

HOUSE COMMITTEE ON LAND USE

June 13, 2005 Hearing Room 50

1:15 P.M. Tapes 130 - 131

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 130, A

002 Chair Garrard Calls the meeting to order at 1:30 p.m. and opens a work session on HB 3120. Calls Dave Hunnicutt, Glenn Klein, Lane Shetterly and Bob Stacey to sit before the committee.

HB 3120 – WORK SESSION

Chair Garrard Announces the committee will discuss Section 4 and states intention to adopt the -1 amendments (**EXHIBIT A**).

014 Rep. Anderson **MOTION: Moves to ADOPT HB 3120-1 amendments dated 5/31/05.**

015 Rep. P. Smith Notes reluctance to accept amendments.

Rep. Nolan Gives her support of the -1 amendments to be used as a framework.

Rep. Ackerman Asks what motion is on the table.

Chair Garrard Reports the motion is to adopt the -1 amendments.

Rep. Greenlick Verifies the committee is replacing the contents of HB 3120 with the -1 amendments.

Chair Garrard Confirms this.

Rep. Ackerman Asks about a different set of amendments being used as the framework in a previous meeting.

Chair Garrard Confirms this and explains the reasoning for adopting the -1 amendments.

Rep. Nolan Notes there is a question as to whether or not the -1 amendments delete the entire body of HB 3120.

051 Lane Shetterly Director, Department of Land Conservation and Development (DLCD). Reports that the -1 amendments amend HB 3120, they do not “gut” them.

Rep. Greenlick Asks about the intention of the committee.

VOTE: 7-0-0

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

Chair Garrard The motion CARRIES.

Sam Litke Committee Administrator. Reports that the committee left off on Page 13 (**EXHIBIT B**) Section 8 on judicial review.

Rep. Ackerman Makes comments on previously raised concerns.

Chair Garrard Discusses the chair's intention for dealing with amendments.

Rep. Ackerman Notes issues identified in the draft and asks how those will be addressed.

Chair Garrard Directs the committee to have individual amendments drafted.

Rep. Ackerman Asks if they should get the amendments individually or as a group.

Chair Garrard Gives his preference for the group process.

119 Litke Reviews questions raised in previous work sessions on ownership and family trusts.

Rep. Ackerman Gives his concern for submitting amendments.

Litke Adds the date in Section 1(5)(a) as another area of concern raised by the committee.

139 Rep. Greenlick Clarifies the issue as having two sets of provisions for M37 claims.

Chair Garrard Agrees with Rep. Greenlick.

145 Bruce Miller Assistant staff counsel, office of the state court administrator. Refers to the June 8, 2005 proposed amendments to HB 3120 which replace the -3 amendments (**EXHIBIT B**). Discusses Section 8(1) which

states that the circuit court has exclusive jurisdiction and notes exception in Section 7(3)(b).

- Rep. Greenlick Asks if “exclusive jurisdiction” means “final jurisdiction”.
- Miller Responds negatively and explains why.
- Rep. Greenlick Asks what exclusive means in this context.
- Miller Defers to Klein.
- Glenn Klein Harrang Long. Explains what exclusive jurisdiction means in this case and gives an example.
- Rep. Greenlick Asks if it is a term of art in statute.
- Klein Responds affirmatively.
- Rep. Greenlick Verifies the meaning of the term.
- Klein Clarifies the meaning.
- Chair Garrard Asks if Klein agrees with Miller’s suggestion.
- Klein Responds affirmatively and notes agreement with other suggestions of Miller’s as well.
- Miller Wants to have concerns on the record.
- Rep. Ackerman Asks for clarification on Section 8 (1).
- Miller Adds his confusion on this point as well and defers to Klein.
- 234 Klein Explains the origin of the concern and gives alternative ways to draft this point.
- Rep. Ackerman Asks who hears the cases.

	Klein	Responds in the case of a city, it would be a municipal court.
	Rep. Ackerman	Asks why they would not go to circuit court.
	Klein	Responds that this was a concession of the work group.
	Rep. Ackerman	Notes municipal courts have limited geographic grounds and asks what happens if someone has a claim with the county.
	Klein	Responds what the situation would be in that case.
	Rep. Ackerman	Asks why they don't just state that no claim for relief is allowed for third parties challenging that would be subject to the waiver process as initiated by another process rather than putting it into a court of limited jurisdiction.
	Klein	Explains the reasoning that cities wanted to preserve home rule authority and notes ambiguities with other possible wording.
	Rep. Ackerman	Asks about the jurisdictional limits of Eugene municipal court in relation to Lane County circuit court.
	Klein	Responds he can provide something in writing.
306	Rep. Ackerman	Asks if the municipal court has injunctive powers.
	Klein	Adds that he will address that in the written memo as well.
310	Rep. Greenlick	States that this is a policy decision and speculates on other policy decisions throughout the draft.
	Klein	Remarks on the complexity of the legislation and many parties involved. Acknowledges the confusion and expresses willingness to go through the draft in greater detail.
	Rep. Greenlick	Asks that areas addressing policy be pointed out.
	Shetterly	Comments on policy issues within the draft. Gives the department's position on this issue.

