

Senate Government Operations June 5, 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

June 5, 1991Hearing Room "B" 3:00 p.m. Tapes 107 - 108

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 968 - Relating to certain cities; appropriating money, WS HB 3534 - Relating to vacation of city land, PH/WS HB 2649 - Relating to fire protection; appropriating money; declaring and emergency, PH/WS HB 2688 - Relating to public contracts, PH HB 3533 - Relating to supplemental budgets of local governments, PH/WS

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TAPE 107, SIDE A

006 CHAIR OTTO: Called the meeting to order at 3:18 p.m.

(TAPE 107, SIDE A)

PUBLIC HEARING

HB 3534 - RELATING TO VACATION OF CITY LAND

Witnesses:Dick Townsend, League of Oregon Cities

012 DICK TOWNSEND, LEAGUE OF OREGON CITIES: The bill talks about the vacation process of public property that comes before a city governing body. The process is normally initiated by petitioners of property owners. Before a hearing can be held, the public notice has to be in four weekly issues of a newspaper. The bill would reduce those notifications from four weeks to two weekly publications, and that the hearing may not be held earlier than 14 days, rather than 28 days prior.

030 Distributes House staff measure summary, Exhibit A, fiscal analysis, Exhibit B and a letter from the City of Eugene, Exhibit E.

(TAPE 107, SIDE A)

PUBLIC HEARING

HB 3533 - RELATING TO SUPPLEMENTAL BUDGETS OF LOCAL GOVERNMENTS

Witnesses:Dick Townsend, League of Oregon Cities B. J. Smith, League of Oregon Cities

030 Distributes fiscal analysis, Exhibit C, House staff measure summary, Exhibit D and a letter from the City of Eugene, Exhibit F.

031 DICK TOWNSEND, LEAGUE OF OREGON CITIES: Reviews changes in HB 3533 to the budget and supplemental budget process. This bill would facilitate a more responsive process when you have unexpected revenues come in during the year. The bill does two things: 1. if expenditure of a supplemental budget is less than 10% of a fund, the governing body would hold a public hearing with notice not less than seven days prior to hearing. The governing body would take action on the supplemental budget request and following that, a press release would report action. 2. If the supplemental budget expenditures exceed 10% of any fund the same notification process used by the Department of Revenue would be used before the governing body had its hearing. If ten interested taxpayers would like to hear the budget committees views, then that would happen prior to the governing body's final hearing.

054 SMITH: A municipal corporation is a local government, correct?

056 TOWNSEND: Yes.

056 SMITH: Sen. Cease, do you know what happened to the bill we dealt with in Revenue on supplemental budgets to local government? What is different between this bill and the treatment for supplemental budgets in HB 2550?

069 TOWNSEND: I believe the House Revenue Committee in (unintelligible) of HB 2550 discussed the supplemental budget process and chose not put any of this language in HB 2550. B. J. Smith can address whether there is any other comparable language in HB 2550. Essentially, one issue was to insure that (unintelligible) property taxes could not be increased through a supplemental budget process.

077 B. J. SMITH, LEAGUE OF OREGON CITIES: I did testify in the Senate Revenue Committee regarding supplemental budgets. I asked that language very similar to this be added to the Senate version of HB 2550, however I did not provide a final amendment to the committee. My reasoning was that this bill in front of you came in through a separate process, I didn't want to confuse the situation.

092 CEASE: We don't have to worry Mr. Chair, conflict amendments would be taken care of.

094 SMITH: I just wanted to know the difference between them. The supplemental budget would be adopted at a regular meeting of the governing body. What would the hearing process be and would the budget committee convene a hearing to adopt the supplemental budget, under the bill?

100 TOWNSEND: If the expenditures are less than 10% the supplemental budget would go directly to the city council after seven days of public notice in a newspaper of general circulation. If it exceeds 10% of any fund and ten interested taxpayers request the budget committee convene, then they would hear the bill.

105 SMITH: The dollar figure in and of itself won't trigger the budget committee, it would take ten interested taxpayers?

107 TOWNSEND: Correct, it does not preempt the local government from extending that time.

110 SMITH: I would like it in the law. What is the current law for supplemental budgets?

119 TOWNSEND: Current law says that the supplemental budget process must parallel the regular budget process.

121 SMITH: One of the effects of this bill is to remove the budget committee from the process unless the two above criteria are met?

