

**SENATE COMMITTEE ON TRANSPORTATION**

**May 12, 1999 Hearing Room C**

**3:05 p.m. Tapes 86 - 88**

**MEMBERS PRESENT: Sen. Marylin Shannon, Chair**

**Sen. Mae Yih, Vice-Chair**

**Sen. Susan Castillo**

**Sen. Ted Ferrioli**

**Sen. Gary George**

**MEMBER EXCUSED:**

**STAFF PRESENT: Megan Palau, Administrator**

**Gary Roulier, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2203 Public Hearing**

**HB 2895A Public Hearing**

**HB 2986A Public Hearing and Work Session**

**HB 2446A Public Hearing and 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
<b>TAPE 86, A</b>		
002	Chair Shannon	Opens the meeting at 3:09 and opens a public hearing on HB 2203.

**HB 2203 PUBLIC HEARING**

007	Chair Shannon	Remarks on policy issues that have a correlation to HB 2203. Discusses the purchase of right of way in the 1970s for the construction of I-205. Notes that this land was purchased with state gas tax money. Presents ( <b>EXHIBIT A</b> ) and emphasizes that this land should not have been converted to transit use.
056	Al Lightner	Right of Way Supervisor, Oregon Department of Transportation (ODOT). Explains the responsibilities of his department and his tenure with ODOT.
073	Chair Shannon	Presents ( <b>EXHIBIT B</b> ) and reviews a Memorandum of Understanding dated December 23, 1997. Asks when the witness first became aware of the agreement.
084	Lightner	Responds that he first became aware of the understanding in the past year. Adds that he felt the use of the right of way for transit should have been discussed by the directors of ODOT and Tri-Met.

- 095      Chair Shannon      Asks if he is usually informed when ODOT right-of-way is being purchased or sold. Discusses the fact that Bechtel is only paying 8 percent of the assessed value of the right of way.
- 097      Lightner      Responds that right of way agreements would eventually come to his office. Adds that his understanding is that Tri-Met is working on drafting agreements regarding payment responsibilities. States that ODOT will always own the right of way property and the rights to use the property will be granted to Tri-Met.
- 119      Sen. Castillo      Asks if this particular discussion is on the agenda.
- 120      Chair Shannon      Responds that HB 2203 is an attempt by ODOT to avoid spending \$54 million on highways. Adds that the issue being discussed deals directly with ODOT uses of funds. Asks if Tri-Met will pay the 8 percent.
- 128      Lightner      Responds that is correct, and reiterates that ODOT will retain title and Tri-Met would have operating rights.
- 132      Chair Shannon      Asks if the agreement was to lease or to purchase the property.
- 134      Lightner      Answers that those agreements are still being negotiated.
- 142      Chair Shannon      Asks if he has been working on this project.
- 145      Lightner      Responds yes and that ODOT has completed an appraisal of the property.

151	Chair Shannon	Notes that her concern is that ODOT was giving land away.
153	Lightner	Responds that the issue is that while ODOT retains title, how much of the value of the use of the property is recoverable. Notes that there are issues of compensability, and his recommendation would be that Bechtel pay full value.
172	Chair Shannon	Asks if it was the ODOT director that made the decision to have Bechtel pay only a percentage of the property value.
174	Grace Crunican	Director, ODOT. Responds that the federal codes state that land that can be used for alternative transportation purposes must be used for those purposes. Adds that the current proposal is to transfer the 92 percent federal reimbursement to transit uses.
193	Chair Shannon	Remarks that the problem is that when Oregon was reimbursed in the 1970s, the funds were placed in the highway trust fund.
207	Crunican	Answers that 92 percent of the project was paid for with federal funds. Notes that the right of way was initially to be used for a busway but will now be used for lightrail. Emphasizes that these are legal uses for the federal funds.
226	Chair Shannon	Contends that the property purchased and set aside for transit was paid for with highway trust fund dollars. Adds that ODOT decided to charge only 8 percent of the value of the land.
240	Sen. Castillo	Remarks that spending decisions on transit are not made in a vacuum and involve an extended public process. Emphasizes that any examination of decisions made in the 1970s need to include a study of the entire process.
263	Chair Shannon	Responds that her research has demonstrated that it was the sole decision of the director of ODOT.
273	Sen. Castillo	Conveys her frustration with the line of questioning.
285	Sen. George	States that right of way property cannot be used for other purposes than for road use unless it is properly compensated for.
300	Chair Shannon	Comments that the assessed value of the property is approximately \$2 million. Asks if the land was sold for full value.
326	Crunican	Answers that any sale of right-of-way requires certification that the right-of-way is not needed. Adds that this property is not related to North-South light rail and that the funds are not state highway funds. Reiterates that the federal guidelines are that this property must be used for transit purposes.

