

Senate Government Operations May 6, 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

May 6, 1991Hearing Room "B" 3:00 p.m. Tapes 83 - 84

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

MEMBERS EXCUSED:Sen. Jim Bunn Sen. John Kitzhaber Sen. Tricia Smith

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

MEASURES CONSIDERED: SB 311 - Relating to structural
engineering, WS SB 548 - Relating to real property, WS SB 652 - Relating
to land surveys, WS

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TAPE 83, SIDE A

004 CHAIR OTTO: Called the meeting to order at 4:13 p.m., as a subcommittee.

(TAPE 83, SIDE A)

WORK SESSION

SB 311 RELATING TO STRUCTURAL ENGINEERING

Witnesses:Ed Graham, Board of Engineering and Examiners, Administrator
Joe Gehlen, Structural Engineers Association of Oregon

010 HOUSER: Discusses the -4 amendments to SB 311, Exhibit A.

031 CEASE: The -4 amendments would restrict other people who are designated as professional structural engineers?

035 HOUSER: Right, there would be two groups qualified to perform work as defined in the bill. One group would consist of structural engineers with the existing designation from the Board, or civil engineers who met the criteria under the grandfather clause in the bill.

042 ED GRAHAM, BOARD OF ENGINEERING AND EXAMINERS, ADMINISTRATOR: There is currently no real significant difference between civil engineers, mechanical engineers, structural engineers and electrical engineers. They all take an examination and are authorized to perform engineering services. Administrative rule speaks to maintaining a practice inside the scope of your area of expertise. The Board proposed that a grandfather clause would allow engineers currently registered, to continue to offer services in structural engineering, if they are competent to do so. The Board proposed that engineers registered after a specific date would no longer be allowed to perform services in structural engineering, unless they are also registered as structural engineers. Mechanical engineers that work in the structural field would oppose restricting it to Civil Engineers. I can't speak directly for the Board.

071 OTTO: Does the majority of the 11 member Board, to the best of your knowledge, accept the grandfather concept?

077 GRAHAM: The Board, at this point, grandfathers new branches of

engineering, but they haven't retro-fitted branches to existing registration.

085 OTTO: What is the general definition of a structural engineer?

089 GRAHAM: The primary difference is that structural engineers deal with the structure and gravity. They don't always deal in buildings. They could be involved in electrical transmission towers, dams, elevated highway structures, windows, curtain walls, window walls where structural glass is involved, etc. Civil engineers are multifaceted, they deal in water, earth, science, etc. The examination for structural engineers focuses on calculations expected of a structural engineer, where the civil exam includes only a small amount of structural. The structural exam is more complex and extensive. The second eight hours of the California exam is entirely dedicated to lateral forces and seismic conditions.

113 OTTO: If we were to strike §3, would we eliminate the grandfather clause?

115 HOUSER: Yes. Testimony from the organization introducing the bill indicated that they felt there would be significant opposition to the bill from the engineering professions, if some form of a grandfather clause were not included in the bill.

121 CEASE: If we struck §3, would we be back to the -3 amendments to SB 311, Exhibit B?

122 HOUSER: Yes.

124 JOE GEHLEN, STRUCTURAL ENGINEERS ASSOCIATION OF OREGON: Our organization feels that some kind of a grandfather clause is necessary to make the bill successful. There are a number of engineers who would not be able to get the structural license without taking the exam, that presently would be considered competent in their respective areas of service. The Structural Engineers Association of Oregon wants new people who register to have had the sixteen hour exam that tests for seismic capability and design. We understood, if the bill was passed as presented in the -3 amendments to SB 311, Exhibit B, that people presently working would no longer be allowed to offer services as structural engineers. A grace period to show competency to the Board is needed, to allow these people to continue to practice and eventually they will phase themselves out.

155 OTTO: How long would it take to phase them out?

158 GEHLEN: Approximately 10-15 years, I would think.

159 OTTO: How many are we talking about?

161 GRAHAM: Probably 600 registered structural engineers. I have no idea how many of the 9,000 registered engineers are practicing structural engineering.

168 CEASE: Even if we do accept the -4 amendments, Exhibit A, someone of the 9,000 could be adversely impacted?

173 GRAHAM: Yes.

175 GEHLEN: I believe with the amendment, as presented, the individuals who have been registered for five years or more are probably the type of individual running a business that would be dependent on being able to offer that service, as a structural engineer. People who have been offering the service for five years or less are more than likely performing those services within an organization that has others more experienced.

191 CEASE: How long have you been operating?

193 GEHLEN: I have been licensed since 197 . . .

194 CEASE: Do you know the situation for all of the 9,000 people registered in Oregon?

195 GEHLEN: I would presume that Mr. Graham was talking about civil,

mechanical . . .

