

HOUSE COMMITTEE ON LAND USE

June 10, 2005 Hearing Room 50

1:30 P.M. Tapes 126 - 129

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 – 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 126, A

002 Chair Garrard Calls the meeting to order at 1:28 p.m., carries over SB 863 until Monday June 13, 2005 and opens a work session on HB 3120.

HB 3120 – WORK SESSION

013 Chair Garrard Reports on a meeting with the Governor's office on Measure 37 (M37) and proposes areas of the committee's focus as: claims process, judicial review, transferability, review process of land use system over the interim, separation of powers, the urban growth boundary (UGB) fringe area, and the compensation issue as part of the interim directive.

030 Rep. Ackerman Lists his concerns as the claims process, judicial review and transferability.

Chair Garrard Suggests the committee decide which set of amendments they want to use as the vehicle.

045 Rep. Greenlick Suggests using the language of Measure 37.

Chair Garrard Verifies he means M37.

Rep. Greenlick Confirms this and explains.

057 Rep. P. Smith Notes qualms with using the language of M37 as a starting point.

Rep. Greenlick Responds that the other amendments use M37 language as a starting point.

067 Rep. Anderson Asks for clarification of the suggested process.

Rep. Greenlick Elaborates on the suggestion to create an omnibus amendment.

079 Rep. Nolan Notes that all the amendments start with inserting M37 language into ORS 197 and that it creates a framework.

Rep. Anderson Raises concern about the process.

090	Rep. Greenlick	Comments on the process.
	Rep. Nolan	Notes timeline and suggests adopting an amendment rather than starting from a blank slate.
	Chair Garrard	Agrees and suggests picking either the -1 amendments or the -3 amendments as a basis to move forward. Asks if Shetterly has a recommendation for which amendments to choose.
109	Lane Shetterly	Director, Department of Land Conservation and Development (DLCD). Concurrs that the amendments provide a template and commends the replacement -3 amendments as the product of substantial discussion among the work group.
	Rep. Greenlick	Asks if (EXHIBIT A) is the latest document.
	Litke	Responds affirmatively.
145	Chair Garrard	Asks if there is anything more recent than the amendments to the amendments (EXHIBIT A) .
	Jon Chandler	Oregon Homebuilders Association. Responds that the next version is not yet available.
	Chair Garrard	Asks if the -3 amendments would be a good place to start.
	Shetterly	Suggests the conceptual amendments.
153	Rep. Nolan	Asks Chandler if using the -3 amendments to frame their discussions would be useful.
	Chandler	Responds affirmatively.
	Shetterly	Agrees.
	Chandler	Comments their discussions are helpful for further fine-tuning the language.
175	Rep. Greenlick	Asks about using (EXHIBIT A) .

	Shetterly	States the document is complete.
	Chair Garrard	Suggests using the -3 amendments in LC form.
200	Litke	Comments that the new document would replace the -3 amendments (EXHIBIT A) .
	Shetterly	Adds that the rewritten form is more refined.
	Chandler	Adds that the newer version is more up to date and includes more concepts.
	Chair Garrard	Concludes that (EXHIBIT A) is the best place to start.
230	Rep. Ackerman	Asks if the replacement -3 amendments contain all the issues they wish to discuss.
	Shetterly	Responds they are the most complete.
240	Rep. Nolan	Discusses possible ways the committee can proceed.
	Chair Garrard	Gives his intention on the procedure.
263	Rep. Greenlick	Asks about the changes made to the language of M37.
	Shetterly	Explains that the language stricken is language originally in M37 and that underlined are additions.
	Rep. Greenlick	Confirms the process.
	Chair Garrard	Calls Klein forward.
	Rep. Greenlick	Verifies that after Page 4, they are all additions.
	Shetterly	Confirms that everything after Section 1 (13) is new text.
	Rep. Greenlick	States that Sections 3 - 18 are additions.

300	Rep. P. Smith	Asks what the process will be for additions or deletions.
	Chair Garrard	Responds that if there if not consensus they will vote.
	Rep. Nolan	Agrees and notes the importance of not discussing pieces exclusively as they are interrelated.
	Rep. Greenlick	Comments on possible concessions.
345	Klein	Concurs and notes that ideas embodied in some sections rely on others.
	Chair Garrard	Asks if he is the main drafter.
	Klein	Responds he is one of a group but the only one present.
370	Chair Garrard	Commences the discussion on the replacement to the -3 amendments (EXHIBIT A) .
	Rep. Greenlick	Remarks on individual amendments.
	Chair Garrard	Remarks that the committee members are open to submit amendments at any time.
	Rep. Greenlick	References the Chair's proposed areas of focus and suggests pointing out which sections deal specifically with those issues.
	Chair Garrard	Responds that the -3 amendments have a claims process and judicial review that are generally agreed upon.

