

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

May 5, 1999 Hearing Room D

1:00 P.M. Tapes 148 - 153

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

STAFF PRESENT: Kristina McNitt, Administrator

Danielle Hamilton, Administrative Support

MEASURES HEARD: HB 3168 Work Session

SB 85 Public Hearing

SB 87-A Public Hearing

SB 444 Public Hearing

SB 524 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 148, A		
005	Chair Welsh	Calls the meeting to order at 1:30 p.m. Opens a work session on HB 3168.

HB 3168 WORK SESSION

015	Rep. Atkinson	Testifies in support of HB 3168. Indicates that the ñ1 amendments (EXHIBIT A) have been submitted for consideration by the committee. Says the bill is designed to allow children to aid in enhancing the steelhead population. Mentions that five Native American tribes have expressed interest in the program.
040	Joe Rohleder	Assistant to the Director, Oregon Department of Fish and Wildlife (ODFW). Testifies in support of HB 3186. Explains that the ñ1 amendments direct ODFW to involve Native American tribes in steelhead recovery efforts. Describes the salmon/trout restoration project.
063	Rep. Morgan	Wonders if the bill will have a fiscal impact on the ODFW budget.
067	Rohleder	Replies that ODFW will absorb the cost of the program into its existing budget.
071	Rep. Morgan	Asks if the program would be incorporated into the existing step program regions.
072	Rohleder	Answers affirmatively.
074	Rep. Atkinson	Comments that the original version of the bill was estimated to cost less than \$500 and that the amendments would not result in appreciable increase.
083	Rep. Morgan	Asserts that the step program has been successful for several years and that the bill will increase its educational value.
090	Rep. Kruse	Expresses support for the bill. Submits it will be educational not only for the Native Americans who participate, but for the department as well.
096	Rep. Atkinson	Clarifies that the original intent of the bill was to begin the program through the tribes, bringing ODFW in later. Submits that allowing children to "bring in fish and then brag about it" is a good thing.
106	Chair Welsh	Asks Rep. Atkinson if the bill should be subsequently referred to the Joint Committee on Salmon and Stream Restoration.
109	Rep. Atkinson	Replies that the bill does not require a subsequent referral.
114	Chair Welsh	Inquires whether there are other parties who have expressed interest in testifying on the bill.
117	Rep. Atkinson	Replies that further testimony could be taken in the Senate.

121	Chair Welsh	Asks Rep. Atkinson if he supports the ñ1 amendments.
122	Rep. Atkinson	Replies that he supports the amendments.
125	Rep. Merkley	MOTION: Moves to ADOPT HB 3168-1 amendments dated 4/30/99.
129		VOTE: 9-0
	Chair Welsh	Hearing no objection, declares the motion CARRIED.
133	Rep. Merkley	MOTION: Moves HB 3168 to the floor with a DO PASS AS AMENDED recommendation.
137		VOTE: 9-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Welsh	The motion CARRIES. REP. ATKINSON will lead discussion on the floor.
140	Chair Welsh	Closes the work session on HB 3168 and opens a public hearing on SB 85.
<u>SB 85 PUBLIC HEARING</u>		
145	Kristina McNitt	Committee Administrator. Gives a brief description of the bill.
168	Doug Myers	Representative, Association of Oregon Recyclers (AOR). Testifies in support of SB 85 (EXHIBIT B).
178	Kristan Mitchell	Representative, Oregon Refuse and Recycling Association (ORRA). Testifies in support of SB 85. Mentions that the bill was requested by the Joint Interim Task Force on Commercial Recycling as a way to reduce barriers to on-site commercial composting.
189	Myers	Explains that commercial composting is not currently allowed on certain exclusive farm use (EFU) lands. States that composting produces a product suitable for use as fertilizer and that many more operations are required to make

		composting commercially viable. Expresses willingness to negotiate with the opponents of the bill. Indicates that the composting operations would utilize only biomass produced on EFU land.
222	Mitchell	Comments that garbage and recycling collectors are responsible for meeting waste reduction goals and that biomass represents a large percentage of landfill waste. Expresses hope that the bill's passage will allow technology to be utilized to turn organic waste into a usable product. Expresses willingness to make the bill fit into the current land use system.
239	Chair Welsh	Inquires whether the issue was discussed in detail in the Senate.
241	Myers	Replies affirmatively.
243	Chair Welsh	Wonders if a work group was organized to work through the differences between the two sides.
245	Myers	Replies that the Senate Committee on Agriculture and Natural Resources passed the bill without organizing a work group.
249	Rep. Kruse	Comments that there is an existing process at the Douglas County landfill for processing organic waste. Asks why it is necessary to expand composting onto Class I land.
252	Mitchell	Replies that the interim committee reviewed cases within the Willamette Valley, where efforts had been made to site a facility in Clackamas County outside of the urban growth boundary.
268	Rep. Kruse	Suggests that Clackamas County could request a variance for its problem, rather than altering statewide practice.
276	Mitchell	Responds that Clackamas county was involved in discussions regarding siting, adding that it is likely that the variance option was discarded prior to that time.
289	Don Schellenberg	Associate Director of Governmental Affairs, Oregon Farm Bureau (OFB). Testifies in opposition to SB 85 (EXHIBIT C). Asserts that the bill is not about the merits of composting in EFU zones but rather about rejecting the principles of land use planning. Says that composting activities, which do not use the soil, should not be allowed to occupy the best soil in the state. Notes that the bill does not require the use of agricultural products, nor does it require that the material produced be sold to farmers.
336	Tom Brawley	Farmer, Marion County. Testifies in opposition to SB 85. Indicates that he performs composting on his land. Says that the current system is adequate and does not require additional use of high value farmland. Suggests that composting could be placed near landfills or paper mills.