400	Rep. Greenlick	Verifies that the common law claim would be taken to circuit court.
	Shetterly	Confirms this.
	Rep. Greenlick	Verifies the provision would not exclude the common law.
	Shetterly	Confirms this.

TAPE 131, A

002	Rep. Nolan	Suggests taking the language out and explains why.
018	Shetterly	Responds he does not agree with a point in her testimony.
	Rep. Nolan	Comments she would like to review Klein's memo.
032	Klein	Clarifies the policy question before the committee on the authority of local governments.
	Chair Garrard	Comments on authority of local governments.
058	Miller	References Section 8 (7) and (8) and suggests they may be inconsistent.
	Rep. Ackerman	Asks about the rationale in Section 8 (2).
	Miller	Responds that he was not involved in the drafting of this document and defers to the work group.
093	Klein	Explains that 8 (2) will allow a claimant to file an appeal, and will also allow others who participated in the government's proceedings and are "adversely affected" may also participate in the judicial review. Gives an example of how the provision will work.
	Rep. Ackerman	Notes that for the process of intervention under ORCP 33 there are two options and no choice is made in Section 8(3). Asks which is preferred.
	Klein	

Responds the work group envisioned “intervention of right” rather than “permissive”. Agrees that under this drafting it is unclear.

138 Rep. Anderson Asks if the process of judicial review is not already covered in statute.

Klein Responds that they would eventually be covered when the courts interpreted the statutes to determine what process would apply.

Chair Garrard Asks about the committee’s opinion on Section 8.

Rep. Greenlick Notes desire to remove the second sentence of Section 8 (1).

Chair Garrard Agrees.

Rep. Ackerman Discusses reasoning to remove the section.

Chair Garrard Clarifies they are referring to the 2nd sentence in Section 8 beginning with “notwithstanding” and ending in “entity”. Asks if there is any objection to removing this sentence and seeing none, removes the sentence.

Rep. Greenlick Asks about different treatment on the question of compensation.

191 Klein Comments that there was an error and that “claim for compensation” should read “claim”.

Chair Garrard Asks if there is objection to removing Section 8 (8).

Rep. Ackerman Verifies with Klein that Section 8 (8) deals with the language of scope of review for a writ of review.

Klein Confirms this and notes an unintended overlap between Section 8 (7) and (8). Recommends leaving (8) in and explains reasoning.

Rep. Ackerman Explains his concern.

Klein Responds they will address this clarification.

225 Rep. Ackerman Asks that clarification is made to Section 8(3) as well.

	Miller	Raises concern about standard review on Section 9 (3) on Page 15.
	Rep. Greenlick	Comments on excessive cross referencing.
	Klein	Explains that the reason for cross referencing is to be as clear as possible with as few words as possible.
330	Rep. Greenlick	Suggests using the “applicable criteria contained in this measure”.
	Klein	Explains resistance to the terminology “applicable criteria” and gives examples of possible problems.
	Rep. Greenlick	Acknowledges that and points out the use of “applicable criteria” on Page 12.
	Klein	Explains why the use of the term of “applicable criteria” is applicable in this case.
	Rep. Greenlick	Expresses concern that the criteria listed is not sufficient.
	Klein	Believes they have a comprehensive list and notes parties involved in the drafting.
360	Rep. Anderson	Suggests the committee move on.
	Rep. Greenlick	Elaborates on his concern on this section.
377	Shetterly	Reviews criteria in Section 6(7) as the key elements of a M37 claim.

TAPE 130, B

005	Rep. Ackerman	Points to Page 13 and asks if there was a reason to take out the criteria on the writ of review section that allows a court to make a finding as to whether the order of the administrative agency is or is not supported by substantial evidence in the record.
	Klein	References Page 15, (3) and reports it was substituted for the provision Rep. Ackerman referred to. Gives the reason why it was substituted.

