

January 28, 1991Hearing Room E 1:30 p.m.Tapes 20 - 21

MEMBERS PRESENT:REP. PARKINSON, CHAIR REP. WHITTY, VICE-CHAIR REP.
BURTON REP. COURTNEY REP. NAITO REP. NORRIS REP. REPINE REP. VAN LEEUWEN
REP. WATT

MEMBER EXCUSED: All present

VISITING MEMBER:Rep. Delna Jones

STAFF PRESENT: Kathryn VanNatta, Committee Administrator Andy
Sloop, Committee Assistant

MEASURES CONSIDERED:HB 2296 - Westside Corridor Project, PH and WS

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 20, SIDE A

008 CHAIR PARKINSON: Calls meeting to order at 1:34 p.m.

(Tape 20, Side A) HB 2296 - WESTSIDE CORRIDOR PROJECT, PUBLIC HEARING
Witnesses: Tom Walsh, Tri-Met Bonnie Hays, Washington County Board of
Commissioners Chris Thomas, Tri-Met Dick Feeney, Tri-Met Susan Brody,
Department of Land Conservation and Development Richard Forester,
Citizens Alliance for Burlington Northern

16REP. DELNA JONES: Testifies in support of the bill.

>This bill would not fund light rail. It would allow the project to
meet the deadline for federal funding.

>Light rail is important not only for the Westside Corridor, but also
because it would use federal money to create jobs in Oregon and there
would be a significant state income tax spinoff from those federal
dollars.

>Does not favor supersiting, like happened during the 1989 session with
prisons. Supersiting is not the way to deal with the land-use issue.
HB 2296 provides for land-use planning. It does not supersite.

>Metropolitan Portland citizens voted in November to tax themselves \$125
million to support the project.

60TOM WALSH, TRI MET: Testifies in support of the bill and gives background on the project. (EXHIBITS A AND B)

147 CHAIR PARKINSON: The 25 percent local match would be the folks in the Tri-Met area?

152 WALSH: No. The 25 percent is a balance of regional and state moneys. Under our proposal, \$125 million would come from a general obligation bond approved by metro voters in November, and the remaining \$100 million would come from the state through \$10 million annual pledges against the sale of \$100 million in bonds.

160 REP. WATT: I'm a farmer in Jackson County and I want to build a barn. I've got somebody committed to pay three-quarters of that barn for me and I've got a deadline on that. What are the chances of me getting an accelerated process from this committee to get that barn built?

165 WALSH: Have you already been through the planning process once?

170 REP. WATT: No.

172 WALSH: Then I can't speak for this committee. As I understand the system, the chances would be slim. However, the Westside Corridor Project differs from your hypothetical because it has already gone through part of the process.

205 REP. VAN LEEUWEN: I'm still struggling with why there needs to be a \$10 million contribution from the state general fund. What's the justification?

213 WALSH: This project has statewide significance and needs state resources to be realized. There is a high probability that a highway project would be required to serve the needs of the Westside Corridor if the light rail does not come to fruition. Such a highway would cost \$1.5 billion. This would come from federal and state coffers and could not be taken from gas-tax revenue. As far as choice for a revenue source, we have only suggested that it be the \$10 million a year from cigarette tax revenues. We would welcome other sources that you might want to suggest when the financing bill comes along.

247 REP. VAN LEEUWEN: It looks to me like this should use some of those added-fuel taxes from the Access Oregon highway program.

250 REP. NORRIS: I think there is a constitutional prohibition against expenditure of any fuel taxes for other than highway projects.

255 REP. VAN LEEUWEN: We can make constitutional changes.

263 REP. WHITTY: The reason I'm in favor of light rail is simple: The money for needed transportation improvements in that area is going to come from my district if we don't pass this. Furthermore, if a highway is built there instead of the light rail, that would require lots of state dollars for maintenance. I'm going to vote for HB 2296, but it's kind of like deciding if I'm going to go to somebody's funeral. "When I'm deciding if I'm going to go to somebody's funeral, I always ask myself if that person would go to mine, and I don't think that's the case here."

303 REP. NORRIS: To refresh my memory on the funding sources, is there any general fund money in this thing at all?

318 WALSH: We presume that if this session grants our request for the \$10 million annual appropriation that would be general fund money.

320 REP. NORRIS: Would that appropriation be ongoing?

327 WALSH: Yes. It would making annual payments on the amortized value of the \$100 million in bonds that we would sell. That would be 12 to 14 years, depending on interest rates.

370 BONNIE HAYES, WASHINGTON COUNTY BOARD OF COMMISSIONERS: Testifies in support of the measure.

>Local and statewide polls indicate that the public thinks this project makes good sense.