368	Cliff Keneagy	Farmer, Benton County. Testifies in opposition to SB 85.
390	Ron Eber	Director, Department of Land Conservation and Development (DLCD). Testifies in opposition to SB 85 (EXHIBIT D). Says that composting operations are already allowed in accordance with farm use or as a method of solid waste disposal. States that 65 percent of existing commercial composting facilities are located within urban growth boundaries. Says that composting facilities must receive a permit from the Department of Environmental Quality (DEQ), a restriction which is intended to limit composting on the best farmland.
TAPE 149, A		
011	Rep. Morgan	Requests a description of a commercial composting facility.
014	Eber	Replies that such facilities can be fairly land extensive, often requiring other land uses such as parking lots. Says that such non-farm related uses of land should not be allowed.
020	Rep. Morgan	Inquires whether DLCD has received applications for compost facilities, which would indicate a need for them.
024	Eber	Replies that there has been no demonstration of a need for the facilities, adding that any such applications would be sent directly to counties. Mentions that a facility related to agriculture use was recently approved in Lane County. Reiterates that there is no reason to transport biomass out into EFU zones for processing.
040	Chair Welsh	Comments that composting is farm related.
045	Judson Parsons	Farmer, Marion County. Testifies in opposition to SB 85. Provides an account of his experiences with a composting facility.
063	Jim Johnson	<p>Representative, Oregon Department of Agriculture (ODA). Testifies in opposition to SB 85 (EXHIBIT E). Explains that ODA does not oppose the production or use of compost, but does oppose commercial aggregation of compost on EFU land. Explains that yard debris and other supplemental feed stocks can be used in agricultural composting. Indicates that composting operations related to agriculture may be sited as follows:</p> <ul style="list-style-type: none"> • As a farm use • As a commercial use in conjunction with farm use • In other rural zones, subject to local zoning requirements <p>Indicates that commercial composting facilities may be permitted in rural areas as follows:</p> <ul style="list-style-type: none"> • In non-resource zones • In an agricultural zone on non-high value farm land • In a forest zone as a solid waste facility • On high value farm land if an exception is granted by the local government

		Mentions that he has yet to see a proposal for the latter method.
120	George Pugh	Vice-Chair, Oregon Board of Agriculture (OBA). Testifies in opposition to SB 85. States that the bill prompted OBA to officially oppose any expansion of composting on EFU land and to reexamine all existing composting operations. Asserts that valuable production ground must be protected. Offers an example of how composting can be performed on non-productive land.
163	Chair Welsh	Urges the interested parties to discuss possible compromises.
174	Rep. Gianella	Wonders how many acres are required to perform composting.
179	Matt Haynes	Representative, ODA. Replies that composting operations can range from a few hundred square feet for a small farm to 20 acres or more for a commercial operation.
193	Blair Batson	Representative, 1000 Friends of Oregon. Testifies in opposition to SB 85 (EXHIBIT F) . Expresses doubt that commercial composting facilities would appreciably benefit farmers.
210	Chair Welsh	Closes the public hearing on SB 85 and opens a public hearing on SB 87-A.
<u>SB 87-A PUBLIC HEARING</u>		
215	Kristina McNitt	Committee Administrator. Gives a brief description of the bill.
229	Jim Mark	Board member, Business Advisory Council. Testifies in support of SB 87-A. States that the bill requires certain jurisdictions with populations over 25,000 to track and inventory buildable land needs for office and industrial development in order to insure a 20-year supply of available land. Indicates that the bill enforces state land use laws by insuring available land for use consistent with plan policies. Compares the bill with the 20-year housing requirements of ORS 197.296. Says that Goal 9 has been a low priority for the Land Conservation and Development Commission (LCDC).
282	Mark	Indicates that a study is currently underway to review the 20-year industrial land supply in the Portland Metro area. Asserts that proper implementation of Goal 9 will reduce local planning and development costs. Reiterates that the bill does not create a new requirement but rather mandates the implementation of an existing one. Asserts that the bill offers local communities flexibility in organizing available land supplies. Suggests that the cost of implementation would be minimal. Says that without proper planning, land prices will rise sharply and increase pressure to expand the urban growth boundary.
346	Chair Welsh	Comments that SB 87-A appears to be a work in progress.
353	Mark	Replies affirmatively.

