

SENATE COMMITTEE ON  
WATER & LAND USE

Hearing Room  
Tapes 5 - 9

MEMBERS PRESENT:

Sen. Rod Johnson, Chair  
Sen. Neil Bryant  
Sen. Ron Cease  
Sen. Bill Dwyer  
Sen. Bob Kintigh

STAFF PRESENT:

Karen Quigley, Committee Counsel  
Kimberly Shadley, Committee Assistant

MEASURES HEARD:

SB 305 - Public Hearing

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 5, SIDE A

CHAIR JOHNSON: Calls the hearing to order. (1:08 P.M.)  
( Announces appointment of Vice-Chair, Senator Kintigh.

PUBLIC HEARING ON SB 305

Witnesses: Senator Randy Miller, Senate District 13  
Representative. Veral Tarno, House District 48  
Sue Hanna, Deputy Counsel, Legislative Counsel, (LC)  
Bill Moshofsky, Vice-President of Government Affairs, Oregonians in Action  
Dorothy Cofield, Staff Attorney, Oregonians in Action  
Digger Dilkes, Resident Of Seaside, Oregon  
Mike Neff, Attorney, The Dalles, Oregon  
Kathy Cantrell, Resident, Dufur, Oregon  
Bob Schechter, Resident, Friend, Oregon  
Georgia Murray, Resident, The Dalles, Oregon  
Parker Johnstone, Resident, Redmond, Oregon  
Jeff Kruse, Resident, Roseberg, Oregon  
Andrew Morrow, Resident, Madras, Oregon  
Tom Nash  
Matt Cryus, Resident, Sisters, Oregon  
Clark Z. Louch, Ashwood Oregon  
Tom Novick, 1000 Friends Of Oregon  
Charles Swindells, 1000 Friends of Oregon  
Jeff Curtis, Water Watch of Oregon  
Gerald Maxwell, Resident, Baker City, Oregon  
Scott Niedermeyer, Resident, Portland, Oregon  
Susan Mast, Resident, Bandon, Oregon  
Lanny Zoeller, Oregon Association of Realtors  
Michael J. Bercutt, Resident, Portland, Oregon  
Robin L. Biesecker, Forester, Elkton, Oregon

Jeff Stewart, Resident, Wasco County  
Jeff Lewis, Resident, Hillsboro, Oregon  
Sara Leiman, Resident, Monroe, Oregon  
Mary Smith, Resident, Dufur, Oregon  
Rick Cantrell, Resident, Dufur, Oregon

045 SENATOR RANDY MILLER, SENATE DISTRICT 13: Testifies in support of SB  
305.

055 REPRESENTATIVE VERAL TARNO, HOUSE DISTRICT 48: Testifies in support of  
SB 305.

074 SUE HANNA, DEPUTY COUNSEL, LEGISLATIVE COUNSEL, (LC): You will find a  
handout describing takings, (EXHIBIT A).

( A state may regulate aspects of citizens lives and their property while  
zoning regulation is an exercise of police power; the law between takings  
and regulation hasn't been clear and that is what leads us to these  
hearings.

( Regulation that goes too far is a taking, historically property had to be  
physically taken.

( Describes cases; Nolan; Dolan v. City of Tigard;

155 SEN. CEASE: Is it fair to say that much of what LUBA does is remand  
cases?

HANNA: I reviewed one volume and 53% of the cases were remands.

( What you will deal with today isn't takings; you need to understand the  
difference between takings and SB 305, which is a regulatory compensation  
bill and has nothing to do with the constitution.

260 SEN. DWYER: Net loss of value seems figured immediately before and  
after regulation is imposed; how would the amount be determined?

CHAIR JOHNSON: Gives history of SB 305.

316 BILL MOSHOFSKY, VICE-PRESIDENT OF GOVERNMENT AFFAIRS, OREGONIANS IN  
ACTION: Submits and summarizes written testimony, (EXHIBIT B).

( Reads from testimony the specific problems SB 305 would address.

446 DOROTHY COFIELD, STAFF ATTORNEY, OREGONIANS IN ACTION: Describes SB 305  
section by section.

TAPE 6, SIDE A

038 COFIELD: Continues, section three, SB 305.

SEN. DWYER: What about value increasing?

COFIELD: We accounted for that by saying "if there were any benefits".

058 SEN. DWYER: If land is taken for a public purpose, is there a benefit?

COFIELD: The entire public will benefit.

MOSHOFSKY: We think these are conservation easements or scenic easements.

