

HOUSE COMMITTEE ON LAND USE

March 28, 2005 Hearing Room 50

1:30 P.M. Tapes 46 - 47

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 3120 - Public Hearing

HB 3137 - Public Hearing

HB 2705 – Public Hearing

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 46, A

002 Chair Garrard Calls the meeting to order at 1:40 p.m. and opens a public hearing on HB 3120.

HB 3120 – PUBLIC HEARING

012 Rep. Sal Esquivel HD 6. Notes his sponsorship of HB 3120 on behalf of Jackson County.

026 Sam Litke Committee Administrator. Introduces the provisions of HB 3120.

040 Dennis CW Smith County Commissioner, Jackson County Commission. Submits and reads from written testimony in support of HB 3120 (**EXHIBIT A**).

073 Rep. Ackerman Proposes a hypothetical situation in which HB 3120 passes and Jackson County issues “blanket waivers” for Measure 37 (2004) claims. Asks if it is the position of Jackson County that there would be no enforcement of that practice if it were contrary to law.

081 Smith Responds that it is not the county’s intention to give “blanket waivers”.

085 Rep. Ackerman Clarifies that if future commissioners were to issue “blanket waivers” and notes assumption that “blanket waivers” would be contrary to law.

087 Smith Agrees they would be.

088 Rep. Ackerman Continues that what Smith is requesting is immunity from those types of lawsuits, allowing the issuance of “blanket waivers”.

090 Smith Responds that that is not what they are asking. Doesn’t view the issue of “blanket waivers” as a concern in Jackson County.

095 Rep. Ackerman Asks if Smith would be satisfied with an overriding state law which would preempt the authority of local governments to grant “blanket waivers”.

100 Smith

		Responds that Jackson County does not have a problem conforming to state law. Reports that Jackson County adjudicates each Measure 37 claim as a tort and relays opinion that the hypothetical situation posed is not realistic.
106	Rep. Ackerman	Asks if Jackson County would be immune from an enforcement action if a statewide law was passed requiring certified appraisals with Measure 37 claims.
109	Smith	Responds that it could be.
110	Rep. Ackerman	Asks what justification is used.
112	Smith	Responds that because Jackson County does not presently require an appraisal, they may be in conflict if the hypothetical were the law.
118	Rep. Greenlick	Comments that the legislature assigns responsibility to state agencies and the importance of correcting them when wrongly assigned. Outlines the conflict of assigning state agencies the responsibility to oversee actions but then disallowing them the power to enforce them and asks for the theory behind this.
133	Smith	Explains that there is a history of the Department of Land Conservation and Development (DLCD) and counties being engaged in enforcement actions which cause additional expense to counties. Further explains their intent to process Measure 37 claims fairly and efficiently, without additional encumbrances for those with "legitimate" claims.
158	Smith	Relays discussions in progress to compromise on HB 3120.
162	Rep. Greenlick	Remarks that Smith is suggesting that if the county government does something which creates an aggrieved citizen, they want to immunize the county against the citizen's ability to take that grievance to the court system. Asks if this is unprecedented.
177	Smith	Responds that it may be. Discusses the possibility of abuse within the system and gives an example of prohibitive lawsuits.
211	Rep. Greenlick	Comments that Measure 37 grants some citizens access to courts in regards to land use decisions and HB 3120 suggests taking away that access to other citizens.

223	Rep. Anderson	Asks Smith for a scenario of a potential lawsuit.
227	Smith	Speculates on complaints given including issues of: ground water levels, increased dust and buffering of agricultural land.
264	Chair Garrard	Asks if there are amendments for HB 3120.
267	Rep. Esquivel	Responds affirmatively.
274	Rep. Esquivel	References Rep. Greenlick's earlier comment and discusses issues of citizen involvement in land use planning.
328	Rep. Nolan	Asks Smith about what distinction people are making by describing farms as "real".
340	Smith	Discusses lands incorrectly zoned exclusive farm use (EFU) and problems in defining farms.

