

SENATE COMMITTEE ON GOVERNMENT OPERATIONS - April 12,
1991 Hearing Room "B" 3:00 p.m. Tapes 62 - 63 MEMBERS
PRESENT: Sen. Jane Cease, Vice-Chair Sen. Jim Bunn Sen. Tricia Smith
Sen. Dick Springer MEMBERS EXCUSED: Sen. Glenn Otto, Chair Sen. Ron
Grensky Sen. John Kitzhaber STAFF PRESENT: John Houser, Committee
Administrator Joan Green, Committee Assistant MEASURES CONSIDERED: SB
1060 - Relating to public contracts, PH SB 548 - Relating to real
property, 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 62, SIDE A

005 VICE CHAIR CEASE: Called the meeting to order at 3:16 p.m.

(TAPE 62, SIDE A) WORK SESSION SB 548 RELATING TO REAL PROPERTY
Witnesses: Chuck Pearson, Washington County Surveyor Russell Nebon,
Marion County, Chief Planner Genoa Ingram, Oregon Association of
Realtors Dale Blanton, Department of Land Conservation and Development,
Senior Policy Analyst Ray Shaw, Attorney

014 MOUSER: Chuck Pearson, as spokesman, will present the 4
amendments to SB 548, dated 04/10/91, Exhibit A. The working group
consisted of the realtors, the planners and the Land Conservation and
Development Commission (LCDC). 018 CEASE: The -4 amendments to SB
548, dated 04/12/91, Exhibit B are from the realtors? 023 MOUSER:
Yes. The -4 amendments to SB 548 represent a consolidation of the issues
addressed by the -1 through the -3 amendments to SB 548, Exhibits E-G.
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024 CEASE: It does not include the -6 amendments to SB 548?
025 MOUSER: No. 027 CHUCK PEARSON, WASHINGTON COUNTY SURVEYOR: SB
548 was drafted primarily as a housekeeping bill. Other people were
interested in the bill and a work group was created. I believe we have
worked out all of the concerns shared by the clerks, county planners and
us, as reflected in the -4 amendments to SB 548. I don't believe the -2
amendments to SB 548, Exhibit F, are incorporated in the -4 amendments
to SB 548. 063 CEASE: The Committee will request the -2 amendments to
SB 548, Exhibit F, be incorporated. 064 PEARSON: Discusses the -4
amendments to SB 548, dated 04/10/91, Exhibit A, section by section.
112 PEARSON: Continues with review of -4 amendments to SB 548,
beginning with pg. 2, In. 21, Exhibit A. 141 SMITH: It allows the
cities to do that?

142 PEARSON: It would allow the city or county to show the restrictions
in a non-graphical form, such as a note format or plat restriction
format.

143 SMITH: It would be worded rather than pictorial?

144 PEARSON: The language providing the notice that this can be changed
is there, it is not just the line on the plat stating, for example,
solar setback line. Continues with review of the -4 amendments beginning
with pg. 2, In. 17 and cross references to pg. 3, Ins. 16, Exhibit A.

203 SMITH: What is the point of this acknowledgement?

204 PEARSON: The Water Resources Department is attempting to track water rights on property and what happens as the property is divided.

213 CEASE: We revised all of that in the 1987 session I believe. 214 PEARSON: I believe that is correct.

216 SMITH: Under the 4 amendments to SB 548, Exhibit A is it still necessary to inform the Department of Water Resources, but Water Resources does not need to file a statement? 220 PEARSON: Correct. Continues with review of 4 amendments to SB 548, beginning with pg. 3, In. 25, Exhibit A. 245 SPRINGER: Are you still proposing the language on pg. 14, In. 11 of the -4 amendments to SB 548, Exhibit A?

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252 PEARSON: Yes.

253 SPRINGER: Have the potentially affected utility people been contacted to see how they feel about that responsibility?

255 PEARSON: It is proactive currently, this sets a time limit. If you would be more comfortable with something other than 14 days we could do that. 269 SPRINGER: I get a little nervous about this.

270 CEASE: I am a lot nervous, people who haven't seen the amendments are sitting out there trying to put it all together. Perhaps Legislative Counsel (LC) needs to combine everything the Committee wants combined and then a hearing could be recommended on the new set of amendments.