381	Mark Fraser	Managing Director, Grubman-Ellis Company. Testifies in support of SB 87-A (EXHIBIT G). Disputes the assertion that the bill will gut land use planning in Oregon, reiterating that it extends existing land use laws. Submits that failure to plan for where new residents will work amounts to "turning our backs on planning." Explains that failure to enforce Goal 9 would be rectified by SB 87-A. Asserts that it is disingenuous for opponents of the bill to declare that local governments are required to plan while claiming that the bill is an un-funded mandate.
TAPE 148, B		
020	Fraser	Denies that the bill will force expansion of urban growth boundaries, in that it requires better planning for density within existing boundaries. Discusses several examples of Goal 9 requirements. Asserts that poor commercial and industrial land use planning has resulted in traffic problems within the Portland metro area. Indicates that the two sides have agreed to work out their differences on the bill.
053	Rep. Morgan	Requests an explanation of the differences that are being discussed.
061	Bill Cross	Representative, Commercial Real Estate Economic Coalition (CREEC). Testifies in support of SB 87-A. Explains the nature of the disagreement between supporters and opponents of the bill. Clarifies that language from the residential requirement has been transferred to the commercial and industrial requirements.
090	Rep. Taylor	Wonders if the A-engrossed bill retains a "fall back position" of projecting growth. Asserts that changes in business strategies may make long-term planning difficult.
110	Cross	Replies that the fallback language is retained in Section 5 of the A-engrossed bill. Says the planning is to be reviewed periodically to address business changes.
126	Fraser	Reiterates that residential planning has made proactive efforts to design communities in accordance with community goals.
137	Rep. Taylor	Requests confirmation that the bill is being brought forth primarily to force larger cities to address Goal 9 issues. Wonders why organizations such as CREEC are not working directly with metropolitan areas to address their concerns.
142	Fraser	Confirms that Goal 9 is not currently being upheld, due primarily to the fact that it has no force of law.
156	Rep. Taylor	Wonders if there are other needed uses that are not being planned for, such as hospitals.
161	Cross	Replies that other goals address such needs. Reiterates that it is Goal 9 that many communities have failed to take into account.

173	Rep. Devlin	Inquires how the differences between jurisdictions within Metro would affect efforts to perform periodic reviews and create local comprehensive plans. Asserts that there are significant differences between communities in the Portland Metro area.
194	Fraser	Reiterates that the process would be similar to that of residential planning. Discusses how different environments may lead to different types of development.
204	Rep. Devlin	Asks how Mr. Fraser would respond to planning that included placing growth properties within currently undeveloped areas.
217	Fraser	Comments that placing all new jobs into such areas represents poor planning.
227	Rep. Merkley	Asks how many communities fall under the 25,000-person requirement.
230	Fraser	Responds that Metro includes 24 cities, adding that eight other communities in the state would also qualify.
234	Rep. Merkley	Inquires whether Bend is one of the affected cities.
235	Fraser	Replies affirmatively.
238	Rep. Merkley	Asks whether the bill is intended to identify land specifically set aside for schools and other facilities or if it merely requires plots to be designated in a particular category.
246	Cross	Replies that sites would be specifically identified as to their future use.
257	Rep. Merkley	Mentions that planners do not normally micromanage school placement, preferring to leave such decisions up to the market. Wonders what would happen if the owner of a parcel of land did not wish to sell his or her land to house a school.
274	Cross	Replies that he is unsure how schools would be addressed in this regard. Mentions that local governments have many avenues available to make land available for schools and other facilities.
285	Fraser	Comments that school districts generally identify where they want a school to be located, at which time land is acquired for that purpose.
292	Rep. Merkley	Discusses potential problems associated with zoning land for school construction years in advance.