>The project is in the comprehensive land-use plans of the five jurisdictions it would affect.

>If this project does not meet the deadlines it is up against, local and county comprehensive plans in Multnomah and Washington counties probably would have to be revised.

>Need light rail for regional transportation balance.

>Light rail is consistent with Oregon's land-use planning values because the congestion that would result from an unbalanced transportation system would be congestion, which eventually would spur pressure to expand the metropolitan urban growth boundary.

TAPE 21, SIDE A

000 HAYES: Continues testimony in support of the bill.

>Light rail attracts business and is good for regional and state economies.

>Positive environmental impact on air quality.

>HB 2296 is the appropriate marriage of land-use and transportation planning. It isn't a land-use override and it wouldn't exempt the proposal from the appeals process.

>Every county in the state supports this project. (EXHIBIT C)

54REP. WATT: Let the record show that I'm sold on light rail, but I'm not sold on the accelerated process because of the precedent it would set.

60HAYES: We're not talking about supersiting here. I would hope you would challenge any other agencies that try to use this as a precedent in the future. We have followed all of the guidelines, but we do have a federal deadline that has been imposed on us.

70REP. NORRIS: What needs to be done to secure the 75 percent federal funding?

80WALSH: We need to demonstrate that we have roughly \$225 million in local resources committed to the project. It is the private transaction equivalent of a letter of credit.

100 REP. COURTNEY: You keep referring to five jurisdictions that would be affected by this project. What are those?

105 HAYES: Portland, Beaverton, Hillsboro, Washington County and Multnomah County.

107 CHRIS THOMAS, ATTORNEY, TRI-MET: Walks committee through proposed amendments (EXHIBITS D and E)

170 CHAIR PARKINSON: It's not accurate to say that the bill only concerns the expedited review process.

175 THOMAS: Certainly the development of criteria is a change from the normal process. The reason for doing that is because we're dealing with comprehensive plans from five jurisdictions. This allows us to maintain the integrity of the land-use process, but you are right that this is moving a step beyond just dealing with policies. Continues explanation of amendments. Reviews accelerated timeline and appeals process.

207 REP. VAN LEEUWEN: What's the normal schedule for this kind of project?

210 THOMAS: The normal schedule would be substantially longer. However, opponents who are prepared for the Tri-Met hearing and have been following what's been going on in the region should be able to meet our timeline for appeals.

225 REP. VAN LEEUWEN: And how will they know about this accelerated timeline?

230 THOMAS: There has been a lot of discussion about this legislation in the region. If and when it passes, people will have about six weeks to familiarize themselves with it. That was a concern we had, but felt there would be adequate opportunity to participate in the planning process as long as people are well prepared in advance. Continues reviewing timeline.

257 THOMAS: With respect to Rep. Courtney's question about the Supreme Court timeline in the event of an appeal, we have not ruled out the possibility of asking for a specific Supreme Court deadline, but we have not found out what their reaction to such a request would be. There are a number of cases in Oregon in which the Legislature has asked the Supreme Court to expedite hearings, particularly with ballot measures. The Supreme Court has complied with virtually all such requests.

274 CHAIR PARKINSON: I've been advised by Legislative Counsel that the prison siting bill last session did not have a Supreme Court deadline.

280 REP. COURTNEY: So the dates that Mr. Thomas has been discussing are not in the bill, but they're preferable? Is that what we're talking about?

285 THOMAS: May 24 would be the date on this schedule for filing a request for Supreme Court review and May 31 would be the date under the bill to file supplemental memoranda. We have projected that the June 5 date would be the date the Supreme Court would hear oral argument. The Supreme Court does not have to hear oral argument and there is no specific date for that in this legislation. So that is an estimate we have made. We have allowed a two-week period for the Supreme Court to

render its decision. Again, there is no specific date for that in the legislation. This is the turn around time that the court has seemed to have on other expedited processes that have been in front of it. The Land Use Board of Appeals (LUBA) review is important to help frame the issues for the Supreme Court, so that they can act expeditiously. We have assumed there would be a remand by the Supreme Court back to Tri-Met, although we are not sure there would be one. If there were, on June 19, we have allowed about 11 days for Tri-Met to publish a hearing notice, file a staff report, hold the hearing and enter the final order.

The legislation does require that the staff report be available and that the notice be published and that the hearing be held not less than five days after the notice is published. After that, if someone wants to go back to the Supreme Court, they would have seven days to submit memoranda. Then we have allowed about 17 days for the Supreme Court to enter its decision. As you can see, this requires a lot of work and cooperation, but we believe it is doable, with a lot of effort.

