

Senate Government Operations February 11, 1991 Page 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.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

February 11, 1991Hearing Room "B" 3:00 p.m. Tapes 19 - 20

MEMBERS PRESENT:Sen. Glenn Otto, Chair Sen. Jane Cease, Vice-Chair Sen. Jim Bunn Sen. Ron Grensky Sen. Tricia Smith Sen. Dick Springer

MEMBERS EXCUSED:Sen. John Kitzhaber

STAFF PRESENT: John Houser, Committee Administrator Joan Green, Committee Assistant

MEASURES CONSIDERED: SB 479 - Relating to the Metropolitan Service District; appropriating money, PH/WS SB 67 - Relating to violation of public contract bidding procedures, PH/WS HB 2042 - Relating to public works contracting, PH/WS

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TAPE 19, SIDE A

006 CHAIR OTTO: Called the meeting to order at 3:09 p.m.

(TAPE 19, SIDE A)

PUBLIC HEARING

SB 479, RELATING TO THE METROPOLITAN SERVICE DISTRICT; APPROPRIATING MONEY

Witnesses:Lawrence Bauer, Metro Council; Bi-State Committee, Co-Chair Fred Neal, Intergovernmental Relations Officer, Multnomah County

013 LAWRENCE BAUER, METRO COUNCIL; BI-STATE COMMITTEE, CO-CHAIR: Describes composition of Bi-State Committee, history and agenda. SB 479 is important because we are one of the few organizations that provide coordination between the states of Washington and Oregon on matters affecting public policy. Our primary objective is to better communicate and coordinate activities between the two states, particularly where urban services and related functions overlap. We currently advise and communicate on matters relating to Columbia River resource management, land use planning, air quality, economic development, household hazardous waste disposal, telecommunications and tourism.

043 BAUER: The issues involved are a matter of state concern, to both states. A companion piece of legislation has been introduced in the Washington legislature, matching this amount of money. If this legislation should pass we would be able to afford much needed staff support. The \$60,000/biennium is an investment where savings could be multiplied many fold through avoidance of duplication of effort, better coordination of existing resources and an improved forum for communication by policy makers on both sides of the river.

079 SMITH: Since you are requesting general fund money, how does the rest of the state benefit from the Bi-State committee?

085 BAUER: The Columbia River water resource management and the coordination of environmental standards on the Columbia River impacts a substantial portion of the state. Standardization of air quality policies would benefit substantial areas of both states. The \$60,000/biennium request would be matched by a like amount from the State of Washington, we would also be matched by a \$7,500/year contribution from the Intergovernmental Relations Center (IRC) and \$7,500/year from the Metropolitan Service District (MSD). The Metro Council is in unanimous support of SB 479.

109 CEASE: Does Clark County participate on the Joint Policy Advisory

Committee on Transportation (JPACT) as a voting member?

112 BAUER: Yes.

113 CEASE: Do we still have the equivalent of an A-95 mandate from the federal government for Clark County's participation on other sub-committees of Metro?

115 BAUER: To my knowledge JPACT is the only committee that has representation from Clark County. Our agenda is expanding the subjects into other critical matters of mutual concern.

121 CEASE: The Committee has been operating since 1981?

123 BAUER: Yes, but only in the last two years have we increased our activity to deal with these issues. Prior to that the Committee's function was more to share communication rather than intervention on issues.

129 CEASE: Has Metro Council discussed some regional funding for this?

131 BAUER: Yes, in terms of the \$7,500/year match from the Metro general fund.

132 CEASE: You have not discussed any more than that?

133 BAUER: No.

134 OTTO: This group has become more active and aggressive in the Portland Metropolitan area since Mr. Bauer has been co-chair. The Committee meets once a month, alternating between Oregon and Washington. We operate with a limited staff and no resources.

146 CEASE: Does this have a subsequent referral to Ways and Means?

147 OTTO: Yes.

152 FRED NEAL, INTERGOVERNMENTAL RELATIONS OFFICER, MULTNOMAH COUNTY: The Multnomah County Board of Commissioners supports SB 479. The Bi-State Committee is the only vehicle for general policy discussion of issues that affect regions on both sides of the river. The non-transportation issues are of importance to the region as a whole. State recognition of the program would be welcomed and provide The Bi-State Committee with more meaningful staffing. The advisory committee meets monthly, but several sub-committees meet as needed on various topics.