286 PEARSON: The -4 amendments, Exhibit A is one philosophy and the -6 amendments, Exhibit B is another. I don't believe there is opposition to the 4 amendments, Exhibit A. The only combining might be the -2 amendments, Exhibit F and the -4 amendments, Exhibit A. 291 CEASE: Has everybody that was not a part of the group seen the 4 amendments, Exhibit A? 295 PEARSON: The amendments were discussed with a number of people. The format of the 4 amendments, Exhibit A is from the -1 amendments, Exhibit E, with minor changes. The one sign)ficant difference is putting \$3 into the -4 amendments, Exhibit A, instead of amending it line by line. 312 SMITH: This is a complicated bill to begin with and there are major amendments in terms of volume. Have local governments been a part of the working group? Are they comfortable with these amendments? 320 PEARSON: Representatives from the planners of the County Clerks Association are present. 321 SMITH: What about the League of Oregon Cities (LOC), etc.?

323 PEARSON: I have had no direct contact with the LOC.

325 MOUSER: The Association of Oregon Counties wanted county planners represented and they were included. I don't believe the LOC was represented.

334 PEARSON: Some of the amendments embodied in the -1 amendments, Exhibit E and the 4 amendments, Exhibit A are the result of conversations with cities, primarily the City of McMinnville. We have talked to the City of Portland. The City of HillSB oro has seen them,

and I don't think they have a problem.

348 CEASE: The 4 amendments, Exhibit A have been around for a couple days?

351 General concurrence. Senate Government Operations Apol 12, 1991 Page 4 . 352 PEARSON: Continues with review of the 4 amendments, beginning with pg. 4, In. 16, Exhibit A. 372 SMITH: On pg. 6, In. 25 of the -4 amendments, Exhibit A, this is a fee for what?

374 PEARSON: It is a fee for the city or county surveyor to do the mathematics check, go into the field to review the subdivision and verify that there are no encroachments, or anything to adversely effect the potential buyer of a particular lot. 387 SMITH: This allows cities to raise or lower the fees to the builder by resolution rather than by the public hearing and ordinance process. 392 PEARSON: Correct, Washington County requested this change.

394 SMITH: How do the Homebuilders feel about that?

398 Acknowledgement from audience.

404 PEARSON: Continues with review of the -4 amendments, beginning with pg. 7, Exhibit A. The substantive changes are on the first 3 pas. of the - 4 amendments, Exhibit A.

484 SPRINGER: What is the philosophical difference between the 4 amendments, Exhibit A and the -6 amendments, Exhibit B? 490 PEARSON: There is no philosophical difference between the two, they are completely different issues.

TAPE 63, SIDE A 034 CEASE: Ms. Ingram are you in disagreement with the 4 amendments, Exhibit A?

035 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: No, that is not an issue.

036 CEASE: You are introducing the other issue in the -6 amendments to SB 548 , Exhibit B?

037 INGRAM: Yes.

038 CEASE: Is there objection to the 4 amendments to SB 548, Exhibit A? 039 PEARSON: A change has been suggested by Dale Blanton of the Department of Land Conservation and Development (DLCD), Exhibit C. We have reviewed this change and have no objection. 042 CEASE: I am not ready to move the bill, I will request another work session of the Chair and I recommend that some consensus be reached on the amendments.

050 BUNN: I would like for the 4 amendments to SB 548, Exhibit A to be hand-engrossed for the next work session. J

- Senate Government Operations Apal 12, 1991 Page 5 056 SPRINGER: It would help to have a hand-engrossed version along with a listing of who participated and has signed off.

065 CEASE: Requests staff have a hand-engrossed version of the revised -4 amendments available for the next meeting. 077 INGRAM: Real estate licensees have a problem with the lack of clarity on whether an offer can be written contingent upon approval of the partition.

