

HOUSE COMMITTEE ON
JUDICIARY

May 17, 1995 Hearing Room 357
8:30 A.M. Tapes 39-40

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Kate Brown, Vice-Chair
Rep. Chuck Carpenter
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Bryan Johnston
Rep. Leslie Lewis
Rep. Lisa Naito
Rep. Floyd Promncki
Rep. Eileen Qutub
Rep. Veral Tarno

MEMBER EXCUSED: Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD: Work session on SB 362 A
Public hearing and work session on SB 1038 A

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

TAPE 39,A

003 CHAIR PARKS: Convenes meeting at 8:33 A M.

OPENS the WORK SESSION on SB 362 A

020 REP. CARPENTER: Introduces witnesses. EXHIBIT'S C & D]

025 JONES: Gives brief overview of SB 362 A. Discusses SB 1056 and SB 493.

EXHIBITS E & F

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040 JEANNE CANFIELD, STATE CHAIR for OREGON MOTHER'S AGAINST DRUNK DRmNG
(MADD): Testimony in opposition to SB 362 A. EXHIBIT A]

080 REP. GRISHAM: I have a great deal of respect for Mother's Against Drunk Driving. With respect of the death of the mother in Estacada, do you know where that driver had been drinking?

088 CANFIELD: We know that he had been at Bagby Springs for part of the time, but we do not know if he was drinking at other places because no depositions have been taken.

091 REP. GRISHAM: Would it be your contention that Bagby Hot Springs and the people of

Oregon, since it's a public park, are responsible for the death of those people? I'm very

concerned that we're focusing on taverns, bars, liquor, parks, wherever people consume alcohol

and we're not focusing on personal responsibility.

108 REP. PROZANSKI: Ms. Canfield, from your testimony it's my understanding your not trying

to place exclusive blame on the shop owner or tavern server, it's basically

accountability once

someone has come to their attention as being under the influence and they should be cut off and not served anymore.

115 CANFIELD: Yes.

118 REP. BROWN: Has your organization considered the impact of SB 450, in terms of dealing

with drunk driving and this issue?

121 PETER GLAZER, CHAIR of GOVERNOR'S ADVISORY COMMITTEE on DUII, OREGON DEPARTMENT OF TRANSPORTATION: Testimony in opposition to SB

The answer is yes, it's my understanding that MADD has taken a position in opposition to SB

450. [EXHIBIT B]

124 REP. BROWN: Do you know why that is?

126 GLAZER: It tends to reduce the deterrent effect of Oregon law at this point. The individual

accountability and the individual responsibility of a bar owner or bar tender who violates Oregon

law and serves someone while visibly intoxicated, it has that effect because it changes the

arrangement and the long standing arrangement for what is called "joint several liability".

136 REP. CARPENTER: What this amendment does is make this more difficult for people who are

victims to go ahead with due process to be able to get the tavern owner to court and find out

whether he or she, the tavern owner, is guilty.

154 GLAZER: You are correct. It does not change Oregon law at all if you take this amendment

out.

163 REP. CARPENTER: There has been discussion that by not having this amendment, the

tavern owner's would not be able to obtain insurance. Could you discuss that?

I base this on comments made during this session. Only the enclosed memorandum reproduces speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

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172 GLAZER: I don't think there is any demonstrated effect at all and I would suggest if there was some cause and effect there, this is the type of concept that would have been introduced early in this session.

201 REP. GRISHAM: Is Mr. Glazer going to read his testimony?

203 GLAZER: I don't need to read my testimony but I want you to understand my background. [EXHIBIT B]

213 REP. GRISHAM: In referring to your exhibit, on the front page you say "one large Oregon

community police department has a 58 percent increase in traffic fatalities in the last four years".

Do you attribute that to being over served?

223 GLAZER: Not every one of those deaths was a result of an alcohol related collision.

247 CHAIR PARKS: I want to vote on this while we still have members here and I also want to give

Mr. McCallum an opportunity to talk.

251 REP. GRISHAM: On the bottom of your testimony [EXHIBIT B], you say Oregon has a two

year statute of limitations in civil cases. The passage of SB 362 A, would shorten the statute of

limitations to six months.

260 GLAZER: The word there is "effectively the passage of SB 363 A, would shorten the statute of limitations", and "effectively" that is exactly what it does.

272 MIKE MCCALLUM, DIRECTOR of GOVERNMENT RELATIONS, OREGON RESTAURANT ASSOCIATION: Testimony in support of the -A2 amendments to SB 362 A.

320 VICE-CHAIR BROWN: In the Estacada case where they don't know if there was a bar or tavern involved directly correlated to the accident, what happens in those cases where they don't find out that information until eight months after the accident?

