

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.

Measures Heard SB 385, PH & WS SB 374, WS SB 421, WS SB 396, WS SB 400, PH & WS SB 399, PH & WS SB 384, PH & WS SB 382, PH & WS SB 383, PH & WS

SENATE COMMITTEE ON JUDICIARY

January 25, 1991Hearing Room C 1:00 p.m.Tapes 8 - 9

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair
Sen. Peter Brockman Sen. Jim Bunn Sen. Jeannette Hamby Sen. Bob
Shoemaker Sen. Dick Springer

STAFF PRESENT: Bill Taylor, Committee Counsel Kate Wrightson,
Committee Assistant

WITNESSES: Fran Kohler, Citizen Kris Gorsuch, Real
Estate Section, Oregon State Bar Joseph W. West, Real Estate Section,
Oregon State Bar Dale Blanton, Department of Land Conservation &
Development Michael Campbell, Real Estate Section, Oregon State Bar Russ
Nebo, Association of Oregon Counties

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TAPE 8, SIDE A

004 CHAIR COHEN: Calls meeting to order at 1:05 p.m.

SB 385 - RELATING TO ADVERSE POSSESSION, PUBLIC HEARING AND WORK SESSION

013 SEN. SHOEMAKER: Last session, legislature agreed that:
-Establishing adverse possession requires honest belief that person
owned property during period of possession -This provision would prevent
deliberate theft through adverse possession. -Law as passed went
further, applied to all adverse possessions claimed after effective date
of bill, regardless of time of possession. -Law removed statute of
limitations protection that adverse possession relief provides. Statute
of limitations recognizes reality that evidence becomes stale. -SB 385
would correct that by making honest belief element applicable only to
adverse possession claims which vest after 1/1/90. It ties in with
vesting, rather than possession. -Claims vest after 10 years. Claims
now maturing would have to prove honest belief.

067 FRAN KOHLER, CITIZEN: Submits and summarizes written testimony in favor of SB 385. (Exhibit A)

170 BILL TAYLOR, COMMITTEE COUNSEL: Submits and summarizes letter sent to Senator Shoemaker dated 6/12/90, with opinion on legal issues here. (Exhibit B)

174 CHAIR COHEN: We looked at this in the interim; it is a concern of ours.

176 SEN. SHOEMAKER: Mr. Kohler's is a recent case; his vesting ended in 1987. Because law became effective before he completed his suit, under 1989 law he loses rights he acquired in 1987.

183 CHAIR COHEN: His vesting ended?

185 SEN. SHOEMAKER: Yes. Even if his vesting had ended 2/1/90, he'd still be in trouble under this law, because honest belief still applies. It doesn't affect anyone who is not yet vested, only those whose vesting is complete by 1/1/90.

195 CHAIR COHEN: New or old law?

196 SEN. SHOEMAKER: Old. Anyone who hadn't adjudicated their rights by this time would be forever at risk.

199 SEN. BUNN: How long is vesting?

200 SEN. SHOEMAKER: Ten years.

201 SEN. BUNN: We aren't dealing with people who vested after 1981?

204 SEN. SHOEMAKER: Anyone whose vesting period began in 1981 has to show honest belief of ownership during entire 10 years.

213 SEN. BUNN: In the old law, with no honest belief, one still had to possess?

215 SEN. SHOEMAKER: Possession had to be open, adverse, notorious (known), and hostile for a ten year period.

217 SEN. BUNN: Last session we added honest belief; do we remove hostile? How can you have hostile and honest belief?

220 SEN. SHOEMAKER: Good question; I don't know.

222 CHAIR COHEN: It's an old statute, common law.

224 SEN. BUNN: So we make it very difficult but not potentially impossible.

226 CHAIR COHEN: That's right.

SB 374 - REVISES LIABILITY OF QUALIFIED DIRECTOR OF NONPROFIT CORPORATION, WORK SESSION

233 TAYLOR: Reviews intended purpose of bill. -Bill clarifies mistake made last session when amendment passed in the Senate was not carried forth on the Senate floor.

