

HOUSE COMMITTEE ON LAND USE

March 02, 2005 Hearing Room 50

1:30 P.M. Tapes 32 - 33

MEMBERS PRESENT: Rep. Bill Garrard, Chair

Rep. Gordon Anderson, Vice-Chair

Rep. Mitch Greenlick, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

Rep. Patti Smith

Rep. Mac Sumner

STAFF PRESENT: Sam Litke, Committee Administrator

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2549 – Work Session

HB 2544 – Public Hearing

HB 2458 – Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 32, A

001 Chair Garrard Calls the meeting to order at 1:36 p.m. and opens a work session on HB 2549.

HB 2549 – WORK SESSION

004 Sam Litke Committee Administrator. Reviews the public hearing and provisions of HB 2549. Describes effect of -2 amendments.

044 Rep. Dennis Richardson HD 4. States position as proponent of HB 2549 and -2 amendments (**EXHIBIT A**). Reiterates Litke’s description of amendments and highlights the “reinterpretation” issue and its intent.

082 Rep. Nolan Notes the two types of “reinterpretation” and her agreement and understanding of one. Gives a hypothetical situation in which a property owner was mistakenly allowed the right to build a house by a local jurisdiction and was later overturned in error. Asks if HB 2549 will grant people the right they didn’t originally have in this case.

100 Rep. Richardson Responds that the change in interpretation would only apply to subsequent people. Emphasizes that if on the date the owner purchased their property they were allowed to build a house, they should have that right now.

126 Rep. Ackerman References Page 2, line 33 of HB 2549 and asks if the intent is to allow a different type of review in circuit court under which you would have entitlement to a jury trial

138 Rep. Richardson Responds that there is no intent to change the judicial procedure and gives his expectation that the technical error will be addressed on the Senate side.

145 Rep. Ackerman Reports his submittal of an amendment to limit conveyance of building permits to apply through inheritance only rather than conveyance to a third party. States his intention to propose his amendments on the Senate side to avoid delaying passage.

158 Chair Garrard Requests Don Schellenberg comment on the amendments and asks if the Farm Bureau will remain neutral on HB 2549.

- 163 Don Schellenberg Oregon Farm Bureau. Defers his position on the bill, citing opposition to the current conveyance rights provided under HB 2549.
- 175 Rep. P. Smith **MOTION: Moves to ADOPT HB 2549-2 amendments dated 3/2/05.**
- VOTE: 7-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- Chair Garrard **The motion CARRIES.**
- 200 Rep. Anderson **MOTION: Moves HB 2549-2 to the floor with a DO PASS AS AMENDED recommendation.**
- 210 Rep. Greenlick Reports intention to vote “no” and his opposition towards piecemeal solutions for Measure 37. Discusses meeting with constituents and his openness in working towards an omnibus solution to make Measure 37 work.
- 260 Rep. Nolan Supports the intention behind the bill but believes it complicates matters rather than simplifying them. Reviews her concern with usage of the word “reinterpretation”. Signifies her “no” vote applies to the “words on the page” and looks forward to an improved bill from the Senate which she can support.
- 280 **VOTE: 5-2-0**
- AYE: 5 - Ackerman, Anderson, Smith P., Sumner, Garrard**
- NAY: 2 - Greenlick, Nolan**
- 290 Chair Garrard **The motion CARRIES.**
- REP. RICHARDSON will lead discussion on the floor.**
- 300 Chair Garrard Closes the work session on HB 2549 and opens a public hearing on HB 2544.

HB 2544 – PUBLIC HEARING

305	Rep. Robert Ackerman	HD 13. Begins testimony
330	Sam Litke	Committee Administrator. Introduces provisions of HB 2544.
350	Rep. Ackerman	Notes practical reasons for allowing reasonable extensions. Reports low number of cases possibly effected by HB 2544. Comments on LUBA appeals extension process in comparison with other courts. Expresses support for HB 2544.
355	Chair Garrard	Asks Rep. Ackerman if HB 2544 needs to be amended.
359	Rep. Ackerman	Responds not necessarily. Expresses openness to shortening the time extension if the committee deemed that necessary in order to move the bill.

TAPE 33, A

014	Stephen Kafoury	Oregon Chapter of American Planning Association. Testifies in opposition to HB 2544. Comments on the importance of the Oregon's relatively quick land use decision and review process.
049	Rep. Greenlick	Notes that courts are under budget constraints and asks if cases with artificially short timelines are given priority over those cases that don't.
060	Kafoury	Responds that he doesn't know and has not heard that issue raised.
068	Rep. Ackerman	Notes that certain areas of the law are given priority.
071	Rep. Greenlick	Comments that there are other areas which do not have priority as LUBA appeals have a finite timeline and wonders if those cases are prolonged because of LUBA appeals.
	Rep. Ackerman	Responds he doesn't know but believes that prioritization of cases comes from the complexity of the case.
077	Kafoury	Interjects that if the courts are having difficulty hearing cases, it is within their authority to change the rules. Reads a statement supporting this assertion.

