

HOUSE COMMITTEE ON LAND USE

April 01, 2005 Hearing Room 50

1:30 P.M. Tapes 50 - 53

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 2484 – Work Session

HB 2755 – Work Session

HB 3301 – Public Hearing

HB 3135 – 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
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TAPE 50, A

003 Chair Garrard Calls the meeting to order at 1:38 p.m and opens a work session on HB 2484.

HB 2484 – WORK SESSION

 Chair Garrard Asks Linda Ludwig to update the committee on proposed sets of amendments to HB 2484.

010 Linda Ludwig League of Oregon Cities. Responds she has not seen many of the amendments but can report on what some say.

016 Chair Garrard Announces the formation of a work group on HB 2484 and names Rep. Anderson, Dennis Mulvihill, Linda Ludwig, Rep. Ackerman, Rep. Greenlick and Rep. Krummel as the members. Asks that the work group report to the committee on Wednesday April 18th with a draft bill on annexation.

028 Chair Garrard Closes the work session on HB 2484 and opens a work session on HB 2755.

HB 2755 – WORK SESSION

031 Sam Litke Committee Administrator. Explains the effects of the -1 amendments **(EXHIBIT A)** and -2 amendments **(EXHIBIT B)**.

041 Tom Gallagher Professional Land Surveyors of Oregon. Reports that -1 and -2 amendments will make HB 2755 acceptable to all parties involved and improve the plat process.

 Chair Garrard Asks if the -2 amendments incorporate the changes in -1 amendments.

 Gallagher Responds that they will need to adopt both sets of amendments.

049 Art Schlack Association of Oregon Counties. Reports that the -2 amendments address his previous concern in tracking “lawfully created parcels” and urges acceptance of -2 amendments.

061 **Rep. Anderson**

MOTION: Moves to ADOPT HB 2755-1 amendments dated 3/17/05.

VOTE: 7-0-0

Chair Garrard Hearing no objection, declares the motion CARRIED.

065 Rep. Anderson MOTION: Moves to ADOPT HB 2755-2 amendments dated 3/31/05.

VOTE: 7-0-0

Chair Garrard Hearing no objection, declares the motion CARRIED.

070 Rep. Greenlick MOTION: Moves HB 2755A to the floor with a DO PASS AS AMENDED recommendation and be placed on the CONSENT CALENDAR.

VOTE: 7-0-0

AYE: In a roll call vote, all members present vote Aye.

Chair Garrard The motion CARRIES.

Chair Garrard Closes the work session on HB 2755 and opens a public hearing on HB 3301.

HB 3301 – PUBLIC HEARING

Chair Garrard Mentions that the committee has received LC Draft 3536 which contains proposed revisions to Measure 37 (2004), for informational purposes.

(NOTE: LC Draft 3536 was introduced as SB 1037.)

100 Rep. Debi Farr HD 14. Introduces HB 3301 which allows for the formation of county service districts. Notes her sponsorship of HB 3301 is at the request of Lane County and outlines reasons for the bill. Submits copy of HB 3301 with a proposed amendment highlighted within (EXHIBIT C).

123	Bill Van Vactor	County Administrator and budget officer, Lane County. Discusses deterioration of Lane County's public safety system due to cost constraints. Explains that HB 3301 proposes a county service district organized under ORS 451 and would still be governed by the board of county commissioners. Discusses issues of funding. Gives history of the formation of Lane County Metropolitan Waste Water District and a possible conflict with overlapping service districts. Notes the proposed deletion of paragraph 3 of Section 2 in HB 3301 (EXHIBIT C) and the input the Eugene City Council will have in the process. Requests passage of HB 3301 with the proposed amendments.
218	Rep. Ackerman	Wants to understand the difference between the formation of a special taxing district and the revenue it will raise and the alternative which would be the county enacting a five year levy for the same purposes. Asks what differences exist between the two approaches beyond the five year levy expiring.
226	Van Vactor	Responds that the greatest concern is creating a permanent base of money and outlines two concerns with special operating levies: <ul style="list-style-type: none"> • Vital court services subject to nonrenewal if voters do not approve • Instability associated with special operating levies during compression.
	Chair Garrard	Asks if there are amendments coming for this bill.
	Rep. Farr	Responds that the amendment proposed in (EXHIBIT C) is being drafted with Legislative Counsel.
250	Bonny Bettman	Ward 1, Eugene City Council and member of intergovernmental relations committee. Expresses appreciation for the amendment being drafted to protect some local approval on the part of the city, but reports that the city of Eugene still opposes HB 3301. States the two major issues of concern regarding special districts as finances and the preemption of home rule authority intrinsic in special district legislation. Summarizes these concerns and announces a vote held by Eugene City Council to oppose special district legislation. Reports that a major problem with the proposed service district is that it will supersede the city's authority to raise revenue by compression.

