

SENATE COMMITTEE ON TRANSPORTATION

March 29, 1999 Hearing Room C

3:05 p.m. Tapes 47 - 48

MEMBERS PRESENT: Sen. Marylin Shannon, Chair

Sen. Mae Yih, Vice-Chair

Sen. Susan Castillo

Sen. Joan Dukes

Sen. Ted Ferrioli

Sen. Gary George

Sen. Lenn Hannon

STAFF PRESENT: Don Scott, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: SB 351 Public Hearing and Possible Work Session

SB 773 Public Hearing and Possible 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 47, A		
003	Chair Shannon	Calls the meeting to order at 3:13. Opens a public hearing on SB 351.
<u>SB 351 PUBLIC HEARING</u>		
014	Don Scott	Committee Administrator. Gives a brief description of the bill. States that the bill was heard previously on 1-22-99. Indicates that the bill amendments (EXHIBIT A) have been submitted in response to concerns raised at the previous hearing.

022	Kelly Taylor	Representative, Oregon Department of Transportation (ODOT). Testifies in support of the SB 351 (EXHIBIT B). Says that the bill streamlines the process for exempting manufactured homes from title and registration requirements. Says that the streamlining applies to any home which is new, or has never been titled in Oregon and is being recorded as real property. Says that the exemption process is unnecessarily time-consuming for ODOT and home owners. Says that the bill will save \$36,000 in the first biennium and \$60,000 in the second, the equivalent of a full time position at ODOT. Says that the ñ1 amendments should be added, to address the concerns of interested parties who participated in a work group on the bill.
058	Don Miner	Representative, Oregon Manufactured Housing Association (OMHA). Testifies in support of SB 351. States that he was a part of the work group which developed the ñ1 amendments. Says that all interested parties were involved in drafting the amendments.
061	Chair Shannon	Closes the public hearing on SB 351 and opens a work session on SB 351.
<u>SB 351 WORK SESSION</u>		
065	Sen. Hannon	MOTION: Moves to ADOPT SB 351-1 amendments dated 3/19/99.
	Chair Shannon	Hearing no objection, declares the motion CARRIED.
070	Sen. Hannon	MOTION: Moves SB 351 to the floor with a DO PASS AS AMENDED recommendation.
073		VOTE: 5-0-2 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Ferrioli, Yih
	Chair Shannon	The motion CARRIES. SEN. CASTILLO will lead discussion on the floor.
077	Chair Shannon	Closes the work session on SB 351 and opens a public hearing on SB 773.
<u>SB 773 PUBLIC HEARING</u>		
085	Don Scott	Committee Administrator. Gives a brief description of the bill and indicates that the ñ3 amendment (EXHIBIT C) and the ñ4 amendment (EXHIBIT D) have

		been submitted and hand-engrossed for the consideration of the members.
096	Craig Greenleaf	Representative, ODOT. Testifies on behalf of SB 773. States that the committee had requested information regarding the Access Management Advisory Commission and that the information has been provided to the committee staff. States that ODOT supports the ñ3 and ñ4 amendments.
122	Sen. Castillo	Asks if the project requirements for engineers would drive up the cost of the project.
133	Greenleaf	Replies that the language within the amendments addresses the issue in that it requires the department to respond in a manner contemporaneous with the work being advanced on the part of the consultant. Says that the language is preferable to that in the original bill. Says that there is no desire to make the system more complex than it already is.
146	Sen. Hannon	Asks what would happen in the event that there is still a lingering dispute between a county and ODOT regarding the granting of access.
155	Greenleaf	Replies that the concern has been mentioned by the Office of the Attorney General. Says that the bill would authorize ODOT to grant decision-making ability to local governments. Says that questions such as the one asked by Sen. Hannon would have to be addressed in the agreement with the local government. Says that the precise manner for how to handle such issues would need to be addressed in the future.
177	Sen. Hannon	Asks if the inter-governmental agreements between counties, cities, and ODOT will include provisions for mediation, in the event that a landowner is caught in the middle.
191	Greenleaf	Replies that ODOT is trying to develop a dispute resolution program within the department. Says that such an alternative may not always be the best method of dealing with disputes but that it should be available.
201	Sen. Hannon	Asks, as an example, who would determine if a landowner would have right-turn-only access, or full four-lane access, to a four-lane road.
213	Greenleaf	Replies that there must be a firm foundation set up to deal with such questions. Says that safety is the primary duty of ODOT. Says that determinations on safety deal primarily with the speeds traveled on highways. Says that ODOT is trying to be more clear regarding signal spacing and median treatments for access lanes.
242	Sen. Hannon	States that ODOT must be aware that a failure to properly craft administrative rules will require the legislature to deal with the issue in the next legislative session. Says that if relations between ODOT and local governments become "heavy-handed" the legislature will hold someone accountable.
253	Sen. Dukes	Asks what the likelihood is of allowing a landowner left-turn access onto a four-

