

Senate Government Operations February 20, 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 20, 1991Hearing Room "B" 3:00 p.m. Tapes 27 - 28

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: Gail Ryder, Senior Committee Administrator John Houser, Committee Administrator Joan Green, Committee Assistant

MEASURES CONSIDERED: SB 292 - Relating to Ethics, WS SB 296 - Relating to Ethics, WS SB 255 - Relating to Building Codes Agency fees; declaring an emergency, PH

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TAPE 27, SIDE A

005 CHAIR OTTO: Called the meeting to order at 3:12 p.m.

(TAPE 27, SIDE A)

WORK SESSION

SB 292, SB 296, RELATING TO ETHICS

MOTION: SEN. SPRINGER MOVED TO BRING SB 292 AND SB 296 BACK TO COMMITTEE FOR RECONSIDERATION.

VOTE: MOTION CARRIED, 5-1. VOTING NO: SEN. CEASE. (EXCUSED: SEN. KITZHABER).

006 RYDER: Distributes the Sen. Bunn amendments, SB 292-5, Exhibit B, SB 296 -4, Exhibit D, SB 292-4, Exhibit A and SB 296-3, Exhibit C. The menu of actions was inappropriately placed in the bill to apply to the preliminary review phase, it appropriately belongs with the investigatory phase. The other change has to do with "probable cause". The Committee on February 15, 1991 chose to change the term "probable cause" to "cause" and wrote a new definition. The Sen. Bunn -5 amendments to SB 292, pg. 1, lns. 21-24 and pg. 2, lns. 1-6, Exhibit B returns to the term "probable cause" and removes the definition.

030 BUNN: Although I am not pleased with the direction the bills have gone, I proposed the amendments because I feel it makes progress, if we don't make the ethics laws so confusing and unclear through a definition of "cause" in the original bill. Returning to the "probable cause" that exists under the status quo would make the bill acceptable. If we use "may have violated" and "the person may have been the one that violated" we have a totally unworkable criteria that virtually everything and anything meets.

041 OTTO: That is on both bills?

042 BUNN: Correct.

044 SMITH: I am concerned about a phrase without a definition. Can you tell me why you don't want a definition of "probable cause"?

047 BUNN: My preference is that we have a clear definition for "probable cause", but the alternative was to have "cause" with an unacceptable definition. I believe, through the court system, we will ultimately define "probable cause". I prefer that to knowing that the "cause" definition does not work.

055 SMITH: Do you assume that by using the term "probable cause" the

definition in other areas of the statute would apply?

056 BUNN: Yes, just as I did last session when we passed the requirement for "probable cause".

061 CEASE: I was never comfortable with "probable cause". I am more comfortable with "cause".

072 BUNN: A final comment on the "cause" definition. To say something may have happened or someone may have committed it in essence says that an individual who is accused must prove that they could not have done something, otherwise the Commission automatically has "probable cause" because they may have done so. The threshold is so low that everyone may have done something until they establish they could not have been the one.

080 SMITH: I think the threshold should be lower at the preliminary phase than "probable cause". That is much too stringent to determine whether or not the Oregon Government Ethics Commission (OGEC) should even investigate the complaint. I am uncomfortable with including the words "probable cause" at this point. Later when you are determining whether a violation has occurred I think a very strong definition should be included. I do support changing the language in the bill to correct the error, can those two issues be voted on separately?

099 OTTO: Yes.

106 MOTION: SEN. BUNN MOVED THE -5 AMENDMENTS TO SB 292, DATED 02/19/91, EXHIBIT B, BE ADOPTED.

112 OTTO: We would separate that in the next motion?

113 RYDER: This would be inclusive of both concepts.

114 BUNN: I would assume if this motion failed someone would make the motion to adopt just one part of that.

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

119 MOTION: SEN. BUNN MOVED SB 292 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

128 VOTE: MOTION FAILED, 3-3. VOTING NO: SEN. CEASE, SEN. SMITH, CHAIR OTTO. (EXCUSED: SEN. KITZHABER).

138 MOTION: SEN. CEASE MOVED TO AMEND THE -5 AMENDMENTS TO SB 292, DATED 02/19/91, BY DELETING THE LANGUAGE REFERRING TO "PROBABLE CAUSE" ON PG. 1, LNS. 21-24 AND PG. 2, LNS. 1-6, EXHIBIT B.