TAPE 51, A

005 Bettman

Discusses the role of special districts. Outlines the second major issue with HB 3301 as preempting their locally adopted comprehensive plan. Notes opposition to HB 3301 will retain local jurisdiction's authority to pursue the creation of a service district through the existing local processes.

045 Chair Garrard Closes the public hearing on HB 3301 and opens a public hearing on HB 3135.

HB 3135 – PUBLIC HEARING

056 Sam Litke Committee Administrator. Introduces the provisions of HB 3135.

061 Rep. Phil Barnhart HD 11. Explains an energy plant siting in his area and the need for more local input. Discusses a “need standard”. Submits -1 amendments **(EXHIBIT D)**.

116 Gail Whitsett Klamath County. Notes she is speaking for herself and on behalf of her husband Sen. Doug Whitsett. Relays that Sen. Whitsett and Sen. Morrisette have introduced SB 527 which addresses similar points. Submits and reads written testimony in favor of limiting or removing the supersiting powers of the Department of Energy and the Energy Facility Siting Council **(EXHIBIT E)**.

240 Rep. Greenlick Asks Whitsett if the agency is not following the law, why change the law rather than forcing them to follow the existing law.

241 Whitsett Responds that she would agree to that, but after the agency's “mitigation”, the statutes have had no effect.

252 Rep. Greenlick Comments that they have raised some compelling horror stories but is concerned about alternative energy siting and asks Barnhart if there is a way to site the smaller alternative energy models without all the complexities added.

268 Chair Garrard Requests that the questions are held until Lisa Arkin has testified.

273 Rep. Barnhart Offers to stay to answer additional questions.

276 Lisa Arkin Executive Director, Oregon Toxics Alliance. Submits a synopsis of HB 3135 and flow chart illustrating the Oregon energy facility siting process **(EXHIBIT F)**. Relays that the Oregon Toxic Alliance

became involved after the rural farming communities of Klamath Falls, Coburg, and Turner contacted them with concerns about proposed sitings of large gas fire power plants. References testimony from the mayor of Turner **(EXHIBIT G)** Discusses the Energy Facility Siting Council and its history. Discusses SB 1149 (1999) which encouraged the development of a competitive energy market. References statistics citing sufficient energy reserves and asserts that with criteria for siting power plants now based on market competitiveness and not an adequacy standard, it is difficult to convince communities that the state has demonstrated the ability to override local concerns for the public benefit. Relays that citizens of these areas have concerns about use of farm land and water resources, economic impacts, health and public safety. Continues that the Energy Facility Siting Council is best suited to assess the technical merits of an application and local governments are best suited to evaluate land use decisions based on land use code.

TAPE 50, B

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| 002 | Arkin | References synopsis of HB 3135 and explains flow chart (EXHIBIT F) Expresses it is not the intention to hurt renewable energy projects and references non-polluting, revenue generating possibilities that would not be hurt by public input. Urges support of HB 3135. |
| 047 | Rep. Greenlick | In regard to the alternative energy models, asks if they would be open to restricting the impact of HB 3135 to gas fire generators and possible fuel burning energy facilities. |
| 052 | Whitsett | Responds that in the Senate version of the bill, there is a statement prioritizing renewable energy projects and moving the state towards long term energy planning which would encourage the development of renewable energy. Expresses openness to addressing this issue and notes discussions with many parties. |
| 068 | Chair Garrard | References testimony from the mayor of Turner, Mr. Thompson (EXHIBIT G) . Asks the panel if they believe that local government in their respective areas had the opportunity during the siting process to intervene. |
| 074 | Whitsett | Responds that for Klamath County, there was one opportunity for commissioners to respond in which two choose not to reply and one did. Explains that the two commissioners have publicly stated they did not feel it would make a difference. |
| 089 | Rep. Barnhart | |

Adds that in Lane County, there was some action by the county commissioners but that it was purely advisory.