303	Fraser	Suggests that zoning requirements set forth by SB 87-A do not necessarily require specificity as to what will be located where on a particular parcel.
320	Rep. Merkley	Asks whether the requirements for maintaining an adequate supply of land referred to in the submitted testimony refers to Goal 9.
327	Fraser	Replies that Goal 9 is the primary factor, adding that Metro has similar goals that do not hold the weight of law.
333	Cross	Adds that LCDC rules require 20-year planning as well.
338	Rep. Merkley	Inquires whether representatives of Metro should be asked to testify on the issue. Suggests that Metro may have sufficient land available, but is delaying the division of that land into residential, commercial, and industrial designations.
354	Fraser	Responds that Metro has been negligent in planning ahead for the location of job growth.
368	Rep. Merkley	Says the bill suggests that the problem is a lack of sufficient land, not just a lack of specifically designated land.
373	Mark	Warns that communities should plan carefully in order to prevent running out of available land before all needs are met.
395	Jim Ludwick	Resident, Yamhill County. Testifies in opposition to SB 87-A. Mentions that McMinnville is currently undergoing a review of future expansion, adding that it currently has sufficient land for growth. Asserts that the bill would contribute to urban sprawl and the consumption of valuable farmland. Argues that agriculture and timber must be protected and promoted.
TAPE 149, B		
020	Ludwick	Suggests that a majority of Oregonians do not support growth planning, adding that they favor limiting urban growth boundaries. Argues that the bill is "the epitome of centralized micro-management."
039	Chair Welsh	Asks Mr. Ludwick where growth should take place.
042	Ludwick	Replies that Oregon's growth is already sufficiently planned. Suggests that urban growth boundaries will eventually bump into one another, thereby eliminating the farm and forest industries.
055	Art Schlack	Representative, Association of Oregon Counties (AOC). Testifies in opposition to SB 87-A. States that the bill represents an un-funded mandate for new responsibilities related to inventorying available land. Asserts that the bill greatly

		expands Goal 9 requirements, increasing the cost to local governments by as much as \$3 million. Lists the cities outside of the Portland Metro area that would be affected. States that LCDC has the ability under current law to address the issue.
098	Bob Clay	Chief Planner, City of Portland. Testifies in opposition to SB 87-A. Asserts that the bill is flawed in its methods for projecting land consumption needs for commercial uses. States that Metro currently requires Portland and other cities in the region to comply with the Urban Growth Functional Management Plan.
132	Chair Welsh	Wonders if the City of Portland intends to request that the state pay for compliance with the bill, should it become law.
134	Clay	Replies affirmatively. Suggests that the bill would increase the requirements and that the state should pay for such changes. Argues that the methodology used for residential lands should not be applied to commercial and industrial lands. Says the bill gives the appearance that Portland is welcoming growth.
188	Clay	Contrasts zoning of residential and commercial areas. Asserts that other cities would not be able to address the issue, due to a lack of sufficient resources. Expresses willingness to work toward a compromise on the bill.
229	Rep. Devlin	Comments that Portland represents 42 percent of the metropolitan area and that it has accepted an inordinate share of the residential growth. Inquires as to what efforts were made to plan for allocation for residential housing.
244	Clay	Replies that Portland considered vacant zones for redevelopment.
271	Rep. Devlin	Asks if it was concluded that Portland had the capacity to assimilate the additional residents.
273	Clay	Replies affirmatively.
279	Rep. Merkley	Wonders if Mr. Clay has seen the A-engrossed version of the bill.
287	Clay	Replies that he has seen only the ñ3 amendments that were adopted by the Senate.
290	Rep. Merkley	Notes that the bill requires local governments to insure adequate development. Asks if the bill would compel cities to decide which lands will be designated as commercial.
303	Clay	Replies that the provisions outlining the methodology to be used would be applied to all lands within the growth boundary and that local governments would be required to expand their boundaries to accommodate increased need.

325	Rep. Merkley	Asks if the commercial community believes that available land set aside will not meet future growth and improvement requirements.
337	Clay	Answers negatively. Suggests that redevelopment can address a significant portion of Portland's future needs.
364	Henry Reeves	Resident, Amity. Testifies in opposition to SB 87-A (EXHIBIT H). Argues that the proposal is "ill conceived" and would run counter to the wishes of residents. Asserts that the bill would increase cost to local governments. Suggests it is impossible to project the commercial land needs for cities in 20 years. Discusses public antipathy toward unmitigated growth.
TAPE 150, A		
048	Judson Parsons	Resident, Marion County. Testifies in opposition to SB 87-A. Says the bill would encourage expansion of urban growth boundaries. Discusses how expansion of Medford would affect his fruit orchards.
067	Don Schellenberg	Associate Director of Governmental Affairs, OFB. Testifies in opposition to SB 87-A (EXHIBIT I). Concurs that the bill will increase pressure on cities to increase their urban growth boundaries to accommodate projected population growth. Wonders if farms are considered a commercial land use. Suggests that the bill could make the planning requirement optional.
108	Scott Ashcomb	Representative, Oregon Association of Nurserymen. Testifies in opposition to SB 87-A. States that the bill duplicates existing mandates and represents unfunded mandates on local governments. Requests the opportunity to work toward a compromise on the bill.
125	Rep. Merkley	Wonders how passage of the bill would increase violations of Goal 3 and Goal 4.
132	Ashcomb	Replies that Goal 3 and Goal 4 relate to protection of agriculture and forestland, respectively. Submits that the expansion of urban growth boundaries that may occur would be detrimental to both farm and forestland.
135	Tom Brawley	Farmer. Testifies in opposition to SB 87-A. Says that his family could lose its farmland within and adjacent to the urban growth boundary if the bill becomes law. Asserts that it is difficult to project 20 years into the future. Argues that growth should be restricted.
163	Cliff Keneagy	Farmer, Benton County. Testifies in opposition to SB 87-A. States that job formation benefits to the detriment of education; making uneducated workers nothing more than replacements for retirees.
187	Jim Johnson	Representative, ODA. Testifies in opposition to SB 87-A (EXHIBIT J). Says that any such proposal should include more efficient use of existing land. Says that needs should be considered on a regional basis. Says that the only county that has come close to meeting 20-year planning requirements, according to

