

HOUSE COMMITTEE ON
RULES, ELECTIONS, AND PUBLIC AFFIARS

June 29, 1999 Hearing Room D

3:00 P. M. Tapes 124 - 125

MEMBERS PRESENT: Rep. Mark Simmons, Chair

Rep. Richard Devlin, Vice-Chair

Rep. Bruce Starr, Vice-Chair

Rep. Roger Beyer

Rep. Randall Edwards

Rep. Dan Gardner

Rep. Kevin Mannix

STAFF PRESENT: Janet Adkins, Policy Analyst

Pat Zwick, Policy Analyst

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD: SB 1295-A ñ Public Hearing and Work Session

SB 299-A ñ Public Hearing and Work Session

SB 686-A ñ 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 124, A		
004	Chair Simmons	Calls meeting to order at 3:43 p.m., announces that the committee will not consider HB 2989-A because further work needs to be done on amendments to the bill, and opens a public hearing on SB 1295-A.

SB 1295-A n WORK SESSION

009	John McCulley	Oregon Association of Mortgage Brokers (OAMB). Introduces David Kroger, President of OAMB. Explains that the bill would clarify that a mortgage broker is liable under the mortgage lender law only for actions involving the mortgage transaction. Gives examples of bond being used for paying costs beyond the transactions. The bill limits damages to those involving money or property and does not include non-economic damages. The bill applies to actions arising after the effective date of the act.
		The bill represents a compromise by the industry, the trial attorneys and the regulator, Department of Consumer and Consumer Services (DCBS).
036	McCulley	SB 144, making other changes in the mortgage banker/mortgage broker law relating to bonding levels, has been signed by the governor and this bill does not conflict.
038	Chair Simmons	Asks if anyone from DCBS wants to testify.
042	James Kruger	Manager, Mortgage Lender Program, DCBS. Comments their department worked with the industry on the bill and the department does not oppose their bill.
053	Chair Simmons	Asks if it will put consumers at risk.
054	Kruger	Responds it would eliminate frivolous lawsuits and lawsuits not based on the nature of the mortgage transaction.
061	Chair Simmons	Closes the public hearing and opens a work session on SB 1295-A.

SB 1295-A n WORK SESSION

063	Rep. Starr	MOTION: Moves SB 1295A to the floor with a DO PASS recommendation.
063		VOTE: 6-0-1 EXCUSED: 1 - Rep. Edwards
	Chair Simmons	Hearing no objection, declares the motion CARRIED. REP. DEVLIN will lead discussion on the floor.

066	Chair Simmons	Opens a public hearing on SB 299-A.
<u>SB 299 nA n PUBLIC HEARING</u>		
076	Pat Zwick	Administrator. Explains SB 299-A.
080	Martha Pagel	Director, Water Resources Department (WRD). Submits prepared statement (EXHIBIT A) . Reviews history of water law and means of resolving conflicts. Comments on number of adjudications not completed. SB 299-A clarifies that the people who have pre-1909 water uses that are unadjudicated have been using a rules process to establish their water rights.
128		Adds that the department has been advised that it would be well to have statutory authority to support the rules.
134	Chair Simmons	States there has been a significant amount of controversy involving one specific non-adjudicated water right in Springfield. Adds that the bill is broader than that and believes it would be beneficial to consider it in a broader context.
138	Rep. Beyer	Asks if a lawsuit prompted action by the attorney general to look at the rules.
143	Pagel	Responds there is no lawsuit. The controversy involving the City of Springfield raised the questions. Adds that there has not been a challenge to the rules.
149	Rep. Edwards	Comments the bill is broader than the Springfield issue. Asks that Pagel describe how the bill affects the adjudication process.
	Pagel	Responds that the bill is in generic form. It affects all people who have filed registration notices with the department, i.e. they have given notice they have pre-1909 claims. There are roughly 600 claims on the west side of the state. Adds that it is not likely the department will get to the adjudications in the near future. It will probably take another three to five years to complete work in the Klamath Basin. The department has spent about \$1 million general funds in the last two years on the Klamath Basin and has another \$1 million appropriation for next biennium.
170	Chair Simmons	Asks if the process is legally sufficient if someone in the Willamette Valley has an unadjudicated water right and needs to move the point of diversion because of a fish species.
173	Pagel	Responds affirmatively.
181	Rep. Starr	Asks for explanation of the process for adjudication of a water right.