326 MCCALLUM: Where there are wrongful deaths, there is still the one year standard so they still have time.

336 REP. BROWN: Because of the new OLCC rules, are you saying restaurants that are currently covered will be denied coverage?

340 MCCALLUM: No, what we're saying is that new licensee's who come on board will have to get coverage and they can't today.

347 REP. BROWN: Wouldn't the practical effect be that these places won't serve alcohol, not that they won't continue to serve alcohol and not have coverage, but that they won't serve alcohol?

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349 MCCALLUM: I don't believe so. I believe the places will 'oe without coverage as t'ney have been without coverage for many years.

352 REP. PROZANSKI: In cases where there are investigations by officers, it is true that they send some type of notice to the licensee through OLCC?

362 MCCALLUM: That's a voluntary program that goes on with most of the policing agencies in the state, and most of the time t'nat notice does come t'nrough. It does not indicate in any fashion that there is an incident that involved over service by the establishment or notify the establishment that there is a potential lawsuit.

371 REP. PROZANSKI: If the notice comes and it says "this individual was either arrested and/or there was an accident", it would seem to me if OLCC is doing their job, they would send some type of notice.

382 MCCALLUM: That notice is sent out in the vast majority of cases. The it.~surance company's have not seen that as the same type of not)fication that is called for in the bill and would not provide the same level of information necessary to collect evidence on the event.

388 REP. LEWIS: Do you know what percentage of your folks do not have insurance?

392 MCCALLUM: Maybe 10 to 25 percent.

396 MOTION: REP. CARPENTER: Moves to rescind the -A2 amendments to SB 362 A.

411 REP. GRISHAM: I 'oelieve we need to improve our laws on drunk driving.

439 VOTE: In a roll call vote REPS. BROWN, CARPENTER, COURTNEY,

JOHNSTON, NAITO and PROZANSKI vote AYE. REPS. GRISHAM,
LEWIS, QUTUB, TARNO and PARKS vote NAY. REP. TIERNAN is
EXCUSED.

440 CHAIR PARKS: The motion CARRIES.

442 JONES: At this point we appear to have rescinded from the -A2
amendments leaving the -A4 intact.

TAPE 40 A

025 MOTION: REP. BROWN: Moves SB 362 A to the Floor with a do
pass recommendation.
027 VOTE: In a roll call vote all members present vote AYE. REP. TIERNAN
is EXCUSED.

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030 CHAIR PARKS: The motion CARRIES.

032 REP. CARPENTER will lead discussion on the Floor.

CLOSES the WORK SESSION on SB 362 A OPENS the PUBLIC HEARING on SB 1038 A

035 CHAIR PARKS: I'm going to have to be gone for a few minutes, so Rep.
Brown will take over
and I will be back shortly.

042 REP. GRISHAM: In reference to the -A2 amendments on SB 362 A, don't we
need seven votes
for passage?

043 CHAIR PARKS: We need the majority of the committee present to for an
amendment to pass.

048 JONES: Gives brief overview of SB 1038 A.

065 REPRESENTATIVE JANE LOKAN, DISTRICT 25: Testimony in support of SB 1038
A.

081 SENATOR BILL KENNEMER, DISTRICT 12: Testimony in support of SB 1038 A.
[EXHIBIT G]

131 REP. NAITO: Why wouldn't the property right's have been protected if it
was a "phase out"
situation?

139 SEN. KENNEMER: If your mortgage does not expire in that time frame, I
don't see how you
can say that is a "phase out" that's very favorable.

152 REP. NAITO: Even if that property changed hands later, there would be no
way you could ever
take that right away.

164 SEN. KENNEMER: In the bill, lines 7 and 8, there is a clause that non
conforming uses or
pre-existing uses abandoned for more than one year do not continue.

171 VICE-CHAIR BROWN: Don't you think that local communities should have the
ability to place
restrictions on whether it's inappropriate behavior or whatever if that's
what that community
wanted to do?

177 SEN. KENNEMER: I agree, they have lots of regulatory opportunity and
authority and I think
they should excursus that.

185 VICE-CHAIR BROWN: So you think local communities have the right to do
any kind of
regulatory authority as long as it does not infringe upon people's
individual rights?

188 SEN. KENNEMER: I was talking more about property rights, and it seems to me as a property owner one has the right.

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199 VICE-CHAIR BROWN: You would agree that property rights stem from individual personal rights?

201 SEN. KENNEMER: Yes, I suppose.

202 VICE-CHAIR BROWN: I have a question about using nuisance ordinances versus this, which I see as designed to be preventative, and my understanding of what happens in Cannon Beach is that weekend after weekend you have college kid's having wild parties through the night. My feeling is, and would you agree with me, that the nuisance ordinance's are really retroactive versus a preventative measure?