182 SMITH: Does the Committee advise local jurisdictions or state policy makers? Is the Committee interested in the portion of the Columbia flowing through the metropolitan area or are they looking at the Columbia River as a whole?

184 NEAL: It is the only forum for ongoing joint local government, regional government and the state legislature that undertakes issues of concern to both sides of the river. The Columbia River study looks at the Columbia River as a whole, from near Umatilla to the mouth of the river.

233 SMITH: The primary function of the committee is to apprise local governments in each of the states on issues affecting the metropolitan region, is that true?

237 NEAL: Yes and those involve, in many cases, statewide policies.

WORK SESSION

245 OTTO: I would want an amendment stating the bill would not become active unless the State of Washington gives an equal amount of money.

256 MOTION: SEN. CEASE MOVED THE CONCEPTUAL AMENDMENT THAT SB 479 WOULD NOT BECOME ACTIVE UNLESS THE STATE OF WASHINGTON CONTRIBUTES AN EQUAL AMOUNT OF MONEY. OBJECTIONS? HEARING NONE, SO ORDERED.

268 MOTION: SEN. SPRINGER MOVED SB 479 TO WAYS AND MEANS WITH A DO PASS AS AMENDED RECOMMENDATION.

273 BUNN: I want the record to reflect that if this comes out of Ways and Means I think Metro should fund this rather than the State.

280 CEASE: I will support the motion to send to it to Ways and Means, but I have other priorities for general funds expenditures that would

likely conflict with this.

286 SMITH: I also do not support expenditure of general funds for this advisory committee.

295 SPRINGER: Moves the question.

302 VOTE: MOTION CARRIED, 6-0. (EXCUSED: SEN. KITZHABER).

309 OTTO: Declares a conflict of interest. I sit on the Bi-State Committee.

(TAPE 19, SIDE A)

PUBLIC HEARING

SB 67, RELATING TO VIOLATION OF PUBLIC CONTRACT BIDDING PROCEDURES

Witnesses: Ken Karnosh, Contract Administration Engineer, State Highway Division
Greg Teeple, Oregon State Building and Construction Trades Council

306 KEN KARNOSH, CONTRACT ADMINISTRATION ENGINEER, STATE HIGHWAY DIVISION: Discusses written testimony, Exhibit B.

372 CEASE: Would a violation be cumulative if there were three violations in a year?

386 KARNOSH: If you had a single one you would lose bidding rights for up to 90 days. During that period you could not bid, however you could have one on a current project. We have not addressed whether they would be cumulative or not.

396 CEASE: Does each violation remain on the record even though you are not suspended?

403 KARNOSH: Each violation would have a life of five years. After five years from the first one it would no longer be considered for the second one..

409 CEASE: Would we still have the ability to refer to disadvantaged minority and women in public contract or is this language in need of some changes since the recent court decision that set aside some affirmative action provisions?

434 KARNOSH: The only time a Highway Division contract has a disadvantaged enterprise section is on a federal aid contract.

448 SMITH: The way I read the time line you could have a violation every three years and never get pinched for the third one, correct?

457 KARNOSH: That is correct. Every three years every one you had would be a subsequent or second violation.

461 SMITH: They would all be second violations?

463 KARNOSH: Yes.

467 SPRINGER: What about people who incorporate under a different name every week, how do you get at that kind of conduct?

474 KARNOSH: In the Highway Division we handle that under our pre-qualification guidelines. The primary person in a contracting firm that has been debarred under one firm cannot be the primary person under a new name.

TAPE 12, SIDE A

032 OTTO: While I was with the construction trade I would see someone in a minority group, for example, act as a front man and gain the contract, although everyone knew that it was not a minority company.

045 GREG TEEPLE, OREGON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL: Speaks in support of SB 67, if anything we wish it were more stringent.

WORK SESSION

057 MOTION: SEN. BUNN MOVED SB 67 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

062 VOTE: MOTION CARRIED, 6-0. (EXCUSED: SEN. KITZHABER). SEN BUNN

WILL LEAD THE FLOOR DISCUSSION.