127 TOWNSEND: Correct.

128 BUNN: Is it "10% or ten taxpayers" or "10% and ten taxpayers"?

130 TOWNSEND: It is "and" ten taxpayers.

131 BUNN: You can increase by 10%, and even if half the taxpayers were concerned you could still go ahead?

133 TOWNSEND: The difference is the process in the waiting time and the longer formal notice that must be published in the newspaper.

139 SPRINGER: Are we talking about any fund, general fund dollars, federal fund dollars or what? With some cities we could be talking millions of dollars.

146 TOWNSEND: The types of dollars involved would be unanticipated revenues. The amounts of money vary by fund. Governing bodies cannot adjust the budget by more than 10% by fund, of what is sent to them by the budget committee. This parallels that criteria.

WORK SESSION

176 SMITH: I would recommend the OOSOOM calendar, but I wouldn't move it to the floor.

178 OTTO: Then we don't have the votes.

(TAPE 107, SIDE A)

WORK SESSION

HB 3534 - RELATING TO VACATION OF CITY LAND

188 MOTION: SEN. SMITH MOVED HB 3534 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

192 VOTE: MOTION CARRIED, 4-0. EXCUSED: SEN. CEASE, SEN. GRENSKY, SEN. KITZHABER.

(TAPE 107, SIDE A)

WORK SESSION

SB 968 - RELATING TO CERTAIN CITIES; APPROPRIATING MONEY

207 MOTION: SEN. SMITH MOVED THE -2 AMENDMENTS TO SB 968, DATED 05/08/91, EXHIBIT J, WITH THE BLANK SHOWING THE AMOUNT OF \$1.00. MOTION CARRIED BY ACCLAMATION.

219 MOTION: SEN. SMITH MOVED SB 968 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION AND A LETTER TO THE SEN. PRESIDENT REQUESTING THAT THE REFERRAL TO WAYS AND MEANS BE RESCINDED.

227 BUNN: It is time that we set the policy and hopefully very soon we will be able to follow up with funding.

231 VOTE: MOTION CARRIED, 4-0. EXCUSED: SEN. CEASE, SEN. GRENSKY, SEN. KITZHABER. SEN. SMITH WILL LEAD THE FLOOR DISCUSSION.

(TAPE 107, SIDE A)

PUBLIC HEARING

HB 2649 - RELATING TO FIRE PROTECTION; APPROPRIATING MONEY; DECLARING AND EMERGENCY

Witnesses:Floyd Pittard, Oregon Fire District Directors Association and the Oregon Fire Chiefs Association

242 FLOYD PITTARD, OREGON FIRE DISTRICT DIRECTORS ASSOCIATION AND THE OREGON FIRE CHIEFS ASSOCIATION: Speaks in support of HB 2649. It will allow updating of equipment and apparatus to departments who need the help, for better protection of their citizens. This bill does not require any money. It will be funded by donations and grants. The State Fire Marshall will operate this fund without additional staff.

269 SMITH: How much money will be requested from Ways and Means from the general fund for the loan fund, as specified in \$7?

274 PITTARD: This bill isn't funded by the state general fund, it's an accounting procedure.

277 SMITH: It just establishes the fund, but it doesn't fund the fund, is that basically it?

281 PITTARD: That's correct, refers to \$7, ln. 10.

285 SMITH: But there is not funding?

286 PITTARD: No state funding.

286 SMITH: Do you hope we can fund it next time?

288 PITTARD: We hope to have money available from other sources and grants. Should that not happen or the crunch on tax money were to ease we probably would ask.

296 SMITH: Why did you choose 5000 as the cutoff?

300 PITTARD: It's an arbitrary figure. There are between 200 to 300 fire departments with less than 5000 population. That is quite a task to try and upgrade that many departments.

WORK SESSION

320 MOTION: SEN. BUNN MOVED HB 2649 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

327 VOTE: MOTION CARRIED, 4-0. EXCUSED: SEN. CEASE, SEN. GRENSKY, SEN. KITZHABER. SEN. BUNN WILL LEAD THE FLOOR DISCUSSION.