TAPE 127, A

005	Chair Garrard	Asks Klein for an overview of Section 1 (EXHIBIT A) .
	Klein	Gives an overview of Section 1 and notes the addition of a date that would apply different provisions to claims filed after the date.
	Chair Garrard	Asks why there is a distinction between old and new M37 claims.

040 Klein Gives reasoning for the distinction.

Chair Garrard Suggests that addressing Section 1 now is premature.

Klein Concurs that Section 1 would be better addressed later.

Rep. Greenlick Makes suggestion for a date if they decide to include that provision.

Chair Garrard States they will allow Don Schellenberg to address the committee on the -6 amendments **(EXHIBIT D)**.

Rep. P. Smith Asks if in Section 1, a person has a choice of which date to file under.

092 Klein Responds that if your claim is filed after March 15 you must refile, and if filed prior to March 15, you would have the option to withdraw and refile the claim.

Rep. P. Smith Asks about the fee.

Klein Responds that this does not address how fees would be handled.

092 Don Schellenberg Oregon Farm Bureau. Submits a rough draft of the -6 amendments **(EXHIBIT C)** and the -6 amendments **(EXHIBIT D)**. Points to the last page of **(EXHIBIT C)** which has a listing of the ORS chapters effected. Notes that the -6 amendments are based on HB 3120-1 amendments. Points out changes on Page 2, line 24 through Page 3, line 5 **(EXHIBIT D)** which add exemptions to M37 claims.

Chair Garrard Asks about his use of the term “inadvertent” M37 claim.

130 Schellenberg Clarifies his point. Discusses Page 5, lines 8-11 on transferability. Moves to Page 13 noting the pages inbetween stay the same.

Rep. Greenlick Verifies he means the same as the -1 amendments.

Schellenberg Confirms this. Notes their deletion of the agencies ability to waive statute.

Chair Garrard Asks why they made this change.

	Schellenberg	States their interest in preserving the separation of powers.
160	Rep. Anderson	Asks what the deletion was.
	Schellenberg	Replies they have deleted a section from the -1 amendments related to the separation of powers issues. Refers to new language proposed on Page 17, which was HB 3349. Notes a mistake in drafting in Section 12 and asks that it be deleted.
	Rep. Greenlick	Verifies his request.
	Schellenberg	Explains his request.
	Rep. Anderson	Verifies the deletion.
200	Schellenberg	Confirms and discusses Sections 14 – 16 on Pages 18 -19 related to limiting water use.
	Chair Garrard	Asks if the city is the only governing body he is concerned with in Section 16.
	Schellenberg	Responds that city approvals are dealt with in Section 16 and county approvals are dealt with in Section 14. Explains that this section was a part of SB 1037.
	Rep. Anderson	Suggests that areas limited in ground water currently would have also been limited in ground water in the past.
	Schellenberg	Replies maybe not.
	Rep. Anderson	Expresses concern that those who have had their water rights retracted and now their prohibited them from building.
	Schellenberg	Replies that he would not be concerned about single family dwellings but are concerned about housing developments.
250	Chair Garrard	Asks if this situation might create another M37 claim.
	Schellenberg	Responds he is uncertain.

	Rep. Greenlick	Asks if there are sections of importance to Schellenberg that he did not explicitly talk about.
268	Schellenberg	Comments on their process.
	Rep. Greenlick	Restates his question, asking if there are parts of the -1 amendments he feels are important to keep in the final amendments.
	Shellenberg	Lists claims and judicial review sections as key areas.
	Rep. Greenlick	Comments on information in the -1 amendments that may not be covered in the -3 amendments.
	Schellenberg	Responds he has not studied the distinctions between the -1 and -3 amendments to comment.
310	Chair Garrard	Directs the committee back to a discussion of the -3 amendments. Verifies that the committee has agreed to eliminate Section 1 of the -3s.
	Rep. Nolan	Comments they put Section 1 at the end of the discussion.
	Rep. Greenlick	Reviews the question before the committee.
330	Chair Garrard	Asks Glenn Klein to address Section 2.
	Glenn Klein	Harrang Long. Explains that Section 2 is technical.
	Chair Garrard	Asks if Section 2 should be included in the new bill.
354	Klein	Responds affirmatively.
	Rep. Greenlick	Asks where the rest of the M37 language is currently located.
	Klein	Responds they are also in ORS 197.
363	Chair Garrard	Asks Klein to address Section 3.