188	Pagel	Explains the process.
202	Rep. Starr	Asks if the department looks at other water users to make sure they are not harmed by the change.
203	Pagel	Explains the steps of reviewing the claim.
219	Rep. Starr	Asks if other water users have the ability to appeal if they disagree with the department.
220	Pagel	Responds that the department does not have the process spelled out in the rules. There is no clear process. Notices of action are posted. There is an opportunity for people to file objections or ask for reconsideration.
248	Rep. Beyer	Asks if they are presently considering claims in the Willamette Basin.
250	Pagel	Responds that they are not currently doing the Willamette Basin but a few of the sub-basins have been done. They are now concentrating on the Klamath.
256	Rep. Beyer	Asks which sub-basins have been done.
257	Pagel	Agrees to provide the information.
258	Rep. Beyer	Asks if this will affect Thompson Mill at Calapooia.
260	Pagel	Responds she is not sure but will provide the information. It may be that they are in a sub-basin that has been decreed or it may be it is a pre-1909 right.
283	Rosemary Prior	City of Springfield. Offers to respond to questions.
290	Chair Simmons	Advises Prior that he has reviewed information from the attorney for the Vinyards and City of Springfield related to the situation.
305	Doug DePriest	Attorney, representing Rodger and Kathryn Vinyard. Testifies in opposition to SB 299-A because the Vinyardis would be adversely affected. The City of Springfield has threatened to condemn an easement through the middle of the Vinyard property to move a point of diversion up river. Asks the committee to reject SB 299-A because of legal and policy issues. Three of the issues are: lack of need; lack of fairness; and lack of fish protection.
324	DePriest	Comments on lack of need.
339	DePriest	Comments on lack of fairness.

361	DePriest	Questions whether the power of condemnation should be utilized in the hands of a right claimant as opposed to a property right holder.
372	DePriest	Submits copies of testimony submitted to the Senate committee proposing an amendment to address condemnation (EXHIBIT B). Adds that the City of Springfield has offered to pay the Vinyards only a little more than fair market value for their property. Because the Vinyards don't particularly want to sell and are under threat of having an easement condemned through the middle of their property, they do not feel fairly treated by the city.
404	DePriest	Comments on the lack of fish protection. Agrees this bill is broader than the Springfield issue.
467	DePriest	Asks that the committee consider the amendments if they are considering voting for the bill (EXHIBIT B, page 5).
TAPE 125, A		
022	Rep. Starr	Asks if DePriest is saying if this bill were to go through, the City of Springfield would not have to provide screening.
028	DePriest	Responds that the transfer process in WRD statutes expressly provides, as part of the department review, a review by the Department of Fish and Wildlife (ODF&W) which could result in fish screening. This bill and the rules have no comparable provision and often times the comments of ODOF are recommendations to regulatory agencies. ODF&W will make recommendations and often rely on the regulatory authority of other agencies to implement their recommendations.
048	Rep. Starr	Asks if it would be sufficient if there were a commitment by WRD to incorporate that in their rules.
049	DePriest	Responds it would not suffice because of the property rights and condemnation issues, but it would be a step in the right direction.
050	Rep. Starr	Comments it would seem additional riparian areas could be created.
055	DePriest	Responds it is theoretically an option. There are steps to be followed and one is to avoid destroying the wetlands.
070	Starr	Asks if pumping has been studied and whether it works well.
076	DePriest	Comments on results of a study by Brown and Caldwell. There are somewhat greater costs for pumping than gravity flow. Submits that the Brown and Caldwell study shows feasibility of pumping. It is their belief that there are political considerations at the city where they would like to be able to connect a park on one side of the Vinyard property with city-owned land on the other side

