

SENATE COMMITTEE ON WATER AND LAND USE

February 11, 1999 Hearing Room B

1:00 PM Tapes 19 - 20

MEMBERS PRESENT: Sen. Veral Tarno, Chair

Sen. Tony Corcoran, Vice-Chair

Sen. Gary George

Sen. Marylin Shannon

Sen. Thomas Wilde

MEMBER EXCUSED:

STAFF PRESENT: Raymond J. Kelly, Administrator

Diana Bronson, Administrative Support

MEASURES/ISSUES HEARD: Introduction of Committee Bills

LC 2617

LC 2618

LC 2493

LC 2494

LC 2497

SB 86 ñ Public Hearing

SB 440 ñ Public Hearing and Work Session

SB 91 ñ 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
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TAPE 19, A		
005	Chair Tarno	Opens meeting at 1:48 p.m. and requests reading of committee bills.
<u>INTRODUCTION OF COMMITTEE BILLS</u>		
014	Ray Kelly	Committee Administrator. Reads staff summaries of LC 2618, 2617, 2493, 2494 and 2497.
020	Chair Tarno	MOTION: Moves LC 2618 BE INTRODUCED as a committee bill.
		VOTE: 4-0 EXCUSED: 1 ñ Shannon LC 2618 becomes SB 628
	Chair Tarno	Hearing no objection, declares the motion CARRIED.
025	Sen. Tarno	MOTION: Moves LC 2617 BE INTRODUCED as a committee bill.
		VOTE: 4-0 EXCUSED: 1 ñ Shannon LC 2617 becomes SB 631
	Chair Tarno	Hearing no objection, declares the motion CARRIED.
030	Chair Tarno	MOTION: Moves LC 2493 BE INTRODUCED as a committee bill.
		VOTE: 4-0 EXCUSED: 1 ñ Shannon LC 2494 becomes SB 630
	Chair Tarno	Hearing no objection, declares the motion CARRIED.

035	Chair Tarno	MOTION: Moves LC 2494 BE INTRODUCED as a committee bill.
		VOTE: 4-0 EXCUSED: 1 ñ Shannon LC 2494 becomes SB 629
	Chair Tarno	Hearing no objection, declares the motion CARRIED.
040	Sen. Tarno	MOTION: Moves LC 2497 BE INTRODUCED as a committee bill.
		VOTE: 4-0 EXCUSED: 1 ñ Shannon LC 2497 becomes SB 627
	Chair	Hearing no objection, declares the motion CARRIED.
<u>SB 86 PUBLIC HEARING</u>		
051	Bob Lindsey	Testifies in opposition to SB 86
097	Bob LeFeber	Commercial Realty Advisors, representing the International Council of Shopping Centers (ICSC). Explains that when the Oregon Department of Transportation (ODOT) builds or expands a road, they need to take some property and, at that time, ODOT dictates where an access will be. For a retailer the success is dependent upon that access.
134	LeFeber	Continues testimony in support of SB 86.
144	Ken Diener	Architect planner. Testifies in support of SB 86.
172	Charles Hudson	Testifies in support of SB 86. Presents (EXHIBIT A) . States that this bill is a reconfirmation of the right to access onto the highway system.

231	Hudson	Continues testimony in support of SB 86.
270	John Liljegren	Westwood Development Corporation, active with the Retail Task Force and International Council of Shopping Centers (ICSC). Presents (EXHIBIT B) . Describes properties in Gresham and Florence which have endured problems with ODOT in trying to obtain access to deeded land.
348	Liljegren	Continues testimony in support of SB 86.
405	Sen. Shannon	Questions Hudson regarding writing an amendment to SB 86.
413	Hudson	States it might be appropriate to make it clear that this legislation is not intended, in any way to reduce rights that already exist.
441	Sen. Shannon	Asks how the witness feels about having ODOT tell the retailers their rights up front.
464	Hudson	Replies that it might go beyond the scope of this legislation.
481	Diener	Interjects that by stating rights up front, ODOT and staff would need to do their homework on the basis that deeded access rights.
TAPE 20, A		
033	Sen. Wilde	Asks Hudson his thoughts as to the shift in the court's view, in terms of just compensation.
038	Hudson	States he is not convinced the courts have changed their view, but some of the diction has changed.
094	Sen. Corcoran	Asks for explanation of differences between the parameters of city access and state and county access rights.
100	Hudson	States that it "appears" to be the way the case law has evolved. Discusses case law.
130	Sen. Corcoran	Asks Deiner if he thinks anyone living in Bend 50 years ago, on or near Highway 99, could have contemplated the growth that they have experienced.
141	Deiner	Responds they would not have 50 years ago.
223	Chair Tarno	Asks Hudson for recommendations on how to amend SB 86.