TAPE 47, A

002	Rep. Esquivel	Discusses history of land use and "broad brush" approach taken to zoning throughout the state.
014	Smith	Describes the original process of determining EFU zoning. Stresses differences in various regions of the state and the ineffectiveness of central planning.
071	Rep. Greenlick	Discusses determining the changing role of DLCDD without removing all their authority and stresses the committee's commitment to helping the problem.
112	Chair Garrard	Asks how much time is necessary before HB 3120 can be brought back in front of the committee.
113	Rep. Esquivel	Responds that there are several parties he must first confer with.
125	Lane Shetterly	Director, Department of Land Conservation and Development. Reports discussion on possible amendments to include "authorized" decisions and other word-smithing changes. Speaks in support of the concept.

152	Rep. Ackerman	Asks if the legislature adopts statewide standards for implementation of Measure 37 if those will be enforceable to local jurisdictions and if so, who will enforce them.
156	Shetterly	Responds that currently decisions to “remove, modify or not apply” under Measure 37 are not land use decisions removing DLCD as the enforcing authority. Continues that if the legislature adopts other standards, amendments to HB 3120 could be added to incorporate those changes.
190	Don Schellenberg	Oregon Farm Bureau. Submits and reads from written testimony (EXHIBIT B) in opposition to HB 3120.
209	Chair Garrard	Notes that the Farm Bureau has endorsed compensation and asks how a compensation fund should be developed or where the funds would come from.
214	Schellenberg	Responds that the Farm Bureau policy does not currently address that issue. Asserts that generally, the public should be responsible for funding the policies they support.
240	Rep. Sumner	Asks what is accomplished if people are compensated for their land but still unable to build.
258	Schellenberg	Responds that with compensation you are purchasing development rights. Continues that SB 100 (1973) had a compensation provision which was never adopted.
270	Rep. Sumner	Says this leaves the situation unresolved.
274	Schellenberg	Responds it may, depending on what the desired use of land is.
278	Art Schlack	Association of Oregon Counties. Speaks in favor of the issues raised by HB 3120. Stresses the importance of addressing what level of government has fiscal responsibility and liability when the majority of county regulations are derived from state statutes or administrative rules.
350	Chair Garrard	Closes the public hearing on HB 3120 and opens the public hearing on HB 3137.

HB 3137 – PUBLIC HEARING

355 Sam Litke Committee Administrator. Introduces the provisions of HB 3137.

TAPE 46, B

014 Jim Just Executive Director, Goal One Coalition. Submits and summarizes written testimony (**EXHIBIT C**).

022 Chair Garrard Requests information about the Goal One Coalition.

024 Just Explains that the Goal One Coalition is a statewide organization of citizens and citizen's groups which advocates and provides support for effective citizen involvement.

027 Chair Garrard Asks how many members they have.

028 Just Responds that they are not a membership based organization. Continues that their support base is in the low hundreds.

035 Rep. Barnhart HD 11. Speaks in support of HB 3137 and notes its intent to make certain that land use issues are addressed by community organizations of sufficient scope. References -1 amendments (**EXHIBIT D**) that would limit the organizations to no more than a county in size. Points out an error in HB 3137 on lines 19-20.

060 Chair Garrard Asks for clarification of the definition of "community organization". Notes resentment among citizens when Portland-based organizations participate in land use discussions in which they have no interest and asks if this bill would permit that.

070 Rep. Barnhart Responds that the bill would not require notification to that sort of organization, only those community organizations within the bounds of the land effected by a specific issue.

085 Chair Garrard Clarifies his concern that a Portland-based group would be notified by a local group and called in to intervene. Identifies the issue of "third party standing" as concern.

100 Rep. Barnhart Responds that HB 3137 is not intended to make changes on that issue and reviews its provisions as a notification statute.