207 REP. LOKAN: I believe that this is a community that has been a resort community ever since I was a little girl in Astoria.

222 REP. CARPENTER: I think the responsibility should be placed on the property owner and that they screen whoever rents the property. There are rules and regulations of how many people can be in the house.

242 SEN. KENNEMER: I think there are other enforcement mechanisms to deal with these nuisance problems rather than taking away something as fundamental as property rights.

251 REP. QUTUB: When you make laws as you were describing, people coming for weekends,

isn't that retroactive?

255 REP. JOHNSTON: Am I right in listening to you, we are debating on how to respond to the

transition period?

266 SEN. KENNEMER: That is not accurate in terms of the bill. The bill is actually tougher than

that in it would say that unless pre-existing uses are abandoned, they would continue.

274 REP. JOHNSTON: Under your solution to my "transition problem", you create a

"grandfathered" position.

279 SEN. KENNEMER: That's correct because that's the date when the ordinance went in to effect.

281 REP. JOHNSTON: Can they sell a rental home as a rental home?

283 SEN. KENNEMER: As the bill is written, it would continue as an existing use with the

property until it was abandoned for one year.

287 REP. JOHNSTON: To get from where we are today to a point where this use is not prevalent

to that neighborhood, could take a period of some hundreds of years?

292 SEN. KENNEMER: It would be indefinite.

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297 REP. GRISHAM: As a practical matter, wouldn't the turn over of single family houses eventually, if their escalating and appreciating in price, end up in private ownership?

303 SEN. KENNEMER: I have someone who is an expert in real estate next to me and he's better

prepared to respond factually to this question.

308 WILLIAM ALLRED, REALESTATE: Testimony in support of SB 1038 A.
EXHIBIT ~

406 REP. JOHNSTON: Are you saying that a community, in your estimation, could not restrict as a condition of construction or new development, the types of uses those lands could be put to?

420 ALLRED: I think they can in terms of new construction purposes.

424 REP. JOHNSTON: So we could for new construction. If we were building a Sun River now for example, you agree that they could say this is not for short term rentals?
433 ALLRED: Yes. For instance, in the state of Oregon since 1979, there is a law that already

applies to counties.

441 REP. JOHNSTON: Your saying we can't go back and just unilaterally do it on existing

properties without at least Ugrandfathering". How do we extinguish the Ugrandfather" right?

443 ALLRED: When those uses are abandoned.

446 REP. JOHNSTON: Can they sell it?

451 ALLRED: As long as the new people propose to continue that residential use it would

be grandfathered" in.

454 REP. JOHNSTON: As long as they continue to exercise the use?

TAPE39B

031 ALLRED: If they exercise the grandfather" rights, yes.

032 REP. JOHNSTON: So the use is marketable along with the property?

037 ALLRED: Yes.

039 REP. JOHNSTON: In your estimation, if the parties were to sell any of the 14 rental homes that they own in Cannon Beach, is they're market value increased or decreased or is it a non consequential factor on the rental ability of the property?

042 ALLRED: I think it's impacted by the rental ability of the property. Gives brief example.

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044 REP. JOHNSTON: Of the 14 houses under your management in Cannon Beach, to what extent in your opinion, would they be impacted by the removal of the rental capacity?

047 ALLRED: I don't think they would be impacted in our specific case because they're almost all ocean front houses and those will always have sigr.uficant value.

050 REP. NAITO: There is a difference between something you purchase with notice. But are all these zoned to be a single family residence?

054 ALLRED: Yes.

056 REP. NAITO: In my mind, even though there is a custom of rental, you are buying it for purposes of occupation of a single family and you have notice of that through your zoning.

062 ALLRED: There is a substantial difference between a destination vacation area and the city of Portland.

074 REP. NAITO: In my mind, there is a certain notice requirement that even though there is a pre-existing use, the actual zoning is single family.

079 VICE-CHAIR BROWN: With regard to affordable family vacation homes, if Cannon Beach decided to not have any affordable family vacation homes in the area and if tourism is their number one business and if they want to shoot themselves in the foot, why should we stop them?

085 ALLRED: Because of the right's of the citizen's of Oregon to go and enjoy natural resource areas.

093 REP. QUTUB: Viewing the rental of these homes as a business, it isn't a business. These are families that rent them so it maintains it's single family dwelling.

098 REP. LEWIS: We have testimony from one of the local government people from Cannon Beach indicating that from 1957 when the city was incorporated, until 1987, that they in fact did have ordinances prohibiting short term rentals of less than 15 days. So, it has been fairly resent since 1987, that these rentals have been allowed.