196 GRAHAM: Every branch, inclusive of all.

198 CEASE: It sounds as though there is a lot of overlapping.

198 GRAHAM: We currently register professional engineers and there are over 9,000.

200 CEASE: They all have a substantial amount of training, usually including structural, from what my constituents tell me.

203 GRAHAM: They are authorized to provide services in professional engineering, as long as they remain within their area of expertise. The only way to challenge that expertise is to see demonstrated deficiencies in their plan. We have electrical or mechanical engineers who do provide structural designs that are adequate, but they recognize their limitations. We depend on that professional limitation idea. I believe §3 in the -4 amendments to SB 311, Exhibit A could be modified to say "individuals who have been registered as professional engineers with documented evidence of expertise in structural engineering for the preceding five years could be registered as structural or could be authorized to perform services as structural engineers." instead of the current language in the -4 amendments, §3, pg. 2, lns. 7-8, Exhibit A.

234 OTTO: I would support amendments to §3, as outlined by Mr. Graham, which would further limit the practice of who we allow.

240 GRAHAM: I would be happy to work with Legislative Counsel.

242 OTTO: That means we have to bring the bill back. Could you go down and see Legislative Counsel now. Is that agreeable with the Committee to get the proper language for that drafted?

247 CEASE: Could you reiterate the §3 proposed change?

251 GRAHAM: I believe the Board would accept an amendment to the effect of "individuals who are registered as professional engineers, who can document their expertise or actual practice in structural engineering for the preceding five years, might be registered as structural engineers."

258 CEASE: Who can document their expertise for the preceding five years? Then they would be registered with this additional structural engineer designation?

264 GRAHAM: Yes, I believe that would have to take place. We have done this with traffic engineers.

265 CEASE: I'd feel better with that rather than having something that might cut somebody off. I'm not happy with the whole exercise.

269 OTTO: Sen. Springer, do you have comments?

271 SPRINGER: I would defer to the Chair, I haven't been following it that closely.

272 OTTO: Sen. Grensky?

273 GRENSKY: My problem is I haven't heard that there is a problem to be dealt with here. I understand the need for specialization, but I haven't heard anyone say buildings are falling down because people who are not certified or qualified are practicing structural engineers. People who are familiar with engineering have stated to me that they feel this is a way to eliminate people in the profession from practicing in an area, that they are supposedly qualified to practice in. I would be more comfortable if I had evidence of a problem.

283 CEASE: Concurs with Sen. Grensky.

285 GEHLEN: Our own Organization has had concerns as to locking people out. In actuality we see the potential dangers in the matters of seismic risk. The northwest does not have a past history of earthquakes and, therefore tested the designs. There are a number of engineers practicing in our area that do not have the technical capabilities to do

a proper design on significant structures under a seismic zones 3-4 criteria.

307 GRENSKY: If I am a bank loaning money to build one of these buildings, I think I would ask that engineer that question, if it concerned me. Were I that engineer, I would be hesitant to build such a building knowing I really did not know what I was doing. How would you respond to those two comments?

314 GEHLEN: I think that would be prudent, but there are people who are performing services that feel they are competent and, in fact, are not.

317 GRENSKY: Is there something keeping people from joining the Structural Engineers Association?

319 GEHLEN: No, but being a member of the Structural Engineers Association of Oregon has nothing to do with the legislation.

321 GRENSKY: That exists for people who have expertise in this particular area.

322 GEHLEN: True, we also have a number of memberships that are related to the building trade. There are also structural engineers who are not a member of the organization.

327 GRENSKY: How do you get in there, is there a test or do you send in money or what?

328 GEHLEN: You make an application to the Board indicating your association with the structural engineering services.

331 GRENSKY: Do you check on the applicants to verify they know what they are doing?

332 GEHLEN: Our organization is for the services of structural engineers, we have nothing to do with qualifications. That is the Boards jurisdiction. The Structural Engineers Association of Oregon is like a trade organization. We have nothing to do with membership qualifications or competency. We do try to provide enough education and opportunity for engineers to improve their skills. This legislation would mandate the continuing education requirement.

375 GRENSKY: I am not convinced, at this point, that we need to exclude potentially thousands of engineers from being in this area. That is not to say that if it is amended, it comes before the Committee again and there is conclusive testimony, I might possibly change my mind. I am not comfortable with it now.

377 GEHLEN: We would like to see the California exam instituted up here as a requirement for registered structurals. Currently there is no way to force people to take that exam. This bill would require people to take the extra effort to learn about seismic design and take the necessary continuing education so as to be competent in this area.

