

Senate Government Operations March 18, 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

March 18, 1991Hearing Room "B" 3:00 p.m. Tapes 45 - 46

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 Jayne
Hamilton, Committee Assistant

MEASURES CONSIDERED: SB #526 - Relating to land surveys,
PH/WS SB #548 - Relating to real property, PH SB #652 - Relating to land
surveys, PH SB #255 - Relating to Building Codes Agency fees, WS

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TAPE 45, SIDE A

005 CHAIR OTTO: Called the meeting to order at 3:13.

(TAPE 45, SIDE A)

PUBLIC HEARING

SB 526 RELATING TO LAND SURVEYS

Witnesses:Chuck Pierson, Washington County Surveyor Dennis Frantz,
Multnomah County Surveyor Fritz Ingram, Douglas County Surveyor Danna
Fehrenbacher, Benton County Surveyor

015 CHUCK PIERSON, WASHINGTON COUNTY SURVEYOR: Reviewed the bill for the committee.

026 OTTO: "On commission," does that mean the county board of commissioners?

028 OTTO: No. We have planning commissions, county commissions, etc. We've just retained that language. It would be three persons appointed by the court.

033 PIERSON: Continues with review of the bill.

063 CEASE: In the first section, are the deleted languages considered to be out of date? Is there something floating around that someone who thinks that they are a practical surveyor can still use anywhere?

068 PIERSON: Under Oregon law if you do any type of surveying you must be a registered professional land surveyor, and any one who claims to be a practical surveyor would be subject to an administrative fine by the Board of Engineering Examiners.

072 CEASE: What about the marks and monuments language?

073 PIERSON: If you were to mark something, it would be to monument it. You could monument it with permanent metal stakes, or whatever the state would determine would be appropriate.

084 DENNIS FRANTZ, MULTNOMAH COUNTY SURVEYOR: I concur with Chucks' testimony. Distributed written testimony, Exhibit A.

090 CEASE: Is there any impact on the cost of the court? We have no fiscal impact.

095 FRANTZ: It was our intention that the county or the court system would not bear any of the cost of this type of action. Whoever the courts were to decide should pay for it, would in fact, pay for it.

098 FRITZ INGRAM, DOUGLAS COUNTY SURVEYOR: Supports the bill.

100 DANNA FEHRENBACHER, BENTON COUNTY SURVEYOR: Supports the bill.

WORK SESSION

113 MOTION: SEN CEASE MOVED THE BILL TO THE FLOOR WITH A DO PASS RECOMMENDATION.

117 BUNN: I'm not comfortable saying that once you've got three surveyors going out together and setting the mark that they are perfect and can't be appealed. I think it's logical to say that we're going to remove practical and put in registered professional land surveyor, take that information to the jury and let them make their decision. To remove a jury and then remove appeal I think is unacceptable. I won't support the bill, because surveyors make mistakes just like any other profession. I think appeal is an important right.

133 VOTE: MOTION CARRIED, 4-1. VOTING NO SEN. BUNN. (EXCUSED, SEN. KITZHABER AND SEN. SMITH).

(TAPE 45, SIDE A)

PUBLIC HEARING

SB 548 RELATING TO REAL PROPERTY

Witnesses: Chuck Pierson, Washington County Surveyor Dennis Frantz, Multnomah County Surveyor Darek Mason, Retired Private Surveyor Verlyn Thomas, Professional Land Surveyors of Oregon:

145 CHUCK PIERSON, WASHINGTON COUNTY SURVEYOR: Reviewed written amendments section by section for the committee, Exhibit B.

266 SMITH: What is the significance of a partition plat?

268 PIERSON: A partition plat is a formal document very similar to a sub-division plat. It has certain requirements that have to be on it. It's a document that is fiscally approved by the governing body, if they require that. It's reviewed and approved by the county surveyors office, before it can be recorded. You cannot sell property in a partition plat until the plat is recorded. It's a smaller, less complicated version of a sub-division plat.

282 SPRINGER: I'm not sure why we're waiving a requirement of a partition plat for partials that are created in excess of eighty acres.

289 PIERSON: We recognized that it was such a burden to take a very small piece out of a very large track, and that we shouldn't burden them to try to put all of this on a partition plat. Continued with explanation of the bill, and the amendments.

434 OTTO: Sue Hanna of LC said she would work on the amendments since some are not compatible with the bill, or with each other. She said she would meet with all interested parties and discuss the amendments.