148 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

160 MOTION: SEN. CEASE MOVED SB 292 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

164 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER). SEN. SPRINGER WILL LEAD THE FLOOR DISCUSSION.

164 BUNN: Gives notice of a minority report.

166 GRENSKY: Joins Sen. Bunn in request for a minority report.

171 MOTION: SEN. CEASE MOVED TO AMEND THE -4 AMENDMENTS TO SB 296, DATED 02/20/91, BY DELETING THE LANGUAGE REFERRING TO "PROBABLE CAUSE", EXHIBIT D.

174 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

178 MOTION: SEN. CEASE MOVED SB 296 TO THE WAYS AND MEANS COMMITTEE BY SUBSEQUENT REFERRAL WITH A DO PASS AS AMENDED RECOMMENDATION.

189 VOTE: MOTION CARRIED, 4-2. VOTING NO: SEN. BUNN, SEN. GRENSKY. (EXCUSED: SEN. KITZHABER).

Recessed at 3:30 p.m.

Reconvened at 3:40 p.m.

(TAPE 27, SIDE A)

PUBLIC HEARING

SB 255, RELATING TO BUILDING CODES AGENCY FEES; DECLARING AN EMERGENCY

Witnesses: Gary Wicks, Building Codes Agency, Administrator Paul Wulf, Home Builders Association Janet Carlson, Building Codes Agency, Budget Management Division Jane Cummins, League of Oregon Cities Don Woodley, Marion County, Building Official

203 GARY WICKS, BUILDING CODES AGENCY, ADMINISTRATOR: Discusses written testimony, Exhibit E.

278 WICKS: Continues with review of written testimony, pg. 3, #1, Exhibit E.

400 WICKS: Continues with review of written testimony, pg. 5, #4, Exhibit E.

TAPE 28, SIDE A

037 WICKS: Continues with review of written testimony, pg. 10, Exhibit E. Discusses proposed amendments, Exhibit F. Support has been indicated by the International Association of Plumbing, Heating & Cooling Contractors, Plumbing & Steamfitters Union Local 290, National Electrical Contractors Association and a number of boiler operators. Conditional support for all or sections of the bill has been indicated by elevator companies and, I believe, the Oregon Builders Officials Association.

086 SMITH: On pg. 13 of your testimony, Exhibit E, there is an ending balance of nearly \$3 million, could you explain why you chose that amount of money? It seems like that is a large amount of surplus money, above your budget, for an agency of your size.

093 WICKS: We tried to set our fees to give us a three month operating capability. We feel that is a prudent amount of money to have as a balance. It is approximately the same amount of time that the 1989 Legislature established for our balance.

105 SMITH: You believe the 1989 Legislature set a policy in place to allow you a three month cushion?

107 WICKS: That is what they allowed and that is what we shot for this time.

109 SMITH: Why would you need that kind of a balance?

112 WICKS: Two reasons: 1. if there were an emergency (i.e. natural disaster) to deal with and we did not have funding available to us. 2. If there is a downturn in the economy we would want to cover ourselves, expenses can't be shut off.

131 JANET CARLSON, BUILDING CODES AGENCY, BUDGET MANAGEMENT DIVISION: I was not directly involved in going through the numbers. Other funded agencies are required to have an ending balance for several reasons: 1. the figures are projections, 2. if there are salary increases those types of numbers have to come out of the ending balance and 3. depending on the frequency of collections, agencies are required to have a certain amount of money to carryover from one biennium to the next biennium.

144 SMITH: Are there situations where you would require your fees to be paid in addition to fees in Portland, or are they separate kinds of activities?

