

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

April 14, 1997 Hearing Room E

1:00 P.M. Tapes 59 - 60

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Michael Fahey

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

MEMBER EXCUSED: Rep. Jim Welsh

STAFF PRESENT:

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 3492 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 59, A		
003	Chair Lewis	Calls the meeting to order at 2:10 p.m. and opens a public hearing on HB 3492.
<u>HB 3492 PUBLIC HEARING</u>		
008	Pat Zwick	Policy Analyst, summarizes provisions of HB 3492.
	Larry	Executive Director, Oregonians in Action. Urges the creation of the office of an Ombudsman to protect the rights of private property owners. Explains that HB 3492 is based on similar legislation in Arizona and indicates that an

017	George	amendment will be introduced to refine the bill. An Ombudsman would be someone for citizens to go to when they have questions about the land use system (EXHIBIT A) .
044	Rep. Lehman	Asks if the language of HB 3492 is the same as the Arizona language.
045	George	Answers affirmatively and states that he will provide copies of the Arizona language.
046	Michael Foster	Ombudsman for Private Property Rights, State of Arizona. Explains the concept of what an ombudsman is. Indicates that the Arizona office was created to resolve issues related to stream navigability. The ombudsman interprets and explains when the public doesn't understand what is going on with the bureaucracy. Explains that he's read the statutes broadly to provide the best advice possible. People need to understand what has happened to them, and why. Indicates that many of the complaints that he responds to are related to local governmental actions. States that his office is not a constituent services office.
106	Foster	Explains that his staff is limited, and discusses the cost of operation. States that he is an attorney and although that is not a requirement of the position, the background is extremely useful.
149	Rep. Lehman	Asks if there must be economic damage to a property owner to qualify as a taking.
154	Foster	Not necessarily. Explains that the term constitutional taking evolves definitionally. Indicates that the mandate of the ombudsman is to resolve the issue.
166	Rep. Lehman	Relates a hypothetical situation; the highway department constructs a median down a road to cut off left turn access to properties. Asks if that would be considered a constitutional taking.
171	Foster	Explains that the situation would be inverse condemnation and that the ombudsman would not be involved with the situation, other than advising the affected party of possible solutions.
182	Rep. Lehman	Asks what the definition of small business is, related to the proposed legislation.
184	George	Explains that the original bill was aimed at small property owners. Indicates that a future amendment will clean up the bill.
200	Rep. Lehman	Clarifies when an ombudsman would be associated with a case.
205	George	Explains that the intent of the bill is that the ombudsman would be involved with cases that are of statewide significance, but would also provide information to the general public on land use issues.
224	Rep. Lehman	Indicates that the language of the bill is different from the verbal definition of the responsibilities of the ombudsman.
231	George	Language was included related to the ombudsman preparing legal briefs for hearings so that the ombudsman would have the opportunity to do so if it becomes necessary.

238	Foster	The opportunity to prepare legal briefs allows the ombudsman to sue state agencies if it becomes necessary. Explains that the position is very broad, yet it can be very narrow.
264	Rep. Luke	Explains that there are several ombudsmen in state agencies and that they work well because they have direct contact with agency heads. Expresses concern that the proposed legislation would allow Legislative Counsel to be advocates in some cases.
288	Foster	Indicates that the same concerns existed in Arizona. Explains that Legislative Counsel and the ombudsman are related for administrative purposes only.
319	Rep. Luke	Asks who the ombudsman is accountable to.
320	Foster	The Executive Director of Legislative Council.
325	George	Explains that an ombudsman in Oregon would be under the direction of the Legislative Administration Committee.
344	Foster	Indicates that each agency in Arizona must have an ombudsman who is perceived as independent of executive influences.
366	Rep. Luke	Asks if citizens can sue the state if the advice of the ombudsman does not benefit them.
372	Foster	Indicates that the legal advice given is not given as independent counsel. The ombudsman does not have a direct attorney-client relationship with those that make inquiries to the office.
386	George	Explains that similar advice is given through Oregonians in Action.
397	Rep. Luke	As a point of reference, the Human Resources ombudsman gets about 600-800 calls per month.
402	Rep. Lehman	States that many times, someone provide a disclaimer for advice that they give, but people believe in what a state agency tells them.
TAPE 60, A		
005	Foster	Relates how he has provided advice and solutions to individuals, but it was not the type of advice that individuals would rely on exclusively. The advice was general and more explanatory than direct legal advice.
029	Rep. Shields	Asks if constitutional takings would include situations where the Department of Environmental Quality requires a small business to remove an in-ground oil tank.
039	Foster	Explains that the oil tank issues have their own regulatory and appeals processes.
046	Rep. Shields	Indicates that the oil tank issues might be considered similar to takings issues.
051	Foster	Explains that discretion would be exercised in any situation that is presented to the ombudsman.
068	George	Indicates that a single ombudsman dealing with land use issues would be overwhelmed, but at least it would be a start in answering citizens' questions.
074	Rep.	Asks how many calls the Arizona ombudsman gets in a month.

	Luke	
075	Foster	About five phone calls and referrals.
078	George	Agrees that there would be many more in Oregon.
091	Foster	Explains that the office of the ombudsman would generate as many calls as they would advertise to generate. Indicates that if people have the opportunity to call, they will take it.
100	Rep. Shields	States that in Oregon, the office wouldn't have to advertise for calls.
104	Foster	Explains that he also deals with the navigable streams issues on top of the property rights issues.
110	George	States that the navigable streams issues were not included in HB 3492 since they are being taken care of elsewhere.
124	Foster	States that he advertises for navigable streams issues.
130	Rep. Shields	Indicates that HB 3492 is very different from the Arizona bill that it was patterned after.
136	George	Agrees that it is different because the "may"s were changed to "shall"s.
139	Foster	States that "may" items are very important to his office, but he needs the staff to work on all of the issues. Indicates that his office was created to resolve navigable stream issues.
166	George	Explains that the "shall" was used as a priority system in Arizona. HB 3492 language changes the priority of the office.
181	Chair Lewis	Closes the public hearing on HB 3492 and adjourns the meeting at 2:52 p.m. Faxed testimony from 1000 Friends of Oregon has been entered into the record (EXHIBIT B) .

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 3492, Written testimony, Larry George, 1 p.

B - HB 3492, Faxed testimony, Committee Staff, 2 pp.