- 355 Chair Shannon Asks if the situation would be different if the property was sold to Tri-Met.
- 358 Crunican Responds that the property must be conveyed rather than sold.
- 363 Don Aman Manager, Funds and Grants Administration Unit, ODOT. Presents (**EXHIBIT C**) and testifies in support of HB 2203. Explains the purpose of HB 2203 which authorizes ODOT to count federal moneys and certain State Highway Fund moneys used for modernization toward amounts required for state modernization program for highways.

**TAPE 87, A**

- 002 Aman Notes that the purpose of the bill is to ensure that Oregon gets the maximum federal funds available. Adds that HB 2203 will allow ODOT to count federal funds toward the modernization requirement.
- 013 Sen. George Asks what the current \$54 million block of revenue is tied to. Remarks that HB 2203 substitutes federal funds for state funds for modernization programs.
- 018 Crunican Responds that the \$54 is state gas tax money which by statute must be dedicated to modernization. Discusses the problem associated with paperwork difficulties with the federal government. Emphasizes that the \$54 million will continue to be spent on modernization.
- 042 Sen. George Discusses the minimal amount that ODOT is spending on modernization. States that the shift in funds is just to make the state look better to the federal government.
- 049 Crunican Responds that is not correct.
- 053 Chair Shannon Asks what the barriers are to applying federal funds to the \$54 million in modernization.
- 054 Aman Responds that the state statutes do not allow ODOT to use gas tax funds on anything other than modernization. Adds that the intent of HB 2203 is to receive more funds from the federal government.
- 063 Chair Shannon Asks if ODOT would have \$108 million in the next year for new road construction if HB 2203 bill passes.
- 068 Aman Responds that is not correct. Restates that the bill gives ODOT access to additional revenue by obligating more federal funds.

080	Chair Shannon	Asks if ODOT must spend at least \$54 million on modernization. Adds that ODOT is arguing that they should be released from that requirement so the department can use federal dollars for modernization.
088	Aman	Answers that the federal government does not recognize a modernization program.
092	Crunican	Adds that ODOT is spending \$54 million on modernization and will continue to do so.
103	Chair Shannon	Remarks that her wish is to increase the amount of funds going to new construction.
108	Aman	States that there could be additional funds available if ODOT qualifies for an additional credit limit at the end of the year.
115	Chair Shannon	Asks what would be done with the \$54 million of state funds if the same amount of federal funds were obtained.
117	Aman	Responds that his responsibility is to manage and maximize the federal funds available.
126	Chair Shannon	Restates her concern that ODOT will use HB 2203 as a justification to spend the \$54 million in modernization funds on maintenance.
129	Aman	Answers that this bill does not change the usage of \$54 million in modernization funds.
133	Sen. George	Reviews the federal dollars available within the budget and how much of the budget will be going to roads. Adds that a percentage of the increased federal funds committed should be utilized on modernization.
170	Crunican	Reiterates that the purpose of the bill is to be able to use federal funds for modernization.
193	Sen. George	Suggests an amendment that would require that \$54 million remain in the state modernization program but would add \$54 million in federal dollars.
197	Crunican	Answers that she could not support the proposed amendment.
200	Chair Shannon	Closes the public hearing and opens a public hearing on HB 2895A.

**HB 2895A PUBLIC HEARING**

218	Megan Palau	Administrator. Explains the provisions of HB 2895A which specifies the amount of interest to be charged if payment is not made within a specified time to persons
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supplying labor or material in connection with a public contract.

- 240 Paul Phillips Oregon Building and Construction Trades Council. Testifies in support of HB 2895A and explains the intent is to insure prompt payment and eliminate bid shopping.
- 258 Carol Duncan General Sheet Metal Works, Inc. Presents (**EXHIBIT D**) and testifies in support of HB 2895A. Notes that enforcement of the public contracting law requiring prompt payment often involves lengthy and expensive legal proceedings.
- 280 Robert Blake Executive Director, Sheet Metal and Air Conditioning Contractors. Testifies in support of HB 2895A. Remarks that the issue is fairness. Adds that the practice of bid peddling hurts the small contractor.
- 302 Chair Shannon Asks if the witness has seen the amendments presented by the Association of General Contractorís (AGC) that would clarify that prompt payment would apply to everyone.
- 305 Blake Responds that he has not.
- 310 John Gervais National Electrical Contractors Association. Presents (**EXHIBIT E**) and testifies in support of HB 2895A.
- 328 Mike Weaver Owner, M&W Electric, Albany, Oregon. Testifies in support of HB 2895A. Relates a recent experience where the general contractor did not pay his company for approximately seven months after receiving payment from the state on a public contract.
- 356 Chair Shannon Asks if the witness had to consult an attorney to receive payment.
- 359 Weaver Responds that he recently consulted an attorney and reviews his efforts to receive payment.
- 377 Sen. George Asks about the provisions of the bill requiring the listing of all subcontractors.
- 391 Gervais Answers that bid peddling causes a number of problems and a requirement to list subcontractors would ensure fairness in the bid process.