150 WICKS: I think the answer is no, separate fees are charged. We do get a surcharge of 5% collected from those fees.

161 GRENSKY: Refers to pg. 12, Exhibit E, does not provide enough information for me to support any fee increases when the only knowledge I have of how you have spent your money appears to be listed under the 89-91 current programs.

177 WICKS: We presented the Committee with general background information on what our budgets were. We do have all of the background information for the budgets available. Our intent was not to go through that because it will be taken up in Ways and Means, but if you wish, we can address that.

187 GRENSKY: This bill would go to Ways and Means?

188 OTTO: Yes.

190 SPRINGER: The Buildings Code Agency is still not attached to any other agency or department?

194 WICKS: No, we are not.

195 SPRINGER: You are a freestanding agency?

196 WICKS: Yes.

198 SPRINGER: How many elevators are subject to inspection on an annual basis in the State of Oregon and are they all state agency certified?

201 WICKS: The elevator program is a 100% state operated program. We inspect about 12,000/annually.

207 SPRINGER: Do your people actually inspect every elevator or are they checking maintenance logs?

211 WICKS: I don't know exactly what is looked at. The law requires annual inspections and we are behind. We went to the Emergency Board in November because I felt it was important to public safety not to carry on with a backlog. With the people we have in the budget and the recommended fee increases we should be able to pick up that backlog and keep it down.

228 SPRINGER: Refers to pg. 2, ln. 29, SB 255 which addresses things you inspect. Does your inspection apply to mobile vehicle mounted lift mechanisms, like the cherry pickers used by utilities?

215 WICKS: No.

236 SPRINGER: Do we have less archaic language than "dumbwaiter" or "manlift"?

239 WICKS: We could work on language for the next time around.

246 SPRINGER: How many "residential inclinators" are you inspecting?

250 WICKS: I don't know what a "residential inclinator" is.

251 SPRINGER: It looks like you would get \$52/year for looking at those.

253 WICKS: Yes, after the increase.

272 PAUL WULF, HOMEBUILDERS ASSOCIATION: The Homebuilders Association's only

concern is on pg. 1, ln. 10, the first reference to the year change from 1979 to 1988 of SB 255. We prefer the 1979 edition of the Uniform Building Code (UBC) be maintained. Refers to Mr. Wicks testimony, pg. 7, Exhibit E, which states the fee increases are 10-40%. The fee currently is \$3/\$1,000 above \$25,000. The proposed fee would be \$4.50/\$1,000 or a \$1.50 increase. If I divide \$1.50 by \$3.00 that is a 50% increase. The Building Codes Agency divided \$1.50 by \$4.50 for a 33% increase. Since 1979 there has been an annual inflation rate, which means an average structure valued at \$27.39/sq. ft. in 1979 would be \$42.80/sq. ft. in 1990. That has helped to keep the structural part of the building permit fee current so there is not a need for an additional 50% increase. Refers to SB 255, ln. 19 and the ability of municipalities to increase fees if costs increase, substantiated by Mr. Wicks testimony pg. 9, Exhibit E. If this bill is enacted the municipalities listed in Mr. Wicks testimony could automatically go to the maximum without a hearings process. Refers to Mr. Wicks testimony, "Statutorily Based Fee Programs, Structural/Mechanical", pg. 13, Exhibit E, is the one category that shows a positive fund balance, even before the increase. There is a concern on our part, that with an additional undedicated 50% increase, the opportunity exists for municipalities to utilize this fee increase however they wish and possibly replace funds lost to Ballot Measure 5. Our concern is strictly with the building permit structural fee.

456 CEASE: Requests Mr. Wulf return to the 1979/88 UBC discussion. At what level would things be if 1979 were used?

464 WULF: Building permit fees are based on the value of the structure. For every \$1,000 increase in value in the 1979 code book there is \$3 fee. The 1988 edition is \$4.50 or a \$1.50/\$1,000, which I calculate to be a 50% increase.

483 CEASE: What have the fees actually been since 1979?

485 WULF: They have increased by increments since 1979. Each year the International Conference of Building Officials (ICBO) publishes a cost per square foot that can be utilized for average and/or good construction. Though the fee has not increased, the value per square foot has increased since 1979.