(TAPE 107, SIDE A)

PUBLIC HEARING

HB 2688 - RELATING TO PUBLIC CONTRACTS

Witnesses:John Gervais, National Electrical Contractors Association Kim Mingo, Associated General Contractors Steve Miller, Multnomah Education Service District, Business Services, Director Bill Penhollow, Association of Oregon Counties Valerie SalisB ury, League of Oregon Cities Richard Hillyard, Lane Community College, Administrative Services, Vice President Susan Schneider, City of Portland Leticia Maldonado, Portland Public Schools

339 Distributes fiscal impact statement, Exhibit G, and House staff measure summary, Exhibit H.

347 JOHN GERVAIS, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION: The overall concept of prompt pay was raised in the 1989 session. Reviews legislative history. We've reached agreement with all of the working parties for an equitable approach to the problems. Contractors sometimes have difficulty collecting payments. We're asking to receive our payment on time. There's a great deal of compromise with this bill.

415 KIM MINGO, ASSOCIATED GENERAL CONTRACTORS: Reviews bill section by section.

443 SPRINGER: Why are we writing a contract, as a part of the negotiated agreement that the agencies and contractors have agreed to themselves? Aren't the contractors capable of negotiating a payment schedule?

455 MINGO: As contractors, we don't have the ability to negotiate terms and conditions of contracts on competitive bidding. We are given a standard contract used by the public contracting agency. Under the terms of the contract we may be able to negotiate payment for a change order, but at the outset we don't have the option to negotiate terms and conditions.

485 SPRINGER: Mr. Penhollow, is that a statement you are going to accept as to what exists in the real world?

TAPE 108, SIDE A

033 BILL PENHOLLOW, ASSOCIATION OF OREGON COUNTIES: I would see it from a different standpoint. Public agencies do encourage input from contractors on contract. Once the contract is developed, a project is selected and a bidding specification process has been completed, the contract must be finalized so all bidders have equal opportunity to bid

in view of the provisions of the contract.

044 SMITH: Do government entities not pay their bills, as a matter of course?

048 PENHOLLOW: I believe they pay their bills on time. I understand from the contractors and subcontractors that we don't. I don't have specific details on that, nor would I offer any, maybe Mr. Gervais and Ms. Mingo could enlighten you on that subject.

056 MINGO: Prompt payment is a problem. This bill is asking for prompt payment. There is an interest penalty within this statute. As contractors we do not want any interest, if we are paid on time.

062 SMITH: What's the problem, either the bills are or are not paid on time?

066 PENHOLLOW: I'm sure there are some that don't pay their bills on time, but I don't know the number or the significance of that. In talking with the people I represent, I don't sense that same issue. There are probably some problems out there and that is the reason for this legislation.

075 SMITH: It's unfortunate that the government, who is right there when I owe money, needs a separate and distinct law passed by the legislature, to tell them to pay their bills on time.

079 OTTO: I've worked for contractors. Cities and municipalities are not always prompt in payment. The result is general contractors are not always a prompt pay to their subcontractors.

085 SMITH: Is there a subsection in the bill to deal with subcontractors and contractors?

086 OTTO: I haven't seen the bill since they worked on it. I think this bill will go a long way in addressing this problem.

089 GERVAIS: We provided a lot of testimony in the House, we didn't want to take your time today. I could cite hundreds of cases where payment is not timely. The statute currently requires interest to be paid, but it is not worth going to court for. One of the provisions of this bill is to add attorney fees, if you need to go to court.

107 SMITH: Are these the same employees that pay taxes so the government can pay its bills to the contractors, so forth and so on?

115 GRENSKY: In the private world the arrangements are with the lending institutions. The bank pays money to the contractor at certain stages so this does not happen. It is a problem, and in essence contractors are acting like a bank when the payments are not made in a timely manner. When you're talking about thousands to millions of dollars it can mean the difference between a profit or not, as well as ruining the reputation of the general contractor with the subcontractors.

129 SMITH: You are saying counties and state agencies?

130 GERVAIS: There are lots of people who work with us. We've had circumstance where a contract will be approved and it is seven months before the payment comes.

133 SMITH: Seven months?

133 GERVAIS: Yes, and that was a state agency. It's a problem with paper flow. In the contracts we sign, if we are late there are late charges and penalties.

148 OTTO: There are many contractors in the state that have gone bankrupt or out of business because of nonpayment of bills, including nonpayment by local governments.

