

**HOUSE COMMITTEE ON LAND USE**

**May 11, 2005 Hearing Room 50**

**1:30 P.M. Tapes 91 - 94**

**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 3474 – Public Hearing**

**SB 887A – 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 91, A

Chair Garrard            Calls the meeting to order at 1:40 p.m. and opens a public hearing on HB 3474.

### HB 3474 – PUBLIC HEARING

Rep. Mac Sumner        HD 18. As sponsor of HB 3474, introduces and speaks in support of HB 3474.

025            Dave Hunnicutt        Oregonians in Action. Submits a packet of information (**EXHIBIT A**) and explains that HB 3474 will allow for permitting of churches and notes exceptions found in Section 2 (3). Reviews the establishment clause. Details a Massachusetts case which corresponds to Oregon case.

127            Hunnicutt                References law literature dealing with the use of zoning to discriminate against religious organizations. Discusses Department of Land Conservation and Development (DLCD) rules relating to zoning of churches. Asserts there is discrimination against churches and stresses HB 3474 will apply to all religions.

185            Rep. Greenlick        Asks if there have been any constitutional challenges to the current status of prohibiting building in exclusive farm use zones (EFU).

                  Hunnicutt                Responds that he is unaware of a challenge in Oregon. Adds that they raised the issue in a previous Molalla christian church Land Use Board of Appeals (LUBA) case and discusses the lack of evidence.

207            Rep. Greenlick        Asks about the constitutionality of the land use laws discussed, and relays that in other states, land use laws have not been found to be in violation of free expression.

                  Hunnicutt                Responds he cannot give an answer for all 50 states. Discusses the establishment clause challenged by municipalities and references the Massachusetts statute which was used as a template for HB 3474.

234            Rep. Greenlick        References Section 2 (2), and asks hypothetically if under this clause a large non-profit educational facility could move into farmland.

                  Hunnicutt                Responds that under this measure it could.

- 252 Rep. Ackerman Asks why they incorporated educational uses with religious uses in HB 3474.
- Hunnicuttt Responds that they were trying to match Massachusetts law as closely as possible to avoid litigation. Adds they would be open to amendments that would clarify religious educational facilities.
- 281 Rep. Ackerman Asks if there is a reasonable statewide need to provide for preferential siting of religious organizations.
- Hunnicuttt References prior cases around the state.
- Rep. Ackerman Notes the bill is based upon ownership and asks what would stop entities from abusing this provision.
- Hunnicuttt Responds that they should look to the Massachusetts record with the statute and is unaware of any cases of abuse.
- 340 Steven K. Green Professor of Law, Willamette University. Submits and summarizes written testimony in opposition to HB 3474 (**EXHIBIT B**).

**TAPE 92, A**

- 020 Green Continues testimony, discussing his third concern outlined on page 2 of his written testimony.
- 042 Christy Munson Counsel, League of Oregon Cities. Speaks in opposition to HB 3474. Stresses HB 3474 would be a major change in how land is regulated. Elaborates on her concerns.
- 082 Lane Shetterly Director, Department of the Land Conservation and Development (DLCDD). Notes his background in educational siting. Expresses concerns of the department, describing HB 3474 as a supersiting bill favoring public entities, religious organizations and non-profit educational organizations. Reiterates Munson's testimony related to demands on government, including availability of services and infrastructure.
- 132 Rep. Greenlick Asks Munson if HB 3474 would prevent the City of Portland from regulating campuses' land use actions.

	Munson	Responds that under certain circumstances they may be exempt from regulations.
145	Rep. Ackerman	Asks if the religious land use and institutionalized persons act has preempted language on state statutes of a similar effect.
	Green	Responds that he believes they do not preempt state law.
	Chair Garrard	Asks Shetterly if he would personally support this bill.
	Shetterly	Responds negatively and elaborates.
170	Rep. Anderson	Asks which zones a church is prohibited from zoning in.
	Shetterly	Defers to Eber. Notes that churches can be sited as conditional uses in zones.
	Munson	Comments that churches can be sited outside of urban growth boundaries (UGB) and are designated "rural churches".
191	Ron Eber	DLCD. Reports that regarding rural land, Land Conservation and Development Commission (LCDC) rules preclude churches and schools from zoning within 3 miles of a UGB or on high value farmland. Adds they are not allowed on forest land at all and that under Goal 14 does not allow urban uses outside of a UGB.
208	Rep. Nolan	Asks if under HB 3474 the exemption from local regulations applies to any property owned by one of the specified entities regardless of use, so asks if currently alternative uses would be allowed in any zone.
	Munson	Responds with the two tests in HB 3474 and elaborates.
240	Rep. Sumner	Comments that under current land use rules a specific situation would not be permitted.
	Shetterly	Gives examples of church sitings. Describes an example of a broad interpretation under ambiguous language.
290	Rep. Greenlick	

Asks if there is a problem siting churches inside UGBs in terms of the types of uses allowed.