TAPE 27, SIDE B

037 WULF: In 1979 an average house with 1800 sq. ft. with a 500 sq. ft. garage would have been \$49,302. In 1990 the same house would be valued at \$75,744.

047 CEASE: Fees are maximum amounts based on those value increases?

048 WULF: For an average house.

049 CEASE: So what are you paying as an actual building fee?

050 WULF: The building permit fee was \$195 for the 1979 house and \$255 for the 1990 house.

052 CEASE: Currently using the 1979 ICBO level you would be paying \$255 for a permit for an inspection fee?

057 WULF: That is how I work through it.

062 CEASE: What are you really paying and what will happen to that if it is changed to 1988?

065 WULF: Outside a municipality it is \$255, if this bill passes it could be automatically increased by 50%, to \$380.

075 CEASE: The increases are always automatically allowed?

076 WULF: The way the bill reads it could just be done.

087 HOUSER: An incremental increase was discussed, if the value of the structure is over \$25,000, of \$3 to \$4.50. Is there a base fee that is paid up to \$25,000?

090 WULF: It is progressive, between \$2,000 and \$25,000. At the 1979 rate it was \$4/\$1,000 and the 1988 rate is \$6/\$1,000. In 1979 the incremental between \$50,000 and \$100,000 was \$2 and in 1988 \$3. In 1979 \$100,000 and above was \$1.50 and in 1988 it was \$2.50.

098 HOUSER: The 50% increase applies to the entire range from the smallest structure up to the most expensive structure?

100 WULF: Yes.

101 BUNN: If we leave 1979 in this section, basically there is still a built in escalator clause for inflation?

103 WULF: Right

104 BUNN: It is now giving the escalator for inflation plus the 50%?

104 WULF: Yes.

105 GRENSKY: The Building Codes Agency is going to perform inspections and offer permits on structures that are not governed by a municipality?

107 WULF: Correct.

107 GRENSKY: What would a range of figures be if the same structure, that under the Building Codes Agency scheme would cost \$250, were to be built in a city?

111 WULF: Mr. Wicks testimony, pg. 9, the first paragraph, Exhibit E, gives the prices in three different cities for the same structure.

126 GRENSKY: The State Building Codes Agency gets 5% of every permit fee paid, even in the cities?

129 WULF: Yes.

131 GRENSKY: What does that money go for?

132 WULF: It would be better to ask them.

144 SPRINGER: Requests Mr. Wulf's comments in writing, if he gets the opportunity.

146 SMITH: Is your agency opposed to all of the fee increases?

148 WULF: No, only the structural portion on pg. 1, ln. 10, the first replacement of 1979, of SB 255 .

160 JANE CUMMINS, LEAGUE OF OREGON CITIES: Distributes letter, Exhibit H. The League of Oregon Cities supports SB 255. I would like to address my remarks to §1 which would change the schedule for setting fees for the mechanical and structural codes from a 1979 schedule to a 1988 schedule. We believe that an update is appropriate. The ability to maintain fees at an adequate level will help provide our communities with the services and code compliance that they expect. Even though local jurisdictions can appeal to the Building Codes Agency for increases to cover costs an updated schedule would avoid many of those requests. Generally cities, in the past and today, are subsidizing programs. They have chosen to keep their fees low, but at this point in time it is difficult to continue doing that.

182 SMITH: Are you aware of cities that arbitrarily raise fees without going through a public hearing process of some sort?

185 CUMMINS: I am not familiar with how each city operates, in some there is a process that involves the public and development community. That is why fees, in many instances, have remained low and have been subsidized, but it is getting harder to do that.

193 SMITH: The Homebuilders seem concerned that municipalities divert these fees to other programs, do you know if that is common practice?

