

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 03, 1999 Hearing Room HR E

8:30 a.m. Tapes 21 - 23

MEMBERS PRESENT: Rep. Roger Beyer, Chair

Rep. Dan Gardner, Vice-Chair

Rep. Tim Knopp, Vice-Chair

Rep. Jason Atkinson

Rep. Bill Morrisette

Rep. Terry Thompson

Rep. Jackie Winters

MEMBER EXCUSED:

STAFF PRESENT: Keith Putman, Administrator

Kevin E. Wells, Administrative Support

MEASURE/ISSUES HEARD: HB 2057, HB 2058, HB 2383

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 21, A		
<u>PUBLIC HEARING HB 2383</u>		

003	Chair Beyer	Calls meeting to order at 8:30 a.m. Opens Public Hearing on HB 2383. Asks staff of review of the bill.
010	Keith Putman	Committee Administrator. Reviews bill, which revises statutes concerning adverse possession. Discusses legal issue of adverse possession.
023	Chair Beyer	Calls Rep. Shetterly to testify.
025	Rep. Shetterly	District 34. Testifies in support of HB 2383. States that HB 2383 puts additional stipulations on adverse possession laws. Comments that adverse possession laws were designed to encourage utilization of land. Suggests that the law may be anachronistic today.
054	Rep. Thompson	Inquires as to the definition of "honest belief" and how to prove it in court.
056	Rep. Shetterly	Clarifies the definition and how it is applied.
072	Chair Beyer	Thanks Rep. Shetterly for testimony and calls Ray Godfrey to testify.
080	Ray Godfrey	Minister, Independence. Requests supports of HB 2383. (EXHIBIT A) Emphasizes protection of personal property rights is essential to protection of personal liberty. Offers personal experience to support the bill.
130	Godfrey	Comments that public entities cannot lose land by adverse possession. Suggests that citizens should have same protection.
160	Chair Beyer	Thanks Godfrey for his testimony. Calls Elmer and Geraldine Stoller and Don Shellenberg.
175	Don Shellenberg	Oregon Farm Bureau. Supports the bill. Introduces the Stollers.
187	Geraldine Stoller	Elmer Stoller Farms Inc. Urges passage of the bill. Emphasizes that adverse possession means that someone can place something on your property and later claim your land. Notes that adverse possession is like stealing.
212	Chair Beyer	Asks Stollers to relate their story.
220	G. Stoller	Narrates how part of their farm was taken. Explains many of their resources have been used by this issue.
230	Elmer Stoller	Explains lawyer advised them to raise a fence on their property line. Relates how their neighbor knocked down the fence and continues to dispute ownership of the property.

275	Chair Beyer	Agrees that "adverse possession" is akin to stealing. Thanks the Stollers.
290	Clyde Rieger	States his support for passage of HB 2383. Relates personal experience of his land being taken by adverse possession. Defines adverse possession.
340	Rieger	Emphasizes that adverse possession is a legal way to steal property. Notes that government bodies cannot lose land through adverse possession.
380	Rieger	States that adverse possession is an old law from homesteading days.
TAPE 22, A		
003	Rep. Winters	Asks Rieger what his legal costs have been.
004	Rieger	Answers over \$8000 plus value of his land.
006	Chair Beyer	Thanks Rieger for testimony.
011	Genoa Ingram	Oregon Association of Realtors (OAR). Introduces Andrea Bushnell. States support of bill. (EXHIBIT B)
021	Andrea Bushnell	General Counsel, OAR. Provides legal background. Lists elements necessary for adverse possession: <ul style="list-style-type: none"> • Actual possession (open, notorious, exclusive and hostile possession continuous for 10 years) • Taken under Color of Title or Claim of Right
035	Bushnell	Clarifies what constitutes "actual possession." Notes that cattle merely walking over property can lead to adverse possession.
050	Bushnell	Discusses "open and notorious use."
055	Bushnell	Explains "exclusive use."
060	Bushnell	Examines the legal issue of "hostility."
077	Bushnell	Discusses Color of Title or Claim of Right, a potential problem area.
093	Bushnell	Explains "continuous use." Reviews statutory provisions. Notes the statute opens areas of potential litigation.