(TAPE 20, SIDE A)

PUBLIC HEARING

HB 2042, RELATING TO PUBLIC WORKS CONTRACTING

Witnesses: Clifford Freeman, Department of General Services, Purchasing Division, Executive Assistant to Administrator Kim Mingo, Associated General Contractors Greg Teeple, Oregon State Building and Construction Trades Council Ray Peterson, Marion Construction

069 CLIFFORD FREEMAN, DEPARTMENT OF GENERAL SERVICES, PURCHASING DIVISION, EXECUTIVE ASSISTANT TO ADMINISTRATOR: Discusses written testimony, Exhibit C.

089 BUNN: Where did the amendments come from that would add the emergency clause?

092 FREEMAN: Those are from the Associated General Contractors, (AGC).

101 KIM MINGO, ASSOCIATED GENERAL CONTRACTORS: Speaks in support of HB 2042 for the same reasons stated by Mr. Freeman. The amendments, Exhibit A, were requested for two reasons: 1. By replacing ORS 279.063 and inserting ORS 279.067 we would extend the definition of the terms currently stated in ORS 279.011. In 1989 HB 3350 passed both houses and was subsequently vetoed by the Governor. During the 1990 special session the veto was overridden. HB 3350 created amendments to ORS 279.067. Our amendment would ask that the definitions contained here be extended to the new amended statute. 2. The other amendment would add the emergency clause. Makes reference to the letter contained in Exhibit A.

138 RAY PETERSON, MARION CONSTRUCTION: Approximately 90% of our work is public bid work. Discussed an Oregon State University (OSU) project. OSU said they were going to disregard the standard public opening bid process and take bids from three separate contractors. Marion Construction called AGC and we were referred to Randy Turnbow who advised us that our only option was to sue the Oregon State Board of Education, but that would be a costly process. We asked for an administrative review of their decision, but a review takes 60-90 days. The ability of public agencies to use the exemption clause is opening the door to favoritism.

192 CEASE: I don't understand your extension of the definition to ORS 279.067?

195 MINGO: The house bill concerns ORS 279.011 and within ORS 279.011 are contained definitions for specific terms that are used within the public contracting statutes. We are asking that definitions for those terms be extended to ORS 279.067 because right now they are only used in ORS 279.063.

207 CEASE: I still don't understand.

210 HOUSER: Refers to pg. 2, ORS 279.067, Exhibit A. There are at least two separate references to the term "public contracting agency". As the definition section in front of the chapter now reads the definition of the term public contracting agency does not extend to this section of law nor is the term defined anywhere else in that chapter to apply to this section of law. You have a phrase that is used, but not defined anywhere in the existing law. My understanding of the amendment is to extend that definition, among others, to this additional section of law.

226 SMITH: Was ORS 279.067 amended at some other time, it does not appear in the 1989 laws.

234 HOUSER: It does not appear because the language was enacted by the 1989 session, the bill was vetoed by the Governor and overridden after the ORS's were printed.

237 CEASE: If the language that you want this to apply to does not appear in ORS 279.067 then why are you making this apply to ORS 279.067, it won't make any difference?

241 HOUSER: The new language is now in the statutes because the veto of the bill adding it was overridden by the 1990 special session. It is not in a printed ORS form yet.

247 BUNN: As I read the letter from the attorney in Exhibit A, it says

we already have the administrative rules which set out the criteria. Yet the rules were not sufficient to stop the Board of Higher Education from bypassing the bid process, is that correct?

256 MINGO: Correct.

257 BUNN: If the rules were in place, but did not stop it, how does taking what the rules say and putting the same words in statute make it work?

260 MINGO: Not all public agencies in the State of Oregon have adopted the administrative rules, the statute would affect all administrative agencies.

265 BUNN: The rules did not apply to the board?

268 MINGO: It is my understanding that the rules did apply to that particular public agency.

270 BUNN: In this case the system worked, but in other cases it might not work?

271 MINGO: Correct.

273 SPRINGER: The second paragraph of the letter in Exhibit A references ORS 279 .115(3) (a), my copy of the ORS does not have that, is that citation an error?

282 MINGO: It may be, I have not had the opportunity to review the letter. There is within the statutes another exemption procedure that does not address the emergency exemption.