139	Chair Garrard	Asks about the -1 amendments (EXHIBIT D).
141	Rep. Barnhart	Explains that the -1 amendments would limit the geographic area.
145	Rep. Nolan	Asks if Rep. Barnhart anticipates any material fiscal impact.
160	Rep. Barnhart	Responds negatively. Continues that it may reduce the cost to counties and other land use agencies by providing notice to a community organization rather than individuals.
175	BJ Smith	Government Relations Director, Clackamas County. States premise that community organizations around the state have taken different forms. Discusses geographic community organizations within Clackamas County and raises the concern that HB 3137 may create an overlapping community planning organization structure. Gives examples of standards set by Clackamas County for community organizations and their ability to be for profit or non-profit organizations. Reiterates concern with the choice of words in HB 3137 and wants to insure that the flexibility of counties to promote citizen involvement is not reduced.
280	Rep. Greenlick	Asks if Smith think that if HB 3137 passes, Clackamas County will have to move away from their Community Planning Organization (CPO) model.
285	Smith	Responds that she is unclear how they would work together. Explains that this may create overlapping similar organizations and the county would lose the benefit of a consolidated community voice.
309	Rep. Greenlick	Asks what other form of organizations exist that are non-profit and how many there are.
314	Smith	Responds that of the 36-37 community organizations between 10 and 15 are non-profits. Adds that they are non-profit, not for the purposes of citizen involvement, rather to raise money to be used for legal appeals in land use applications. Comments that the majority of the groups are grassroots-level associations of citizens concerned about the welfare of their communities and are not non-profits.
335	Rep. Nolan	Asks if there is a burden on Clackamas County as a result of HB 3137 beyond providing additional notice to community organizations who become non-profits.

354 Smith Responds that confusion lies in specifying the responsibility of a non-profit organization to a specific boundary within a county. Discusses attempts to provide more public information through their website.

389 Art Schlack Association of Oregon Counties. Raises concern about the number of organizations, who meet the specified criteria, a county is required to recognize.

TAPE 47, B

005 Schlack Continues that HB 3137 may polarize rather than facilitate community discussion. Reiterates concern with multiple organizations being required to be recognized.

The following material is submitted for the record without public testimony:

Micheal Collmeyer 1000 Friends of Oregon. Submits written testimony in support of HB 3137.

055 Chair Garrard Closes public hearing on HB 3137 and opens a public hearing on HB 2705.

HB 2705 – PUBLIC HEARING

064 Dave Hunnicutt Oregonians in Action. Speaks in support of HB 2705 and explains its legislative history as HB 3016 in the 2003 session. As a result of the passage of Measure 37 (2004), recommends amendments deleting Lines 13-15 on Page 1 of HB 2705 which may allow development beyond what was allowed at the time the property owner purchased their property. Relays this concession came from discussions with Linda Ludwig, League of Oregon Cities and Lane Shetterly, Department of Land Conservation and Development who will both support the bill with the proposed amendments.

090 Rep. Greenlick Asks where the proposed amendment will be.

092 Hunnicutt Responds it will be in Section 2, Page 1 and suggests deleting lines 13-15.

096 Rep. Greenlick

Confirms that this will take away the ability to extend the sewer line out, allowing a cluster to form their own sewer system.

- 102 Hunnicutt Responds that Rep. Greenlick is correct. Adds that the amendment would narrow the bill, and explains that by allowing a local government to extend a sewer outside of an urban growth boundary (UGB), one could conceivably have a more intense development, or Measure 37 claim, than before.
- 130 Rep. Ackerman Suggests further amendments, stating that line 23 should include “construction improvement” and “remediation of the system” in addition to “cost of maintenance”. Also references lines 26-27 and comments that “recovering attorney fees” is too broad and should be narrowed.
- 140 Hunnicutt Agrees to the suggestions.
- 142 Rep. Nolan Asks if any explicit or implied changes to the Department of Environmental Quality (DEQ) ground water standards are present in HB 2705.
- 145 Hunnicutt Responds negatively. Continues that approval by DEQ is required and that HB 2705 does not limit DEQ’s authority but expands it.
- 153 Chair Garrard References the fiscal statement (**EXHIBIT F**) requiring \$114,894 in DLCD agency resources and asks for comment.
- 159 Hunnicutt Responds that the fiscal statement was the original reason that HB 3016 (2003) was sent to the Ways and Means committee last session. Explains it was determined that the cost of the bill could be absorbed under the existing budget.
- 165 Chair Garrard Comments they will discuss the issue with Lane Shetterly when HB 2705 comes before the committee again. Adjourns the meeting at 3:15 p.m.

EXHIBIT SUMMARY

- A. **HB 3120, written testimony, CW Smith, 1 p**
- B. **HB 3120, written testimony, Don Schellenberg, 1 p**
- C. **HB 3137, written testimony, Jim Jist, 2 pp**
- D. **HB 3137, -1 amendments, Rep. Phil Barnhart, 1 p**
- E. **HB 3137, written testimony, Michael Collmeyer, 1 p**
- F. **HB 2705, fiscal statement, staff, 1 p**