131	Bushnell	Supports the bill and notes it resolves many issues.
152	Rep. Thompson	Comments on how survey lines are commonly in error; asks if this bill will result in more adverse possession cases.
158	Bushnell	Responds in the affirmative. States there will be corrections to titles.
171	Rep. Thompson	Agrees that technology has helped in many ways, but warns that clear guidelines are needed for property issues.
177	Rep. Morisette	Notes rights of way are not always on county records.
183	Bushnell	Answers that she is aware of situation, but defers to Matt Farmer.
195	Matt Farmer	Oregon Association of Realtors. Explains the 804 Trail case. Notes that HB 2383 addresses different issues.
209	Rep. Atkinson	Asks what is statutory time on easements (to use or enforce an easement) and if that relate to adverse possession.
229	Bushnell	Explains how easement contracts work. States that easements are subject to adverse possession law as any other property. Notes that easements of public record pass with title of land.
261	Rep. Thompson	Asks about the 804 Trail; seeks clarification.
274	Farmer	Reviews the 804 Trail case. Emphasizes that no one lost property in that case, only that they are burdened by easements.
289	Rep. Thompson	Asks if there is potential for extension of the trail.
296	Farmer	Affirms the possibility.
301	Rep. Atkinson	Discusses a similar case in California. Asks if the bill would add further protection to non-private land.
337	Bushnell	States that HB 2383 will clear up these issues, but that land that is not subject to property tax would not be protected.
353	Chair Beyer	Asks if HB 2383 will change open range laws.
357	Bushnell	States belief that HB 2383 will not change those laws.

373	Chair Beyer	Asks what happens if an assumed property line is found to be an error.
385	Bushnell	Replies that HB 2383 probably would not impact the situation unless the taxing situation changes.
TAPE 21, B		
009	Chair Beyer	Asks for clarification of when ten years begins.
013	Farmer	Responds that the time begins when possession begins.
023	Chair Beyer	Asks if change of possession has an effect.
024	Farmer	Replies in the negative. States HB 2383 will not change the situation.
030	Chair Beyer	Asks if a property line dispute interrupts the ten year possession rule.
036	Farmer	Answers that if there is a dispute, notorious possession ends.
053	Chair Beyer	Seeks further clarification.
069	Farmer	States that cases that have already occurred will not be effected by HB 2383.
082	Chair Beyer	Asks what the law was before 1989.
085	Farmer	States there were only statutory changes
090	Rep. Morrisette	Asks who is the opposition to HB 2383.
095	Ingram	Indicates that, to date, no opposition has been identified.
099	Chair Beyer	Asks if written easements are subject to ten year rule.
104	Bushnell	Replies that with a written agreement the use is permissive and not subject to adverse possession.
123	Chair Beyer	Asks what the argument would be against abolishing adverse possession.
125	Bushnell	States that without adverse possession then common law and case law would be the standard, which have been inconsistent. Emphasizes the need for the

		certainty provided by HB 2383.
152	Putman	Asks what would happen if it were stated that no person would acquire civil title by adverse possession. Asks if it would remove this issue from common law.
155	Bushnell	Replies in the affirmative.
158	Chair Beyer	Asks if HB 2383 also removes adverse possession from common law..
163	Farmer	Answers negatively. States that there are still cases where adverse possession could still work and should be retained.
171	Chair Beyer	Asks what happens if two people pay tax on a property.
181	Farmer	States that such a case would clearly be an error.
185	Bushnell	Notes that an exception is needed for tax-exempt properties.
190	Chair Beyer	Thanks witnesses, closes public hearing and opens work session.
<u>WORK SESSION HB 2383</u>		
196	Chair Beyer	Comments that an amendment is needed to have HB 2383 work as proposed. States bill is not ready to be moved
206	Rep. Atkinson	Asks if the amendment would simply add tax exempt properties in a such as clause.
210	Chair Beyer	Responds with doubt. Asks Rep. Atkinson to propose specific language.
215	Putman	Suggests what to propose to legislative council.
222	Chair Beyer	Discusses what needs to be done and possible solutions.
225	Ingram	Suggest, in line 23, after "record owner", insert "unless exempt." States support for HB 2383.
235	Chair Beyer	Agrees that amendment gets to the issue. Asks Putman to arrange amendment with LC. Closes Work Session
<u>PUBLIC HEARING HB 2057</u>		