433 OTTO: Would the Committee be comfortable with the gentlemen going to Legislative Counsel and providing us with further amendments to §3 of the bill?

440 CEASE: I would be willing to look at those, I am going to ask constituent(s) of mine, who are members of the Structural Engineers, but do not like this legislation, about the amendments. If they still are uncomfortable I won't be able to support it.

TAPE 84, SIDE A

WORK SESSION

SB 548 RELATING TO REAL PROPERTY

Witnesses: Chuck Pearson, Washington County Surveyor and Oregon Association of County Engineers and Surveyors Dale Blanton, Department of Land Conservation and Development, Senior Analyst Genoa Ingram, Oregon Association of Realtors Debra Weaver, Legislative Committee, Oregon Association of Realtors, Chairman

022 HOUSER: Distributes a hand-engrossed bill, Exhibit C and the -7 amendments to SB 548, Exhibit D.

024 CEASE: I had some land use planning related concerns when we heard this previously. I would like to hear if Sen. Springer has concerns about the amendments?

031 SPRINGER: I haven't had a chance to review the full package, Exhibits C-D. In the last hearing Sen.'s Smith, Cease and myself had questions about the impact of some of these changes on the process by which local government is faced with decisions regarding partitions. The discussion focused on the change in the definition, as it applied to earnest money contract, and the impact on individuals party to such an agreement. I am still not persuaded that this is a good step, even after visiting with a proponent, for the reasons Sen. Smith and I and others stated earlier. If this is still part of the package, this bill is not something I can support.

050 HOUSER: The hand-engrossed bill, Exhibit C is of the -7 amendments, Exhibit D. The -6 amendments are separate and a different issue entirely, Exhibit E.

059 CEASE: The question we were concerned about were in the -6 amendments, Exhibit E?

060 HOUSER: Right.

062 CHUCK PEARSON, WASHINGTON COUNTY SURVEYOR AND OREGON ASSOCIATION OF COUNTY ENGINEERS AND SURVEYORS: Reviews the hand-engrossed bill, Exhibit C, section by section. On pg. 3, lns. 26-27 refers to language Dale Blanton recommended.

146 HOUSER: That was distributed at the last meeting.

147 PEARSON: We have no problem with Mr. Blanton's language. Continues with review, beginning with pg. 4, lns. 23-25, Exhibit C.

167 CEASE: Should this read the other way?

170 PEARSON: We would concur in that language change to the hand-engrossed bill. In the hand-engrossed bill we would strike "nothing in this subsection shall exempt the governing body from the requirement of ORS 92.044 and 92.046", Exhibit C, and insert the highlighted language on the amended sheet, Exhibit D.

179 CEASE: In lns. 26-27, Exhibit C, we would strike only that one sentence and leave the rest?

183 PEARSON: Correct. Continues with review, beginning with pg. 4, lns. 23-25, Exhibit C. The Water Resources Department has been contacted and concurs with the deletion of the language.

210 OTTO: What if the recorder finds two numbering systems that don't jibe? Does he have the authority not to record?

226 PEARSON: I would say yes, if something on the plat was in conflict with the statutes. Continues with review, pg. 6, (2), Exhibit C. On pg. 8, the hand-engrossed language should be deleted and the Department of Land Conservation and Development (DLCD) language should be inserted.

311 OTTO: What happens if they are large lots that are eventually subdivided, would it read Lot 1a, 1b, etc.?

317 PEARSON: No, as Lot 1 is further subdivided in a continued phase, if Lot 1 is five acres and broken into five one acre lots and the last lot number used was 60, then they would pick up with lots 61-65. Lot 1 would cease to exist, as a matter of record. Continues with review of the hand-engrossed -7 amendments, pg. 12, ln. 21, Exhibit C. On pg. 14, ln. 23 reads "of the mailing or other", the words "service of the notice." need to be added. No adverse reaction was received from any of the utility companies on the 14 day notice. On pg. 7 of the -7 amendments, ln. 2, Exhibit D, it proposes "resolution or order" of the city or county.