244 MOTION: SEN. SHOEMAKER moves SB 374 to the floor with a due pass recommendation.

251 VOTE: MOTION PASSES UNANIMOUSLY

SB 421 - LIMITS CORPORATIONS FROM ENGAGING IN CERTAIN BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS, WORK SESSION

257 TAYLOR: Introduces and summarizes -1 amendments. (Exhibit C) There are no consolidations in Oregon business law.

277 CHAIR COHEN: Calls attention to Staff Measure Summary of SB 421 (Exhibit D).

286 MOTION: SEN. HAMBY moved to adopt SB 421 LC-1 amendments dated 1/25/91.

291 VOTE: HEARING NO OBJECTIONS, MOTION CARRIES

293 MOTION: SEN. HAMBY moved SB 421 as amended to the floor with a "do pass" recommendation.

297 SEN. HILL: [QUOTE]" Madam Chair, I'd like to note a conflict of interest as I work for Mentor Graphics Corporation."

304 VOTE: MOTION CARRIES, WITH SENATORS BUNN, HAMBY, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING "AYE" AND SENATOR BROCKMAN VOTING "NAY" SB 396 - BULK SALES ACT REPEAL (DEBTOR CREDITOR), WORK SESSION

308 TAYLOR: Reviews intended purpose of bill.

317 SEN. HILL: Were people from both sides of the issue notified as to what this bill will do?

322 TAYLOR: We tried to figure out who's against it. That doesn't mean that there isn't any opposition, but I can't find anyone who is against this bill.

334 MOTION: SEN. HILL moved SB 396 to the floor with "do pass" recommendation.

341 VOTE: MOTION PASSES UNANIMOUSLY, WITH SENATOR SHOEMAKER EXCUSED

SB 400 - RELATING TO REAL PROPERTY, PUBLIC HEARING AND WORK SESSION

388 KRIS GORSUCH, OREGON STATE BAR: Last session, legislature passed easement maintenance bill codified in Chapter 105. SB 400 makes these suggested changes: -Redefines who parties are. In present form, code refers to "owner of an easement"; in the new version, changes to "holder of an interest." Allows for nonexclusive easement; based on concept of use, not ownership. -Clarifies that parties can opt out of the statutory framework by private agreement. -Clarifies whether standards which were set are mandatory or discretionary on the part of the court. Must the court assign duties of maintenance, or is that one consideration among other factors? This bill drafted to show that these standards are discretionary. -Changes language from "road" to "easement," because not just roads are affected; there are many kinds of easements. -Provides more clarification on arbitration process. Would tie the provision in the existing statute that discusses arbitration directly to ORS sections on arbitration. -Provides that grantee of an easement isn't bound by provisions in an agreement which that person didn't sign. -Provides that if parties agree in document to allocate maintenance cost, and record that document, the allocation is binding on other parties who come into the chain of title at a subsequent time. -These amendments take

ambiguities out of bill. They identify and provide for change and modification of language, not intent or framework.

TAPE 9, SIDE A

SB 399 - RELATING TO REAL PROPERTY, DEFAULTS/FORFEITURES, PUBLIC HEARING AND WORK SESSION

067 GORSUCH: Forfeiture is a process in foreclosing a land sale contract; now a statutory process, which lines up with non-judicial trust deed foreclosures. -Forfeiture foreclosures were out of statute, but were addressed in common law and contract rights among the parties; that was changed by the 1985 legislature. -These provisions were intended to track trustee foreclosures as closely as possible; they did not provide for appointment of a receiver. -SB 399 provides for that appointment if needed.

SB 384 - RELATING TO MULTI-COUNTY FORECLOSURES, PUBLIC HEARING AND WORK SESSION

096 GORSUCH: Bill provides for foreclosures which go across county lines, such as restaurants or property that straddles county lines. -Sheriffs' Association saw bill and had problems--not with concept, but that it affected more than we thought. -Want it held or dropped so we can look at it with the Sheriffs' Association over the next two years and rewrite it.

122 MOTION: SEN. HILL moved to table SB 384.

123 VOTE: MOTION CARRIES UNANIMOUSLY, WITH SENATOR SHOEMAKER EXCUSED

SB 382 - RELATING TO LINE OF CREDIT INSTRUMENTS

134 JOSEPH WEST, OREGON STATE BAR: ORS 86.155 covers line of credit instruments. Statute provides that loans or advances made by lender retain the priority of the original mortgage or trust deed recorded by that lender; has been in use for 3 years. This bill suggests these changes: -Changes "line of credit mortgage" to "line of credit instrument," since many lenders prefer to use trust deeds instead of mortgages. Refers to "lien holder" instead of "line of credit holder." -Confirms that line of credit mortgage statute may be used in commercial, as well as consumer, situations. -Clarifies certain disclosure which must be carried on the front page of any line of credit document. Existing statute states that the maximum amount to be advanced must be disclosed; this bill proposes that the maximum principal amount be disclosed. Existing statute states that the term must be stated; this bill proposes that maturity date be stated, exclusive of any option to extend or renew such maturity date. -Clarifies kinds of advances which will retain priority date of original mortgage or trust deed. Protective advances (advances made by lender to pay delinquent taxes or premiums) which preserve collateral or protect property would retain and have priority date as of the date of the original recording of the document. Also, advances made to complete construction of a project would retain that priority date. -Clarifies that certain actions do not affect the priority of a line of credit instrument, and incorporates provisions of ORS 86.095, such as renegotiation of payment schedule or modification of the interest rate. Does not affect priority date.