- 100 Roger Hamilton Consultant in the wind power industry, and former chairman of the Oregon Public Utility Commission. Submits and reads from written testimony in support of HB 3135 **(EXHIBIT H)**.
- 170 Hamilton Continues reading from written testimony Page 2 **(EXHIBIT H)**.
- 209 Hamilton Continues reading from written testimony Page 3 **(EXHIBIT H)**.
- 236 Lyn Brock Bonanza, Klamath County. Reads prepared statement urging the legislature to change the law concerning siting of energy facilities **(EXHIBIT I)**.
- 370 Bill Brock Bonanza, Klamath County. Express support for HB 3135. Describes frustration with the energy siting process and lack of public input.

TAPE 51, B

- 003 Brock Continues outlining details of Klamath situation. Reiterates support for HB 3135 and believes it is a step in the right direction.
- 054 Barbara Allen Springfield, Jefferson County. Asks for permission to read testimony into the record on behalf of Mary Zemke, Chair of the Jefferson County Board of Commissioners **(EXHIBIT J)**.
- Chair Garrard Agrees.
- 060 Allen Reads testimony in support of HB 3135 **(EXHIBIT J)**.
- 090 Richard Barnhart Lane County Chapter of Physicians for Social Responsibility. Reports on research he has done on literature on health effects of air pollution from power generated plants and fossil fuel burning. Summarizes findings. Asserts that when citizens' health is effected, they should have a say on where the facilities are sited. Makes literature available to the committee **(EXHIBIT K)**
- 134 John Sundquist Coburg, Lane County. Submits and reads from prepared testimony in favor of HB 3135 **(EXHIBIT L)**.

- 192 Bonny Bettman Eugene City Council. Relays that the City of Eugene supports the passage of HB 3135. Discusses the proposal of the Coburg power plant and the inability for any input on a local level.
- 228 David Monk Oregon Toxics Alliance. Asks for support of HB 3135. Reports that the energy siting process has serious short comings and requires reform. Focuses on public input on long term energy needs. Expresses desire to craft language for consensus. Clarifies that HB 3135 will not allow a veto over where the facilities are sited rather, if a land use exception is required the local land use authority shall have the decision making authority. Concurs with earlier testimony that the Siting Council has very little concern for local concerns or input.
- Bettman Submits written testimony in support of the passage of HB 3135 on behalf of Kitty Piercy, Mayor of Eugene (**EXHIBIT M**).
- 334 Rep. Anderson Comments that he appreciates the concern of local determination and relays a problem in southwestern Oregon relating to outside groups.
- 383 Mike Grainey Director, Oregon Department of Energy. Reports strong concerns about HB 3135 and objects to the bill as written. Submits and explains the contents of two handouts (**EXHIBIT N**).

TAPE 52, A

- 004 Grainey Gives history of the energy facility siting process. Contends that the department is following the law which has centralized the process, assuring access to energy when needed. Adds their support of wind farms as mentioned in previous testimony. Discusses Oregon's energy supply situation and the importance of having an effective energy siting process. Describes their siting process as extensive and demonstrates the Council's ability to act independently. Discusses details of the Coburg project and the input they have sought from Lane County. Believes the centralized siting council has been successful.
- 085 Chair Garrard Asks whom the Siting Council is accountable to.
- 088 Grainey Responds that the Siting Council is accountable to the Governor, legislature and the courts. Continues that there have been procedural errors remanded for further review but no substantive decisions reversed. Outlines provisions for public input while still having an efficient centralized process.