Klein Explains that Section 3 will revise definitions within BM37.

375 Rep. Anderson Asks if Section 3 (1)(a) was included.

Klein Replies that they were all included and comments on (c) and (d).

Rep. Anderson Verifies that marriage lines were included in the definition of “family owner”.

Klein Confirms this and notes it was addressed in M37.

Rep. Greenlick Asks how the definition of “family member” in M37 and the new amendments differ.

Klein Responds it is not intended to be substantively different but that (c) and (d) clarify the language of M37.

TAPE 126, B

005 Rep. Greenlick Asks if Section 3(1)(a) and (b) are identical to the text of M37.

Klein Confirms this.

Rep. Greenlick Verifies that Section 3(1)(c) and (d) are explications of the text of M37.

Klein Confirms this. Adds that there have been further adjustments to the amendments and mentions one addition to this section.

015 Chair Garrard Asks when the newer version will be available to the committee.

Klein Replies Monday June 13, 2005.

031 Rep. Ackerman Points out that the definition of family member does not include family trusts and suggests inserting language in this section to address that point.

Chair Garrard Comments on the ambiguity around family trusts. Asks if it is the intent of the committee to allow family trusts in this definition.

	Rep. Nolan	Expresses interest in seeing the impact of the addition of Sections 3(1) (c) and (d) and asks for an example of ownership structures that would be allowed now that would not have been under the original language.
056	Klein	Responds that it is outside of his area of expertise but offers to return with the information.
	Rep. Nolan	Responds she cannot respond to the Chair's question without knowing if it will expand the group eligible for M37 claims.
	Chair Garrard	Comments on the distinction between "clarifying" or "changing" the measure.
075	Rep. Greenlick	Asks why a business wholly owned by the owner is included under the definition of family member.
	Klein	Elaborates on the definition of a wholly owned business.
	Rep. Greenlick	Asks why it is included as a family member.
	Klein	Explains that M37 currently defines family member to include "legal entity owner by any one or combination of these family members or the owner of the property" and explains their intent to clarify.
	Rep. Greenlick	Comments that the original language seems more clear.
097	Shetterly	Starts to explain.
	Chair Garrard	Discusses creation of an LLC.
	Rep. Greenlick	Expresses dissatisfaction with the new language.
	Klein	Reports that they will postpone this discussion and come back to it.
116	Rep. P. Smith	Suggests putting language on LLC and family trust in Section 3 1(b).
	Rep. Greenlick	Asks what is ambiguous in the original language of M37 on this section.

	Rep. P. Smith	Comments on the problem of proving ownership.
	Rep. Ackerman	Comments.
	Rep. Greenlick	Comments.
	Rep. P. Smith	Asks if the problem with this issue is date of ownership.
134	Rep. Sumner	Reads the original text of M37 and notes its inclusion of “interest therein”.
	Rep. Ackerman	Disagrees with his interpretation.
145	Rep. Anderson	Asks why there are different definitions within different sections and suggests consolidating the definitions.
	Klein	Explains the reasoning behind including new definitions.
162	Rep. Ackerman	Submits that if they believe that the trust entity is implicit within the definition of a business entity or a business entity owned by the owner, why not set forth what they mean.
	Rep. Nolan	Notes this is why she asked for the examples and elaborates.
	Klein	Replies he can back to the committee with their information.
181	Rep. Ackerman	Asks why the word “notarized” is included in Section 3(3).
	Shetterly	Relays that issue is currently being revised. Makes comments on variations of land sale contracts.
	Rep. Ackerman	Agrees with Shetterly and suggests modifying the language to say land sale contract that has been recorded pursuant to ORS 93.640.
218	Klein	Points out a concern with that suggestion and gives his own approach.
	Rep. Ackerman	Notes an issue he will bring up later.

243	Rep. Ackerman	Asks about the definition of “property” on Page 5, Section 3(4).
	Klein	Explains the reason for removal of “or interest therein” in this section.
	Rep. Ackerman	Wonders why “interest therein” was omitted in the definition but appears other places.
	Chair Garrard	Asks the committee if they want to have “any interest therein” added.
	Shetterly	Explains that “interest therein” expands the definition significantly.
	Klein	Adds this is connected to another section on claims process requiring all owners to sign on a claim.
300	Chair Garrard	Comments on the possible interpretations of “interest” therein.
	Shetterly	Explains the difference.
	Rep. Nolan	Clarifies the distinction.
	Chair Garrard	Asks if Rep. Ackerman agrees with the definition.
	Rep. Ackerman	Agrees with the consensus.
323	Rep. Ackerman	Asks if Section 3 (6)(a) on Page 5 – 6 is consistent with M37.
	Klein	Explains the distinction between the language in the draft and M37.
382	Rep. Nolan	Gives a hypothetical example about trying multiple options until they receive an approved use.
	Klein	Explains that that would not be allowed.