		population forecasts, is Marion County. Asserts that a farm is "a factory without walls."
230	George Pugh	Representative, OBA. Testifies in opposition to SB 87-A. Suggests that the bill creates a disincentive for businesses to move to rural areas by stimulating growth in urban areas.
260	Mary Kyle McCurdy	Representative, 1000 Friends of Oregon. Testifies in opposition to SB 87-A (EXHIBIT K) . Declares the bill to be "a solution in search of a problem." Mentions that the bill's proponents are real estate developers who have contributed to economic growth in the Willamette Valley at the expense of the rest of the state. Asserts that passage of the bill will continue such trends.
307	McCurdy	Says the bill reduces the flexibility that cities have for addressing growth and will result in enlarged urban growth boundaries. Recalls that virtually all cities overestimated their urban growth boundaries in the past.
360	Rep. Devlin	Inquires whether 1000 Friends is willing to work toward a compromise with the proponents of the bill.
371	McCurdy	Replies affirmatively.
374	Rep. Devlin	Asks if 1000 Friends disagrees with the current formula for residential land predictions.
383	McCurdy	Replies that is the case.
388	Rep. Devlin	Suggests that 1000 Friends might be interested in using the bill as a vehicle for revising the residential planning requirement.
391	Marilyn Reeves	Resident, Yamhill County. Testifies in opposition to SB 87-A. States that there is no need for additional commercial or industrial lands. Suggests that the bill represents a "training exercise." Asserts that the bill should instead be used as a vehicle for revoking the residential planning requirement.
TAPE 151, A		
009	Rep. Devlin	Clarifies that his comment referred to a revision of the residential requirement, rather than a repeal.
027	Chair Welsh	Closes the public hearing on SB 87-A and opens a public hearing on SB 444.
<u>SB 444 PUBLIC HEARING</u>		

030	Portia Foster	Resident, Lane County. Testifies in support of SB 444. States that the bill would assist in avoiding conflicts of interest with regard to land use planning.
061	Fran Recht	President, Oregon Shores Conservation Coalition (OSCC). Testifies in support of SB 444 (EXHIBIT L). States that the bill requires disclosures of conflicts for both local decision-makers and their family members, as well as requiring disclosure of campaign contributions. Indicates that the bill requires the Land Use Board of Appeals (LUBA) to remand any decision made without full disclosure. Relates a personal experience related to re-zoning of property involving a conflict of interest.
115	Rep. Merkley	Asks if extension of an urban growth boundary is considered a land use decision.
122	Recht	Replies affirmatively.
124	Rep. Merkley	Inquires whether planners who have relatives within the potential expansion area of an urban growth boundary would need to remove themselves from the decision making process.
128	Recht	Replies negatively, as such a decision affects all properties equally, as opposed to a specific property.
132	Robert Liberty	Director, 1000 Friends of Oregon. Testifies in support of SB 444.
155	Charlie Swindells	Representative, 1000 Friends of Oregon. Testifies in support to SB 444 (EXHIBIT M). Says the bill allows appropriate application of the law without bias. Acknowledges that most local officials are honest but adds that the bill is necessary to deal with a few who are not.
180	Liberty	Reads a series of newspaper articles as illustration of conflicts of interest.
230	Liberty	Continues to read newspaper articles. Says that the issue is whether officials should disclose conflicts of interest. Asserts that failure to uphold ethical principles damages the process and should be prevented by passage of the bill.
284	Rep. Merkley	Asks if a campaign contribution creates a conflict of interest.
294	Liberty	Replies that a contribution of over \$100 would indicate a conflict.
299	Rep. Merkley	Suggests that such a decision would have serious ramifications if it were extended to the legislature.
305	Liberty	Clarifies that voting against the apparent conflict of interest does not constitute wrongdoing.