085 COFIELD: Continues describing SB 305, section three.  
( Section four covers pollution control.

COFIELD: (In response to Sen. Dwyer) A judge will decide which entity will  
be liable.

122 SEN. DWYER: Is this the value of the whole property or the portion regulated?

COFIELD: It doesn't matter; you look at the whole property and compensate for the portion regulated.

155 SEN. CEASE: We are including land use in this; if the state has a regulation that controls what the aggregate can do, one reason for that is to protect the adjacent property owners.

( Under this bill the state would pay compensation to aggregate owners for putting restrictions on them?

MOSHOFISKY: This bill limits it to uses in order to provide public benefit.

SEN. CEASE: The bill requires two things; you will need bureaucracy to compensate; there has to be a process to do this and the other issue is where do you get the money?

COFIELD: In my experience there is an incredible bureaucracy; I see an enormous savings in taking the bureaucracy we have and using it.

( This isn't a lot of money, but the principal; a lot of land owners wouldn't make the claim if they knew their rights were protected.

( Describes bond measure; it is up to the citizens of the State of Oregon to be willing to pay for some.

295 SEN. CEASE: That surely won't take care of all the property owners.

COFIELD: A lot of land now is protected that we don't have the money to protect.

MOSHOFISKY: We aren't talking about traditional zoning.

339 COFIELD: Continues summarizing the bill.

MOSHOFISKY: It isn't just what is on the books today, but what is going to come.

SEN. BRYANT: My concerns are that definitions are lacking; goals; local government; wildlife habitat and natural areas; open space; cultural resources; it will save time and effort.

( Uses hypothetical situations to clarify process.

472 MOSHOFISKY: There is a formula in there for net loss in value.

COFIELD: We could say that any of these use restrictions triggered by the development permit would be handled under the Dolan rough proportionality test.

TAPE 5, SIDE B

040 SEN. BRYANT: Downzoning, such as from light commercial to multi-family residential, what effect would this have on that?

COFIELD: I don't see downzoning triggering this.

SEN. BRYANT: Could someone who doesn't want an overlay removed file a claim saying they lost value in their tract of land?

COFIELD: That land owner would have the opportunity to protect as much wildlife as that land owner wanted on their property.

120 DIGGER DILKES, RESIDENT OF SEASIDE OREGON: Testifies in support of SB 305; describes personal situation.

170 MIKE NEFF, ATTORNEY, THE DALLES: Testifies in support of SB 305.

( Describes designations of scenic areas.

250 KATHY CANTRELL, RESIDENT, DUFUR, OREGON: Testifies in support submits  
informative materials, (EXHIBIT C).

425 BOB SCHECHTER, RESIDENT, FRIEND, OREGON: Testifies in support of SB  
305.

TAPE 6, SIDE B

036 SCHECHTER: Continues, describing personal experience.  
( Reads from Wasco County ten year review of their twenty year plan.  
( I'm not comfortable here supporting a bill that will cause litigation,  
but have to as it will stop ODFW.

090 GEORGIA MURRAY, RESIDENT, THE DALLES, OREGON: Testifies in support of  
SB 305.  
( Submits written testimony, (EXHIBIT D) and describes personal experience.

202 SEN. DWYER: This bill wouldn't help you because you are in the National  
Scenic Area?

MURRAY: That is my question.

CHAIR JOHNSON: If it is a federal mandate it technically isn't the states'  
decision.

298 CHAIR JOHNSON: If you've already been had, you are out of luck; this  
bill is designed to help those in the future.

330 PARKER JOHNSTONE, RESIDENT OF REDMOND, OREGON: Testifies in support of  
SB 305; describes personal experience.

437 JEFF KRUSE, ROSEBERG: Testifies in support of SB 305.

TAPE 7, SIDE A

035 ANDREW MORROW, RESIDENT, MADRAS, OREGON: Testifies in support of SB  
305.

133 TOM NASH: Testifies in support of SB 305, submits written testimony,  
(EXHIBIT E).

238 MATT CRYUS, RESIDENT, SISTERS OREGON: Testifies in support of SB 305.  
( I would suggest limiting the Goal 5 restrictions to public lands only.  
( Submits informative material, (EXHIBIT F).

375 CLARK Z. LOUCH, ASHWOOD OREGON: Testifies in support of SB 305.

TAPE 8, SIDE A

035 TOM NOVICK, 1000 FRIENDS OF OREGON: Testifies in opposition to SB 305.

065 CHARLES SWINDELLS, 1000 FRIENDS OF OREGON: Testifies in opposition to  
SB 305.

100 CHAIR JOHNSON: Would your opinion of the bill be different if it didn't  
involve a jury trial, or court system but used a private system?