		lane highway as mentioned in Sen. Hannon's example. Says that ODOT would not allow such access.
265	Chair Shannon	Asks Sen. Hannon if such access should be allowed.
266	Sen. Hannon	Replies that he does not and that such access would be hazardous. Says that there may be political pressure on cities and counties to implement practices which do not meet ODOT safety requirements. Says that any dispute mediators who are charged with making determinations must be knowledgeable on such matters.
282	Sen. Dukes	Asks why local governments are being given such authority if ODOT is going to monitor them as they make decisions. Says that there may be advantages to giving cities and counties the ability to issue permits but that the ability should only be given if ODOT will not be constantly involved in the monitoring of the process.
298	Chair Shannon	Says that the issue is more complex than the cut-and-dry example given by Sen. Hannon
304	Sen. George	Says that the amendments alter the intended meaning of the bill too much. Says that passage of the bill with the amendments would leave the situation as it is currently. Says that access points are being blocked all over the state by ODOT, due to problems related to left-turn lanes. Says that he would like to show the committee photos of the barricades being placed by ODOT, offering the I-5 Stafford Exit as an example. Says that the barricades have adverse effects on businesses. Says that the committee must deal with the problem.
340	Chair Shannon	Asks Sen. George if he would be willing to put together a presentation for the committee to show the problems which he has discussed. Asks which businesses are being blocked at the I-5 Stafford Exit.
344	Sen. George	Replies that the affected businesses are Burns Brothers Truck Stop, the International House of Pancakes, and the Holiday Inn. States that the Holiday Inn was sold because the previous owner was concerned about the potential financial impact of the barricades. Says that he will put together a presentation for the committee.
355	Sen. Dukes	Asks Mr. Greenleaf for the commission's status regarding its access management policy.
357	Greenleaf	Replies that the commission adopted the highway plan and access management spacing standards on a provisional basis
366	Sen. Dukes	States that she was under the impression that the commission had removed the access management policy before adopting the highway plan.
370	Greenleaf	States that the access management policy was included as an appendix to the plan for purposes of consideration on a provisional basis. Says that there may be

		changes which will need to be made in order to fit the parts of the plan together appropriately. Says that the existing, 1991 version of the plan sets access management standards which needed to be replaced for the current times.
387	Sen. Dukes	Asks for the difference between the 1991 and 1999 spacing standards.
389	Greenleaf	Replies that the provisions now recognize three separate characteristics which are pooled together to make spacing judgements. States that the first characteristic considered is the functional classification of the highway. Says that the second consideration is recognizing local area treatments.
415	Sen. Dukes	Asks if there is a population limit on the local area treatments considered by the plan.
TAPE 50, A		
002	Greenleaf	Replies that there is no population limit and that the limits on distance spacing were removed.
006	Sen. Dukes	Asks if downtown Seaside could be treated the same as downtown Portland.
007	Greenleaf	Replies that it is possible. Says that there are also provisions for urban business area points of entry. Says that the third major consideration is speed. Says that the circumstances are different for 55 mph than for 25 mph. Says that the 1991 highway plan had a sophisticated, five-level treatment and that there is a need to fit the two methodologies together.
026	Sen. Dukes	Asks if the commission has discussed the possibility that the rules it adopts may not concur with the laws passed by the legislature.
028	Greenleaf	Replies that the commission recognizes that the issues are before the legislature and that laws passed would take precedent over the rules that it adopts.
032	Sen. Dukes	Says that the commission used to work with the legislature on areas of mutual concern. Says that it would be helpful for the committee to receive a presentation by ODOT regarding its access management plan. Asks if there is a plan being used by regional offices for purposes of granting or denial of access.
046	Greenleaf	Replies that the existing rules governing access management are in place and that the new rule package addresses changes that are to be made to the rules.
050	Sen. Dukes	States that the committee should be shown the rules that ODOT is using for making access management decisions.
055	Greenleaf	States that there is a recognition that the existing rules are not satisfactory with