224	Hudson	Suggests that: 1) The language be created to recognize the grant or reservation; and 2) add a clause at the end of the bill saying, that by recognizing the foregoing rights of access, the legislature does not intend to diminish or imply that abutting rights do not already exist.
242	Chair Tarno	Asks for input on amendments.
247	Sen. George	Asks what the costs were to prevail on these cases.
251	Hudson	Replies that the three cases were different. Responds costs were probably more than a couple hundred thousand dollars in one case and in another case, costs were approximately \$50,000.
312	Hudson	Continues to describe lawsuit cases and monetary costs.
343	Sen. George	Assumes ODOT spent \$50,000 to \$200,000 for each of the cases.
346	Hudson	States that \$50,000 to \$200,000 is about right.
356	Craig Greenleaf	Deputy Director, (ODOT).
359	Sen. Corcoran	Asks ODOT to explain the amount of \$20 million in "other" funds and asks why it is not in "general" funds.
373	Greenleaf	Replies.
<u>SB 440 PUBLIC HEARING</u>		
409	Dave Hunnicutt	Oregonians In Action. States there have been two previous hearings on SB 440. Describes previous hearings concerning omitting Sections 8 and 12.
<u>SB 440 WORK SESSION</u>		
457	Sen. Corcoran	MOTION: Moves to ADOPT SB 440-2 amendments dated 1/11/99. (EXHIBIT C).
		VOTE: 4-0 EXCUSED: 1 - Shannon

	Chair Tarno	Hearing no objection, declares the motion CARRIED.
500	Sen. Corcoran	MOTION: Moves SB 440A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
		Chair Tarno
		The motion CARRIES. SEN. TARNO will lead discussion on the floor.
TAPE 19, B		
<u>SB 91 PUBLIC HEARING</u>		
054	Scott Ashcom	Oregon Association of Nurserymen. Introduces a proposed amendment to SB 91. States that permit rules cannot be changed retroactively.
106	Sen. Corcoran	Asks how long the general permitting process takes.
109	Ashcom	Replies approximately two to three years.
123	Sen. Corcoran	Questions that three years seems to be extreme on fill-removal permits.
126	Ashcom	Answers that he was the manager of the Coquille River and had several fill-removal permits that were pending for at least that long.
162	Ashcom	States SB 91, with the amendment, is meant to treat the citizens in a fair manner.
179	Sen. Corcoran	Asks if Department of Environmental Quality (DEQ) has the same protection as Water Resources.
194	Ashcom	Replies that his question is not in the scope of what is intended in SB 91. Describes intended application process.

212	Paul Cleary	Director of the State Lands. States he has not seen the amendment to SB 91 nor has he met with Ashcom and would like to discuss some of the details on the outstanding permits. States they have a statutory time limit on remove and fill permits of 90 days or they must issue a temporary permit.
259	Cleary	Recommends that, during the rule making process, it might be wise to have a "dead" period for not taking applications because, in the end, the system may apply different sets of rules to different people and that is counterproductive.
275	Tom Byler	Water Resources Department. States he has not seen the draft before today and has questions regarding SB 91.
287	Chair Tarno	Interjects that Ashcom has work to do on his amendment to SB 91, and suggests Ashcom to consult with State Lands and Water Resources. Adjourns meeting at 3:04p.m.

Submitted By, Reviewed By,

Diana Bronson, Raymond J. Kelly,
Administrative Support Administrator

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EXHIBIT SUMMARY

A ñ SB 86, Written testimony, Charles Hudson, 9 pp

B ñ SB 86, Written testimony, John Liljegren, 5 pp

C ñ SB 440, Proposed amendments, staff 1 pp