

HOUSE GENERAL GOVERNMENT AND REGULATORY REFORM  
SUBCOMMITTEE ON TRANSPORTATION

February 28, 1995 Hearing Room C 1:00 PM

HOUSE GENERAL GOVERNMENT AND REGULATORY REFORM SUBCOMMITTEE ON  
TRANSPORTATION MEMBERS PRESENT: Rep. Cedric Hayden, Chair Rep. Lonnie  
Roberts, Vice-Chair Rep. Jerry Grisham Rep. Ken Strobeck

HOUSE MEMBERS EXCUSED: Rep. Mike Lehman Rep. Bill Markham

SENATE COMMITTEE ON TRANSPORTATION MEMBERS PRESENT: Sen. Ken Baker, Chair  
Sen. Mae Yih, ViceChair Sen. John Lim Sen. Marilyn Shannon Sen. Dick  
Springer

STAFF PRESENT:

~~~ Anne T`veedt, House Committee Counsel  
Janet Adkins, Senate Committee Administrator  
Gina Rumbaugh, Senate Committee Assistant

MEASURES HEARD: Informational Overview: South/North Light Rail Project

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation marks  
report a speaker's exact words. For complete contents of the proceedings,  
please refer to the tapes.

JOINT MEETING OF THE HOUSE GENERAL GOVERNMENT AND REGULATORY REFORM  
SUBCOMMITTEE ON TRANSPORTATION AND THE SENATE COMMITTEE ON TRANSPORTATION.  
REFER TO MINUTES AND AUDIO TAPE OF THE SENATE COMMITTEE ON TRANSPORTATION  
FOR INFORMATION.

Submitted by,  
Gina Rumbaugh Anne Tweedt  
Committee Assistant Committee Counsel

Reviewed by ,

HOUSE COMMITTEE ON  
GENERAL GOVERNMENT AND REGULATORY REFORM  
SUBCOMMITTEE ON TRANSPORTATION

Hearing Room  
Tapes

MEMBERS PRESENT:

Rep. Cedric Hayden, Chair  
Rep. Lonnie Roberts, Vice-Chair  
Rep. Jerry Grisham  
Rep. Mike Lehman  
Rep. Ken Strobeck

MEMBER EXCUSED:

Rep. Bill Markham

STAFF PRESENT:

Anne Tweedt, Committee Counsel  
Kay C. Shaw, Committee Assistant

MEASURES HEARD:

SB 128                   Public Hearing  
SB 126-A                Public Hearing and Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004       CHAIR HAYDEN: Calls the meeting to order at 3:19 pm. REP. MARKHAM IS EXCUSED. Introductory comments.

          CHAIR HAYDEN: Opens the public hearing on SB 128.

SB 128 - PUBLIC HEARING

          Witnesses: Tom Barkin, Public Utility Commission  
                          Susan Johnson, Board of Maritime Pilots

012       ANNE TWEEDT, Committee Counsel, reviews the Preliminary Staff Measure Summary. The Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT A).

020       TOM BARKIN, Assistant Commissioner, Administrative Hearings Division, Public Utility Commission: Testifies from a prepared statement in support of SB 128. Submits (EXHIBIT B).

040       REP. ROBERTS: Asks if PUC is going to create a standing list and what

is the process for creating the list?

MR. BARKIN: Explains that PUC hasn't thought about that process; however, PUC has a list of hearings officers under contract to hold hearings. Adds that PUC would recruit for an hearing officer if there is need for qualified people.

REP. ROBERTS: What are the timelines if someone is needed?

MR. BARKIN: Responds that at least a month or more notice is given to select an hearing officer.

060 REP. GRISHAM: What are the qualifications of the hearings officer and is there a ready "pool" of available talents?

MR. BARKIN: Explains that PUC applies the same criteria for the hearings officers for the Board that are applied when a PUC hearings officer is needed (i.e., someone with the ability to handle complex material; someone who is independent and unbiased; someone who has some experience holding contested case proceedings; and someone who writes well and delivers a product on a timely basis).

068 REP STROBECK: Do the maritime pilots pay PUC for the use of an hearings officer?

MR. BARKIN: Yes. There is an inter-agency agreement with them.

REP STROBECK: When an outside hearings officer is used, would they pay the full cost of the hearing?

MR. BARKIN: Yes.

076 CHAIR HAYDEN: Would they pay the money directly to the hearings officer?

MR. BARKIN: Responds that if PUC contracts with an outside hearings officer, they would pay the hearings officer directly.

CHAIR HAYDEN: Summarizes from the proposed bill that they would have the opportunity to name the person they wanted to be the hearing officer and then they would pay that person directly.

080 MR. BARKIN: Agrees. Adds that the selection is from a list that PUC would supply.

CHAIR HAYDEN: Asks whether they have an essential monopoly on the business?

MR. BARKIN: Yes.