		of the Vinyard property and create the channel, and there are other reasons why the city wants to do this.
092	Chair Simmons	Asks if DePriest's clients chose one of the engineering firms.
097	DePriest	Explains the results of the study by the chosen engineer.
102	Rodger Vinyard	Comments that the study says it cost twice as much to remove the rock as the rock would be sold for.
106	DePriest	Explains that the Brown and Caldwell study said it is more expensive to pump than use gravity flow. Then there is the \$400,000 extra cost to remove gravel. They believe if the adjustment is made the cost of pumping works out to be comparable and that supports their contention that pumping is feasible.
125	Rep. Devlin	Asks if it takes into consideration the long-term cost of pumping.
131	DePriest	Responds it is comparable over a 20-year life cycle costing.
136	DePriest	States that another option would be direct pumping from the river and they would not have the cost of rock removal and maintaining the pond. Adds that the option has not been considered since the time the Division of State Lands directed the city to study pumping more carefully.
144	Chair Simmons	Asks if DePriest has reason to believe that when adjudication takes place in the area around Springfield that the claim the City of Springfield has for the water in Mill Race will not be recognized.
155	DePriest	Responds that he has no idea. They doubt that the city would be adjudicated to have the full allocations they have claimed. Adds there was also a change in the point of diversion prior to the WRD rules.
175	Chair Simmons	Ask how many individuals are served by the water through Mill Race.
176	Rosemary Prior	City of Springfield. Responds she does not know, but there are downstream industrial users and that the water in Mill Race replenishes ground water that supplies wells maintained by the Springfield Utility District that supplies one-third of Springfield's drinking water.
181	Chair Simmons	Asks if the City of Springfield has any reason to believe when adjudication takes place that the claim will not be recognized.
183	Prior	Responds she has no reason to believe that the claim, which came to the city with the mill property from Georgia Pacific, would not be upheld.

189	Chair Simmons	Asks if both engineering studies came up with the same conclusion.
190	Prior	Responds affirmatively. Explains the process of allowing the Vinyards to choose engineers and explains the results of the studies.
221	Prior	Adds that the city has not said they cannot pump, but the city has been told by the engineering firms that the city cannot pump from the present intake location. If the council were to pay the additional capitol and annualized cost of pumping, they could not do it from the current spot.
235	Rep. Starr	Asks if the city purchased the property with a plan to use the water..
235	Prior	Explains the land was a gift from Georgia Pacific in 1985.
250	Rep. Starr	Asks if this bill passes and the department was to go through the rule process whether the agency would adopt rules similar to the rules for adjudicated water rights where they must be run through ODF&W for comment.
255	Pagel	Responds that if the department goes through further rule making, they would go through a process that would include ODF&W. Needs clarification of legislative intent on whether the department is expected to do rule making. The bill would ratify the rules and allow the department to continue. It is not their intention to do rule making immediately. The primary goal is to make sure that people are not placed in jeopardy.
277	Chair Simmons	Asks how many cases they have processed.
278	Pagel	Responds they have processed about 30 or 40 under the existing rules; there are about 600 people who have filed registration statements who are eligible to benefit from the rules.
283	Rep. Starr	Asks if the department has rules relating to wetlands.
292	Pagel	Explains they do not and explains the extent of their rules. Comments on authority of ODF&W to require fish screens.
313	Chair Simmons	Asks if the 30 or 40 cases that have been processed under the rules would be placed in jeopardy.
320	Pagel	Responds affirmatively. There is a cloud over the authority under which the rules were adopted in the first place.
323	Chair Simmons	Closes the public hearing and opens the work session on SB 299-A.