SWINDELLS: There are two concerns related to that; one is the extra  
planning that a local or state government will have to make in anticipation

of such claims and secondly, the award from such claims.

CHAIR JOHNSON: This bill requires only compensation if in the future things are done by governments to further restrict peoples property; there doesn't have to be any burden on the government as they have the choice to compensate or not.

SWINDELLS: They would be legally required to under the bill as drafted and they would also be under the expectation and pressure of their constituents to do so.

( Continues testifying in opposition.  
( Submits comments in writing, (EXHIBIT G).

191 JEFF CURTIS, DIRECTOR, WATER WATCH OF OREGON: Testifies in opposition to SB 305.

CHAIR JOHNSON: The bill isn't intended to apply in the way you are indicating it would.  
( Describes intent.

253 SEN. CEASE: Is it a question that the regulation has to be new after that date or the application of an existing regulation after that date?

CHAIR JOHNSON: The way the bill is written now it is the application.  
( My intent is make this prospective only.

CURTIS: There will be a trade-off here, less fish or higher taxes.

SEN. KINTIGH: The question is who pays.

SEN. CEASE: That is the simple question; the real questions is how do you divide it up.

363 GERALD MAXWELL, RESIDENT, BAKER CITY: Testifies in support of SB 305.  
( Regarding the stream bank protection issue; the 200 feet is upsetting.  
( There is a damn , Mason Damn, that with two more feet of water would give the public what they want without restricting water rights.

486 SCOTT NIEDERMEYER, PORTLAND OREGON: Testifies in support of SB 305.

TAPE 7, SIDE B

040 NIEDERMEYER: Continues.

130 COFIELD: It was our intent to hit regulations that are on the books, but haven't been applied to private property..  
( The confusion is that LC wrote in the summary that this applies to regulations adopted after January 1, 1996; this was a mistake.

218 SUSAN MAST, BANDON, OREGON: Testifies in support of SB 305.  
( Describes personal experience.

SEN. CEASE: At the state level, what agencies have you dealt with?

MAST: The Division of State Lands; the Forestry Department.

300 LANNY ZOELLER, OREGON ASSOCIATION OF REALTORS: Submits written testimony in support of SB 305, see (EXHIBIT H).

TAPE 8, SIDE B

032 MICHAEL J. BERCUIT, PORTLAND OREGON: Testifies in support of SB 305.

( Gives examples of situations he's seen.

167 ROBIN L. BIESECKER, FORESTER, ELKTON OREGON: Testifies in support of SB  
305; submits informative material, (EXHIBIT I).

249 JEFF STEWART, RESIDENT, WASCO COUNTY: Testifies in support of SB 305.

294 JEFF LEWIS, RESIDENT, HILLSB ORO OREGON: Testifies in support of SB 305.  
( Describes personal experiences.

400 SARA LEIMAN: Testifies in support of SB 305, submits written testimony,  
(EXHIBIT J).

478 MARY SMITH: Testifies in support of SB 305.  
( I would like to applaud the sponsors of SB 305.

TAPE 9, SIDE A

043 RICK CANTRELL: Testifies in support of SB 305.  
( Describes background and personal experiences.

115 CHAIR JOHNSON: We are adjourned. (5:00 p.m.)

Submitted by, Reviewed by,

Kimberly Shadley	Karen Quigley
Committee Assistant	Committee Counsel

#### EXHIBIT SUMMARY:

A - SB 305: Informative material on takings submitted by Hanna, pp 2  
B - SB 305: Written testimony in support submitted by Moshofsky, pp 4  
C - SB 305: Informative materials submitted by Cantrell, pp 5  
D - SB 305: Informative material submitted by Murray, pp 5  
E - SB 305: Written testimony in support & Informative materials submitted

by Nash, p 16

F - SB 305: Informative materials submitted by Cryus, pp 14  
G - SB 305: Written testimony in support submitted by Swindells, pp 6  
H - SB 305: Written testimony in support submitted by Zoeller, pp 2  
I - SB 305: Informative materials submitted by Biesecker, pp 7  
J - SB 305: Written testimony in support submitted by Leiman, pp 2  
K - SB 305: Written testimony in support submitted for the record by Webb,

pp 3

L - SB 305: Preliminary Staff Measure Summary, (SMS) submitted by staff,  
pp 1