

**SENATE COMMITTEE ON GENERAL GOVERNMENT AND
TRANSPORTATION**

February 20, 2001 Hearing Room 343
3:00 pm Tapes 35 - 38

MEMBERS PRESENT: **Sen. Gary George, Chair**
 Sen. Rick Metsger, Vice-Chair
 Sen. Margaret Carter
 Sen. Bev Clarno
 Sen. Ken Messerle

STAFF PRESENT: **Patrick Balducci, Administrator**
 Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD:
 ODOT Reports on 1999 Session Bills
 SB 296 Public Hearing
 SB 322 Public Hearing

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 35, A		
108	Sen. Gary George	Chair. Opens meeting at 1:05 pm. Introduces Director Crunican.
114	Grace Crunican	Director, Oregon Department of Transportation (ODOT). Introduces Craig Greenleaf and Mike Marsh. States they will give updates on some bills from the 1999 Session (EXHIBIT A).
116	Craig Greenleaf	Transportation Development, ODOT. SB 773 describes handling highway system. Created an Access Advisory Committee representing several areas. The committee created an access management rule. Defines the rule.
193	Chair George	Comments on experience in Florence, Oregon, in which a development was held up by ODOT. Is the process in place now going to work better?
209	Greenleaf	Explains his version of the development but explains circumstances of adjoining property interests affecting how to handle the development and other issues. Says the rule was not in place yet but in the future it should be easier. Addresses SB 86, which will sunset next session. Access management questions need to be pursued.
280	Chair George	Comments on a Newberg tire business on Hwy 99 that could not get trucks in and out. Following the construction of an ODOT- sponsored project, complaints were received about the ODOT process.
297	Greenleaf	Answers he cannot speak to these complaints and the process may not have given answers as quickly as wanted. At the time rules were adopted a review process was implemented.
324	Crunican	States that these bills took more time to set up than the legislature allowed.
360	Mike Marsh	ODOT. Discusses SB 614 to require cost accounting system by

438	Chair George	programs. Refers to Kay VanSickle on Hwy 99 projects. Says that Ms. VanSickle once responded to one of his requests in a few hours, including costs and breakdowns.
TAPE 36, A		
030	Marsh	Describes HB 2478 implementation. Describes the program budgets and expenditures. Explains the Highway Construction Plan required by the bill.
090	Crunican	States this is the first time flexibility was built in the budget process.
095	Marsh	Discusses Section 8 construction plan quarterly status report. Discusses Section 9 environmental cost study. Discusses Section 10 projected biennial project expenditures.
117	Chair George	Asks if the federal transportation agency is going to compensate the state for endangered species. Asks about federal transportation to compensate for initial costs.
120	Crunican	Not aware that federal government would pay for any costs to implement rules and rates.
129	Chair George	Asks if there were any estimate of long-term damage caused by ODOT as a result of not doing ditching.
132	Crunican	Replies ODOT is doing the ditching they are supposed to.
140	Chair George	Asks if there is a pinch in the ditching.
142	Crunican	Explains it is a money issue.
148	Marsh	Describes Section 10 as required by HB 2478.
170	Sen. Metsger	Asks how much spending of ODOT in categories are to private contractors.
175	Marsh	Replies about 75 percent of entire budget goes through private contractors. Within construction around 66 percent within the highway area.
187	Sen. Metsger	States there is a need to communicate to the public the fact that highway projects are being contracted out to private firms on a bid basis.
212	Sen. Carter	Asks about the charge against ODOT regarding environmental damage.
218	Crunican	Describes Tumult Creek incident. Culverts were cleaned out and water was diverted to old creek bed and back. Says the contractor did not have permit on site to redivert the water. Oregon Fish and Wildlife complained and ODOT then rediverted water. However, a few baby fish were killed and ODOT was in violation of the Endangered Species Act. The State Police intervened and ODOT workers are susceptible to arrest.
370	Chair George	Asked if any employees would go to jail.
378	Crunican	Explains they did not know that it is a misdemeanor to violate the Endangered Species Act.
385	Sen. Carter	Asks Director Crunican if she had planned to resign. Compliments Crunican's job with ODOT. Said that it is a loss to the Legislature to lose Director Crunican.
388	Crunican	Said that two months ago she had not planned to resign.
Tape 35, B		
006	Crunican	Reports on HB 2680 from the 1999 Legislative Session required the Director to form a committee and examine how state and federal environmental and land use regulations affect state and local road construction, preservation, and maintenance costs. Describes the frustration with natural resource agencies. Major