451 HOUSER: Distributes letter, Exhibit F.

TAPE 83, SIDE B

012 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: Discusses letter, Exhibit G. Our objective in introducing the -6 amendments, Exhibit E is not to change the way subdivisions are handled. Refers to ORS 92.016 (2). ORS 92.010 defines negotiate. It was our contention that earnest money, based on these provisions, is not a binding agreement, it is activity that is preliminary to that execution. Failure to adopt the -6 amendments, Exhibit E would not prohibit the practice of individuals entering into earnest money agreements prior to the tentative approval, but it would allow the confusion to continue and probably allow people to enter into these agreements without direction, until someone is sued. Addresses Sen. Smith's concern of the additional pressure on local officials, if the -6 amendments, Exhibit E were to pass. Mr. Nebon's testimony reflected that sort of contingency would be added protection to the purchaser, the seller and the local official. Other planners concurred with his position. Earnest money agreements are written daily, contingent on local government actions. Examples include conditional uses, variances, lot line adjustments, dwelling approvals, etc. If local officials do not feel undue pressure for these types of things, why would they feel additional pressure, if an earnest money agreement was written contingent on the alternative approval for a partition? We believe the earnest money agreement is conditional, contingent on certain facts, and is not binding until those provisions are carried out.

091 DEBRA WEAVER, LEGISLATIVE COMMITTEE, OREGON ASSOCIATION OF REALTORS, CHAIRMAN: Reiterates Ms. Ingram's testimony. Our amendments are not intended, in anyway, to change any land use process. They are strictly for the purpose of clarifying the process that the public goes through in buying and selling property and being able to enter into sales agreements subject to approval of the land use process. If the current statutes were interpreted to mean that one could only operate with verbal agreements, rather than written agreements, we would have some concerns with the protection of the parties in carrying out those agreements and the parties being able to get what they had bargained for in a transaction.

112 DALE BLANTON, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, SENIOR ANALYST: The Department would like to express their overall support for SB 548. We believe, in general, it improves the current law on subdivisions and partitions. The Department does not, however, support the -6 amendments, the language on pg. 2, ln. 7, Exhibit E would change the law to authorize the sale (by definition that means entering into an earnest money agreement) of a parcel which does not have, but requires local government approval. The Department is opposed to this provision for five reasons: 1. We see no reason to make this change.

139 GRENSKY: I have 50 to 100 acres, but am not interested in developing it or submitting an application. Someone with an interest towards development approaches me about sale of the property, and is willing to go through the process with sale contingent on approval. Why shouldn't I be able to sell it contingent on that person going through the process and expense?

148 BLANTON: Once you enter into the earnest money agreement, you are basically tied into a legal transaction. If the county planning department finds that the parcel you hope to create doesn't meet minimum parcel size requirements or some other land use approval criteria and your application is denied by the local government for that partitioning, you are still entered into a binding agreement.

152 GRENSKY: No you're not. Are you exaggerating here or do you honestly believe that? You can make an earnest money agreement contingent on this approval, just like any other.

154 BLANTON: We are concerned about the possibility for an innocent third party entering into an earnest money agreement, not knowing whether the parcel to be created does or does not meet land use requirements.

159 GRENSKY: This bill will not rectify that situation. If I'm an ignorant developer that sees a 100 acres for sale, and I don't make it contingent, assuming I will get approval, I really am in trouble. The

other developer, that you are envisioning I believe, makes this contingent, and if it doesn't go through he is out of the picture. I don't see that argument.

175 BLANTON: Our concern is the possibility for an earnest money agreement for a unit of land that does not lawfully exist and cannot be conveyed. Legally there is a significant difference.

186 GRENSKY: If the deal is contingent on creating that parcel, wouldn't the deal fall? It would be a mutual mistake, of such magnitude, to render the deal unenforceable. If it is contingent on that approval, once again, if I buy the whole thing, there is a piece of land that exists, I just want to divide it into smaller chunks and when I can't do that I go to the seller and say this contingency was not met and I walk away. I still don't understand your argument.

196 BLANTON: Our argument is we believe that is an avoidable situation, under the current law, and there is no reason to create that.

197 GRENSKY: How is that avoided under the current law?

198 BLANTON: Under current law it is not legal to sell a parcel prior to obtaining approval. The approval process for subdivisions and partitions is basically a two-step process. You apply at the local government level, you receive a tentative approval, and you would then be free to sell. The second step is filing the plat or the final approval and at that point you would be able to convey that parcel.

213 GRENSKY: I can't believe realtors will list a piece of land that doesn't exist. Your concern, apparently, is that under this law, realtors are going to list 100 acres as one acre parcels before it has been partitioned. I don't think it would happen. I don't understand why, if a owner doesn't want to enter this arena, it can't be offered for sale contingent on approval.

233 BLANTON: That is a policy issue. The Department's position is that the approval ought to come prior to the sale in order to avoid the potential for either tying up an innocent third party in an earnest money agreement or having a decision maker, faced with people in the audience who have entered into an earnest money agreement, saying no the partition doesn't meet the standards. Continues testimony with point two of five: 2. The current law on subdivisions, under the -6 amendments to SB 548, Exhibit E, is being changed to coincide with the current law in partitions.