310	Rep. Merkley	Notes that the bill requires officials to excuse themselves from votes where a potential conflict exists, meaning that there would be no opportunity to cast a vote contrary to the conflict. Inquires as to the nature of contribution expenditure reporting requirements that exist at the local level.
325	Liberty	Replies that such reports are filed as part of the existing land use process through the ethics panel.
335	Rep. Gianella	Wonders if officials would need to be aware of all contributors to their election campaigns.
346	Liberty	Replies that candidates would need to be aware of donors giving \$100 or more. Suggests that planners could ask participants in the process if they are donors before making decisions.
371	Rep. Gianella	Suggests that it would be simpler to turn over campaign reports to the public.
378	Charlie Swindells	States that there is a significant difference between requiring disclosure and making information available. Says that full disclosure helps prevent personal attacks.
TAPE 150, B		
003	Rep. Kruse	Expresses concern regarding allowing voting against a conflict of interest, adding that sometimes voting in accordance with the conflict is the correct decision.
014	Liberty	Asserts that money buys influence. Says there should be a mechanism for preventing conflicts from unfairly affecting the decision making process.
021	Rep. Kruse	Acknowledges that there are problems associated with the current system. Asserts that the bill proposes a "guilty until proven innocent" structure.
033	Liberty	Comments that more people should be questioned about their potential conflicts of interest.
038	Rep. Devlin	Inquires whether a decision involving personal gain carries penalties. Recalls that campaign contributions do not constitute personal gain.
064	Liberty	Replies that the provision would likely be enforced by citizens and will be much quicker than an ethics commission investigation.
076	Rep. Devlin	Asks for confirmation that a local official cannot receive a campaign contribution unless they have a political action committee. Indicates that the general public cannot request campaign information in advance of a land use

		decision.
092	Liberty	Clarifies that the bill is designed to set an ethical standard for land use planners. Asserts that most Oregonians are put off by seeing officials benefit personally from decisions they make in an official capacity.
105	Chair Welsh	Closes the public hearing on SB 444 and opens a public hearing on SB 524.
<u>SB 524 PUBLIC HEARING</u>		
113	Kristina McNitt	Committee Administrator. Gives a brief description of the bill.
116	Rob Bovett	Assistant County Counsel, Lincoln County. Testifies in support of SB 524 (EXHIBIT N). Says the bill returns local control over roads. Disputes the argument that the bill hinders beach access.
160	Bovett	Discusses the Yachats right-of-way case. Says that the case is pending appeal to LUBA. Mentions a bipartisan letter of support has been submitted by the Lincoln County Board of Commissioners.
220	Arthur Roberts	Mayor, City of Yachats. Testifies in support of SB 524 (EXHIBITS O, P, and Q). Asserts that the bill will release coastal cities from litigation related to the protection of beach access. Says that Yachats has suffered from efforts to prevent the vacation of road easements. Suggests that failure of the bill will eventually result in abandonment of homes within Yachats.
294	Portia Foster	Resident, Lane County. Testifies in opposition to SB 524 (EXHIBIT R). Says that coastal issues should continue to be land use decisions. Mentions that efforts by the Oregon Department of Transportation (ODOT) to develop a continuous coastal trail would be benefited by passage of the bill. Says that the land should not have been built on in the first place, but clarifies that those structures already there should be allowed to remain.
350	Rep. Taylor	Wonders what types of solutions for homeowners have been suggested.
353	Foster	Replies that efforts to open a dialogue have been rebuffed. Adds that area residents have participated in libel, slander, and promulgation of misinformation. Asserts that the bill will hinder public access to the coast.
TAPE 151, B		
010	Fran Recht	President, OSCC. Testifies in opposition to SB 524 (EXHIBIT S). Says the bill is designed to fix a single issue by making the sweeping change of declaring road vacations not to be land use decisions. Says the bill will directly weaken an appeal filed by OSCC in the Yachats case. Argues that "hard cases make bad law." Suggests that the bill could lead to a loss of public access to beaches throughout the state. Cites <i>Billington v. Polk County (1985)</i> as evidence that

		vacation is not a land use decision when there are no significant land use impacts. Says the bill will allow title companies in Lincoln County to avoid responsibility for previous mistakes.
048	Rep. Morgan	Requests a visual representation of the affected piece of land in Yachats. Inquires whether the public currently has access to the private property in the right-of-way.
062	Recht	Replies that is not the case, as landowners have been placing fences and no trespassing signs on their property since 1974. Mentions that the property owners had rejected a vacation opportunity in 1977. Indicates that visitors have been verbally and physically threatened while traversing the right-of-way.
073	Rep. Morgan	Notes that the bill's proponents deny the allegations of threats and assaults.
077	Recht	Mentions that Mayor Roberts is one of the affected property owners and asserts that he has no authority from the City of Yachats to testify before the committee in his official capacity as Mayor. States that she lives in Depot Bay, located several miles north of Yachats, but is affected by the bill nonetheless, as it would restrict the access of all Oregonians to the beach.
083	Rep. Morgan	Asks Ms. Recht for opinion as to the "best case outcome" for the Yachats issue.
084	Recht	Replies that the responsible parties, particularly the title companies that mistakenly built upon the right-of-way should be held accountable. Reiterates that all county land surveys show the right-of-way, indicating a failure on the part of the title companies to do proper research. Asserts that the county is also responsible, as it allowed the property to be built. Says a negotiated settlement could protect both the landowners and the right of the public to beach access.
094	Rep. Morgan	Requests clarification regarding Ms. Recht's suggestion that the public has access to privately owned land.
100	Recht	Reiterates that the land in question is not private property, but is instead "a public road that has never been vacated." Argues that the road was used by the public for years, until property owners began to threaten those they perceived to be trespassers. States that the affected homeowners have not held the title companies that sold them the property responsible for failure to perform due diligence and that the county is seeking to avoid responsibility for its "mistakes."
123	Rep. Morgan	Submits that it is the duty of the legislature to deal with such situations by changing the law accordingly.
130	Rep. Merkley	Wonders why the map provided to the members refers to the right-of-way as vacated.
137	Recht	Clarifies that certain portions of the right-of-way have been vacated. Says that the northern portion of the property is currently used as a public hiking trail.