Purchasers of real estate may write earnest money agreements contingent on any number of things and it represents an excellent way to test the market for an individual who owns property. It would allow a property owner of ten acres to test the market for three parcels, and find there are no buyers, but there would be for two parcels, prior to the partitioning. It also allows the consumer the ability to reserve parcels for a future purchase, if the partition is approved. The -6 amendments, Exhibit B represent those changes and make those allowances. There was consensus among the surveyors, the planners and the title companies. DLCD has a concern about consumer protection; would the consumer somehow be cheated by entering into what was referred to as a "binding agreement", before the partition was approved? The agreement is not binding until after the partition is approved, no one loses any money. Our legal counsel, Mr. Shaw, reviewed the consumer protection mechanisms already in current statute and we are comfortable that the consumer is provided adequate protection under Chapter 92. 129 DALE BLANTON, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, SENIOR POLICY ANALYST: The Department is in strong opposition to the concept of sale of parcels prior to the approval, as seen in the -6 amendments, Exhibit B. We believe it sets a bad public policy, unnecessarily complicates the land use decision making process, unfairly jeopardizes third parties, whose interests are tied up in partitioning, prior to the local land use process reviewing that and compromises local decision making, forcing the decision makers to make a decision with money tied up in transaction. 142 SMITH: Are we talking about an accepted offer contingent upon thus and so? If it does not happen everyone gets their money back and goes away, right? 149 INGRAM: We did redraft definitions of "convey", "sell" and "negotiate", those three terms constitute the heart of our amendments. 154 SMITH: Has your legal counsel looked at this? 155 BLANTON: Our legal counsel has not evaluated the -6 amendments, Exhibit B. Today is the first we have seen the language.

158 SMITH: I am interested in what exactly this will translate to when it gets to a land use action on a local level. If it is more pressure on a local government to grant a land use action, even though they may not want to, I don't like it. However, if it holds everyone harmless and allows them to make a decision based on law that is different. 167 SPRINGER: Concur with Sen. Smith's comments. 186 SMITH: My experience from sitting on a city council was that nothing in current law

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hindered developers and property owners from making decisions on property, contingent upon getting a land use action out of the local government. It occurs without this, all except perhaps the money part.

196 RAY SHAW, ATTORNEY: The -6 amendments, Exhibit B, would not affect current land use procedures adversely, it retains local control. It does allow a seller more options in the orderly development of housing, contingent on certain conditions precedent. Refers the Committee's attention to pg. 2, In. 8, -6 amendments, Exhibit B, and the requirements for handling the consideration. This protects the buyer, but I would argue, it also protects the seller.

' 219 BLANTON: The concerns, as we see them, are expressed on pg. 2, In. 7, of the -6 amendments, Exhibit B. Current law authorizes for partitions in negotiations for a sale. These amendments authorize the

selling in replacing the word "sell" with "convey". Nothing prevents testing of the waters, in terms of negotiation, of a partition. Our concern is this actually authorizes the sale of land in a partition without local approval. We foresee more pressure on the decision makers who are trying to apply the land use regulations. They will already be faced with several people who may have money tied to a specific partition, any amendments would be jeopardizing the interests that those folks have in the partition. In some instances we may even have the ability for folks to file partitions and create, at least a perception, that an area is committed to non-resource development, without an exception being applied for. Those kinds of pressures will cause problems for the land use program, we think. We do not object to the negotiation portion.

253 SPRINGER: Mr. Pearson, how do you feel about the -6 amendments, Exhibit B? This is a big anchor and chain attached to SB 548.

261 PEARSON: My comfort level with the -6 amendments, Exhibit B has risen, I am not comfortable with them if it makes the bill flounder. I am not sure the concerns expressed about the -6 amendments, Exhibit B are appropriate, land use decisions are spelled out by ordinance.

283 SPRINGER: If a person from the Department says there is a problem, it is problem. 291 PEARSON: I don't think it is so much a land use problem, as a consumer protection problem. 298 RUSS NEBON, MARION COUNTY, CHIEF PLANNER: On pg. 1, In. 14 of SB 548 there is a definition of "negotiate". Returning to the 10 acre parcel example; a doctor sees the 10 acre parcel and wants to buy 5 acres. The owner would sign the application, but they don't want to be up front proposing the division so this person can buy it, they want to transfer that responsibility to the prospective buyer. The discussion ensues and the doctor pays the application fee, hires the planning consultant and works through the planning process, and if it is approved he will buy it. Is that a binding agreement? This does go on because the owner does not want to be the applicant. The way this bill is worded all of the funds are in an escrow account, if there is any exchange of money. Currently, based on the definitions of the law, people are technically violating the definition of "negotiate". There is always a concern that the local decision maker is going to be influenced by somebody coming in. I don't think Senate Government Operations April 12, 1991 Page ~ money on the table is a deciding factor in the decision making process. I think the law should reflect what the current practice is, I don't think that will affect local decision making, particularly if there are the precautions built into this bill.

