

Senate Government Operations May 13, 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 13, 1991Hearing Room "B" 3:00 p.m. Tapes 89 - 90

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 Julie Muñiz,
Committee Assistant

MEASURES CONSIDERED: SB 1005 - Relating to hazardous
material emergency response, WS SB 1033 - Relating to local government,
WS SB 1031 - Relating to public contracts, WS SB 1060 - Relating to
public contracts, WS SB 803 - Relating to emergencies, WS

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TAPE 89, SIDE A

015 CHAIR OTTO: Called the meeting to order at 3:15 p.m.

(TAPE 89, SIDE A)

WORK SESSION

SB 1005 - RELATING TO HAZARDOUS MATERIAL EMERGENCY RESPONSE

021 MOTION: SEN. SMITH MOVED SB 1005 TO THE FLOOR WITH A DO PASS
RECOMMENDATION

024 CEASE: I'm still uncomfortable with this bill.

030 VOTE: MOTION FAILED, 3-1. VOTING NO: SEN. CEASE. (EXCUSED: SEN.
BUNN, SEN. KITZHABER, SEN. SPRINGER).

WORK SESSION

SB 1033 - RELATING TO LOCAL GOVERNMENT

Witnesses: Burton Weast, Special Districts Association of Oregon Ken
Martin, Portland Boundary Commission Phillip Fell, League of Oregon
Cities

036 BURTON WEAST, SPECIAL DISTRICTS ASSOCIATION OF OREGON: Reviews
amendments section by section, Exhibit B.

059 KEN MARTIN, PORTLAND BOUNDARY COMMISSION: The commission favors the amendment. Points out potential problems with the bill. One thing that needs to be done is insert "boundary commission" in one section of the bill. Also, in section 11, we were concerned that there was no definition of "districts". Points out possible misinterpretations of this word. Section 12 of the bill provides for a dissolution of water authorities. I think that's already covered since the water authority is a district. We have no problems with what the Special Districts Association wants to add under the new section 14. In the language that's drafted for the proposed amendments, however, the changes in section 13 would remove the word "wholesale". So you should probably remove the phrase "in wholesale only" in section 14, line 16 and replace it with a reference to line 13.

107 CEASE: That allows consolidation of these anywhere in the state?

109 MARTIN: That is correct.

111 CEASE: I had a conversation with someone about whether we ought to worry about these being formed anywhere. Should there be any kind of review of that kind of situation?

118 WEAST: This does not create new water authorities. The way the current law is, they can be created within or without an urban growth boundary, because water doesn't flow just within urban growth boundaries. This bill's basic purpose is to generate some concern about basin management for water supply authorities or water supply urban growth areas. To delete this would get rid of the basic purpose of this bill. We feel the current law should be left alone, and water and sanitary authorities should have their boundaries based on the territory they served, not whether it's inside or outside the urban growth boundary.

129 CEASE: Growth and development was coming to my mind. This is a response to that and a concern of mine the last time we heard this bill.

135 WEAST: I agree with Mr. Martin's wording on the draft and we would support that change. We didn't want to specify water districts dissolution because there are many different kinds of districts that can get involved in water supply. We wanted to leave it open on who was dissolved. It is clearly stated in section 11, and nothing is done behind the back. We didn't see the necessity for combing the statutes and listing the districts that might be included in the petition.

162 CEASE: What happened to the amendment from the 24th regarding special districts that the League of Oregon Cities wanted to see?

168 HOUSER: That's section 14 of the amendments. The only change was that Legislative Counsel chose to remove all the descriptors in front of water authority in that first sentence.

173 CEASE: I have something from the city of Central Point -- a letter from Douglas Engle that asks for an additional amendment that would amend ORS 450.987. It's an additional issue about formation of a water supply.

201 OTTO: Do you want to go over those word changes?

202 WEAST: The word change on the amendments, line 16 would read "as provided in section 13 of this act," and delete the words "at wholesale only". That makes it clear what kind of authority we're talking about.