SB 299-A ñ WORK SESSION

325	Rep. Mannix	MOTION: Moves SB 299A to the floor with a DO PASS recommendation.
329	Rep. Mannix	Comments that he has read the documents that have been submitted and understands the gist of the arguments and is satisfied that the bill is good public policy. Does not think the proposed amendments (EXHIBIT B, page 5) are good public policy because they would delay condemnation actions that may be necessary in a variety of circumstances.
339	Rep. Starr	Comments he is hesitant to support this. Feels he is not sure he is aware of all the issues. Believes it has more far reaching impacts than the Springfield issue. Will support the motion to get the bill to the floor with the caveat that he will continue to study the issue and may change his vote on the floor.
354	Rep. Mannix	Comments that if the bill dealt only with Springfield he would probably oppose the bill. Believes there are many water right owners who need to be protected by the rule making process as it has been set up.
365	Chair Simmons	Comments the bill will provide some assurance that those with unadjudicated water rights will be able to change a point of diversion without having a question mark hanging over them until the adjudication process takes place.
378	Rep. Starr	Wonders what the agricultural industry would say about the bill.
384	Chair Simmons	Responds that he has spoken with the Farm Bureau and Oregonians for Food and Shelter and they are neutral on the bill.
387	Rep. Beyer	Asks if the questions relating to the Calapooia and Thompson Mill have been addressed.
387	Pagel	Comments she does not know the answer with respect to Thompson Mill. It may have been one of the sub-basins that was already adjudicated and if not, this bill would be essential for them to move forward.
424	Rep. Mannix	Comments that if one likes the Thompson Mill proposal, this bill does not hurt and the lack of this bill might hurt.
430	Rep. Beyer	Comments he will support moving the bill today but with the caveat that if there is new information that something will be done, he will vote against the bill.
437		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye.

	Chair Simmons	<p>The motion CARRIES.</p> <p>REP. SIMMONS will lead discussion on the floor.</p>
TAPE 124, B		
020	Chair Simmons	Opens a work session on SB 686-A.
<u>SB 686-A ñ WORK SESSION</u>		
024	Zwick	Advises members the ñA14 amendments (EXHIBIT C) are new since the meeting on June 25.
030	Dave Cook	<p>Director, Department of Corrections (DOC). Comments he appreciates the fact the committee is taking this issue up. It has been a 3-year long, arduous road for a lot of people. DOC is supportive of the SB 686-A11 amendments (EXHIBIT C). DOC believes Day Road to be an appropriate site for a correction facility that would include the Womenís Prison Intake Center concept. Adds that a significant amount of work has been done in siting. They have looked at hundreds of sites around the state and on the reopening of the siting process they looked at hundreds of sites in the Metropolitan area. The selection of Day Road, they believe, is the best site available. The site will do everything the department needs to do and it will do what the state needs to have done in housing offenders. It will be appropriate for reintroduction of criminals back into the community that occurs in 96 percent of the cases.</p>
050	Chair Simmons	Ask how long it would take to break ground if the ñA11 amendments were put in the bill.
052	Cook	<p>Responds they would begin the process immediately. Explains that they have already done significant design work. Additional design work would have to be done, but groundbreaking would occur in the spring of next year. Prior to that time essential work that has to be done prior to construction would be done. No time would be lost.</p>
057	Chair Simmons	Comments there are trees and a lot of brush on the grounds.
057	Cook	<p>Responds there is clearing of the ground and there are infrastructure issues to deal with. Adds that there are a lot of design issues left. They found in the process used at the Snake River facility and at Umatilla that if one builds and designs simultaneously for speed, there are costs associated and problems occur. In this case, they would be more direct in terms of some of the design work trying to reduce cost of construction and to be ready to begin construction May of next year with about a 27-month window for completion of the facility.</p>

