johnson

345 Vice-Chair Johnson

A.

Wonders why the measure does not have a subsequent referral to the Revenue Committee.

Explains that the bill has a statement of no revenue impact, while the fiscal statement indicates no impact during the current biennium and savings for the next.

MOTION: Moves SB 268-A to the floor with a DO PASS recommendation.

VOTE: 9-0-2

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

EXCUSED: 2 - Krummel, Walker

The motion CARRIES.

REP. CARLSON will lead discussion on the floor.

Closes the work session on SB 268-A and opens a public hearing on SB 580-A.

Coos County Commissioner. Testifies in support of SB 580-A. States that the measure eliminates the requirement that county treasurers review bonds. Indicates that the Treasurer’s Office reviewed the bill while it was in the Senate and amended it to clarify to whom it applies.

Special Districts Association (SDA). Testifies in support of SB 580-A.

Asks whether there is any known opposition to the bill.

Replies negatively.

Wonders why AOC is not here to testify on the measure.

Responds that members of AOC legislative committee have expressed support for the measure.

Closes the public hearing and opens a work session on SB 580-A.

MOTION: Moves SB 580-A to the floor with a DO PASS recommendation.

VOTE: 7-0-4

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

EXCUSED: 4 - Brown, Garrard, Krummel, Walker

The motion CARRIES.

MOTION: Moves SB 580-A be placed on the Consent Calendar for floor consideration.

VOTE: 7-0-4

EXCUSED: 4 - Brown, Garrard, Krummel, Walker

Hearing no objection, declares the motion CARRIED.

Closes the work session on SB 580-A and adjourns the meeting at 4:55 p.m.

Submitted By,

Reviewed By,

Patrick Brennan,

Dan Clem,

EXHIBIT SUMMARY

- A – HB 3925, -2 amendments, staff, 9 pp.**
- B – HB 3925, testimony, Art Schlack, 1 p.**
- C – HB 3925, testimony, Linda Ludwig, 1 p.**
- D – HB 3925, testimony, Kathryn Beaumont, 3 pp.**
- E – HB 3424, -2 amendments, staff, 1 p.**
- F – HB 2980, -1 amendments, staff, 7 pp.**
- G – SB 268-A, testimony, Joel Ario, 2 pp.**
- H – SB 268-A, informational materials, Joel Ario, 2 pp.**
- I – SB 268-A, letter, Joel Ario, 2 pp.**
- J – SB 268-A, -3 amendments, Joel Ario, 5 pp.**
- K – SB 268-A, testimony, Lana Butterfield, 1 p.**