236 OTTO: The issue is the amendments to SB 1033. There has been an amendment to the amendment.

242 HOUSER: Reviews amendment.

255 CEASE: I still feel uncomfortable about this bill.

257 MOTION: SEN. CEASE MOVES TO ADOPT THE -1 AMENDMENTS AS AMENDED.

259 CEASE: Did you say there was one other part that needed to be looked at?

263 MARTIN: I had indicated that I was uncomfortable with the definition of "districts". Burton gave you a reason why he felt that should stay in.

274 VOTE: MOTION CARRIED, 5-0. (EXCUSED: SEN. BUNN, SEN. KITZHABER).

275 CEASE: Mr. Chair, could I ask John if he has the gist of the Central Point letters?

278 HOUSER: It has to do with the criteria in section 34 of the bill. They would like to see sub 4 deleted from that section. This is the section that relates to criteria under which a city may annex an area within a water authority.

296 CEASE: They want to take out the part that says that one of the criteria has to be whether or not the authority can provide adequate service. Right?

301 SMITH: I think the way the law and the bill are written, the authority must continue to exist unless it cannot provide services subject to territory which is being annexed. Correct?

314 WEAST: No, I think there's some confusion about water authorities or sanitary authorities. In this bill, under current law, the water authority can't be created unless it's consistent with the local plan, it can't include any territory in a city unless the city counsel approves that territory being within the city. It's not a water district, it's different. Once the authority is created, however, you can't remove infrastructure from the authority unless except certain conditions. They want to take out the condition about a water supply or sanitary authority providing adequate service.

334 CEASE: That has to be determined by the county governing body or the boundary commission.

337 MARTIN: I guess I'm not clear what their intention was.

338 HOUSER: The issue in Central Point specifically is, if they seek to annex any of the territory around the city to provide service to that territory, the sanitary authority will always be in the position of saying it can provide service to that area.

353 CEASE: I think they can settle that in the separate (unintelligible).

355 GRENSKY: I'm wondering if we can remove that criteria.

373 MOTION: GRENSKY MOVED TO AMEND THE BILL TO DELETE SUB 4 OF SECTION 34 OF SB 1033

383 CEASE: These are the things the county or boundary commission would have to determine. Could Ken Martin comment on removing the provision?

398 MARTIN: We've never addressed this situation before so it's difficult for me to comprehend this. I have no familiarity with it.

406 CEASE: I wouldn't want an area needing service to not get this service because of two parts of the government battling over who's territory it is. I don't know what "in a reasonable time" means -- it could have a number of interpretations.

415 WEAST: The removal of that language is not something we've discussed with anyone. The purpose of water authority is not to create special districts that couldn't be annexed, it's to create a unit of government that can deal with a large area and provide expensive services. The reason this language is here is so we can make sure if there is a change, that they couldn't decide to undo many years of planning to provide sewer and water service over several jurisdictions. It's hard to create these authorities, and if you take that language out there's no reason to have an authority. It defeats the purpose of the bill.

455 SPRINGER: Do we need any guidance from our friends of the local government to inquire how they might feel on this issue?

465 GRENSKY: The Central Point issue is a bit unusual. They need to expand their city limits. They're stuck. This isn't an incentive issue, the issue is more manageable city government.

Tape 90, Side A

030 PHILLIP FELL, LEAGUE OF OREGON CITIES: The language in section 34 is language we had many arguments about a couple of sessions ago. Gives brief history of language arguments. I would suspect the deletion of sub 4 is not going to allow the destruction of water and sanitary authorities. The League would be in support of Sen. Grensky's motion. The League supports the earlier amendments as well.

052 CEASE: How frustrated will Mr. Weast be if we do that? On the whole, he really cares for the bill more than he wants that, right?

056 WEAST: I'm frustrated that this bill was constructed to meet the concerns of the cities over the interim. My frustration is if we're going to change on old law, I don't know why we brought the bill forward.

074 VOTE: MOTION FAILED, 3-2. VOTING NO: SEN. CEASE, SEN. OTTO.
(EXCUSED: SEN. BUNN, SEN. KITZHABER).

078 SEN. CEASE MOVED SB 1033 TO FLOOR WITH A DO PASS RECOMMENDATION AS AMENDED.

087 VOTE: MOTION FAILED, 3-2. VOTING NO: SEN. GRENSKY, SEN. SPRINGER.
(EXCUSED: SEN. BUNN, SEN. KITZHABER).

WORK SESSION

SB 1031 - RELATING TO PUBLIC CONTRACTS

Witnesses: Ed Hughes, Pharmacy Steering Council Richard Reedal,
Pharmacist

096 ED HUGHES, PHARMACY STEERING COUNCIL: We had met with the Department of

Revenue and the Department of General Services, the two departments this bill impacts, and put their suggestions into the -1 amendments, Exhibit C.