- Munson Responds she does not know about the specifics of siting but discusses governmental regulations regarding churches inside the UGB.
- 325 Shetterly Discusses the problem of siting a specific church within a UGB due to inadequate land supply.
- Rep. P. Smith Asks if the state does land use applications by ownership.
- Eber Responds that that information is part of the process dependant on the type of application.
- 350 Rep. Sumner Discusses the problem of siting churches within UGB in rural areas.
- Shetterly Reviews the LUBA decision in the Molalla Christian Church case and the possibility to pursue the exception process.
- 390 Eber Gives an example of an exception approved for a church outside the city of Amity.
- 400 Elon Hasson Lobbyist, 1000 Friends of Oregon. Speaks in opposition to HB 3474.

#### **TAPE 91, B**

- 010 Phillip Kennedy – Wong Ecumenical Ministries of Oregon. Thanks Rep. Sumner for the intent of the bill but speaks in opposition to HB 3474. Outlines objections.
- 054 Randy Tucker Legislative Affairs Manager, Metro. References three examples of “rural churches” located outside of the UGB serving urban populations. Discusses expansion of UGB for industrial purposes.
- 084 Rep. Anderson Asks Kennedy-Wong if a specific example would be allowable.
- Kennedy - Wong Verifies he means in respect of HB 3474.
- Rep. Anderson Confirms this.

	Kennedy-Wong	Describes legal challenges in determining what constitutes a “religious body”.
112	Rep. Anderson	Verifies a point in Kennedy-Wong’s testimony about physical buildings and preserving land.
	Kennedy-Wong	Discusses spiritual and physical aspects of religion.
	Rep. Anderson	Asks if we have committed sins by building on land.
	Kennedy-Wong	Respond negatively.
	Rep. Anderson	Verifies a point in Kennedy-Wong’s testimony.
	Kennedy-Wong	Responds that HB 3474 is not a “one-size fits all”.
	Chair Garrard	Closes the public hearing on HB 3474 and opens a public hearing on SB 887A.

### **SB 887A – PUBLIC HEARING**

170	Sam Litke	Committee Administrator. Reviews the legislative history of SB 887A and explains its provisions. References –A13 amendments <b>(EXHIBIT C)</b> , -A10 amendments <b>(EXHIBIT K)</b> and –A11 <b>(EXHIBIT L)</b> .
	Rep. Greenlick	Asks about other amendments.
	Litke	Reports the committee has not received other amendments.
	Chair Garrard	Recesses the meeting at 2:55 pm and reopens at 3:00 pm.
242	Sen. Ryan Deckert	SD 14. Outlines the effect of the -A13 amendments <b>(EXHIBIT C)</b> and submits a written explanation of the amendments <b>(EXHIBIT D)</b> .
	Rep. Greenlick	Expresses concern if the mediation group detailed in the –A13 amendments could not reach a consensus and the lack of consequence.

Sen. Deckert Agrees that the mediations are not binding but relays the possibility of the neutral third party helping to adjudicate the issue.

Chair Garrard Announces the origin of the –A13 amendments (**EXHIBIT C**), the –A6 amendments (**EXHIBIT I**), -A8 amendments (**EXHIBIT E**), -A9 amendments (**EXHIBIT F**), -A10 amendments (**EXHIBIT K**), –A11 amendments (**EXHIBIT L**) and the –A12 amendments (**EXHIBIT M**).

356 Rep. Brad Avakian HD 34. Explains the effect and intent of the -A8 amendments (**EXHIBIT E**) and -A9 amendments (**EXHIBIT F**).

### **TAPE 92, B**

006 Rep. Ackerman Asks if the mediation has the effect of staying the annexation election.

Rep. Avakian Responds negatively.

Rep. Ackerman Comments that a continuing election and a mediation process seem to be cross purposes.

Rep. Avakian Agrees and suggests support of other annexation bills before the committee in conjunction with SB 887.

015 Rep. Sal Esquivel HD 6. Submits map of (**EXHIBIT G**). Describes misuse of forced annexations and asserts most municipalities function well. Explains the procedure for dealing with enclaves in the city of Medford. Describes problems in allowing enclaves but asks for awareness in maintaining the tool of municipalities to annex enclaves.

110 Chair Garrard References letter in support of SB 887 from Micheal J. Konich of Leupold and Stevens, Inc (**EXHIBIT H**).

126 Julia Brim-Edwards Deputy Director for State and Public Affairs, Nike. Submits –A6 amendments (**EXHIBIT I**) and explains their effect. Elaborates on reasons for the extension of the sunset.