376 CEASE: Do the -6 amendments, Exhibit B, fit into the context of the rest of the bill or should it be considered separately in another bill?

382 NEBON: It is a different issue. We support the 4 amendments, Exhibit A. If the -6 amendments, Exhibit B jeopardize the 4 amendments, Exhibit A and SB 548 we would have the same concerns Mr. Pearson has. If the -6 amendments, Exhibit B, address a legitimate concern, and there is support, I have no problem including them in the bill. 394 CEASE: We are operating as a subcommittee. 398 SMITH: I have been one of those decision makers and I have watched applicants, generally the current owners of the property, come in and sway, because of the money, and this will exacerbate that problem. Land use decisions are the most political thing a local government does, this makes it even more political. I haven't closed the door, but I am concerned. I think the -6 amendments, Exhibit B, should be a separate issue if we are going to deal with it.

441 CEASE: Requests staff to have the -2 amendments to SB 548, Exhibit F, the DLCD sheet, Exhibit C and the 4 amendments to SB 548

drafted by LC. The -6 amendments should be kept separate, in case you find a fourth vote, I am not there either.

(TAPE 63, SIDE A)

PUBLIC HEARING

SB 1060 RELATING TO PUBLIC CONTRACTS

Witnesses: John Gervais, National Electrical Contractors Association
Irene Coburn, National Electrical Contractors Association
Raymond Sansing, Corroon & Black Insurance

463 JOHN GERVAIS, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: SB 1060, as drafted, was not what we had hoped for, thus the -1 amendments to SB 1060, Exhibit D.

TAPE 62, SIDE B

023 IRENE COBURN, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: We are asked, as contractors, to furnish a certificate of insurance before we start a project. Certain public agencies require to be named as an additional insured to the policy, through the certificate. Normally they ask for their officers and employees to be named additional insurers and in some cases agents. The word "agent" is the problem. A few months ago our insurance company asked what an agent was and who it referred to. This went through many channels, including the Attorney General's (AG) office, and could not be defined. The insurance company was willing to do this, but they had to know who they were naming as an additional insured. In our particular case they canceled our complete blanket policy and we Senate Government Operations April 12, 1991 Page 8 were placed with another company. This is happening to other companies besides ours and other insurance companies are questioning "agent". This bill would help define "agent" to take care of that situation.

047 CEASE: Is that what the amendment does? 048 GERVAIS: The -1 amendment does not define agent, but instead asks for a listing of agents.

058 RAY SANSING, CORROON & BLACK INSURANCE: I work with a number of client contractors and have seen a number of cases where the request for additional insured coverage extensions, under the contracts, resulted in an undefined situation. An underwriter, in order to write correctly, needs to know what they are underwriting. In some cases insurance carriers, because they could not define the exposures they were being asked to underwrite, could not accept those certificates and the insurance would need to be moved or the job turned down. 071 GERVAIS: There are very few agencies that do require "agent" in the public contracting area, in terms of the insurance requirement, but for those who do it is a problem and this is a fair solution. This has the support of the Associated General Contractors.

078 CEASE: Do the public agencies support this? 079 GERVAIS: I have talked to them, told them we have the bill and invited them to come and get involved, but I see no one here. I invited the Insurance Commissioner, but he did not feel a need to get involved.

088 Meeting adjourned at 4:20 p.m.

Submitted By: Reviewed By: Joan Green Jayne Hamilton
Assistant Assistant

EXHIBIT LOG A - SB 548-4 amendments, Pearson, 9 pas. B - SB 548-6 amendments, Ingram, 3 pas. C - Proposed amendment to SB 5484, Blanton, 1 pg. D - SB 1060-1 amendments, Gervais, 1 pg. E - SB 548-1 amendments, Staff, 8 pas. F - SB 548-2 amendments, Staff, 1 pg. G - SB 548-3 amendments, Staff, 2 pas.

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