109 RICHARD REEDAL, PHARMACIST: Reads written testimony, Exhibit D.

131 SMITH: Isn't there someplace in the law that says an employer will withhold employee taxes and will pay taxes.

138 HUGHES: It is stated in the law.

139 SMITH: Doesn't the Department of Revenue already have the charge to investigate complaints of people not doing that?

141 HUGHES: Yes.

142 SMITH: So we have three things we're trying to do: we're going to require written documentation from the contractor that he does these things -- is that new?

144 HUGHES: I believe they are required to do that already.

145 SMITH: So that takes care of sections 1 and 2. Section three is the penalty section -- if they don't do that then the contract won't be renewed or extended and the contractor is prohibited from contracting with the state for 5 years.

150 HUGHES: There are many duplications in statutes. This gives the particular section of that statute some teeth.

156 SMITH: Clarifies section 3.

160 HUGHES: We think it is unfair to have to bid on contracts with people coming in out of state who do not pay taxes.

165 SMITH: I agree with that, but it seems like a lot of stuff for two penalties. There's nothing in the language to void the contract of someone who has been found not paying their taxes.

176 HUGHES: It isn't an after the fact bill, it's before the contract.

178 REEDAL: We did not want to penalize the state by revoking the contract. We want to send a message to the people who do business with the state that the state will not tolerate that sort of behavior in the future.

184 SMITH: So you can do it once, but don't come back?

185 REEDAL: We don't legitimize doing it once, we just didn't want to interrupt the construction that was being done.

189 SMITH: Can we withhold payments to a contractor if he's found not paying his taxes?

194 HUGHES: This has been going on for a long time. Gives license plate example.

207 CEASE: I believe you're mistaken about someone doing business without paying taxes. Is there an instance that the Pharmacy Steering Council knows about that needs to be investigated?

215 REEDAL: We have an instance, where I have brought the information to the agency.

216 CEASE: Are they going after those people?

217 REEDAL: They've said the Revenue Department has to go after them.

218 CEASE: So is the Revenue Department going after them?

219 REEDAL: I believe they will.

220 CEASE: So it's all working.

220 REEDAL: Looking at the only penalty they have to pay, if an out of state provider is caught, they have to make up those taxes they haven't paid or possibly a penalty. There is a lack of incentive to forcing agencies to realistically look at the issue of complying to Oregon tax laws.

230 SMITH: Did you say to force the agencies to look at tax laws?

232 REEDAL: To force the contract carrier.

233 SMITH: Do you believe most of these contractors are contractors that come back again and again after they've defeated the Revenue Department? That's a pretty dangerous game.

243 REEDAL: We tried to look at some penalty that would send a message to people like that.

246 SMITH: I'm not sure this will do it.

252 MOTION: SEN. BUNN MOVES TO ADOPT THE -1 AMENDMENTS TO SB 1031 EXHIBIT C.

255 SMITH: The original bill put the burden on the state agencies. If a private corporation has hired a contractor, who's responsible to require they adhere to the law? I would guess that you included these amendments to get rid of a fiscal impact.

266 HUGHES: No, we had a complaint from one of the agencies we had included in the bill. We removed them at their request.

273 SMITH: The original bill made state agencies responsible with the Secretary of State Audit Division investigate thing charges.

279 HUGHES: We took them out of the amendments.

280 SMITH: You also took out the state agencies responsibility to make sure the contractors are complying to the law.

283 REEDAL: The state agencies had a problem deciding how to decide if a contractor is complying with the law. That's addressing your question. It's an issue of how do you verify that compliance.

289 SMITH: In the private sector, the company is not responsible with assuring that the contractor is complying with the laws.