		transportation projects are not integrated with local land use policy.
040	Crunican	Continues presentation. Says ODOT advocates early involvement by the natural resource agencies and land use agencies. Suggests the agencies involved come together with a memorandum of intent. They would include Federal Highway Administration, National Marine Fisheries Service, Environmental Protection Agency, Army Corps of Engineers, U. S. Fish, ODOT, DLCDC, ODFW, Division of State Lands and DEQ and local government. The committee recommended the memorandum focus on six strategies for process improvement.
094	Chair George	Concurs with recommendations.
108	Crunican	Explains how the ecosystem and the transportation system come together with the agencies.
113	Sen. Metsger	Asks for suggestions to the legislature in bringing federal involvement in moving forward with the transportation process.
130	Crunican	Answers that ODOT highway funds can only be spent on road projects. Describes natural incidents. Other agencies are not adequately funded to review ODOT projects. The cooperative approach with federal agencies could be better. Streamlining is a needed collaborative process.
173	Sen. George	Asks about employees being at the risk of arrest in the incident previously described.
177	Crunican	Responds some fish were killed and ODOT did not have permit on site. ODOT has now clarified the law to its employees. ODOT is now making sure there are biologists available to assess situations.
197	Chair George	Asks if the employees have no protection. Was this part of the salmon plan.
199	Crunican	Answers the law was violated. However, there was a permit in a computer but not on site.
216	Sen. Messerle	States he has been following this incident from the beginning. Comments this is a heads up for all agencies and the private sector. Says the department handled the situation properly.
241	Crunican	Replies that Clackamas County got caught in a transition period.
255	Sen. Metsger	Responds on the circumstances. Regulations need to be enforced and in good faith for state employees. Employees have to rely on those directing them.
279	Crunican	Relates that civil penalties versus criminal intent may need to be defined for future enforcement measures.
315	Chair George	Asks if employees are going to leave the department because of the lack of training and fear of possible arrests.
320	Crunican	Says the employees have been informed of the situation and they now know training is going to be provided.
340	Chair George	Closes informational hearing. Opens public hearing on SB 296.
SB 296 PUBLIC HEARING		
353	Patrick Balducci	Committee Administrator. Explains SB 296.
400	Kelly Taylor	ODOT. Gives background on SB 296. Explains that ODOT worked with the new federal regulations on commercial motor vehicle railroad crossing offenses and commercial driver license suspensions. ODOT will lose several million dollars in federal highway funds if they do not comply with federal regulations (EXHIBIT B) .

011	Taylor	Describes Railroad crossing offenses described already existing in Oregon law and a proposed new offense. Describes commercial drivers license suspensions. Asks committee to pass this bill.
036	Sen. Messerle	Asks if the suspensions are the minimum that the federal government will allow to comply.
042	Taylor	Answers they are current specific suspensions in the Motor Vehicle Code matching the federal regulations.
048	Bob Russell	Oregon Trucking Associations. Explains the need to parallel state and federal regulations. Says the federal regulations include truck and railroad crossings. Suggests adopting federal regulations and referencing in statutes. At the federal level, they use the word “disqualify” instead of “suspension”. Supports the intent of SB 296 but asks to adopt with federal regulations (EXHIBIT C) .
101	Sen. Metsger	Asks if the truckers prefer the federal language rather than the SB 296 language.
112	Russell	The way it is worded is different from the federal regulation. The federal government changes from time to time. If federal government is referenced, truckers know what is expected. Asks to adopt the whole book.
127	Sen. Messerle	Says it would be simpler to automatically comply with federal rules and regulations.
132	Taylor	States that SB 296 is consistent with how commercial drivers license statutes have been enacted since 1989.
150	Chair George	Asks about a new offense.
152	Taylor	Says it exists in Oregon statute but not for these vehicles.
160	Sen. Messerle	Asks how long ago the federal government changed the regulations.
163	Taylor	Answers about a year ago. This was discussed with DMV and they thought commercial driver’s license should be consistent with statute.
171	Sen. Messerle	Asks if there would be a problem in printing driving manuals with changing federal rules.
176	Taylor	Driver’s manuals are printed after each session.
180	Sen. Messerle	Asks if the truck drivers get a federal manual
184	Russell	Oregon Drivers Manual is available to Oregon licensed drivers. Describes wording of “suspension” versus “disqualify.” Out of state drivers would benefit from the federal manual. All commercial drivers are given a federal book when they go to work.
198	Sen. Messerle	Asks if all commercial drivers provided with the federal regulation book.
202	Russell	Says he does not know of an instance when drivers are not provided the book.
207	Chair George	Asks about the suspension of driver’s license.
214	Russell	Says they need the uniformity of federal regulations.
254	Sen. Messerle	Asks if there is a down side to the federal regulations.
261	Taylor	Explains SB 296 brings ODOT into compliance but with federal regulations there may be a fiscal impact.
284	Dee Bridges	Oregon Forest Products Transportation Association. Concurs with Mr. Russell.
288	Everett Cutter	Oregon Railroad Association. Supports SB 296. Highway-railroad intersection safety is being addressed. Describes truck-