153 CEASE: Could I have specific examples?

155 GERVAIS: How many?

158 CEASE: All that you can find. Everyone is talking about this problem, and I need to see it.

161 GERVAIS: Would you want to see where the Department of Transportation pays interest on contracts when they are late?

162 CEASE: I want to see all of it.

164 BUNN: Do we have the amendments?

164 OTTO: They're being drafted.

166 CEASE: Could we have a description of what the amendments do to all of the language in the A-engrossed bill?

172 MINGO: The amendments have two sections. In §1 we deal with the relationship between the prime contractor and the public agency. There are four major changes from current statute: 1. the policy statement, 2. the requirement that interest will be paid automatically when the overdue payment is made, 3. requirements dealing with defective invoices submitted by contractors and 4. the allowance for attorney fees and costs to a prevailing party in the event of legal or administrative action. In §2 the relationship between the prime contractor and the subcontractor(s) is dealt with.

236 HOUSER: Is the bill limited to public improvement contracts?

237 GERVAIS: Yes.

241 CEASE: I need to see that.

243 SPRINGER: Are there changes to the language on pg. 3, (15), lns. 7-10?

248 GERVAIS: We withdrew on 17-19. We took an offering brought by the cities and counties with approximately four changes in present law. We dumped all of the House passed version, with the exception of our section on contractor to subcontractor, because of the concerns about balance.

257 MINGO: If you want to indicate what section you are looking at I can tell you whether it has been deleted.

263 CEASE: Is the pink package what the new bill would look like?

264 SPRINGER: Pretty much.

265 CEASE: Why don't they give us copies of that?

272 VALERIE SALISB URY, LEAGUE OF OREGON CITIES: There is a process for the contractor to negotiate unreasonable provisions in a contract. There are some parts of the compromise that we are uncomfortable with, but we have been assured by Mr. Gervais and Ms. Mingo that the issue of prompt payment will be addressed during the interim. With that assurance, we can support the compromise at this time.

308 RICHARD HILLYARD, LANE COMMUNITY COLLEGE, ADMINISTRATIVE SERVICES, VICE PRESIDENT: I'm here to speak on one issue, subparagraph 4 of the compromise, regarding an invoice being filled out incorrectly. The only concern I have is if it is an erroneous invoice, at the time it was corrected the payment would ensue within 30 days.

326 SMITH: The language in the compromise would start the clock ticking when the invoice is corrected or you would want the language to say that?

331 HILLYARD: If it is obviously an incorrect invoice of major proportion, requiring time to work on it, it allows for 22 days. If it is an error on the part of the submitter, when it's resubmitted we are asking the agencies be given the 30 day period to pay rather than 8 days, as indicated in the compromise. It is not major to me, but it could be major statewide. I think it needs clarification.

349 OTTO: John, will you bring that to Kathleen's attention?

355 STEVE MILLER, MULTNOMAH EDUCATION SERVICE DISTRICT, BUSINESS SERVICES, DIRECTOR: Submits written testimony, Exhibit I, which is in opposition to HB 268 8 A-engrossed. We have no problem with the compromise bill.

372 OTTO: You have no problem with the compromise?

372 MILLER: Correct.

379 OTTO: Where was everyone when the original bill passed?

379 MILLER: We saw a copy of the A-engrossed bill last week for the first time. I don't believe the original bill brought opposition, but the amended version.

393 SUSAN SCHNEIDER, CITY OF PORTLAND: We didn't comment on this bill on the House side because we were not aware of the significance of the amendments introduced at the time of the hearing.

399 OTTO: You are in agreement with the compromise?

401 SCHNEIDER: We have worked on the compromise, yes.

402 CEASE: You worked on the compromise, are you in agreement with the compromise?

405 SCHNEIDER: Yes.

409 LETICIA MALDONADO, PORTLAND PUBLIC SCHOOLS: The amendments appear to be workable, although I have not had an opportunity to have my legal counsel review them. We were against HB 2688 A-engrossed.

427 Meeting adjourned at 4:14 p.m.

Submitted

By:

By:

Joan  
Green  
ie Muñiz  
Assistant

Assistant

Reviewed

Jul

EXHIBIT LOG

A - House staff measure summary on HB 3534-A, Staff, 1 pg. B - HB 3534

fiscal statement, Staff, 1 pg. C - HB 3533 fiscal statement, Staff, 1  
pg. D - House staff measure summary on HB 3533-A, Staff, 1 pg. E -  
Letter to HB 3534, Miller, 1 pg. F - Letter to HB 3533, Miller, 1 pg. G  
- HB 2688 fiscal statement, Staff, 1 pg. H - House staff measure summary  
on HB 2688-A, Staff, 1 pg. I - Testimony, Miller, 3 pgs. J - SB 968-2  
amendments, Smith, 1 pg.