088	Chair Garrard	Request Bruce Miller testify.
091	Bruce Miller	Office of the State Court Administrator.
097	Rep. Greenlick	Restates question asking if appeals with finite timeline can drive out appeals which do not have finite timelines.
102	Miller	Responds that those with finite timelines cannot drive out those without, but that they can be delayed.
112	Rep. Greenlick	Concludes that the effect would be to give more flexibility to courts.
118	Miller	Confirms that it would allow more flexibility to the courts. Clarifies the court's rule of appellate procedure and notes that while they have a mechanism to change the rule, it is still very difficult.
138	Chair Garrard	Introduces written testimony from Richard Stein in support of HB 2544 (EXHIBIT B) to be a part of record without public testimony.
146	Doug Dupriest	Land use attorney, Hutchinson and Cox. Submits written testimony in support of HB 2544 (EXHIBIT C). Reports the intention of HB 2544 is not to make significant changes to the expediency of decisions. Urges support of HB 2544.
245	Zack P. Mittge	Land use attorney, Hutchinson and Cox. Asserts that the inflexible timelines harm litigants and the development of land use law as issues don't have time to be sufficiently reviewed. Also reports that the 49-day deadline does not impact the timeline upon which the court of appeals hands down their decision. Comments on difficulty in getting counsel on short notice, resulting in some litigants representing themselves.
320	Al Johnson	Land use attorney, Johnson and Sherton. Submits written testimony outlining his neutral position on HB 2544 (EXHIBIT D). Discusses importance of time to proponents of land use projects and possibility of delay tactics from opponents. References two cases to illustrate importance of time (EXHIBIT D, Pages 1-2). Outlines the levels of tight deadlines in Oregon's land use process (EXHIBIT D, Page 3). Expresses interest in addressing more basic issues in regards to the LUBA appeals process.

036	Rep. Ackerman	References the Utsey case (EXHIBIT D, Page 1) and notes that the Court of Appeals granted themselves a wavier and confirms that this is not the same type of time they are discussing today.
038	Johnson	Confirms and elaborates.
040	Rep. Ackerman	Ask how long the waiver of time was.
042	Johnson	Responds it was a year, although no specific date was issued.
045	Rep. Ackerman	References (EXHIBIT D, Page 1) which states that the court granted LCDC months of time and confirms that this is not the same type of time they are discussing today.
048	Johnson	Confirms.
050	Rep. Ackerman	Asks what time limit was granted in that case.
051	Johnson	Confirms he's referring to the action taken by the Supreme Court.
052	Rep. Ackerman	Responds affirmatively.
054	Johnson	Responds that the petition was originally due at the end of May but was granted extension until October.
059	Jon Chandler	Oregon Home Builders Association. Speaks in opposition to HB 2544. Discusses the importance of accessibility and timeliness in land use decisions. Encourages a broader look at the land use appeals process.
110	Chair Garrard	Asks if Rep. Ackerman is open to a discussion with Chandler about amending HB 2544.
113	Rep. Ackerman	Responds that he is, but only with respect to time limits.
132	Chair Garrard	Closes public hearing on HB 2544 and opens a work session on HB 2458.

HB 2458 – WORK SESSION

145	Sam Litke	Committee Administrator. Reviews provisions of HB 2458 and introduces -1 (EXHIBIT F) and -2 amendments (EXHIBIT G).
194	Harlan Levy	Oregon Association of Realtors. Submits written testimony in support of HB 2458 and documentation from LCDC on amount of land effected (EXHIBIT E). Describes -2 amendments (EXHIBIT G) as result of the work group. Gives statistics on land effected by HB 2458 and jobs created by the related HB 2614 (2003).
245	Levy	Outlines provisions of -2 amendments (EXHIBIT G) including: <ul style="list-style-type: none"> • lowering the population threshold, • requiring commercial projects not be approved within 5 miles of every city unless the city concurs, • specifying not to allow any conversion of industrial land to commercial use or vice versa and • those types of commercial projects that counties can currently approve would not be effected by this new limitation.
288	Rep. P. Smith	Asks for examples of cities that will be effected by the lowered population threshold.
301	Levy	Answers that Grant's Pass, Ashland, Roseburg and Klamath Falls will be effected.
310	Rep. Greenlick	Asks what the motivation for a county would be to designate land as commercial or industrial 3 miles from the city limits.
320	Chair Garrard	Responds with an example from Klamath Falls.
325	Art Schlack	Association of Oregon Counties. Discusses sites historically zoned for industrial services.
362	Rep. Greenlick	Concludes that counties are not siting arbitrarily but for historical reasons.
370	Schlack	Responds affirmatively.
372	Chair Garrard	Asks if Schlack is satisfied with the -2 amendments (EXHIBIT G).
375	Schlack	Responds affirmatively.

- 380 Linda Ludwig League of Oregon Cities. References previous concerns with HB 2458 and the -2 amendments (**EXHIBIT G**) as a compromise but not going as far as they would've liked.
- 400 Rep. P. Smith **MOTION: Moves to ADOPT HB 2458-2 amendments dated 3/1/05.**
- VOTE: 7-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- Chair Garrard **The motion CARRIES.**
- 415 Rep. P. Smith **MOTION: Moves HB 2458-2 to the floor with a DO PASS AS AMENDED recommendation.**
- 445 **VOTE: 6-1-0**
- AYE: 6 - Ackerman, Anderson, Greenlick, Smith P., Sumner, Garrard**
- NAY: 1 - Nolan**
- Chair Garrard **The motion CARRIES.**
- REP. P. SMITH will lead discussion on the floor.**
- 450 Chair Garrard Closes the work session on HB 2458 and adjourns the meeting at 3:00 p.m.

EXHIBIT SUMMARY

- A. HB 2549, -2 Amendments, Rep. Dennis Richardson, 2 pp
- B. HB 2544, written testimony, Richard C. Stein, 1 p
- C. HB 2544, written testimony, Douglas DuPriest, 2 pp
- D. HB 2544, written testimony, Allen Johnson, 2 pp
- E. HB 2458, written testimony and requested information, Harlan Levy, 8 pp
- F. HB 2458, -1 amendments, staff, 1 p
- G. HB 2458, -2 amendments, Harlan Levy, 1 p