294 REEDAL: This bill does not address that.

294 SMITH: I know.

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

309 MOTION: SEN. BUNN MOVED SB 1031 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

318 VOTE: MOTION FAILED, 2-4. VOTING NO: SEN. CEASE, SEN. GRENSKY, SEN. SMITH, SEN. SPRINGER. (EXCUSED: SEN. KITZHABER).

WORK SESSION

SB 1060 - RELATING TO PUBLIC CONTRACTS

Witnesses: John Gervais, National Electrical Contractors Association Ray Sansing, Corroon and Black Insurance Counselors David White, Department of Transportation

329 HOUSER: Discusses bill. I contacted a number of state agencies to get an opinion on this. Many are here as resources to the Committee on this issue.

348 JOHN GERVAIS, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: We've requested this bill to respond to a problem we had with our contractors who've lost insurance carriers because of the word "agency". As drafted the bill required a definition of agency which was very difficult. We've asked for the -1 amendments. The Port of Portland had a couple of concerns we agreed with. One was the definition of "agency" in terms of public contracting agency, the other said the contractor could receive a list of the agents of the contracting agency upon request. There was a question by the Committee about the depth of the problem. A survey was done by Sansing.

409 RAY SANSING, CORROON AND BLACK INSURANCE COUNSELORS: I contacted many insurance companies that do business with contractors in this state. Two would accept the term "agent" without major problems. When we told them that the word "agent" would be identified and explained we were able to add five more insurance carriers who were willing to add that wording.

437 GERVAIS: We can get a list of those companies if you want them.

438 OTTO: I have two sets of -1 amendments. They're all marked up. What are the different markings on both sets of amendments?

444 GERVAIS: The proposed amendments from the National Electrical Contractors Association (NECA) incorporate the proposed amendments from the Port of Portland. I don't know about the other markings.

452 HOUSER: I didn't add the Port of Portland's amendments because of the potential for additional changes. Those were the only changes in the bill.

466 OTTO: Those amendments are agreeable to you?

467 GERVAIS: Yes.

469 SPRINGER: I'm still unsure what we're trying to do here. Trying to say someone is or is not an "agent" doesn't get at the issue.

492 GERVAIS: We would accept any solution that makes sense.

Tape 89, Side B

030 GRENSKY: My question is whether this will help you and do what you want it to do. I have a feeling that insurance companies won't care what you think is an "agent" and what isn't. This may look better on paper. I assume you're trying to reduce your premium costs

042 GERVAIS: Reducing premium cost is not the intent of this bill. We can't get insurance when the term "agent" is used in the contract requirements.

046 GRENSKY: What we could potentially have is a situation where you're only getting partial insurance.

050 GERVAIS: We met with Kathleen Beaufait and her suggestion was having this list of the designated agents to take to the insurance company for coverage. The second provision allows them to revise the list. But the list comes from the contracting agency and would not be the contractor's group of people.

058 GRENSKY: Let's say somebody not on that list is negligent. What are my options?

064 SANSING: If the other party believes this person was working on behalf of the department, then that person can be construed as an agent. The department would be covered for the actions of this person. The person acting as the agent would not be covered. The people with the insurance risk need to know what they're being asked to insure.

085 GRENSKY: It isn't so much a coverage question, it's that your insurance companies don't know who they're dealing with. What's keeping you from doing that now?

093 GERVAIS: Discusses a letter from the Department of Transportation. It doesn't give us a lot of relief.

096 GRENSKY: It's a question of whether we can bring other carriers into the market by more clearly delineating what the responsibilities of these people are.

103 GERVAIS: It's not so much what they're doing as it is who they are.

105 GRENSKY: Why does that matter?

106 GERVAIS: They have no definition what an agent is.

107 CEASE: Reads fax from the Department of Transportation dated December 12, 1990. That's not very helpful.

117 SPRINGER: I asked for a couple of agency people to come in to testify.

125 DAVID WHITE, DEPARTMENT OF TRANSPORTATION: This is probably no longer a issue for state government. You go through three levels: the indemnification clause (what's the obligation of the contractor to the state?), a liability policy (can a contractor make good on this?), and the additional insured clause (have the insurance name me). We'll never be able to define agent. It can't be said. This legislation isn't needed. If this did pass, an agency could live with it, but we would recommend some minor amendments if that would be the case.