112	Chair Garrard	Asks if there is still a need for a Siting Council.
114	Grainey	Responds affirmatively if one wants to be sure of approving the energy facilities needed. Adds that the decisions made are controversial and they want input from the local community. Remarks that it is a policy decision whether to have a centralized process or permitting through local jurisdictions.
123	Chair Garrard	Understands the position that Grainey supervises a council that must follow the laws created by the legislature. States that if the legislature created the Siting Council they have the authority to end it.
	Grainey	Agrees but does not recommend it.
	Rep. Greenlick	References testimony that the siting council violated the law and then used the prior violations as precedents for future decisions and asks for comment.
135	Grainey	Disagrees with the characterization. Asserts they have followed the law and their decisions have been confirmed by the Supreme Court. Notes unhappiness with approval of the COB plant but believes their decision will be affirmed in the Supreme Court.
147	Chair Garrard	Adds that he doesn't believe the Council violated the law, but thinks there are different ways of applying the laws. Comments that in the Klamath case, there was complete disregard for the people. Asserts the legislature needs to take a serious look at the actions of the Siting Council.
160	Dave Stewart-Smith	Assistant Director, Oregon Department of Energy for Energy Resources. Also serves as the executive secretary of the Oregon Energy Facility Siting Council. Notes his availability for questions.
170	Rep. P. Smith	Asks if there have been these types of problems before with local sitings.
172	Chair Garrard	Responds that there have been problems siting women's prison in the past. Discusses the difficulties in supersiting situations. Ask Grainey how power plants were sited before there was a Siting Council.
	Grainey	Responds that there has been a siting council for 30 years.

	Stewart -Smith	Adds that the first form of a citizen commission for making siting decisions was called the Nuclear and Thermal Energy Council formed in 1971 which was transformed into the Energy Facility Siting Council by statute in 1975. Adds that few plants predate the Siting Council.
196	Chair Garrard	Wonders if they are focusing on the right issue or if they should just abolish the Siting Council.
	Grainey	Notes that if the legislature wants to do that, they would need an alternative process to replace it. Adds that the Council does not control the proposals that come before them, and discusses his prior appearances testifying in favor of incentives for renewable energy sources.
212	Rep. Greenlick	References a list of sitings (EXHIBIT N) and asks how many sitings would not have been approved if they could have been vetoed by the local authority. Restates to ask how many sitings the council heard major opposition from the local area.
220	Grainey	First states there is a difference between opposition from the local community and from the local government. Remarks in the case of the COB plant, Klamath County did not take a position. Adds that most projects approved in the 1990s had the support of the local community but notes some exceptions.
237	Stewart-Smith	Concurs with Grainey and adds that plants sited in the 1990s were sited in eastern Oregon. Comments that they have run out of transmission capacity for shipping power across the Cascades and there will be an increasing need to site closer to load centers and larger populations because that is where the power is being used.
262	Chair Garrard	Remarks that there is a cogeneration plant in Klamath that sells its power to California.
265	Stewart	Responds that the Klamath Cogeneration Plant power is marketed by Pacific Power Marketing and was required by law to sell its power to non-taxable organizations.
273	Chair Garrard	Interjects that this is a central point of discussion in regards to taxes.
	Stewart	Continues it was his understanding that there were limitations on the bonds so that the vast majority had to be sold to non-taxed entities

such as municipal corporations. Adds that Oregon is a net importer of electricity and provides assurance that Oregon is not and will not become an energy farm for California.

- 288 Chair Garrard Asks if the power from the Coburg plant and the Klamath plant will stay in Oregon.
- Stewart Responds that the power from those plants, if they are built, will go where contracts lead them. Adds that while some sales will go to California, as some sales come from California, they will not be able to sell a significant amount south.
- Chair Garrard Concludes that the answer is no.
- Stewart Responds that the power will go where the contracts lead the power. Continues that he can not predict the future, but reiterates that there is very little capacity to ship any significant amount of power into California.
- 310 Rep. Greenlick Comments that from the testimony given, siting decisions are likely to become more controversial increasing the need for the discussions they are having.
- 329 Theresa Miller Portland General Electric. Defers to Richard Allen and Arya Behbehani-Dires.
- 340 Richard Allen Partner, Ball Janik LLP. Notes his law practice focuses on environmental and land use law and his testifying on behalf of PGE. Discusses a siting project in Port Westward, Columbia County. Describes the history and functioning of the Oregon Energy Facility Siting process and how land use permitting relates to this process.