CHAIR HAYDEN: Summarizes that they would have a monopoly on the business, would select their own hearings officer, pay their own hearings officer and PUC would get a fair rate.

MR. BARKIN: Says that the Board would only select an hearings officers from a list that PUC supplies and PUC would certify (i.e., guarantee) to the Board that the hearings officer they are getting is a person who can handle the work competently, independently and be unbiased.

091 CHAIR HAYDEN: Questions how PUC can render such a guarantee unless PUC pays the hearings officer with money that is provided by the Maritime Board (i.e., PUC controls who is the hearings officer).

MR. BARKIN: Thinks that is what PUC is doing (i.e., PUC will select the qualified hearings officer, but the Maritime Board will be required to pay the person directly).

REP. ROBERTS: Comments that the Maritime Board has to pay it now.

MR. BARKIN: Says they are now paying PUC.

104 CHAIR HAYDEN: Reads the current language in ORS 776.129. Concludes the proposal is "a very dramatic change" and it takes the authority away from PUC, except that PUC submits a list.

MR. BARKIN: Replies that it is up to PUC.

CHAIR HAYDEN: Asks what happens if the hearings officers don't set the right kind of rates? Do they work for the Board of Maritime Pilots the next time?

122 MR. BARKIN: Agrees that the person might not be selected again; however, if PUC considers that individual's work as "competent", PUC might resubmit that name to the Board.

127 CHAIR HAYDEN: Expresses concerns about the "steep" rates and suggests that someone watch the rates to ensure fairness.

REP STROBECK: Would it be possible to change the proposed language and retain some of the current language in the law and then talk about the "Board shall contract with the Public Utility Commission for the use of hearings officers, either employed by the Commission, or from an outside list"?

MR. BARKIN: Says that is the way PUC reads the proposed bill. Explains that it is PUC's intent to provide a PUC hearings officer for the Board -- this is not PUC's effort to "get away from" that obligation.

147 REP. ROBERTS: Is there an appeal process to PUC if rates are incorrect?

MR. BARKIN: No. The action would be taken to the Court of Appeals.

REP. ROBERTS: Specifies there is in fact an appeal process, but it isn't through PUC.

MR. BARKIN: Agrees.

154 CHAIR HAYDEN: Suggests a further review and perhaps drafting an amendment that would retain some authority by PUC.

REP STROBECK: Agrees. Refers to testimony that PUC intends to have oversight; however, perceives the language in the proposed bill as abdicating the oversight responsibility. Recommends that the language say that PUC has responsibility regardless of who is the hearings officer selected.

CHAIR HAYDEN: Suggests that payment come from PUC to the hearings officer.

166 MR. BARKIN: Identifies concerns during the last rate proceeding about receiving revenues from the Board of Maritime Pilots for the hearings officer's services that are directly from the PUC budget. Explains that PUC receives the revenues, but those revenues cannot exceed the PUC limitation for personal and supply services (i.e., there is a cap).

174 CHAIR HAYDEN: Asks if this bill is submitted at the request of PUC?

MR. BARKIN: Yes.

CHAIR HAYDEN: Closes the public hearing on SB 128.

189 CHAIR HAYDEN: Reopens the public hearing on SB 128.

190 SUSAN JOHNSON, Administrator, Board of Maritime Pilots: Explains the intent of the proposed bill is to relieve the PUC's contractual obligation to the Board of Maritime Pilots and that the Board desires to retain the PUC's services at oversight/expertise in rate hearings.

CHAIR HAYDEN: Remarks that amendments are to be drafted.

211 REP STROBECK: Illustrates the issue as similar to a bill involving a TriMet inspection going through the PUC to contract with the only agency that does inspections for passenger railroads.

CHAIR HAYDEN: Closes the public hearing on SB 128 and opens public hearing and possible work session on SB 126-A.

#### SB 126-A - PUBLIC HEARING

Witnesses: Bob Russell, Public Utility Commission  
Everett Cutter, Oregon Railroad Association

ANNE TWEEDT, Committee Counsel, reviews the Preliminary Staff Measure Summary and the joint hearing with Senate Transportation Committee on February 14, 1995. The Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT C).