449 PIERSON: I don't see a problem so critical that it can't be worked out. We are more than willing to do that.

457 DENNIS FRANTZ, MULTNOMAH COUNTY SURVEYOR: Concurred with Chucks' testimony and agreed to meeting with Sue Hanna over the amendments.

488 HOUSER: The -1 amendments are the amendments that came to us on Friday from the Surveyors and Engineers Association. We have two other sets of amendments, and I understand that there is a fourth set. I was notified an hour and a half ago from LC that some of them were not compatible.

044 DAREK MASON, RETIRED PRIVATE SURVEYOR: I've been meeting with people for over thirty years to try to get something like this enacted. I support the bill.

084 VERLYN THOMAS, PROFESSIONAL LAND SURVEYORS OF OREGON: Is in support of the bill.

TAPE 46, SIDE A

PUBLIC HEARING

SB 652 RELATING TO LAND SURVEYS

Witnesses: Verlyn Thomas, Land surveyor Tim Fassbender, Professional Land Surveyors of Oregon Fritz Ingram, Douglas County Surveyor Frank Brawner, Oregon Banking Association Ed Graham, Land Surveyor Silas Davis, Professional Land Surveyors of Oregon David Edwards, Land Surveyor Brian Wigart, Laker Associates Dennis Fahnswell, County Surveyors Office

141 VERLYN THOMAS, LAND SURVEYOR: Read written testimony, Exhibit C. Made reference to a letter he submitted to Sen. Otto, Exhibit D.

194 TIM FASSBENDER, PROFESSIONAL LAND SURVEYORS OF OREGON: Supports the bill.

203 GRENSKY: Explain to me why you should be able to walk away from a situation where there's a legitimate mistake made in a survey just because a ten year period has expired.

214 FASSBENDER: If you buy a house, and in ten years you decide there's something wrong with your plumbing, do you go back and try to nail that plumber?

220 GRENSKY: If my plumbing problem doesn't show up for ten years, under the law I can sue within the time allotted from the date of discovery. The problem I have with this bill is my time doesn't start from the date I discover the problem. It starts from the date you walk away from your survey.

259 FASSBENDER: Engineers, architects and surveyors, are covered under a ten year statute of limitation, if it deals with construction. The only thing that we are after is to include a land survey, so that it would be covered under the same period of time.

428 FRITZ INGRAM, DOUGLAS COUNTY SURVEYOR: I don't think the ten year statute of limitations is unreasonable at all, because it is very much in line with the courts determinations of the land owners responsibility for knowing where his property line is.

TAPE 45, SIDE B

028 SMITH: If that's the case, then why do you need the bill?

029 INGRAM: If the surveyor has to carry errors and omission insurance, (E&O), it's an unreasonable burden on a retiree. Without this bill he is obligated to go in and put on an expensive defense many years after the fact.

039 SPRINGER: Where do the surveyors get their insurance? Do they have a Mutual or a National Surveyors Organization that helps put this together?

042 INGRAM: I don't know, I don't deal with that directly.

043 SPRINGER: It seems unusual that a retiree would have to pay full rates until the day they die.

045 INGRAM: I do believe that this type of insurance is not as easily obtained as some other forms of insurance.

052 FRANK BRAWNER, OREGON BANKING ASSOCIATION: Our concern with the bill is to the effective date. We believe it should be prospective since we're changing the rules, and not retroactive.

064 SMITH: When you first began speaking I thought you were in opposition of the bill. When you finished I thought maybe you weren't in opposition of the bill if it's amended.

067 BROWNER: We support the bill, but we believe it should be prospective.

081 ED GRAHAM, LAND SURVEYOR: Supports the bill.

092 SILAS DAVIS, PROFESSIONAL LAND SURVEYORS OF OREGON: Supports the bill.

114 SMITH: Would you see that your cost of insurance would go down if this bill passes?

115 DAVIS: Most definitely. We happen to be the largest employer of land surveyors in the United States. We employ over 160 land surveyors within our firm alone.

118 SMITH: You would still have to have this E&O insurance.

119 DAVIS: Yes, but we know the insurance would go down if the statute of ten years ran, because some of our work would go off the docket.

130 SMITH: Are most of your surveys done on undeveloped land? Would this only apply where the land is not developed in ten years?

132 DAVIS: This bill as it reads would protect a land surveyor for what, in most cases, could commonly be referred to as a boundary survey in which there may not be any improvements i.e. construction improvements on the property.