		regards to clarity, certainty, appeals, or variations in the system.
063	Sen. Dukes	States that she has been told on more than one occasion that the commission had never adopted rules governing access management. Says that the fact that there are existing rules is a surprise. Says that the fact that there is no dialogue between the commission and the legislature creates the possibility that the rules adopted by the commission will be incompatible with laws that may be passed by the legislature. Says that such incompatibility would be a waste of money and an inconvenience for citizens seeking access.
081	Sen. Hannon	Asks for confirmation that there is an existing set of rules regarding access management.
084	Greenleaf	Replies that they are and that ODOT recognizes that they are not sufficient to deal with the process of handling permits in a consistent manner.
090	Sen. Hannon	Asks for the difference between the administrative rules being used and the rules within the appendix of the adopted highway plan.
095	Greenleaf	Replies that the rules being used have existed for some time. Says that they do not contain provisions which are included in the new highway plan. Says that the existing rules are largely silent regarding decision-making criteria and landscape variances. Says that ODOT recognizes the value of achieving a consistent application of access management rules.
124	Sen. Hannon	Asks what the result of adoption of the ñ4 amendment would be if the administrative rules are silent. Asks how policies would be different in such a situation than in current practice.
129	Greenleaf	Replies that, if the rules were silent, the Attorney General would probably advise that there was no basis for ODOT to delegate the decision to a local government.
135	Sen. Hannon	Asks how the passage of SB 773 with the ñ4 amendment would be different from existing practice. Says that the bill is intended to set up a procedure for ODOT to enter into inter-governmental agreements regarding access management. Asks why the committee should believe that the bill would amend the current rules, which are silent on access management.
160	Greenleaf	Replies that the other provisions of the bill, such as the 120-day timeline for addressing the issues, are not contained in the existing administrative rules.
170	Sen. Dukes	Says that if the committee passes the bill with the ñ4 amendments and ODOT does not amend its rules then local governments will be able to give anyone an access permit.
180	Tim Ramis	Attorney; Ramis, Crew, Corrigan, and Bachrach LLP (EXHIBIT E). Indicates that he has worked with local governments and businesses with regards to access issues but that he is not testifying today on their behalf.

198	Chair Shannon	States that Mr. Ramis worked with the taskforce which dealt with the access issue during the interim.
201	Sen. Hannon	Says that cities and counties should be a part of the decision-making process but that there should be safeguards, such as an appeals process, to prevent unilateral decisions. Says that SB 773 was originally designed to allow for inter-governmental agreements.
220	Ramis	<p>States that the ñ4 amendment is designed to do just that. Says that the first step would be for ODOT and the local government to reach an agreement through the comprehensive planning process. Says that the second step would be to designate a single body for arbitrating disagreements on the issue. Says that the bill is designed to allow a "one-step process" for issuing permits at the local level, so long as ODOT has no objections.</p> <p>Says that there is currently the potential for ODOT to veto a permit which has proceeded through the process. Says that SB 773 is designed to address the issue through the ñ3 amendments. Says that procedural rules should apply to the appeals, rather than to the original issuance of the permit. Says that he has submitted language which would include all appeals in the final decision, as well as inclusion of the appeals process in the 120-day time limit.</p>
275	Chair Shannon	Asks if the submitted language is offered by ODOT.
276	Ramis	Replies that it is. Says that the language would be acceptable to him if the language discussed in his exhibit is also included.
291	Scott	Asks if the "internal appeals" mentioned in Mr. Ramisí suggested language refers to appeals internal to.
295	Ramis	Replies that is correct.
299	Chair Shannon	Asks for clarification regarding the word "final" in the suggested language.
305	Ramis	Replies that the word would be added to Line 10 of the bill.
308	Sen. Hannon	States that the typical process is to submit suggested amendments to Legislative Counsel so that they can be considered by the committee. Says that it would be helpful if the suggested changes could be drafted and hand-engrossed in order to see them in context.
337	Sen. Dukes	Says that there should not be multiple standards. Says that the second change proposed by Mr. Ramis raises concerns. Says that there may be different criteria developed within Lane County than in Polk County. Says that the plan should develop as much consistency as possible.
366	Ramis	States that the suggested language is designed to prevent the access planning