239 BOB RUSSELL, Assistant Commissioner, Transportation Program, Public Utility Commission: Testifies from prepared testimony in support of SB 126-A. Submits (EXHIBIT D).

279 MR. RUSSELL: Continues testifying in support of SB 126-A. Explains the problem that several private crossings have evolved into public crossings by usage, but no one has applied to make them public crossings. Refers to the list of 12 dangerous unauthorized crossings, Appendix A.

294 EVERETT CUTTER, Manager, Oregon Railroad Association: Testifies in support of SB 126-A. Refers to a prepared statement for the Joint Committee two weeks ago. Explains the intent of the proposed bill is to provide statutory change to allow signalization of unauthorized grade crossings using available Federal funds. Points out that it does not increase state spending and that railroads are responsible for maintenance of the newly signalized crossings. Additionally, the proposed bill provides a solution to prevent future development of such unauthorized crossings.

311 MR. CUTTER: Comments about the positive partnership of PUC, the railroads and local authorities in making safe railroad crossings in

Oregon.

330 REP. ROBERTS: Refers to testimony about the 12 dangerous unauthorized crossings and the use of federal money.

MR. RUSSELL: Mentions the work with cities and counties to identify other crossings not already identified. Explains the process for expending funds.

REP. ROBERTS: Do you prioritize?

MR. RUSSELL: Absolutely.

345 REP. ROBERTS: Who makes decision about which crossings are the most dangerous?

MR. RUSSELL: Describes Oregon's formula as a nationwide model in deciding and setting up priorities (i.e., scrutiny by the railroads, local jurisdictions, and ORS staff).

342 REP. ROBERTS: Of the 12 listed dangerous unauthorized crossings, what is the timeline for setting them up?

MR. RUSSELL: Explains the process after screening through the priority model.

REP. ROBERTS: Are you saying that all 12 will be done within the next year?

MR. RUSSELL: Says that all 12 may not be completed within the next years, but that of the 12 that rise to the top of the priority list and that the maximum amount of available money is being expended, those crossings will be done within the next year.

371 REP STROBECK: Since PUC or law enforcement has very limited authority over these crossings now, is there some law that says people are in violation if in essence private crossings have been converted into public crossings?

MR. RUSSELL: Explains the bureaucratic problem that when the statutes were setup originally, two types of crossings were contemplated (i.e., private and public), and the only way to make a public crossing was to have a public authority apply to make a public crossing. However, the process didn't work that way as there are unauthorized crossings that are in fact private crossings that are really public crossings, but nobody has made the application (i.e., no category for them).

REP STROBECK: as these crossings have become public crossings (i.e., increased traffic), have there been improvements at these crossings that have made them more useable for greater usage?

391 MR. RUSSELL: Says that none of the 12 on the list have been improved?

REP STROBECK: Are they still dirt or gravel roads?

MR. RUSSELL: The issue is not whether or not they are dirt, gravel or paved roads. Explains there are no warning or protection devices at the crossings to warn motorists of an approaching train.

417 CHAIR HAYDEN: Closes public hearing on SB 126-A and opens work session on SB 126-A.

SB A 126-A - WORK SESSION

MOTION: REP. ROBERTS moves that SB 126-A Engrossed be sent to the Full Committee with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. REP. MARKHAM IS EXCUSED.

441 CHAIR HAYDEN: Declares the motion PASSED to the Full Committee with a DO PASS recommendation. REP. LEHMAN will lead discussion at the Full Committee.

CHAIR HAYDEN: Adjourns the meeting at 3:47 pm.

Submitted by, Reviewed by,

Kay C. Shaw      Anne Tweedt  
Committee Assistant      Committee Counsel

EXHIBIT SUMMARY:

- A - Preliminary Staff Measure Summary on SB 128 -- staff -- 2 pages
- B - Prepared Testimony on SB 128 -- Tom Barkin -- 1 page
- C - Preliminary Staff Measure Summary on SB 126-A -- staff -- 1 page
- D - Prepared Testimony on SB 126-A -- Bob Russell -- 4 pages