147 SMITH: Are the surveys done at the time of a sale?

148 DAVIS: In most cases. We certainly advise people to that effect.

152 SPRINGER: Who supplies the insurance?

153 DAVIS: There are independent agents who supply the coverage. There are no nation wide professional insurance organizations that offer E&O to surveyors to my knowledge.

209 DAVID EDWARDS, LAND SURVEYOR: Strongly supports the bill.

268 CEASE: Tell me about your insurance.

269 EDWARDS: We don't carry E&O. We can't afford to.

275 CEASE: When was the last time you knew of someone who needed to use this type of insurance, and have you tried to find insurance?

281 EDWARDS: The price of E&O is common knowledge.

288 CEASE: Nobody so far has given any indication of how much this insurance cost. I'm trying to get an idea of what is reasonable and what is not.

300 BRIAN WIGART, LAKER ASSOCIATES: We are a firm of 26 people, our E&O insurance per year is \$30,000.00 to \$35,000.00.

309 CEASE: What and who does that insurance cover?

310 WIGART: It covers everybody. It covers the firm for the work that we do and the services we provide.

313 GRENSKY: Are you a full service surveying company?

314 WIGART: Yes.

315 GRENSKY: Has your insurance company told you they would reduce your rates, and if so how much?

319 WIGART: I do not know if our rates would be reduced with the passage of this legislation.

344 OTTO: Are you in support of this bill?

345 WIGART: Most definitely.

374 DENNIS FAHNSWELL, COUNTY SURVEYORS OFFICE: Supports the bill.

398 GRENSKY: In the first example you're dealing with people who develop property for a living. They are probably in the commercial end, not residential. With what they're doing, if there's an error it will be determined in short order, or there won't be an error. That is probably why you have that ten year limit on those type of surveying services. What you're trying to correct here is not that type of situation. That's why I think this statute has never applied to that type of surveying situation. Would you disagree with that.

414 FAHNSWELL: I certainly do. A boundary survey, for any part of their property, serves notice as to the boundaries of the property and constitutes an improvement thereof. It serves notice to the neighbors of the party as to the location of the boundaries and any third party interested. After ten years have taken place, anything done on behalf

of that survey regarding the location of the boundaries, would have precedence for title under adverse possession. The ten years would run concurrent and satisfy both parts of the law. I see no problem with the bill regarding that.

TAPE 46, SIDE B

028 SMITH: It seems to me that what we're hearing from the industry is that they are paying outrageous rates for this E&O insurance and they want their liability limited with the hopes that it would reduce their rates. There's testimony from the surveyors that the courts don't rule against them in those cases. I'd like to know if this is really going to have any impact at all on their insurance.

(TAPE 46, SIDE B)

WORK SESSION

SB 255 RELATING TO BUILDING CODES AGENCY FEES

Witnesses: Gary Wicks, Building Codes Agency

045 HOUSER: Reviews the bill and the amendments, section by section for the committee. Distributed written testimony from Building Codes Agency, Exhibit E, and written testimony from Oregon State Home Builders Association, Exhibit F.

081 GARY WICKS, BUILDING CODES AGENCY: Our budget hearings are on April 4th and 5th, and we're before the Public Safety sub-committee. The Chairman is Rep. Jones.

086 MOTION: SEN. SPRINGER MOVED THE -1 AMENDMENTS TO SB 255. HEARING NO OBJECTION, SO ORDERED.

090 MOTION: SEN. SPRINGER MOVED SB 255 AS AMENDED TO WAYS AND MEANS WITH A DO PASS RECOMMENDATION.

093 GRENSKY: I'm going to have to vote no on this. I don't feel qualified to say these fee increases are something we need or don't need. I'm being asked to say yes we do, and move it along the system. I know the cost of building has sky-rocketed in this state. I can't justify raising fees so I'll have to vote no on it.

103 VOTE: MOTION CARRIED, 4-1. VOTING NO SEN. GRENSKY. (EXCUSED, SEN. BUNN AND SEN. KITZHABER).

Meeting adjourned at 4:50.

Submitted By:

Jayne Hamilton
Assistant

Reviewed By:

Joan Green
Assistant

EXHIBIT LOG A - Written testimony for SB 526, Dennis Frantz, 1 page B - Proposed amendments for SB 548, staff, 8 pages C - Written testimony for SB 652, Verlyn Thomas, 2 pages D - Written letter to Sen. Otto on SB 652, Verlyn Thomas, 2 pages E - Written testimony for SB 255, Building Codes, 5 pages F - Written testimony for SB 255, OSHB A, 5 pages