205 SEN. BUNN: If I hold a second mortgage, can the first mortgage holder, who has issued the line of credit, increase the balance or interest rate, and I would be subject to those changes?

210 WEST: That would not be affected by this bill at all. That situation would be addressed under ORS 86.095, where disclosure is part of the document.

215 CHAIR COHEN: What is the practical effect? Are we talking about consumers, or developers who are using a major line of credit?

223 WEST: The potential is there for use by developers.

225 CHAIR COHEN: I'm looking at the Springfields of the world; is there a relationship between the modification of this statute and housing development loans? Or just people who want home loans? I want to know how far we're going in public interest impact with housing developments.

238 WEST: Your concern is loans and advances made by a lender?

240 CHAIR COHEN: I'm a consumer, and don't do this sort of business, so I understand it from a consumer point of view. I want to know scale of expansion when commercial interests are included.

252 WEST: The potential is there for development use. Attorneys and lenders have encouraged its use in that way. The protection is that the disclosure would have to state the maximum principal amount that the lender could loan to retain priority. Additional protective advances, taxes, etc. would also retain that priority. Those provisions were taken from the Uniform Land Transaction Act and statutes from other states. We want to encourage that the project is completed, so that it will be more valuable/marketable. Beneficial to claimants, owner, lender, worth, borrower, etc.

280 TAYLOR: Are you proposing amendments?

281 WEST: [QUOTE]" Yes, one minor change. On line 20, after 'time', delete 'after the date of recording and'. These changes were made in Sections B and C, but not in A."

289 TAYLOR: This is in addition to -1 amendments?

290 WEST: Yes.

291 CHAIR COHEN: [QUOTE]"We have an amendment on line 20. We will have L.C. draw them up."

311 TAYLOR: Will go to Legislative Counsel and get the additional amendment added.

319 CHAIR COHEN: We'll take no action until we get the amendment.

SB 383 - ALLOWS CITY/COUNTY TO SPLIT UP LOTS UNDER CERTAIN CIRCUMSTANCES, PUBLIC HEARING AND WORK SESSION

335 SEN. SPRINGER: Is this the bill that deals with definition of a lot? I was contacted just before the hearing by people who thought that this might sound too much like a land use issue, rather than judiciary.

349 CHAIR COHEN: Let's hear it since people have made the effort to come to the hearing, and if we need to refer it, we will.

357 MICHAEL CAMPBELL, OREGON STATE BAR: This bill is expressly intended not to affect current land use standards. -To partition property, must go to the local government, but this doesn't always happen: thus, illegal lots. The point at which people find illegality is when they

can't get a building permit. -In Court of Appeals case, court said that all the subdivided lots are illegal. Usually, only one person finds illegality at one time, though Appeals court says that all holders of illegal lots must apply for legality at the same time. -This bill is intended to say that one holder can apply individually, not with all the other owners. -Other owners may want to wait before applying for approval; this gives leverage against the applicant for legality, which may not be land use leverage at all. -We are thus reversing the appellate decision. -The land use standards which apply are those in effect at the time the application is made. -Some people are concerned about subsection 1 of section 2 of the bill, where we try to say we're not doing anything to land use standards; by saying we don't want to change the law, we might change the law. We're not wedded to the language of subsection 1; the important part is subsection 2. We're not trying to change land use standards: we discussed the language of the subsection with 1000 Friends of Oregon and the Land Use Section of the Bar. I can't say that they support the bill, but they have given us no oppositions to the language of the bill.

486 CHAIR COHEN: One wouldn't play with the language unless you recirculated the whole effort.

493 CAMPBELL: I don't want to represent LCDC, but I want to anticipate what I think their concern is.

TAPE 8, SIDE B

037 SEN. BUNN: Is the only advantage of this bill that it allows a property owner to skip the process of application for partition?