**TAPE 86, B**

- 011 Sen. Yih Asks if the witness sought reimbursement of attorneyís fees.

019	Weaver	Answers that he was confident that payment would be received since it was a state contract so did not hire an attorney until recently. Notes that he is \$2,000 out-of-pocket for attorney fees. Emphasizes that the prime contractor was the one withholding payment.
031	Weaver	Adds that the dispute was over work that the prime contractor insisted was late.
053	Sen. Ferrioli	Asks if the witness had any other remedy available such as a contractor's lien.
061	Gervais	Responds that a contractor's lien is not available on a public contract.
072	Jeff Carlson	Business Agent, Ironworkers Local #29. Testifies in support of HB 2895A. Notes that contractors deserve to be paid in a timely fashion after completion of the contract.
091	Howard Lyness	Owner, Metis, Inc. Presents ( <b>EXHIBIT F</b> ) and testifies in support of HB 2895A. Notes that the bill will serve to greatly reduce the practice of bid shopping on public contracts. Summarizes why he does not support the proposed the amendment offered by the AGC office.
143	Ken Koch	Owner, Koch Construction. Presents ( <b>EXHIBIT G</b> ) and testifies in support of HB 2895A. Notes that general contractors can use the subcontractor's money until they are ready to pay and can also withhold payment to exert pressure on the subcontractor to settle for less.
183	Koch	Remarks that the section of HB 2895A which requires the submittal of the subcontractors list with the bid is long overdue.
202	Greg Akeson	President, Total Mechanical. Testifies in support of HB 2895A and reiterates that delay of payments can cause serious problems.
232	Darrell Evenson	President, Mason Contractors Association. Testifies in support of HB 2895A. Adds that any additional information provided to the subcontractors is beneficial and emphasizes the importance of cash flow.
259	Ed Gormly	Plumbing and Heating Contractor, McMinnville, Oregon. Testifies in support of HB 2895A. Notes that general contractors on large projects will make more money by handling the funds that on the project.
284	Gormly	Relates his experiences with bid shopping public projects.
324	Cindy Catto	Associated General Contractors, Oregon-Columbia Chapter. Presents ( <b>EXHIBIT H</b> ) and testifies that AGC does not oppose HB 2895A.

368 Catto Notes that AGC has procedural concerns with how the bill is written, and outlines efforts of a work group to resolve these concerns

**TAPE 87, B**

003 Catto Emphasizes that AGC supports prompt payment. Adds that AGC has had a policy for over a decade against bid shopping but notes that current language in HB 2895A is simply too burdensome (page 2 of the exhibit).

037 Bill Eckhardt Chief Financial Officer, Andersen Construction. Presents (**EXHIBIT I**) and testifies that he supports prompt payment of subcontractors. Expresses concerns with sections of the bill and outlines suggested amendments (page 1 of the exhibit).

057 Chair Shannon Asks if Anderson contracts for work outside of Oregon and if he deals with the bid process in California and Washington.

061 Eckhardt Responds that they do.

065 Kevin Spellman President, Emerick Construction. Presents (**EXHIBIT J**) and testifies that he supports prompt payment of subcontractors. Relates concerns about Section 2(5) which requires the prime contractor to provide a copy of its invoice to the public agency to all subcontractors.

096 Spellman Notes that based upon a recent project, under the provisions of HB 2895A, invoices including over 260 line items would have to be provided to 75 subcontractors/suppliers (page 2 of the exhibit).

107 Patrick O'Brien President, OTKM Construction, Inc. Presents (**EXHIBIT K**) and testifies in opposition to the section of HB 2895A which requires subcontractor listing at the time of bid.

142 O'Brien Defines bid peddling and states that it is not illegal.

155 Chair Shannon Asks how Washington state outlawed bid peddling and asks about the establishment of bid services.

161 O'Brien Responds by explaining bid depositories.

170 Sen. Ferrioli Asks if the AGC has a mission statement against bid shopping.

178 Catto Responds that it is part of the ethical guidelines for the AGC.



181 Chair Shannon Comments that laws are not written for ethical people.

184 OiBrien Notes that according to AGC surveys, less than 20 percent of subcontractors feel that bid peddling is a problem. Stresses that listing subcontractors will complicate an already burdensome, complex and error-prone process (page 2 of the exhibit).