335 REP. NORRIS: Do I understand correctly that everything on this time schedule beyond April 12 would occur only in the event of an appeal?

344 THOMAS: Yes. This is a well-educated estimate of what the timelines would be.

358 REP. NORRIS: Does this enjoy special immunity from litigation?

360 THOMAS: Somebody could challenge the legislation, but we feel the legislation would be secure from such a challenge in the sense that it would be "very unlikely" that such a challenge would stop the process. We believe, ultimately, we would win such a challenge and the process would proceed in the meantime.

375 CHAIR PARKINSON: To clarify, we have cut out the Court of Appeals from the appeals process to expedite this, right?

380 THOMAS: Yes. That is correct. The bill provides that if something happens that pushes Tri-Met's final decision past April 15, that the LUBA portion of the process would be bypassed and the matter would go directly to the Supreme Court. That is something that we would like to avoid, but could become necessary.

395 REP. BURTON: We've bypassed the court of appeals on this issue. Has the chief appeals judge had a chance to comment on this?

13THOMAS: Not yet, but we don't anticipate a problem.

15REP. BURTON: I would urge that we get the views of the state court administrator, chief justice or appeals chief testify on this so that it's clear that there's a legislative impetus on the amount of time that we want to have that review occur.

30THOMAS: Continues section-by-section review of proposed amendments.

50REP. BURTON: You're suggesting creating more than one branch to the process. Why not do the whole process in one part?

55THOMAS: Federal environmental policy on the portion of the project that would extend into downtown HillSB or isn't ready yet and we don't want to premake decisions associated with that policy. Continues section-by-section review.

97REP. VAN LEEUWEN: Wouldn't it be a good idea on April 7 to notify people who have testified at any and every stage of the planning project, especially those people who have not overjoyed with the project? I mean, since you've shortened the timeframe down to practically nothing.

105 THOMAS: We certainly could do that. People who are sophisticated enough to propose criteria at the LCDC level, I would be very confident, will be very aware of what the schedule is.

110 REP. VAN LEEUWEN: I guess I have a problem with that, because you would be excluding those of us who are not as "sophisticated" as others.

113 THOMAS: I understand that, can't say I disagree with you. We're doing the best we can with what obviously is a difficult situation.

118 REP. VAN LEEUWEN: Would you have a problem adding notification procedures into your criteria that would cover these people?

121 THOMAS: No, I don't think that would be a problem.

123 REP. VAN LEEUWEN: Will you do it?

125 THOMAS: Sure. We'll be happy to draft language that does that.

126 REP. BURTON: Can you assure us that all interested parties are notified?

130 THOMAS: Yes. Continues bill review.

175 REP. BURTON: Is there a precedent on mitigation circumstances?

180 THOMAS: If the final order is consistent with the criteria, it will be consistent with any mitigating circumstances. Continues review.

213 REP. VAN LEEUWEN: What kinds of non-land-use decisions (and therefore decisions that would not be subject to land-use appeals) are you anticipating?

217 THOMAS: An example might be a request or requirement to move the route to bypass a wetland.

223 REP. BURTON: Is there an escape clause here to hold harmless the final decision? In other words, the appealable decision is on the land-use questions only and not on the process?

234 THOMAS: Section 12 is exactly that. It provides that a failure to meet a timeline or follow up procedure established by the bill does not in itself invalidate any action, provided that the failure has not prejudiced any parties substantially. Continues review, resuming with Section 11.

255 CHAIR PARKINSON: Do you still have some question about the courts Rep. Burton?

263 REP. BURTON: We've found in the past that it's difficult to require times to make the Supreme Court act. I'm wondering if there's any way that we can get assurances that there aren't going to be objections from the appeals court level?

278 DICK FEENEY, TRI-MET: We have not addressed this issue directly yet, but we hope to get some answers soon.

292 REP. BURTON: My intent here was to get a letter on the record from the Chief Justice acknowledging that the courts are aware this is on the fast track.

307 FEENEY: That's exactly the kind of thing we had in mind.

316 CHAIR PARKINSON: Calls for break at 2:50 p.m. Reconvenes at 3:03 p.m.

324 SUSAN BRODY, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT (DLCD): Testifies in support of the bill.

>DLCD does not believe this is supersiting.

>LCDC is able and willing to hold a hearing on criteria in accordance with Section 4.