108 ALLRED: From 1957 to the period your mentioning, even though short term rentals were not allowed, there was "wholesale" renting of short term family residences down there and the city chose to ignore it and did not enforce their ordinances at that time.

120 REP. CARPENTER: I would like to make a comment about these really being business's. I think that's a can of worms and if we open that up and say these are business's, then maybe we should take a look at adult foster homes and say those are business's.

126 SEN. KENNEMER: What about the right to regulate locally? We're protecting those people who don't agree with that regulation.

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- 147 HERBERT SCHWAB, CANNON BEACH: Testimony in opposition to SB 1038 A. EXHIBIT
- 190 FRANK LITTLE, CANNON BEACH CITY COUNCIL: Testimony in opposition to SB 1038 A. EXHIBIT J1
- 207 BUD KRAMER, CANNON BEACH PLANNING COMMISSION: Testimony in opposition to HB 1038 A.

243 JOHN WILLIAMS, CITY MANAGER of CANNON BEACH: Testimony in
opposition to SB 1038 A. EXHIBIT K1
330 REP. GRISHAM: How many houses are there in Cannon Beach?
334 WILLIAMS: Approximately 1400 to 1500 dwelling units total, and about 800
to 900 of them
are second homes.
338 REP. GRISHAM: In your testimony didn't you say that since you passed
your room tax
ordinance you have about 100 registered as rental homes?
341 SCHWAB: About 100, yes.

346 WILLIAMS: At the time we passed the ordinance we said anyone who was
legally renting at that time could apply for a license, and about 111
applied at that time.

348 REP. GRISHAM: Do you have any problem in collecting that, the 6 percent
surcharge on the rent on those units?

350 SCHWAB: We've had no difficulty collecting that.

352 REP. CARPENTER: In the course of the past year, do you have any
statistics about problems
that you've had at rental properties because of noise and parties, police
calls and so on?

357 SCHWAB: Very few, practically none, as a matter of fact most of these
rentals are being
managed professionally.

367 REP. CARPENTER: What sort of restrictions do you place on renters?

373 WILLIAMS: When the property owners initially apply for a short term
rental license, our building official examines the property in terms of
fire and life safety issues as well to determine what the maximum occupancy
can reasonably be.

383 SCHWAB: The manager's of these places in many cases have set back some
occupancy limits that are less than the city's maximum.

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during this session. Only text enclosed in quotation marks report a
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387 REP. CARPENTER: I know from experience that you do a good job of
scrutinizing who you rent your properties to. Is that typical of other
property manager's in Cannon Beach?

400 WILLIAMS: I know of at least three other property manager's, that gave
testimony to the committee that was examining this ordinance, and each one
of them has a set of regulations and rules that they send out to
prospective person's that are renting.

418 REP. CARPENTER: Has there been any discussion of the benefit's of having
someone at those
properties for a week or whatever, rather than having the property
abandoned?

437 WILLIAMS: There has not been a lot of discussion about that. Obviously,
I suppose if there
were someone around the property more often than it's left vacant, it
becomes less of an invitation
to someone to do something wrong there.

446 LITTLE: I can tell you that there are three houses right around mine
that are not short term

rentals, that are second homes. Friends of ours give us key's to all three of those houses and we observe them and look after them to see that there is no damage.

TAPE 40 B

027 KRAMER: Obviously, all of us have a number of people around us who are not permanent residents. One of the problems with a short term rental is that you do not have an identity of who is there and not there.

034 REP. JOHNSTON: In 1911, Governor West declared the Oregon Coast a highway, from Washington to California, and guaranteed public access to the beach. The model your setting up

is one of "exclusion" rather than "inclusion".
055 SCHWAB: Any rental of two weeks or more is permitted, and has always been permitted. We have some 800 motel rooms, most are on the beach, and those motels are a lot cheaper than the ocean front family homes.

060 REP. NAITO: We camp at the beach too.

063 VICE-CHAIR BROWN: The committee will be in recess due to a call on the Floor.

072 VICE-CHAIR BROWN: Re-opens the public hearing on SB 1038 A.

073 REP. QUTUB: Since you are proponents of the bill, are you concerned at all about the "ripple effect" of this, and do you not see it as a property right's issue?

089 LITTLE: I would say it concerns me to the extent of this becoming world wide, but so far we have seen two other communities mentioned, look at it. I have not seen any local community in Oregon adopt an ordinance to prohibit short term rental.

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

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100 KRAMER: To me the important thing your dealing with here, is that each community can adapt whatever land use rules and regulations it wants to put in for it's community.