065	Rep. Starr	Asks if Day Road was considered in the original siting process.
068	Cook	Explains the Day Road site was not originally considered. Explains process and activities after the siting process was completed.
076	Rep. Starr	Asks why they are not pushing dirt since it seems the governor has decided to put the facility at Dammasch.
078	Cook	Responds he cannot answer the question. Adds that there are still issues to address. Thinks the governor would like to see Day Road simply because it is a community that is supportive of it, it benefits others, it is a better land use decision to use Dammasch for other purposes, potentially.
085	Rep. Starr	Ask why there cannot be a 12 th -hour site.
090	Cook	Explains that temporary facilities are being utilized. Suggests there is a superior-to-Dammasch site that is ready to build on and one they believe, and many others believe, is the appropriate location. Also thinks the governor is unwilling and certainly others are unwilling to look at continuing options for sites when a good, workable, buildable site exists at Day Road.
100	Rep. Starr	Asks if legislative leadership were to say they want the prison to be built at Donald or somewhere along I-5 that has been identified, as the Director of the Department of Corrections, would Cook respond to legislative leadership at that point.
111	Cook	Responds it is a \$750,000 per month cost to delay construction of the facility. It is an approximate \$400,000 to \$500,000 cost to adequately assess a site. No assessment of the Donald site has been done to date. Design delay would also play into the \$750,000 per month delay. It would be a significant cost. As Director of Corrections he is not supportive of a further delay in the process. Believes the delay would have \$5 million to \$10 million cost associated with a further look at sites when we have an adequate, buildable site.
126	Rep. Beyer	Asks if the estimated time for completion takes into account the legal challenges on the Day Road site.
126	Cook	Responds it would depend on how the legislation is crafted to allow certain types of appeals. Believes appeals on the Day Road site have been exhausted.
134	Rep. Beyer	Asks if Cook is suggesting the legislature take away citizens' rights to appeal and ram a prison down their throats.
135	Cook	Responds that due process has been provided. Hearings have been conducted. The ability to use the process has been used. It has been exhausted with decisions from the courts. The legislative body could provide further remedy to those who oppose the site, but they are using the same opportunities for legal challenge that

		were in the original supersiting bill passed by the legislative body that directed the governor to site.
145	Rep. Beyer	Asks if ground has not been broken at Dammasch because there have been legal challenges and an injunction is stopping it.
148	Cook	Responds that he is not aware of any injunction stopping any activity at Dammasch. Adds that the court decisions were in favor of the state and there are no legal issues that preclude the construction of the facility.
154	Rep. Devlin	Asks if there have been any appeals filed relating to Day Road.
160	Sue Acuff	Department of Corrections. Responds that Rep. Devlin is correct. No legal action has been filed on Day Road.
163	Rep. Devlin	Comments that under the supersiting the possible remedies would have been an appeal relative to the constitutionality, appeal on permits, or appeal based on whether it had met the supersiting criteria.
198	Rep. Devlin	Comments that in the 1997 session there was an extensive review of alternatives to Dammasch. Asks how many sites were reviewed.
200	Cook	Comments they have answered these questions on numerous occasions when they were prepared to provide testimony and that they did not come prepared to answer in-depth detail around each of the siting questions.
213	Rep. Devlin	Asks who directed the review of the Day Road site last February.
213	Acuff	Responds the review was subsequent to the E-Board action in January when the expenditure authority was approved. AT DOC direction, from February 11 to 24, they looked at the site and came to the conclusion construction costs would be higher and there were security issues. They went back at the direction of the governor. It was a 90-day process and they came to the conclusion that all the issues could be mitigated.
266	Rep. Devlin	Asks how much has been spent on Dammasch, excluding the \$2.5 million for purchase of the property from the Department of Human Resources.
268	Acuff	Responds that the original appropriation last session was \$5.3 million for Dammasch. DOC has not spent that in its entirety.
278	Rep. Devlin	Comments the intake center is planned at 432 beds. Asks how the discussion is going.
292	Acuff	Reviews the number of beds planned and when the bed spaces will be