347 REP. VAN LEEUWEN: When you say you favor the bill, you're talking about the amendments and the bill.

356 BRODY: Yes, specifically with the amendments.

360 RICHARD FORESTER, CITIZENS ALLIANCE FOR BURLINGTON NORTHERN: Testifies in opposition to the bill.

>Businesses have been investing and developing for years in Beaverton based on the alignment selected in 1983. If alignment is changed, Tri-Met will, in effect, be amending Beaverton's comprehensive plan.

TAPE 21, SIDE B

000 >Tri-Met has decided not to consult several advisory and government bodies.

>When overriding local comprehensive plans that incorporate the 1983 alignment, there ought to be a special burden on the jurisdiction advocating the override.

17CHAIR PARKINSON: Could you explain what Citizens Alliance For Burlington Northern is.

19FORESTER: We are a group of people and businesses that are in the path of one of the alignments that might be chosen. There is an existing alignment that's in Beaverton's comprehensive plan that goes through an abandoned Burlington Northern right-of-way.

40REP. REPINE: What does this bill mean for the Washington Park alignment proposed seven years ago.

46BRODY: That isn't an issue that I've studied thoroughly and it isn't one I feel comfortable commenting on at this point. However, it certainly is an issue that will need to be addressed. The way it is laid out in the legislation, LCDC would determine the criteria that Tri-Met would use in making the land-use decision. In determining these criteria, the commission would rely on the policies in existing comprehensive land-use plans.

56REP. REPINE: I suspect this falls in line with the barn Rep. Watt was talking about earlier. If your going to change some parts of the comprehensive plan that were defined some time ago, you have to ask if that plan is still intact. I think that's an interesting question. I would think that this question deals not only with the area Mr. Forester mentioned, but deviations from any other routes defined earlier. It appears the tunnel concept versus the over-ground concept might fall into this also.

67BRODY: I think you might want to have Tri-Met come back up on that question. What you have is a decision in all comprehensive plans that there would be a light-rail line that would be sited in those jurisdictions, and I think it's only Beaverton's comprehensive plan that notes a specific alignment.

71CHAIR PARKINSON: Now that this is flagged, it might be appropriate for us to hold off and have interested parties respond to it at our next hearing on this.

75REP. NORRIS: I'd like to address this to Mr. Forester. Are you concerned that either one of these alignments could either deny light-rail service to a group of businesses or result in the condemnation of their property, or all of the above.

77FORESTER: My concern is that the proposed alignment would displace 40 residences and businesses; that the decision would be made without going through the entire local planning process; and that it would deny those people in the corridor the full protection of the process.

100 CHAIR PARKINSON: Closes public hearing. Postpones public hearing on HB 215 0 pending further preliminary work by DLCD. Notes that nobody signed up to testify about HB 2150. Opens work session to introduce committee bills.

WORK SESSION - POSSIBLE INTRODUCTION OF COMMITTEE BILLS

125 CHAIR PARKINSON: Calls for discussion on introduction of LC 1271, relating to designation of "primary" and "secondary" farm and forest lands.

129 MOTION:REP. WHITTY: Moves for introduction of LC 1271 (EXHIBIT F) as a committee bill at the request of Oregonians In Action.

VOTE:Hearing no objection, Chair Parkinson so moves.

132 CHAIR PARKINSON: Calls for discussion on introduction of LC 2580, relating to special facilities, specifically the Westside Corridor Project. Notes that due to the importance of the project, it is appropriate to draft a bill incorporating the original bill, HB 2296, and proposed amendments. Also notes that he inserted an amendment on the last page of the LC draft, relating to partitioning of land on which a church may be sited without conditions.

151 MOTION:REP. WHITTY: Moves for introduction of LC 2580 (EXHIBIT G) as a committee bill.

155 REP. BURTON: Will your amendment be an amendment Rep. Parkinson?

157 CHAIR PARKINSON: This will be a new bill. It is exactly the same as the Tri-Met bill with the Tri-Met amendments. The only addition is

the last paragraph, just before the emergency clause.

VOTE:Hearing no objection, Chair Parkinson so moves.

162 CHAIR PARKINSON: Adjourns meeting at 3:17 p.m.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee
Administrator

EXHIBIT LOG:

A -"Westside MAX Facts" presented by Tom Walsh, Tri-Met - 27 pages
B -Testimony on HB 2296 - Tom Walsh, Tri-Met - 6 pages
C -"Endorsements of support for HB 2296" presented by Bonnie Hays,
Washington County Board of Commissioners - 17 pages D -Dash 2
amendments to HB 2296 - Chris Thomas, Tri-Met - 17 pages E -Testimony
on HB 2296 - Chris Thomas, Tri-Met - 14 pages F -LC 1271 - Chair
Parkinson - 17 pages G -LC 2580 - Chair Parkinson - 86 pages