197 CUMMINS: I can't say it does not or has not occurred, but generally I would say it does not occur.

206 DON WOODLEY, MARION COUNTY, BUILDING OFFICIAL: We support §1-2 of SB 255 . Concur with deletion on pg. 2, lns. 9-10 of SB 255. Discusses §1 and the issue of the 1979 versus the 1988 tables. It would not impact Marion County's fees regardless of whether the 1988 edition were adopted. Services can be reduced in two ways: 1. by providing bad service that allows you to reduce your fees. We are four weeks on plan reviews now. We are not charging the 40% fire and life safety plan review placed on commercial buildings, that by statute we are authorized to charge. I will be proposing a fee increase to charge that fee beginning July 1, 1991.

246 OTTO: The fee increase in addition to the 30%?

248 WOODLEY: It would have nothing to do with this, it is a 40% plan review increase so that I can hire another plans examiner. It would basically be on buildings over 4,000 sq. ft. or 20 ft. in height. Marion County has operated on dedicated funds since 1978, if more money is received than it costs to administer the program it sits in an account drawing interest and stays there. That current interest almost funds one position in my department. When we issue a building permit we enter a contract to provide inspection services anywhere from 90 days to 2 years or more depending on the project. We need money in reserve to honor that contract. The reserve is not profit, it is dedicated funds and if Marion County should quit the inspection business, the funds would go to the Building Codes Agency to finish the inspection process. Marion County's budget goes through a public process. The Homebuilders in 1980 agreed that a 50% operating budget in cash reserve was reasonable so there would not be a turnover of inspectors. Speaks to increases in salaries and rents, among other things, which require increases in fees. Supports adopting a reasonable fee structure, I believe there is plenty of opportunity for review. I don't believe the 1979 edition of the UBC is in print any longer. Mechanical fees on pg. 1, ln. 10, SB 255 are so low already that a 50% increase would pay one-third of the cost of providing the service. We get the money for this program from other programs.

343 SMITH: If you are subsidizing that program why haven't you come to the Building Codes Agency and asked for higher fees?

347 WOODLEY: Overall our budget balances, we are in the black with a cash carryover. We have been trying to do program budgeting where each individual specialty code pays its own way. If you raise the fees for wood stoves too high they won't be inspected.

359 SMITH: Aren't there insurance liabilities for uninspected stoves?

367 WOODLEY: That is happening now. When we started the campaign to have wood stoves inspected very few insurance companies required they be inspected.

375 SMITH: I was just curious why you did not request a raise in fees to cover your mechanical inspection costs.

382 WOODLEY: I don't want to raise mechanical fees so high that people don't take out mechanical permits.

390 OTTO: Percentage wise, how many people are avoiding the requirements of the law in not obtaining a permit?

392 WOODLEY: I don't have hard facts. Two years ago the electrical contractors testified that they were not buying permits for 40-60% of their work. Building permits are more readily noticed than mechanical, plumbing or electrical work.

406 OTTO: An electrical inspector told me that people will take a permit on a single outlet in their house and it is more trouble to inspect for that than the revenue received. I think that is true.

413 WOODLEY: Last session we had a minor installation electrical label that we initiated so we could randomly pull and inspect one out of ten at a lesser cost to the public. We have been selling minor installation labels since September in Marion County and I don't think any contractor has sent back a list of ten so we can inspect one.

427 OTTO: I think you are correct that for a structure there is inspection, but for plumbing or electrical there often isn't.

433 Fiscal impact statement distributed, Exhibit G.

436 Meeting adjourned at 4:50 p.m.

Submitted By:

Joan Green  
Assistant

Reviewed By:

Jayne Hamilton  
Assistant

EXHIBIT LOG

A - Majority amendments SB 292-4, Staff, 3 pgs. B - Sen. Bunn amendments SB 292-5, Staff, 3 pgs. C - Majority amendments SB 296-3, Staff, 4 pgs. D - Sen. Bunn amendments SB 296-4, Staff, 4 pgs. E - Written testimony, Wicks, 14 pgs. F - Amendments SB 255-1, Staff, 2 pgs. G - Fiscal impact SB 255, Staff, 1 pg. H - Letter, City of Eugene, 1 pg.