Rep. Greenlick Asks if this extension would relate to Columbia Sportswear as well.

Brim-Edwards Responds affirmatively.

	Rep. Greenlick	Asks if ESI is included in this amendment.
	Brim-Edwards	Responds she believes they have another amendment.
155	Gary Conkling	Tektranix. Submits the -A10 amendments ( <b>EXHIBIT K</b> ), -A11 amendments ( <b>EXHIBIT L</b> ) and written testimony ( <b>EXHIBIT J</b> ). Urges support of -A10 and -A11 amendments.
220	Rep. Greenlick	Submits and explains the -A12 amendments ( <b>EXHIBIT M</b> ). Describes need for consequences with interim work groups. Notes intention to propose more amendments which would a delay an implementation of this until January 2008 and repeal ORS 222.750.
300	Linda Ludwig	League of Oregon Cities. Submits and summarizes written testimony urging the passage of SB 887 A-engrossed without changes ( <b>EXHIBIT N</b> ). Discusses possible consequences of island annexations and changing definitions. Reiterates her prior recommendation for a interim work group.

**TAPE 93, A**

002	Ludwig	Reports she cannot support the -A12 amendments, and asks that the committee not pass HB 3084.
	Chair Garrard	Asks if there are any representatives from the City of Beaverton present.
	Ludwig	Responds that there are not.
018	Chair Garrard	Asks about Beaverton and the issue of annexation.
035	Ludwig	Mentions that SB 887 has a provision that directly impacts Beaverton and not other cities and the League of Oregon Cities's support of SB 887.
055	Steve Bryant	City of Albany. Submits a map of Albany showing recent annexations ( <b>EXHIBIT O</b> ). Expresses concern for a statewide solution to a limited problem.
	Chair Garrard	Notes the dilemma before the committee.



	Rep. Greenlick	Relays the possibility of other cities interpreting the laws in the same way that Beaverton has.
093	Bryant	Continues testimony. Discusses annexation as a necessary tool for cities. Discusses benefits available to unincorporated citizens without paying. Relays that the most important point is the efficient provision of urban services. References island annexations done in the past year and points them out on the map of Albany ( <b>EXHIBIT O</b> ).
	Chair Garrard	Asks for clarification on which voters he is referring to.
	Bryant	Responds the voters of the city and notes that members of the proposed territory may make comments at the meeting.
	Chair Garrard	Verifies that those in the proposed territory may not vote.
	Bryant	Confirms this. Discusses other options for annexing. Notes that the proportion of voters in the territory are usually small and would not effect the vote.
171	Chair Garrard	Verifies he means their proportion compared with the city vote.
	Bryant	Confirms this. Refers to the map.
	Rep. Greenlick	Asks if the portion referenced was annexed under ORS 222.750.
	Bryant	Confirms this.
	Rep. Greenlick	Verifies this was done because of the bordering river.
	Bryant	Responds affirmatively and continues describing the annexation. Asks that the committee not take a “one size fits all” approach.
231	Rep. Greenlick	Asks how the city would have been able to annex a certain part of land if the river were not located where it is.
	Bryant	Responds that they would not have been able to and remarks that the urban growth boundary (UGB) is located where it is because of the river.

	Rep. Greenlick	Asks why the city gave the owners of particular enclave city services.
	Bryant	Responds that the water systems existed before the city owned the water and discusses the services provided.
300	Jerry Ritter	Oregon Communities for a Voice in Annexations. Submits and summarizes written testimony in support of SB 887A ( <b>EXHIBIT P</b> ).
386	Ritter	Responds to previous testimony.

**TAPE 94, A**

003	Harvey Matthews	Association of Oregon Industries. Speaks in opposition to SB 887A and relays supports Rep. Greenlick's -A12 amendments.
036	Dana Krawczuk	Attorney, Ball Janik. Submits and summarizes written testimony suggesting amendments to SB 887A ( <b>EXHIBIT Q</b> ).
079	Rep. Ackerman	Verifies with Rep. Greenlick that the -A12 amendments take out Section 3 of A-Engrossed SB 887.
	Rep. Greenlick	Discusses other sections it would effect.
	Rep. Ackerman	Notes the -A12 amendments take out lines 4-19.
	Rep. Greenlick	Adds it will also delete pages 2, 3, and 4 of the original bill.
	Rep. Ackerman	Asks if Rep. Greenlick intended to delete Section 3 which deals with the single majority requirement for ORS 195 types of annexation.
	Rep. Greenlick	Responds that that was not the intent.
	Chair Garrard	Verifies that the discussion is focused around whether or not any amendments address annexation that occurred before March 1, 2005.
	Rep. Greenlick	Responds that the discussion is not focused on that point and clarifies that they are trying to determine if they took out the ORS 195 piece of the bill on page 1, line 8-9.