181 CEASE: "The amendments to the bill or the to amendments to the bill and the bill?"

183 WHITE: I was referring to the bill itself, an unamended bill. The Oregon Supreme Court doesn't want us to pass our liability to another party unless that's done very openly. We think it'll be a case where the contractor will be in a situation with their liability probably there.

208 CEASE: So there's been an edict issued somewhere in state government that, for example, would say agent instead of project manager?

213 WHITE: I can't go that far. We've never operated in that direction giving mode. You can do this expressly; you can bargain it. When the state offers a contract to a small contractor it's a contract of adhesion -- take it or leave it. This works against you. No one can find a reason to have agents additionally insured. We would advise against a law because there's so much already. It's an issue we should just pull back from and modify.

245 CEASE: We're talking about a couple of changes. You were talking about the printed bill and not the amendments.

253 WHITE: The amendments have been read at the contractor's request.

262 CEASE: I think titles would be better.

263 WHITE: This is really a bidding issue. They will know the function of the person, but not identify who it will be.

280 GERVAIS: With this stated policy, if this is where it's headed, we'd be comfortable pulling the bill.

291 MOTION: SEN. GRENSKY MOVES TO TABLE SB 1060.

297 VOTE: MOTION CARRIED, 6-0. EXCUSED: SEN. KITZHABER.

WORK SESSION

SB 803 - RELATING TO EMERGENCIES

310 HOUSER: Discusses bill.

322 MOTION: SEN. SMITH MOVES SB 803 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

331 VOTE: MOTION CARRIED, 6-0. (EXCUSED: SEN. KITZHABER). SEN. HAMBY OR SEN. SMITH WILL CARRY THE BILL.

WORK SESSION

SB 1005 - RELATING TO HAZARDOUS MATERIAL EMERGENCY RESPONSE

346 Committee reconsiders previous action on SB 1005.

347 MOTION: SEN. GRENSKY MOVED SB 1005 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

350 CEASE: I still have a problem with spending state money for local government personnel. I have a question for oversight and who's working for whom and how that works out.

365 SPRINGER: There's a letter from the City of Salem. The third largest city in the state and they can't afford their personnel. What's it going to take? Is the state going to subsidize everything except the metropolitan area?

380 SMITH: The state doesn't subsidize the metropolitan area?

382 CEASE: We get \$0.16 back to every dollar we put in for the lottery. You should look at Sen. Hamby's figures.

389 SPRINGER: But where's it going to stop? Even in the Valley there are jurisdictions that can't get by without state help.

399 SMITH: I sat on the City Council in Salem. We found that the cost of establishing a hazard response team is too much -- we couldn't do it because it requires people to be pulled out. These people can't be firemen and hazard respondents too. So it sets out all these people that will be sitting around waiting to respond anywhere in the Valley.

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

WORK SESSION

SB 1033 - RELATING TO LOCAL GOVERNMENT

458 Committee reconsiders previous action on SB 1033.

458 GRENSKY: Did we adopt the -1 amendments? We did.

475 MOTION: SEN. GRENSKY MOVES TO DELETE SUB 4, SECTION 34, PAGE 10 OF SB 1033.

486 OTTO: Who made the comment that if we delete that section there's no need for the bill?

489 Committee concurs that such a comment wasn't made.

Tape 90, Side B

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

038 MOTION: SEN. GRENSKY MOVES SB 1033 TO THE FLOOR AS AMENDED WITH A DO PASS RECOMMENDATION.

050 VOTE: MOTION CARRIED, 5-1. VOTING NO: SEN. SPRINGER. (EXCUSED: SEN. KITZHABER). SEN. GRENSKY WILL CARRY THE BILL.

052 Meeting adjourned at 4:28 p.m.

Submitted
By:

Reviewed By:

Julie Muñiz
Green
Assistant
istant

Joan

Ass

EXHIBIT LOG

A - Letter, City of Salem, 1 pg. B - SB 1033-1 amendments, Staff, 2 pgs.
C - SB 1031-1 amendments, Staff, 2 pgs. D - Written testimony, Richard Reedal, 1 pg.