145	Rep. Merkley	Says that title companies generally review property easements. Expresses doubt that several title companies would have failed to perform due diligence on the matter.
150	Recht	Replies that the title companies do not dispute the fact that the road has not been vacated. Explains that the property in question lies south of the portion on the map designated as vacated.
152	Rep. Merkley	Expresses doubt that all the title companies involved would have made such an obvious oversight.
157	Recht	Responds that that is why the issue is before the courts. Mentions that the county counsel has indicated that he was aware that the road had not been vacated. Acknowledges that the legislature has the authority to address the issue, but implores the committee not to do so.
170	Rep. Merkley	Agrees that the bill may be too broad to address the Yachats issue. Asks whether OSCC has proposed legislation that would address the issue more succinctly.
175	Recht	Replies negatively. Reiterates that Mayor Roberts, the primary supporter of the bill, has failed to disclose that he has not been given the authority by the city to testify on behalf of the bill, adding that he owns a piece of property that is directly affected.
215	Rep. Morgan	Inquires as to the basis for the claim that the road has existed for "thousands of years."
219	Recht	Replies that archaeological records and information provided by the Siletz tribe show that the pathway has existed prior to statehood.
227	Sen. Joan Dukes	Senate District 1. Testifies in support of SB 524. Says that many such roads exist all over the Oregon coastline as anachronisms of 19 th century planning. Indicates that many communities have made efforts to vacate such roads when they are no longer in use. Opines that land use at the local level is open to the public. Asserts that the process should be left with local jurisdictions.
288	Sen. Gary George	Senate District 2. Testifies in support of SB 524. Offers an account of the public hearing on the issue. Says there was general agreement that the houses should remain on the road. Mentions that SB 1060, which recently passed through the Senate, is designed to guarantee that beach access is maintained.
340	Rep. Taylor	Expresses concern that the bill will exclude vacation of right-of-ways as land use decision, thereby eliminating public input on such issues.
355	Bovett	Clarifies that Oregon statutory law provides for notice and public hearings, which are not affected by the bill. Discusses the history of vacation along the Yachats right-of-way. Says that the bill attempts to return to the process that was

		in place prior to the conflict.
398	Rep. Taylor	Requests confirmation that the Adobe site is not located on the provided map.
400	Bovett	Replies affirmatively.
TAPE 152, A		
001	Sen. Dukes	Comments that the bill addresses the process that led to the issue.
008	Rep. Morgan	Asks what happens if there are dissatisfied parties at the conclusion of the process.
013	Bovett	Replies that the decision of the commission can be appealed normally.
015	Rep. Morgan	Inquires as to the basis of such appeals.
017	Bovett	Replies that appeals can be made on procedural or constitutional grounds.
018	Rep. Merkley	Expresses concern regarding the process. Suggests that ORS 368.351 seems to indicate that a governing body has the authority to make such decisions without hearings, if the vacation is considered to be in the public interest.
030	Bovett	Suggests that the statute refers to a different process than the one being discussed.
041	Rep. Merkley	Requests that Mr. Bovett submit an analysis of ORS 368.351 and ORS 368.346 to clarify that it does not apply.
044	Bovett	Concurs that further analysis of the statute may be necessary.
047	Rep. Merkley	Explains that he is concerned that the exception from one statute does not necessarily indicate an exception from the other.
059	Roberts	Clarifies that the bill was approved by the Yachats city council. Asserts that he has been authorized to represent the city and that he has prevailed in suits claiming a conflict of interest.
076	Howard Osbourne	Resident, City of Yachats. Testifies in opposition to SB 524. Indicates he is one of the affected landowners. States that he has people and vehicles crossing his valuable beachfront property every day. Acknowledges that part of his property will be yielded due to the decision. Asserts that the property is not a road, but a public right-of-way.