		<p>process from being vetoed at the end by ODOT. Says that the amendment would take into consideration not only the comprehensive plan but also the local transportation system plan. Says that is important because local transportation system plans must be shown to be consistent with the state-level plan. Says that such disagreements would be resolved at the state approval stage. Says that if there is to be a disagreement it should happen during the development of the transportation system plan, rather than at the end of the process. Discusses occasions in the past where ODOT intervened at the end of the planning process, resulting in the loss of money and time invested.</p>
TAPE 47, B		
015	Sen. Dukes	States that ODOT did not have an access management policy at the time that such problems were occurring.
025	Ramis	Says that transportation system plans are fairly new and that few have been adopted. Says that the bill could require development of criteria up front, so that the development of transportation system plans in the future could be reviewed against those criteria.
031	Sen. Dukes	Asks if ODOT would refuse to enter into inter-governmental agreements with communities which already have transportation system plans.
034	Ramis	Replies that would be the case, unless the communities went back and made the necessary changes.
050	Sen. Dukes	States that she had been hopeful that there would be a statewide policy which would be applied uniformly. Says that having local governments offer permits opens the possibility that there may be inconsistency.
067	Chair Shannon	Asks Sen. Dukes if she is ready to write in a statewide policy.
072	Sen. Dukes	Replies that the commission may not come up with a statewide policy. Says that there seems to be no need for adhering to local government transportation plans if ODOT is to remain involved. Says that she has heard that access management is handled differently in various parts of the state.
074	Chair Shannon	Says that there is a need for the committee to have clarity before taking action.
076	Sen. Dukes	Concurs and says that allowing for local control will not achieve clarity.
079	Ramis	Says that the difficulty in land use planning is that it is difficult to develop standards which will work just as well in metropolitan Portland as they do on the coast or vice versa. Says that the key is to develop standards that can be applied to local conditions. Says that is the way to get local governments to sign on to the idea.

094	Sen. Yih	Asks if the committee requested that the commission provide information on its statewide policy. Says that the committee should ask for an updated version of the policy.
104	Chair Shannon	Says that there will not be a "one size fits all" solution.
107	Sen. Yih	States that having the policy in hand will make it easier to make a final recommendation.
113	Chair Shannon	Says that the legislative process must be moved along and that it may not be possible to wait until the commission can present their policy.
114	Sen. Yih	Says that the committee must act on the issue before the end of session.
118	Sen. Ferrioli	Says that it would be beneficial to know what criteria are used to determine where access points will be placed.
130	Chair Shannon	Closes the public hearing on SB 773 and opens a work session on SB 773.
<u>SB 773 WORK SESSION</u>		
137	Sen. Hannon	MOTION: Moves to ADOPT SB 773-3 amendments dated 3/23/99 AND SB 773-4 amendments dated 3/25/99.
	Chair Shannon	Hearing no objection, declares the motion CARRIED.
145	Sen. Hannon	Asks that the amendments be hand-engrossed into the bill once they are received from Legislative Counsel.
151	Chair Shannon	Closes the work session on SB 773 and reopens the public hearing on SB 773.
<u>SB 773 PUBLIC HEARING</u>		
154	Art Schlack	Representative, Association of Oregon Counties (AOC). Testifies in support of the ñ4 amendments to SB 773. Says that the ñ4 amendments were drafted to clarify that local governments are to consider the state highway plan, administrative rules, state statute, and local transportation system plans in making access decisions. Says that the amendments are designed to increase collaboration between ODOT and local governments. Says that dispute resolution would be spelled out by the inter-governmental agreements. Says that AOC submitted the ñ4 amendments and that they are supported by ODOT.
188	Save Barenberg	Representative, League of Oregon Cities (LOC). Testifies in support of the ñ4 amendments to SB 773. Says that the intent of the amendments was not to create

		different standards but to allow for more flexibility to try different things consistent with the rules set forth by ODOT.
205	Sen. Ferrioli	Says that there must have been decisions made by ODOT at some point in the past regarding access points.
221	Greenleaf	Says that there are others within ODOT who would be better equipped to answer Sen. Ferrioli's question.
234	Ferrioli	Says that there must be some collaboration between policy makers and those who implement policy in the field for ODOT.
248	Shannon	Closes the public hearing on SB 773. Adjourns the meeting at 4:28 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Don Scott,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 351, testimony, Kelly Taylor, 1 p.

B ñ SB 351, -1 amendments, staff, 2 pp.

C ñ SB 773, -3 amendments, staff, 1 p.

D ñ SB 773, -4 amendments, staff, 1 p.

E ñ SB 773, testimony, Tim Ramis, 11 pp.