115 REP. QUTUB: It is a more fundamental issue we are addressing here, and it's the issue of property rights.

120 WILLIAMS: I think that what we're trying to do in Cannon Beach is a balancing act of representing and recognizing the rights of those who come to visit, those who are second home owner's and those who are permanent residents in the community.

134 REP. GRISHAM: Doesn't the effect of your extensions sort of chill the market? I would not want to purchase a house there if I knew that there was sometime in the next year or two, that you were changing all the regulations.

138 SCHWAB: Houses are being sold at to healthy a price every week of the year at Cannon Beach, but they are being sold as residences.

150 REP. GRISHAM: You impose a 6 percent room tax on these short term rentals, where does

that go?

156 WILLIAMS: That goes into our general fund.

162 KELLY ROSS, OREGON ASSOCIATION OF REALTORS: Testimony in support of SB 1038 A. EXHIBIT L]

238 CHAIR PARKS: This bill is very broad, this is for the whole state in every circumstance. Is

there some way you can accomplish what you want to do without effecting the whole state?

245 ROSS: I share those concerns. I think Senator Kennemer made a step in that direction with his

amendments. [EXHIBIT G]

260 PHILLIP FELL, LEAGUE OF OREGON CITIES: Testimony in opposition to SB 1038 A.

310 REP. GRISHAM: How many units of affordable housing exist in Cannon Beach, low income housing?

314 FELL: I can't answer that, there are people from Cannon Beach here that may be able to answer that.

316 REP. GRISHAM: Is it the position of the League of Oregon Cities that all cities should have provisions in their housing stock for low income and affordable housing opportunities?

320 FELL: It is in fact state law.

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323 REP. QUTUB: People who are absentee owner's, do they have the ability to vote in Cannon Beach, either for their commissioner's or at city meetings?

324 FELL: I believe they have the ability to register in the jurisdiction where they reside. That is an issue that is under investigation this session.

328 REP. QUTUB: The way I asked the question, it really should be no. If they don't reside there and they are absentee owner's, they would not have the ability to vote.

331 VICE-CHAIR BROWN: We recently passed out a bill dealing with government regulation that

would keep gun ordinance on a state wide basis. Do you think that we should not have the power

to regulate a local or county ordinance's from a state wide basis, on this particular issue?

340 FELL: I think that if the legislature can demonstrate that there is a compelling public policy

reason to overrule a local government's decision, then I think that you clearly have the right and

would want to talk about whether you want to overrule the local decision.

352 VICE-CHAIR BROWN: You don't think this will be a problem in Sun River and Black Butte

and along the coast?

360 FELL: We've heard that there are other communities that are
contemplating them, some

communities have adopted and rescinded them.

370 WILLIAMS: Cannon Beach has just recently completed a 36 unit affordable
housing project and

we have another project which has been pending, and has approval of FMHA,
funding for

another 34 unit's of affordable housing.

377 CHAIR PARKS: How many houses are rented in this way?

379 WILLIAMS: We currently have 100 to 105 registered short term rental
units in Cannon Beach.

381 CHAIR PARKS: How many day's does that equate to, rental days of the 105?

386 WILLIAMS: The average room tax revenue comes to approximately \$80
thousand dollars per year. The average revenue to a short term rental in
Cannon Beach is about \$14 thousand dollars per year.

CLOSES the PUBLIC HEARING on SB 1038 A

395 CHAIR PARKS: We will schedule this for tomorrow for work session. We
are now on a one hour notice so you want to post that on the hearing's for
tomorrow. With nothing further the meeting is adjourned.

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Submitted by, Reviewed by,
Janet Ellingsworth Debra Johns~J
Committee Clerk Committee Coordinator

EXHIBIT SUMMARY:

A - Testimony on SB 362 A - Canfield - 2 pages
B - Testimony on SB 362 A - Glazer - 2 pages
C - Testimony on SB 362 A - Rep. Carpenter - 1 page
D - Testimony on SB 362 A - Rep. Carpenter - 2 page
E - Proposed amendments to SB 362 A - Staff- 3 pages
F - Proposed amendments to SB 362 A - Staff- 1 page
G - Proposed amendments to SB 1038 A - Sen. Kennemer - 1 page
H - Testimony to SB 1038 A - Allred - 2 pages
I - Testimony to SB 1038 A - Schwab - 2 pages
J - Testimony to SB 1038 A - Little - 2 pages
K - Testimony to SB 1038 A - Williams - 1 page
L - Testimony to SB 1038 A - Ross - 2 pages
M - Testimony to SB 1038 A - Kirk Anderson - 1 page

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