TAPE 127, B

010	Rep. Nolan	Verifies that some onus is on the government to help find an approved use.
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	Shetterly	Notes this allows issues to be resolved in a single claim.
	Rep. Ackerman	Suggests this is an extension of M37 by allowing an alternative use.
024	Shetterly	Explains that it is not an expansion but a clarification of what they are currently doing.
	Rep. Ackerman	Comments it seems to be an expansion.
039	Klein	Explains their intent to clarify.
	Rep. Ackerman	Elaborates on his interpretation.
	Klein	Clarifies what would be allowed under the provision.
	Rep. Greenlick	Notes the distinction between the list under “land use regulation” in Section 3(2) as compared with the original language in M37 and asks if it is an explication of the original.
	Klein	Responds it would depend on how the courts would interpret the existing definition.
	Rep. Greenlick	Replies that they are creating statute, so it would not matter.
	Shetterly	Responds that whether it is an expansion or not would be dependant on the courts’ interpretation.
	Klein	Explains his interpretation of the existing language and gives reasons for inclusion of other subsections.
	Rep. Greenlick	Expresses concern with knowing which of the subsections are not straightforward interpretations.
107	Klein	Offers to bring a comparison into the committee at the next meeting.
112	Chair Garrard	Notes intention to finish going through the -3 amendments today.
130	Dave Hunnicutt	

Oregonians in Action. Responds to Rep. Greenlick's last question and comments that the definition of land use regulation in the new draft is a significant narrowing of the original definition.

	Klein	Mentions information to be brought to next meeting.
150	Chair Garrard	Asks for direction on whether or not to continue going through the draft.
153	Klein	Suggests the committee to go through Sections 5 and 6 (Page 8 – 12) on claims process and judicial review and commends them for adoption within the new bill.
182	Rep. Greenlick	Asks if Section 5(4) deals with the question of filing claims at local and state levels.
	Klein	Responds that the property owner must file with both levels and gives reasons why.
	Rep. Greenlick	Wonders why claimants should have to file with both.
	Shetterly	Poses the policy reasoning from either side and supports filing with both.
	Rep. Greenlick	Notes this issue as one to address.
224	Shetterly	Explains further reasoning for separating the claims.
	Rep. Ackerman	Asks about filing claims with local and state entities.
239	Hunnicut	Asks for clarification of the question.
	Rep. Ackerman	Restates his question, asking if one were supposed to file both with the state and county but only filed with the county and received a waiver if it would apply.
	Hunnicut	Asks under the existing measure or the proposal.
	Rep. Ackerman	Replies under either.

	Hunnicutt	Explains what would happen in this situation.
280	Rep. Greenlick	Reviews the issue of taking claims to both state and county levels.
	Chair Garrard	Notes assumption that the panel is in agreement.
	Shetterly	Comments that this is not a controversial issue.
	Hunnicutt	Explains reasoning for filing at both levels.
	Chair Garrard	Asks if an option to simplify the process was considered.
	Hunnicutt	Gives explanation against allowing local regulations to be waived by the state and vice versa.
336	Chair Garrard	Asks if the people are better protected this way.
	Shetterly	Responds that property owners are better protected by applying at both levels.
344	Rep. Ackerman	Suggests that a filing at the county level would also register as being filed with the state. Gives an example of this type of filing.
	Rep. Greenlick	Agrees with this suggestion and elaborates.
	Shetterly	Responds that they discussed these suggestions and elaborates on possible problems with this method. Asserts the proposed dual filing process is simpler.
	Rep. Sumner	Comments to the committee that this testimony is consistent with information from the beginning.

TAPE 128, A

002	Rep. Greenlick	Disagrees with the proposed process.
021	Klein	Elaborates on other difficulties with a single filing system. Notes their decision to have claimants outside the UGB file in both places.