		train accidents at crossings. Discusses scheduled education seminars on the issue of truck-train safety (EXHIBIT D) .
363	Chair George	Describes clearance problems of trucks in SB 296.
380	Sen. Metsger	Asks whether federal or state regulations should be followed.
384	Cutter	Answers he is not familiar with federal regulations or the amendment. Supports SB 296.
403	Chair George	Asks if the committee wants more clarification.
405	Sen. Messerle	Answers he suggests more discussion on this.
410	Chair George	Closes pubic hearing on SB 296. Opens public Hearing on SB 322
SB 322 PUBLIC HEARING		
TAPE 37, A		
009	Balducci	Explains SB 322 and amendment.
018	Claudia Howells	Railroad Division Manager, ODOT. Supports SB 322. Explains UAX, unauthorized public crossing. UAX is a crossing that was a private road and through use has transitioned to the public. Shows pictures of a UAX and describes this example of a very busy nursery situated near a rail line and driveway crossing. Describes different kinds of crossings. Describes a “deeded” crossing and a “renegade” crossing (EXHIBIT E) .
093	Howells	Continues explaining the problems of different kinds of private railroad crossings. Suggests local government through land use rules to provide any changes affecting private railroad crossings. Suggests exploring other ways to deal with UAX. Stresses improving private crossing safety.
160	Howells	Continues explaining complaints of citizens about crossing blockages. Suggests converting to a civil process rather than criminal penalties. Explains rules adopted. Explains increase in \$3,000 penalty. Asks committee to pass this bill.
205	Sen. Metsger	Asks to clarify not generating revenue because it is offset.
214	Howells	Explains fees paid by railroads operated in Oregon fund budget. Penalty money in the rail fund account offsets the amount charged railroads.
223	Sen. Metsger	Reiterates what is charged the railroads goes down if there are more civil penalties.
228	Howells	Answers that is true.
230	Sen. George	Comments that what SSB 322 does is to take some kind of action.
234	Howells	Explains those crossings not susceptible to public road authority would be the responsibility of the railroad and the user through contract.
268	Howells	Discusses the distinction between the government’s responsibility and private agreements between a railroad and a private party.
298	Chair George	Says he agrees a solution is needed.
330	Everett Cutter	Manager, Oregon Railroad Association representing Burlington Northern Sante Fe and the Union Pacific Railroad. Introduces Mrs. Carolyn Larson, counsel for Union Pacific Railroad, primarily on crossing matters. Opposes SB 322. Explains amendments and why SB 322 is not supported. Maintains ODOT should have authority over the UAX crossings. Public authority should maintain states oversight on these particular crossings (EXHIBIT F) .
386	Sen. George	Asks what mechanisms broke down that SB 126 did not accomplish.
400	Cutter	Responds that the primary mechanism is the reluctance of local

		jurisdictions to take on the authority of the crossings. Explains there has not been a definition of an UAX, nor is it known how many of them there are. The railroads wish to cooperate with ODOT to find a better solution.
405	Chair George	Asks what other states do in similar situations.
TAPE 38, A		
011	Cutter	Other states distinguish between private and public crossings. Describes how private crossings become unauthorized crossings. Does support changing crossing blocking violations from criminal penalty to civil proceeding. Explains that crossing blockage problems have been alleviated and does not support increasing penalties.
025	Carolyn Larson	Counsel for Union Pacific. Getting rid of the statute on UAXs would turn them into private crossings. ODOT does not have jurisdiction over private crossings except where it is high-speed rail territory. Describes incidences using private crossings after housing developments have been built. Discusses alternate access over gated crossings. Explains this issue is nation-wide and other states do not provide a good model. States that effort is being put forth to decrease crossing blockages. Feels the fine should not be increased.
120	Chair George	Asks about access management in developments impacting a state highway.
138	Larson	Responds she does not know about other states but if cities notify railroads when there is a development it would be very helpful.
144	Chair George	Asks interested parties to keep in touch with the committee. Says the committee will try to address the issue.
150	Sen. Metsger	Restates the problem and agrees to working on a solution.
184	Chair George	Adjourns meeting at 5:25 p.m.

Submitted By,

Reviewed By,

Nancy Masee,
Committee Assistant

Patrick Balducci,
Administrator

EXHIBIT SUMMARY

- A – Written Testimony, Grace Crunican, 78 pp**
- B – SB 296, Written testimony, Kelly Taylor, 1p**
- C – SB 296, Written testimony, Robert Russell, 1 p**
- D – SB 296, Written testimony, Everett Cutter, 3 pp**
- E – SB 322, Written testimony, Claudia Howells, 15 pp**
- F – SB 322, Written testimony, Everett Cutter 2 pp**