226 OiBrien Outlines possible problems associated with errors involving public owners (page 2 of the exhibit). Adds that subcontractors are listed in California primarily to improve contractor registration.

266 Chair Shannon Closes the public hearing and opens a public hearing on HB 2986A.

**SB 2986A PUBLIC HEARING**

278 Palau Explains the provisions of HB 2986A which allows certain violations of traffic laws to be placed on the employment rather than the non-employment driving record.

307 Kelly Taylor ODOT. Summarizes the intent of HB 2986A and notes that this change cannot be handled administratively and requires a change in the statute.

323 Ralph Groener American Federation of State, County and Municipal Employees (AFSCME). Presents (**EXHIBIT L**) and testifies in support of HB 2986A. Notes that the bill received unanimous support in the House and has been approved by the Department of Motor Vehicles and representatives of the insurance industry.

353 Don Morgan President, AFSCME Local 75. Testifies in support of HB 2986A. Reviews an accident involving a county employee and county vehicle where the employee was not at fault but was charged for the accident by the private insurance carrier.

397 Morgan Relates differences in auto insurance rates when charged with an accident.

420 Sen. Yih Asks who pays the insurance in the event of charged accidents for an employee.

434 Taylor Responds that the employers insurance would cover the employee.

**TAPE 88, A**

016 Morgan Adds that the employer carefully checks the employment driving record before hiring.

**HB 2986A WORK SESSION**

020 Sen. Yih **MOTION: Moves HB 2986A to the floor with a DO PASS recommendation.**

**VOTE: 3-0**

**EXCUSED: 2 - Ferrioli, George**

**Chair Shannon Hearing no objection, declares the motion CARRIED.**

**SEN. YIH will lead discussion on the floor.**

027 Chair Shannon Closes the work session and opens a public hearing on HB 2446A.

**HB 2446A PUBLIC HEARING**

036 Palau Explains the provisions of HB 2446A which requires ODOT to study the effects of aging on driving ability.

039 Andi Miller Community Relations Director, Alzheimer's Association. Presents **(EXHIBIT M)** and testifies in support of HB 2446A. Relates personal experiences with Alzheimer's and notes that the association is eager to serve on the advisory committee that studies this difficult issue.

067 Taylor Adds that ODOT understands the concern and HB 2446A will have no fiscal impact on ODOT.

073 Sen. Yih Asks when recommendations would be completed.

074 Taylor Responds that the study could be completed within a year and a report could be made to the interim committee.

084 Chair Shannon Notes that Rep. Montgomery, House District 56, would like to testify.

089 Sen. Castillo Comments on a person in the Eugene that would be a good resource for the study.

103 Taylor Reviews plans for the makeup of the committee.

130 Chair Shannon Closes the public hearing and opens a work session on HB 2446A.

**HB 2446A WORK SESSION**

136 Sen. Yih **MOTION: Moves HB 2446A to the floor with a DO PASS recommendation.**

**VOTE: 3-0**

**EXCUSED: 2 - Ferrioli, George**

**Chair Shannon**

**Hearing no objection, declares the motion CARRIED.**

**SEN. CASTILLO will lead discussion on the floor.**

141

Chair Shannon

Closes the work session and adjourns the meeting at 5:07 p.m.

Submitted By, Reviewed By,

Gary Roulier, Megan Palau,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ HB 2203, letter submitted prior to meeting, staff, 1 p**

**B ñ HB 2203, report submitted prior to meeting, staff, 16 pp**

**C ñ HB 2203, written testimony, Don Aman, 2 pp**

**D ñ HB 2895A, written testimony, Carol Duncan, 1 p**

**E - HB 2895A, written testimony, John Gervais, 1 p**

**F - HB 2895A, written testimony, Howard Lyness, 1 p**

**G - HB 2895A, written testimony, Ken Koch, 1 p**

**H - HB 2895A, written testimony, Cindy Catto, 2 pp**

**I - HB 2895A, written testimony, Bill Eckhardt, 1 p**

**J - HB 2895A, written testimony, Kevin Spellman, 2 pp**

**K - HB 2895A, written testimony, Patrick O'Brien, 2 pp**

**L ñ HB 2986A, written testimony, Ralph Groener, 5 pp**

**M ñ HB 2446A, written testimony, Andi Miller, 4 pp**

**N ñ HB 2895A, letter submitted at meeting, staff, 3 pp**

**O ñ HB 2895A, letter submitted at meeting, staff, 1 p**

**P ñ HB 2895A, letter submitted at meeting, staff, 1 p**