039 CAMPBELL: No.

047 SEN. BUNN: Can't I just apply when I want a permit?

049 CAMPBELL: Yes, but every other holder has to apply at the same time, and they might not want you to get a permit.

054 SEN. BUNN: The other holders could prevent me from ever getting a legal building permit.

059 CAMPBELL: From the local government, yes. There is some potential judicial recourse. This bill says that the local government can accept just one applicant; however, you must meet land use standards.

075 SEN. SPRINGER: What is the appellate court citation?

076 CHAIR COHEN: If we decide to take this up in this committee, Bill will look it up.

081 SEN. SPRINGER: How often does this happen?

083 CAMPBELL: Illegally created lots are relatively frequent; refusal to join an application is less frequent.

095 SEN. SPRINGER: How is this division recorded? How evidenced?

097 CAMPBELL: Deed can be recorded but generally lot approval isn't. One would need to contact local government to see if there was local approval.

102 SEN. SPRINGER: What about taxes? Is this a problem for assessor?

108 CAMPBELL: I'm not sure that's a problem. Tax lots may not be legal lots. This bill doesn't really affect that issue. The appellate court reached their decision because the partitioning statute referred to division of land. Court ruled that the one person applying isn't dividing land; you must have everyone in to have division of land. This seems to be distinction without substance to us.

134 DALE BLANTON, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: We have several concerns, which can be alleviated by statement of intent of bill. -If the intent of subsection 1, section 2 is to restate that the law in place applies, we think it's unnecessary. -Some language in subsections 1 and 2 creates lack of clarity about bill's purpose. Subsection 2 is operative language, and can be rewritten. -[QUOTE]"I propose 'the governing body of a city or county may (delete APPROVE) consider an application (delete DESCRIBED IN SUBSECTION ONE OF THIS SECTION) for the

creation of lots or parcels, notwithstanding etc.'" -We think that creates a clearer statutory remedy for the problem described. It doesn't create presumption that someone may be able to apply for approval on a lot that was illegally created, and have land use standards of the time of illegal creation apply. We also think effect is unclear, but don't know how big a problem this is. -We want bill referred to Senate Agriculture and Natural Resource Committee because of land use implications.

179 RUSS NEBON, ASSOCIATION OF OREGON COUNTIES: Marion County has many instances of this situation. -Under our current plan, if we can find that all resulting parcels comply with land use standards, no risk or jeopardy applies and we can legitimize them. -We don't want to go into court on every case in order to overrule people who won't sign application. -We want to support the bill, but think it can be cleaned up.

213 SEN. HILL: When you say that the language should satisfy state & local standards, is this a clear cut thing?

217 NEBON: I would interpret that to mean the requirements of the state land use goals & local acknowledged comprehensive plan. If that's the intent, then yes, it's clear and easy to administer because that's what we do every day.

226 SEN. HILL: I want to know if that's what it means.

229 CHAIR COHEN: We might want to pass it by the appropriate people & not go to appeals again.

238 CAMPBELL: Mr. Blanton's proposed amendment is fine. My concern is that to prevent opposition we ran this past other concerned people.

247 CHAIR COHEN: To get it through the committee, you might have to do more than run it by.

249 CAMPBELL: We went only to those we felt to be most concerned, it's not exactly the language we want but that's what we got.

272 SEN. HILL: Do you approve all these situations or have you turned some down?

280 NEBON: Our local permitting process says that we must accept the application. Sometimes they don't meet land use requirements, and then we turn them down. This bill is just if they meet standards.

287 SEN. HILL: When you say "clearly meet standards," are these yes or no situations?

292 NEBON: Not every case is cut and dried. All criteria, standards, and procedures are in place.

309 SEN. HILL: "state & local standards?" Is it just you that makes the determination? Does the state come back in?

313 NEBON: The state only comes in when they participate in acknowledgement of the plan and make new ordinances for land use. Individual permit happens at local level.

328 SEN. SPRINGER: If an instrument transfer wasn't recorded, what about liens or judgment debt? Problems could arise if division is illegal. What instructions if transfer isn't recorded in county records?

342 NEBON: May well have been sale contract among family members, etc -Deeds don't have to be recorded. -Parties might be unaware of partitioning regulations. -If we find clear evidence of transfer, we take it.

389 CHAIR COHEN adjourns at 2:28 p.m.

Submitted by: Reviewed by:

Kate Wrightson Bill Taylor Assistant Counsel

EXHIBIT LOG:

A - Testimony on SB 385 - Fran Kohler, Citizen - 5 pages
B - Testimony on SB 385 - Staff - 2 pages C - Amendments to
SB 421 - Staff - 1 page D - Staff Measure Summary on SB 421 -
Staff - 1 page