114	Rep. Kruse	Requests clarification as to where Mr. Osbourne's property is located.
116	Osbourne	Replies that his property is not located on the map provided to members. Says that the property in question is public property that has been taken for the private use of the landowners and should remain accessible to all Oregonians.
165	Monte Marshall	Resident, City of Yachats. Testifies in opposition to SB 524 (EXHIBIT T). States that road vacations involve a decision making process that includes a determination as to whether road vacation is in the public interest. Asserts that the definition of "public interest" is insufficient and is determined solely by an assessment by the county road official.
225	Marshall	Submits that the process should include a broader examination of the public interest. Argues that statute allows only residents and those directly affected by a road vacation to have standing with regard to public interest determinations.
282	Charlotte Mills	Representative, Friends of the Historic 804 County Road and Hiking Trail. Testifies in opposition to SB 524 (EXHIBIT U). Says the issue has been hotly contested for over six years. Mentions that threats have been received by members of OSCC.
340	Mills	Asserts that the issue goes back to 1953, at which time land use was less complex than it is today. Reiterates that archaeological evidence indicates that the road has existed for at least 3,500 years and that it was dedicated in 1890. Indicates that all major surveys of the county indicate that the road exists and has not been vacated.
400	Mills	Refers to <i>Rendler v. Lincoln County (1988)</i> , which guaranteed that the northern portion of the 804 would not be vacated. Says there has not been a public forum for discussion of alternative solutions.
TAPE 153, A		
005	Mills	Discusses previous efforts to open a dialogue on the issue. Offers a brief history of Monterey Bay, California, drawing comparison to the Yachats coastline. Suggests that the state can develop a world class hiking trail along the coastline.
057	Rep. Morgan	Requests clarification as to when the courts acknowledged the size and scope of the 804 easement.
059	Mills	Replies that the <i>Rendler</i> decision was made in 1988.
061	Rep. Morgan	Wonders why such a long period of time passed before it was recognized that the easement existed.
065	Mills	Replies that the existence of the easement was widely recognized.

068	Rep. Morgan	Mentions that the title companies were apparently unaware that such a determination had been made.
071	Mills	Explains that her research clearly indicates that the easement was acknowledged as far back as the 1950s. Says the county commissioner who approved the easement was involved in local real estate development.
082	Rep. Morgan	Expresses doubt that title companies would miss evidence as obvious as Ms. Mills claims it is.
087	Mills	Asserts that sometimes public officials in small towns fail to exercise proper ethical restraint. Reiterates that property owners have alternatives to legislation for seeking restitution. Discusses the <i>Rindler</i> decision's clarification that the road was pre-existing and had not been vacated. Indicates that the county's position in support of the bill is a result of its insurance liability.
149	Rep. Gianella	Inquires whether business owners in Monterey were forced to relocate as a result of the creation of the walkway.
157	Mills	Replies that the community negotiated settlements with individual business owners for the purchase or donation of their property.
164	Rep. Gianella	Requests confirmation that none were forced to leave.
166	Mills	Confirms Rep. Gianella's statement.
168	Norma McMillan	Representative, OSCC. Testifies in opposition to SB 524. Mentions that she was a Lincoln County Commissioner in 1985, at which time the north portion of the 804 was turned over to the State Parks Department. Expresses gratitude to Mr. Osbourne for his willingness to allow public access to his property.
210	McMillan	Describes the 804 trail. Asserts that the trail must be preserved for access by all Oregonians.
256	Rep. Morgan	Comments that it is unwise to pursue litigation if the goal is to cooperate with landowners for the establishment of the road as a historic landmark. Suggests that such efforts place property owners in a defensive position.
278	Chair Welsh	Indicates that the issue will receive additional hearings. Closes the public hearing on SB 524 and adjourns the meeting at 6:05 p.m.

Submitted By, Reviewed By,

Danielle Hamilton, Jennifer Peck,
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Transcribed By,

Patrick Brennan,
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EXHIBIT SUMMARY

A ñ HB 3168, -1 amendments, staff, 1 p.
B ñ SB 85, testimony, Doug Myers, 1 p.
C ñ SB 85, testimony, Don Schellenberg, 1 p.
D - SB 85, testimony, Ron Eber, 2 pp.
E - SB 85, testimony, Jim Johnson, 3 pp.
F - SB 85, testimony, Blair Batson, 2 pp.
G - SB 87-A, testimony, Mark Fraser, 4 pp.
H - SB 87-A, testimony, Henry Reeves, 2 pp.
I - SB 87-A, testimony, Don Schellenberg, 1 p.
J - SB 87-A, testimony, Jim Johnson, 2 pp.
K - SB 87-A, testimony, Mary Kyle McCurdy, 3 pp.
L ñ SB 444, testimony, Fran Recht, 1 p.
M ñ SB 444, testimony, Charlie Swindells, 2 pp.
N ñ SB 524, testimony, Rob Bovett, 5 pp.
O - SB 524, testimony, Arthur Roberts, 2 pp.
P - SB 524, informational materials, Arthur Roberts, 1 p.

Q ñ SB 524, chronology, Arthur Roberts, 1 p.

R - SB 524, testimony, Portia Foster, 1 p.

S - SB 524, testimony, Fran Recht, 2 pp.

T ñ SB 524, testimony, Monte Marshall, 2 pp.

U - SB 524, testimony, Charlotte Mills, 3 pp.