	Rep. Greenlick	Asks about those inside UGBs.
	Klein	Responds that those inside the UGB will not likely have to file with the state and explains why.
048	Chair Garrard	Asks about the timeline of 180 days.
	Shetterly	Comments on their decision about the timeline.
	Klein	Explains how the timeline would function.
068	Rep. P. Smith	Asks if the 180 days starts when the county deems a claim complete.
	Klein	Believes it is the same as the existing land use process.
	Hunnicut	Explains the timeline and when the claim would be deemed complete. References Section 5(7).
086	Rep. P. Smith	Asks for the location of a provision.
	Hunnicut	Reports it is (a) on Page 10.
094	Rep. P. Smith	Describes a land owner who cannot get a complete application and wonders if their claim has started or not.
	Hunnicut	Responds it will depend and elaborates.
	Chair Garrard	Asks if uniform application of this section across the state would eliminate the capability of counties to use delay tactics.
130	Hunnicut	Comments that the section will specify what is needed to file a complete claim.
	Chair Garrard	Asks if there is language to add that make it more explicit.
	Hunnicut	Replies he does not think they need to.
	Klein	

		Agrees. Reviews the timeline process when a claim filed is deemed incomplete.
	Rep. Greenlick	Gives a hypothetical example of an incomplete claim and asks if they can wait until the timeline has passed and take their claim to court.
162	Klein	Replies that if you fail to submit the fee, your application is not complete.
	Rep. Greenlick	Verifies that if you refuse to pay the fee, you cannot take the claim to court after 180 days.
	Klein	Confirms this. Adds an example of when the government must make a decision. Notes in the judicial review provisions, the court proceeding is based on the record submitted to the government.
184	Rep. P. Smith	Asks about appraisals and describes the requirements of one county to require two certified appraisals for complete claims.
	Klein	Replies that this draft would not require claimants to submit appraisals.
	Hunnicutt	References the criteria contained on page 9 Section 5(5)(a) - (i) and submits it will resolve many of the issues discussed.
214	Chair Garrard	Expresses appreciation of the panel's patience.
	Rep. Greenlick	Suggests problems with county assessing damages without appraisals and the lack of record for the courts.
	Klein	Gives an exception of when the court can make a decision that is not based on the record.
261	Hunnicutt	References Section 5 (5)(h) which requires evidence of reduction of fair market value of the property.
	Rep. Greenlick	Comments on an extreme case.
	Hunnicutt	Reports that the process is designed to prohibit misuse from either side.

	Rep. P. Smith	Gives suggestions to add language related to the 30 day notice and about listing regulations.
306	Klein	Responds that they have tried to address the issue of how regulations are listed in Section 5(5)(f) on Page 9 and explains.
	Shetterly	Adds that DLCD is already operating this way.
	Rep. P. Smith	References previous speakers who discussed their denied claims due to omitting a regulation from the list on their claim.
	Shetterly	Replies that this was not with the state.
	Klein	Explains Section 6, Page 10, which gives criteria for giving notice.
365	Klein	Explains Section 7, Pages 12-13, which would allow a land use application and M37 claim to file jointly.
	Rep. Ackerman	Verifies that this would include a different appeal process to LUBA.
	Klein	Confirms this and explains the judicial review in this instance.
	Rep. Ackerman	Comments that this commits the property owner to a waiver rather than compensation.
	Shetterly	Reports that this presumes that the owner wants a waiver.
405	Rep. P. Smith	Asks why this section is included.
	Hunnicutt	Explains the timeline and reasons why this would be beneficial to the property owner.

TAPE 129, A

026	Rep. P. Smith	Asks if claimants can't do that now.
030	Klein	Explains that without this provision the land use application would not be valid until after the M37 claim approved the specified use.

045	Rep. Greenlick	Makes a comment about the process.
	Shetterly	Clarifies the function of a M37 claim in this case.
	Rep. Greenlick	Gives a hypothetical example and asks about which codes would apply.
	Klein	Responds it will be a combination based on which types of regulations the government has the authority to waive and gives examples.
	Chair Garrard	Notes they will start with Section 8 at the next meeting.
115	Klein	Suggests discussing Sections 8 - 11 together.
	Rep. Sumner	References an article in the Statesman Journal on the 1st M37 claim approved in Marion County. Wants assurance that legislative action will not inadvertently harm someone who has already received a claim.
136	Chair Garrard	Makes announcements on future meetings.
	Litke	Makes announcements.
	Chair Garrard	Adjourns the meeting at 3:55 p.m.

EXHIBIT SUMMARY

- A. **HB 3120, proposed amendments to HB 3120 (replace -3 amendments), Staff, 25**
- B. **HB 3120, summary of proposed amendment to HB 3120, staff, 4 pp**
- C. **HB 3120, draft form of -6 amendments, Don Schellenberg, 6 pp**
- D. **HB 3120, -6 amendments, Don Schellenberg, 20 pp**