288 SPRINGER: I would like to hear from someone in Higher Education to explain what happened. I am surprised there is not some judicial remedy to allow you to go to court in a timely manner, if you thought there was a problem. Do you agree Sen. Grensky?

294 GRENSKY: The administrative remedy would not operate in a timely fashion in this case. The construction would be well underway or perhaps completed before a contested hearing would be heard and then taken to the Court of Appeals and reviewed. Isn't the purpose of the statute to allow for you to go into court immediately and get an injunction rather than to go through the administrative process?

303 MINGO: I am not sure if that is what we are trying to accomplish, we are trying to narrow the definition of emergency by statute.

310 BUNN: In requesting that we tighten the definition of emergency you have also requested we declare an emergency. Is this threatening public health and safety if we don't so?

318 MINGO: We believe so, the peak of the construction season will be starting in a few months when many public agencies will let contracts out. The definition in the statute should be in place prior to the those contracts being let.

329 BUNN: Is it endangering public health safety? You want a definition of emergency to cut abuses, but you also want us to declare an emergency. I find it hard to believe that it would endanger the public health, welfare and safety if we don't enact this immediately.

339 MINGO: It is our position that if this bill is not enacted and the definition is not in place. If public agencies do let contracts using the emergency exemption it may create situations where there is a dispute and these projects which might need to go ahead would not take place because of the disputes involved.

362 GREG TEEPLE, OREGON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL: Speaks in support of HB 2042. We would support the amendments, if that is the Committee's desire.

370 CEASE: Requests General Services speak to the amendment, and the inclusion of ORS 279 .067, Exhibit A.

358 FREEMAN: As I read the statute several sections were made into law after ORS 279.063. Each of the latter sections contain some term or language that is included in ORS 279.011. My guess is that the definition section was made at the same time ORS 279 .063 was passed and when the other sections were added they weren't plugged in. I see it as an oversight.

422 CEASE: I would request that Legislative Counsel determine where the definitions need to be applied and direct the Committee.

WORK SESSION

442 MOTION: SEN. GRENSKY MOVED THE AMENDMENTS, EXHIBIT A TO HB 204 2.

445 SMITH: I agree with Sen. Cease. I would like Legislative Counsel to look at the remaining statutes in ORS 279 through .111 to see if the definitions apply to them as well. I think now would be a good time to do that.

459 CEASE: I am not asking they look through .111, but to look through any number where they think those definitions should apply.

471 BUNN: I have no problem with ln. 5, Exhibit A, but I won't vote for an emergency clause. The abuse of the emergency clause is an ongoing frustration to me, but to abuse the emergency clause on a bill designed to cut the use of emergencies that are inappropriate seems ironic and I won't vote for that.

TAPE 19, SIDE A

025 GRENSKY: This is a fairly specific bill and the term emergency is not going to be used in the other statutes unless it is appropriate. I have no problem with making it enforceable immediately because it could theoretically save tax dollars on getting a lower bid on a future project.

041 VOTE: MOTION FAILED, 3-3. VOTING NO: SEN. BUNN, SEN. CEASE, SEN. SMITH. (EXCUSED: SEN. KITZHABER).

051 MOTION: SEN. BUNN MOVED THE AMENDMENT, "IN LINE 5 OF THE PRINTED BILL DELETE 279.063 AND INSERT 279.067 BE ADOPTED.

058 CEASE: I would still like direction from Legislative Counsel as to whether the definitions ought to apply further than ORS 279.067. I will vote against it.

062 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. CEASE, SEN. SMITH. (EXCUSED: SEN. KITZHABER).

068 MOTION: SEN. GRENSKY MOVED HB 2042 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

071 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. CEASE, SEN. SMITH. (EXCUSED: SEN. KITZHABER). SEN. BUNN WILL LEAD THE FLOOR DISCUSSION.

082 Meeting adjourned at 4:13 p.m.

Submitted By:

Joan Green
Assistant

EXHIBIT LOG

A - Amendments to HB 2042, AGC, 5 pgs. B - Written testimony, Karnosh, 1 pg. C - Written testimony, Freeman, 1 pg.

Reviewed By:

Jayne Hamilton
Assistant