025	Rep. Greenlick	Asks about Section 9 (3) which makes reference to Section 6 (7) which references Section 5 (5) and (6) and asks if that means that if the claims process is flawed by a violation of section 1 – 4 a circuit court could not deny the claim.
	Klein	Responds negatively. Clarifies that Page 15 (3) only references applicable criteria and (2) deals with applicable procedures.
	Rep. Greenlick	Asks about what will apply under the claims process and applicable procedures in the sections described above.
	Klein	Gives the intention of the provisions and lists the applicable sections which may be grounds for a court reversal.
	Rep. Greenlick	Verifies that the fee would not fall into this category.
	Klein	Agrees, noting it is a requirement of the claimant. Elaborates on the definition of “applicable procedures”.
068	Miller	Suggests clarification of the terms used in Section 10(1)(a), (b), and (c).
	Rep. Ackerman	Asks why they use the term “order” rather than “judgment” in Section 10 (1)(c).
	Miller	Comments on (c) and further defers to Klein. Gives his interpretation of Section 10 (1)(a), (b) and (c).
100	Miller	Suggests clarifying Section 10 (1) (c) to specify if the order is appealable or not.
	Rep. Anderson	Verifies that Miller wanted to clarify something in (3).
	Miller	Responds negatively and points out a problem with courts awarding compensation without an appraisal and suggests wording to clarify this issue.
	Rep. Anderson	Asks Klein if there is justification for the state to ask for a fee for the investigation of a M37 claim rather than after the fact.

143	Klein	Describes this question as a policy issue and defers to Art Schlack and Linda Ludwig to discuss at another time.
154	Klein	Responds to Rep. Greenlick's earlier question on Section 10 on the terms "order" versus "judgment".
	Chair Garrard	Asks Miller if he is satisfied with Section 11.
	Miller	Responds affirmatively.
202	Klein	Discusses Section 12 which deals with use of the waiver and explains constraints. Notes the intention of Section 12 (2) is to avoid "gotchas".
	Rep. Anderson	Asks why only one additional claim would be allowed if more than one mistake is made by the local government.
	Klein	Responds with their assumption that all the criteria would be identified.
246	Rep. Ackerman	Asks when the additional claim is filed and what timeline will be applicable.
	Klein	Explains why there is not an explicit deadline.
266	Klein	Discusses Section 13 on the transferability of waivers. Reviews the provisions of this section.
	Rep. Greenlick	Suggests a different interpretation and asks for an explanation.
	Klein	Clarifies that the later of two timelines will apply. Gives an example.
	Rep. Greenlick	Verifies that the waiver would not expire in a given situation.
	Klein	Confirms this if the person who received the waiver still owns the property and elaborates.
317	Rep. Greenlick	Verifies that essentially the waiver is permanent for the person who attained it, unless property is transferred in which case it expires in 2 years.

	Klein	Confirms this.
	Rep. Anderson	Asks if this can be clarified.
	Klein	Agrees to clarify this point in Legislative Counsel.
	Rep. Nolan	Believes that the explanation and draft language are consistent but raises concern about uncertainty with adjacent properties.
344	Chair Garrard	Suggests that local government make the decision.
	Rep. Nolan	Responds that local government wouldn't have a say in this issue. Reiterates her concern about extensive uncertainty for property owners.
	Chair Garrard	Adds that a property owner would still have to go through the local process to have a specific facility sited.
	Shetterly	Addresses Rep. Nolan's concern and describes it as a function of M37 not addressed in this bill.
	Chair Garrard	Asks if in this case adjacent property owners would have M37 claims.
	Shetterly	Responds negatively because the impact on their property is not by a regulation but by a use exercised by neighbors.

TAPE 131, B

007	Rep. Greenlick	Suggests using the wording "the sooner of" rather than "the later of" in regards to transferability.
	Shetterly	Explains the intention behind this policy decision and notes that by limiting the term there is pressure to develop.
027	Rep. Anderson	Comments on uncertainty for banks loaning on property and asks if a clarification can be made.
	Klein	Responds that Section 13 (3) attempts to address this point. Suggests getting input from the lending institutions.

	Chair Garrard	Directs staff to do this.
	Rep. Ackerman	Asks about what “vested” refers to on Section 13 (2) (b).
053	Klein	Respond that it is a term of art and notes usage of “vested” from previous court cases.
	Rep. Ackerman	Asks why they do not specify that the waiver is vested after a final decision by the administrative body or the court.
	Klein	Responds that that is not the rule and defers this issue to later discussions.
065	Rep. Ackerman	Speaks supportively of recording waivers but wonders about the formulation of standardized forms.
	Klein	Responds that (4) has been moved in the newer draft of the bill and attempts to use more traditional language.
	Rep. Ackerman	Suggests a simpler document.
	Klein	Remarks that other have suggested this point and they will address this concern.
	Chair Garrard	Adjourns the meeting at 2:58 p.m.

EXHIBIT SUMMARY

A. HB 3120, -1 amendments, staff, 60 pp

B. HB 3120, proposed amendments to HB 3120 to replace -3 amendments, staff, 25 pp