262	Chair Beyer	Opens Public Hearing on HB 2057. Calls Ken Keudall to testify.
271	Ken Keudall	Construction Contractors Board (CCB). Introduces Jim Chaney
289	Jim Chaney	Chairman of CCB. States support of HB 2057. Discusses the wide-ranging duties of CCB. Reviews process for adjudication of complaints.
333	Chaney	Emphasizes that proposed changes are necessary. Explains effects of HB 2057.
351	Keudall	Reviews particular sections of HB 2057.
366	Chair Beyer	Asks that particular issues be dealt with later.
368	Keudall	Asks for removal of provision that compels on-site investigation. States a concern of general contractors over length of review. Offers general support for HB 2057.
TAPE 22, B		
011	Putman	Asks for effects of sections 2 and 3.
014	Keudall	Discusses relevant changes and effects. Indicates that the sections clean up existing statutes.
029	Vice-Chair Knopp	Asks about determination of final claims against contractors and proposed changes.
039	Keudall	Notes that proposed changes would provide for extra staff, thus increasing efficiency of CCB. Reiterates need for changes.
045	Chaney	Mentions that CCB can only rule on claims where there was a contract. Explains how CCB has helped resolve disputes and how HB 2057 will increase their effectiveness.
064	Putman	Notes that there is a fiscal impact, but that it has not yet been determined. Asks for clarification on proposed change in fees.
070	Keudall	Replies that fees will not be increased, but HB 2057 and HB 2058 will provide funds.
076	Putman	Explains Legislative Fiscal will release impact statements.

078	Rep. Winters	Agrees that HB 2057 will reduce number of complaints going to court. Asks how many disputes currently go to court.
087	Chaney	States the exact number is difficult to track. Comments that most claims are small, \$200 - \$300, so going to court is more expensive.
097	Keudall	States there will be an approximately 13% increase in claims.
104	Beyer	Calls Rep. Proszanski to testify.
107	Rep. Proszanski	District 40. Testifies in support of CCB, HB 2057 and HB 2058. Relates experiences that support the need for HB 2057.
152	Rep. Proszanski	Suggests ways in which legislature can assist CCB. Notes need to disseminate more information. Discusses surety bonds and need for performance bonds. Raises issue of basic competency levels and ways to address the issue.
215	Rep. Proszanski	Explains registration system in place in Oregon. Argues need for a licensing system. Examines liability of contractors for payment to sub-contractors. Discusses loopholes in current regulations.
260	Rep. Proszanski	Offers his office's support and assistance.
273	Putman	Asks if all suggestions are within the bills as introduced.
279	Rep. Proszanski	Replies in the affirmative. Notes that not everyone will like bills, but emphasizes the need to protect constituents. Reiterates the need for proposed changes and urges support of CCB.
313	Vice-Chair Knopp	Asks how often decisions are in favor of homeowners.
315	Rep. Proszanski	Answers that he will find that information. Offers anecdotal evidence.
335	Chair Beyer	Thanks Rep. Proszanski. Calls Bonnie Sullivan to testify.
345	Bonnie Sullivan	Independent Contractors of Oregon, Salem. Supports parts of HB 2057. States oppositions to specific requirements relating to notarized acknowledgement and provisions relating to moral turpitude. (EXHIBITS C & D)
396	Beyer	Thanks for written testimony and calls Stephen Kafoury
TAPE 23, A		

010	Stephen Kafoury	Oregon Remodelers Association. Supports HB 2057 in part, opposing in part. Reviews relevant issues.
030	Kafoury	Opposes use of CCB for claims against unregistered contractors. Disputes use of term "moral turpitude."
070	Kafoury	Argues against probation for contractors with a number of claims against them. Notes that claims are not judgements of wrong doing and have nothing to do with competency.
093	Chair Beyer	Thanks Kafoury for testimony and asks for his concerns in writing. Closes Public Hearing on HB 2057.
<u>PUBLIC HEARING HB 2058</u>		
098	Chair Beyer	Opens Public Hearing on HB 2058. Calls Keudall.
100	Keudall	Explains the bill. Discusses the need for spending authority to better disseminate information. Notes there is little fiscal impact.
129	Chair Beyer	Closes Public Hearing on HB 2058. Adjourns meeting at 10:38 a.m.

Submitted By, Reviewed By,

KEVIN E. WELLS, KEITH PUTMAN,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Written testimony, Raymond Godfrey, 1 p.

B ñ Written testimony, Oregon Association of Realtors, Genoa Ingram, 13 pp.

C ñ Written testimony, Independent Contractors of Oregon, Bonnie Sullivan, 4 pp.

D ñ Written testimony, Independent Contractors of Oregon, Mary Mann, 3 pp.