		completed.
328	Rep. Devlin	Comments on types of beds and timing for construction.
348	Rep. Devlin	Asks what would be an ideal acreage for a site.
353	Cook	Comments he does not know that there is an ideal site. Thinks the sites at Day Road and Dammasch are adequate for the Women's Intake Center. Does not know an ideal amount of acreage. Depends on the location, specific site and terrain.
380	Rep. Devlin	Requests copies of the infrastructure and proposed operational agreement with the City of Wilsonville.
394	Rep. Devlin	Asks if there is a contractual arrangement with Wilsonville.
400	Acuff	Responds negatively. Adds they have had negotiations going on. There is a draft agreement and they are working toward getting it signed this week.
422	Rep. Edwards	Asks when the criteria for siting in Multnomah County were established.
443	Cook	Reviews process of determining need for facilities and location of the facilities.
TAPE 125, B		
025	Acuff	Clarifies the process.
033	Rep. Edwards	Asks if the Women's Intake Center lends itself better to the criteria for location in the tri-county area.
034	Cook	Comments that the tri-county area represents about 55 or 56 percent of the inmates. In excess of 70 percent of women come from the tri-county area adding Lane and Marion counties. Directions were also given on Lane County and Jackson County sites because the communities made it clear that they did not disagree with the fact the department had the authority to site there and felt they could choose a better site. Dammasch remained on the list as the preferential site if a superior site was not located.
055	Rep. Edward	Asks if the commission gives recommendations to the governor and what DOC's interaction is with the commission.
058	Cook	Responds that their interaction with the commission had been to staff the commission, to provide set up work for them to help manage the hearing process and to provide technical information to members of the siting authority.

061	Acuff	Explains that DOC nominates the sites to the siting authority and the siting authority recommends to the governor. The siting authority is in the statute.
068	Cook	Comments further on the statutory siting authority.
073	Rep. Edward	Asks how the \$750,000 per month is calculated.
076	Cook	Responds they had a worksheet that broke down the costs and will provide it again. It represents costs associated with delay and other issues. Highlights costs included in the figure. Notes that the costs are site specific.
099	Rep. Edward	Asks what it costs to look at a site.
100	Acuff	Responds that the initial site work to find out if the site is functional is roughly \$125,000.
106	Rep. Edward	Ask what happens to Dammasch if it is not the site of the prison.
112	Acuff	Responds that the -A11 amendments (EXHIBIT C) designate that Dammasch will not be used for a prison. HB 3446 asks for the sale of Dammasch and that the proceeds be used for the mental health community and institutional housing.
136	Rep. Mannix	Asks if the intake center would relieve the problem in Clackamas County and their need for a true jail facility.
138	Cook	Responds it relieves their concerns and it also meets the statutory obligation the state has to turn the facility over to Clackamas County.
142	Rep. Mannix	Asks if it is fair to say that land use planning does not contemplate state prisons and that a process will be set up to hear the concerns of citizens and then proceed to allow their concerns to be addressed, but it is done differently from the typical land use process.
146	Cook	Responds affirmatively.
147	Rep. Mannix	Comments the alternative is the condemnation situation. One part is taking and the other is just compensation. Asks if there is anything in the legislation today, other than allowing for taking, that denies the citizens the right to have access to the courts to have adjudication as to what their fair compensation would be.
152	Cook	Responds there is not that he is aware of.
154	Rep. Devlin	Comments that the price given for the development at Day Road is approximately \$181 million.

164	Acuff	Explains that the estimates for construction at Day Road, on the initial build, is \$171.7 million. Four units are to be completed later. The later additions of the minimum and medium units are not funded in the \$171.7 million.
185	Rep. Devlin	Asks if the Governor could have saved \$750,000 per month if he had decided to move on Dammasch.
199	Acuff	Explains delays due to lawsuits.
208	Chair Simmons	Adjourns meeting at 5:20 p.m.

Submitted By, Reviewed By, Reviewed By,

Annetta Mullins, Janet Adkins Pat Zwick

Administrative Support Policy Analyst Policy Analyst

EXHIBIT SUMMARY

A ñ SB 299, prepared statement, Martha Pagel, 3 pp

B ñ SB 299, prepared statement, Doug DePriest, 8 pp

C ñ SB 686, SB 686-A11 amendments, Rep. Mannix, 10 pp