TAPE 53, A

- 005 Allen Continues describing the siting process and discusses distinctions between permits. Notes that the process does provide involvement from state and local agencies, tribal governments and individuals.
- 030 Chair Garrard Asks if there is anything written which requires one to visit the proposed site to make an evaluation.
- Allen Asks for clarification of the question.

	Chair Garrard	Asks if any representative of state government is required to go to the site of the proposed plan. Adds that during the Klamath project, no state official went to the site and yet the site was approved.
042	Allen	Explains that it is not required for a state official to go to the site and discusses why they do not. Outlines unique points of siting power plants including the necessity of crossing surrounding lands, which may be zoned differently and cross various local jurisdictions, in order to get energy to market. Reiterates the benefits of maintaining a centralized process. Outlines amendments made throughout the siting application process as more information is gathered. Discusses the “need standard” and merchant plants.
150	Arya Behbehani-Dires	Civil Engineer, Portland General Electric. Describes her involvement with the Port Westward Project and details the existing process of Energy Facility Siting Process. Outlines the meetings held to determine impacts to the local area and how to mitigate them. Summarizes conditions agreed upon including ways to deal with noise impacts and conservation easements. Reviews public notice given and expresses the desire to partner with the community.
268	Shawn Miller	Pacificorp and PPM Energy. Submits and reads written testimony in opposition to HB 3135 and -1 amendments (EXHIBIT O).
326	Gary Bauer	Northwest Natural. Explains that siting laws pertain to different types of energy facilities. Describes a facility in Mist, Oregon and their pipelines. Raises concern about projects which would cross many local jurisdictions. Discusses their notice of intent, public meetings held and concessions made in response to concerns raised. Comments on conflict between rural and urban areas on where to site the pipeline and stresses the need for the overarching process the Siting Council has.
408	Chair Garrard	Asks if the pipeline described was underground.
	Bauer	Responds affirmatively.
	Chair Garrard	Comments that that situation is a little different.
	Bauer	Responds that it is different but they still received complaints about where to site it, not about the need for the pipe. Describes extensive actions taken during the siting process. Concedes they could not

please everyone but the statewide process allowed for the most interests to be heard.

TAPE 52, B

020	Julie Brandis	Associated Oregon Industries. Reports discussions from previous legislative sessions and modifications made to siting procedures. Asserts that the changes made were not superseding changes and describes their intent to better work with government agencies. Outlines conflicts in the past with state agency people needed for siting applications. Urges the committee not to revert to using a “need standard”. Comments that renewable power is important but should not be put above all else. Reiterates the benefits of statewide system.
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The following material is submitted for the record without public testimony:

	Kathy Ging	Eugene, OR resident. Submits written testimony in support of HB 3135 (EXHIBIT P).
077	Chair Garrard	Closes public session on HB 3135 and adjourns the meeting at 4:27 p.m.

EXHIBIT SUMMARY

- A. HB 2755, -1 amendments, staff, 1 p
- B. HB 2755, -2 amendments, staff, 1 p
- C. HB 3301, proposed amendment within bill, Rep. Farr, 5 pp
- D. HB 3135, -1 amendments, Rep. Barnhart, 5 pp
- E. HB 3135, written testimony, Gail Whitsett, 5 pp
- F. HB 3135, synopsis of bill and flow chart, Lisa Arkin, 2 pp
- G. HB 3135, written testimony, James A. Thompson, 2 pp
- H. HB 3135, written testimony, Roger Hamilton, 3 pp
 - I. HB 3135, written testimony, Lyn Brock, 5 pp
 - J. HB 3135, written testimony, Barbara Allen on behalf of Mary Zemke, 1 p
- K. HB 3135, medical literature, Richard Barnhart, 57 pp
- L. HB 3135, prepared statement, John Sundquist, 1 p
- M. HB 3135, written testimony, Bonny Bettman on behalf of Mayor Kitty Pierce, 2 pp

- N. **HB 3135, informational handouts, Mike Grainey, 3 pp**
- O. **HB 3135, written testimony, Shawn Miller, 2 pp**
- P. **HB 3135, written testimony, Kathy Ging, 1 p**