	Rep. Ackerman	Notes further changes needed for the amendments.
100	Rep. Greenlick	Agrees. Asks Krawczuk whether the appeal stopped the annexation.
	Krawczuk	Responds that it will depend on the result of the appeal and explains.
	Rep. Greenlick	Asks about the current status of the annexation.
	Krawczuk,	Responds that for the property owners who have appealed to LUBA, the annexations are in abeyance.
121	Sean O'Day	Assistant City Attorney, City of Salem. Remarks that any revision to ORS 222 must be deliberative and comprehensive. Highlights island annexations and discusses cities' use of this process.
195	Rep. Ackerman	Asks if O'Day is familiar with any unincorporated municipalities which receive the majority of their services not from adjoining cities but from regional systems and special service districts.
	O'Day	Responds that services provided by special service districts are more along utility types of services.
	Rep. Ackerman	Poses a hypothetical situation with an unincorporated area that was receiving 75% of its services from regional providers and special service districts and asks if that argues more in favor for a vote of the people in the unincorporated areas to associate with the city.
	O'Day	Responds and discusses the public process involved in annexations.
227	Rep. Ackerman	Restates his question, asking if the unincorporated areas receiving 75% of its municipal services from special service districts and regional systems, aside from the city, would argue in favor of having the people vote before they are annexed into a city.
	O'Day	Responds that it would be a compelling argument, but is not the case in Oregon.
	Rep. Ackerman	Responds that it is where he resides.
	O'Day	Responds that it is not in Salem.

240	Glenn Gross	City of Salem. Reports on the testimony from the City Council in previous hearings. Discusses voluntary annexations.
	Rep. Greenlick	Asks if the specific annexation would be under ORS 222.050.
	O'Day	Discusses the statutory process.
	Rep. Greenlick	Remarks that no one is objecting to voluntary annexations.
	O'Day	Explains that they do not want to lose the annexing tool for the future. Encourages the committee not to hinder cities' ability to annex.
287	Rep. Anderson	Asks if there is a way to make things more balanced with the existing process related to islands.
	O'Day	Responds it is a good question and that should be directed at the task force.
300	Rep. Greenlick	Comments on cities' position.
	O'Day	Point out the public process involved.
	Gross	Adds that in the future an involuntary annexation may be appropriate.
336	Doug Riggs	Central Oregon Cities Organization. Submits and summarizes written testimony raising issues on annexation and SB 887A ( <b>EXHIBIT R</b> ).

**TAPE 93, B**

002	Riggs	Relays personal experience with those outside of UGBs.
014	Chair Garrard	Remarks that County Commissioners do not have the power to stop city annexations and comments on misleading wording in Riggs written testimony.
	Riggs	Clarifies his point.
050	Jon Chandler	

Oregon Homebuilders Association. Makes suggestions to the committee and issues support for SB 887A.

Chair Garrard                      Makes announcements on future actions.

Chair Garrard                      Closes the public hearing on SB 887 and adjourns the meeting at 4:36 p.m.

### **EXHIBIT SUMMARY**

- A. **HB 3474, packet of material, Dave Hunnicutt, 14 pp**
- B. **HB 3474, written testimony, Steven K. Green, 2 pp**
- C. **SB 887, -13 amendments, Sen. Deckert, 2 pp**
- D. **SB 887, summary of amendments, Sen. Deckert, 1 p**
- E. **SB 887, -8 amendments, Rep. Avakian, 1 p**
- F. **SB 887, -9 amendments, Rep. Avakian, 2 pp**
- G. **SB 887, map of Medford, Rep. Esquivel, 1 p**
- H. **SB 887, written testimony, Leupold and Stevens, 2 pp**
  - I. **SB 887, -6 amendments, Julia Brim Edwards, 1 p**
  - J. **SB 887, written testimony, Gary Conkling, 2 pp**
- K. **SB 887, -10 amendments, Gary Conkling, 1 p**
- L. **SB 887, -11 amendments, Gary Conkling, 1 p**
- M. **SB 887, -12 amendments, Rep. Greenlick, 8 pp**
- N. **SB 887, written testimony, Linda Ludwig, 2 pp**
- O. **SB 887, map of Albany, Steve Bryant, 1 p**
- P. **SB 887, written testimony, Jerry Ritter, 2 pp**
- Q. **SB 887, written testimony, Dana L. Krawczuk, 2 pp**
- R. **SB 887, written testimony, Doug Riggs, 2 pp**
- S. **SB 887, fiscal statement, Staff, 2 pp**