272 GRENSKY: The -6 amendment to SB 548, pg. 2, ln. 7, Exhibit E is the part you have problems with. I don't see why you have a problem with this because "convey" means transfer title. That won't happen until the deal closes and that can't occur without approval. If they change "sell" to "convey", how can you have a problem with that?

285 BLANTON: That is the basis of our major concern. It is appropriate to convey land after the final plat is approved. There is a prohibition saying no person may sell land in a partition prior to tentative approval. "Convey" implies that you may sell the land you just can't convey it. By doing this you are creating a distinction between a new lot in a subdivision and a new lot in a partition. I think the remainder of my points were covered in answering Sen. Grensky's questions. We believe the -6 amendments, Exhibit E would unnecessarily complicate the local land use decision making process, unfairly jeopardize third party interests and have the possibility of compromising local decision makers. If the Committee is interested in the -6 amendments, Exhibit E, changes could possibly be made to the language in ORS 93 for a disclaimer on earnest money agreements. It would clarify that in those earnest money agreements, where a parcel is being sold prior to local approval, a disclaimer would be added to that section clearly stating the uncertain nature of the transaction. The Department recommends the language on pg. 2, ln. 7 of the -6 amendments to SB 548, Exhibit E be deleted.

328 OTTO: Would you meet with the other two parties and bring language back that is satisfactory to everyone?

331 BLANTON: We have met with the realtors and have been unable to come up with compromise language. The fundamental issue with us is that

local government approval ought to occur, at least an application should be made, so there is some degree of insurance prior to entering into a transaction.

346 OTTO: Sen. Springer, you had concerns about the bill?

347 SPRINGER: I still have them. With the -6 amendments, Exhibit E, it is a no go.

351 CEASE: Not with the bill, just with the -6 amendments, Exhibit E?

352 SPRINGER: I can live with the bill, without the -6 amendments, Exhibit E.

356 OTTO: The original bill?

357 SPRINGER: With the -7 amendments, Exhibit D, which has been worked on carefully. I see no reason to hold the bill hostage.

362 MOTION: SEN. SPRINGER MOVED THE -7 AMENDMENTS TO SB 548, DATED 05/02/91, EXHIBIT D.

367 GRENSKY: I don't see a problem with the -6 amendments, Exhibit E. There is probably more than meets the eye. I am going to support the -7 amendments, Exhibit D.

372 VOTE: MOTION CARRIED BY ACCLAMATION.

376 MOTION: SEN. SPRINGER MOVED SB 548 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

383 VOTE: MOTION CARRIED, 4-0. EXCUSED: SEN. BUNN, SEN. KITZHABER, SEN. SMITH. SEN. SPRINGER WILL LEAD THE FLOOR DISCUSSION.

(TAPE 83, SIDE A)

WORK SESSION

SB 652 RELATING TO LAND SURVEYS

Witnesses: Frank Brawner, Oregon Bankers Association

402 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Discusses proposed amendments, Exhibit H.

435 GRENSKY: One of the major concern was the need to maintain records. How are we going to help with that problem?

446 BRAWNER: I understand that. If the bill passes with the effective date, which is 90 days after session, then those surveys made ten years ago, the world changes immediately and there is no recourse at all.

455 GRENSKY: It would still require them to maintain their records?

456 BRAWNER: Correct, but we would change the world for the future. It is my feeling that the proponents who are here are in support of the amendment, but I may be wrong.

466 CEASE: I have a number of reservations about the bill, amended or not.

471 GRENSKY: The amendment does not alleviate the main problem of record keeping. I didn't hear any testimony that insurance rates were putting them out of business, in fact few had claims for this type of thing. Records was the big concern and I don't think this will be of help. I guess I can't support it.

487 MOTION: SEN. SPRINGER MOVED TO TABLE SB 652.

491 VOTE: MOTION CARRIED, 4-0. EXCUSED: SEN. BUNN, SEN. KITZHABER, SEN. SMITH.

497 Meeting adjourned at 4:48 p.m.

Submitted By:

Reviewed By:

Joan Green
Assistant

Julie Muñiz
Assistant

EXHIBIT LOG

A - SB 311-4 amendments, Staff, 2 pgs. B - SB 311-3 amendments, Staff, 2 pgs. C - SB 548-7 hand-engrossed amendments, Staff, 27 pgs. D - SB 548-7 amendments, Staff, 9 pgs. E - SB 548-6 amendments, Staff, 3 pgs. F - Letter, Kagan, 1 pg. G - Letter, Ingram, 2 pgs. H - Proposed amendment, Brawner, 1 pg.