

## SENATE COMMITTEE ON ENVIRONMENT & LAND USE

February 09, 2005  
3:00 P.M.

Hearing Room B  
Tapes 17 - 18

**MEMBERS PRESENT:** Sen. Charlie Ringo, Chair  
Sen. Jason Atkinson, Vice-Chair  
Sen. Roger Beyer

**MEMBER EXCUSED:** Sen. Ginny Burdick  
Sen. Frank Shields

**MEMBERS VISITING:** Rep. Jackie Dingfelder

**STAFF PRESENT:** Matt Shields, Committee Administrator  
Katie Lowry, Committee Assistant

**MEASURES/ISSUES HEARD:**  
SB 406 – Public Hearing  
Introduction of Committee Measures – Work Session

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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.

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TAPE/#	Speaker	Comments
<b>TAPE 17, A</b>		
005	Chair Ringo	Calls meeting to order at 3:06 pm. Makes opening remarks regarding Hood River meeting on Friday, 2/11/2005. Introduces Chris Crean, Counsel. Makes opening remarks regarding SB 406. Opens public hearing on SB 406.
<b><u>SB 406 – PUBLIC HEARING</u></b>		
025	Sen. Kurt Schrader	Submits section by section summary of SB 406 ( <b>EXHIBIT A</b> ). Gives background information on Measure 37. States support for SB 406. Urges committee to look at SB 406 as a template for getting started.
080	Sen. Schrader	Explains SB 460 and refers to ( <b>EXHIBIT A</b> ).
115	Chair Ringo	Asks if witness envisions a provision for waivers.
116	Sen. Schrader	Replies yes and explains.
120	Chair Ringo	Verifies that this bill contains a mechanism for allowing those waivers.
122	Sen. Schrader	Confirms this. Explains specifications of what SB 406 would accomplish.
150	Sen. Schrader	Explains funding mechanism for compensation provided for in SB 406.
151	Chair Ringo	Asks if there is some analysis for how much money would be raised.
155	Sen. Schrader	Explains.
160	Chair Ringo	Remarks that he would like to know more about the revenue source.
165	Sen. Schrader	Refers to sections 23-27 ( <b>EXHIBIT A, Page 2</b> ). Refers to section 29 subsection 3 of SB 406. (SB 406, Page 17).
190	Chair Ringo	Asks if SB 406 has Measure 5 implications.

191	Sen. Schrader	Replies yes and discusses the implications.
195	Chair Ringo	Asks what the witness has that he could show the committee about the financial analysis.
196	Sen. Schrader	Answers question. Hopes committee will use SB 406 as a template and asks to be a part of the process. Encourages committee to involve legislators.
220	Sen. Atkinson	Refers to section 12 ( <b>EXHIBIT A, Page 1</b> ). Asks about language.
222	Sen. Schrader	Explains language.
230	Sen. Atkinson	Refers to SB 432. Believes Land Use Board of Appeals (LUBA) should be a point of discussion for a future work group.
240	Sen. Schrader	Points out that this legislation would be for all Oregonians and therefore needs to be balanced.
242	Sen. Atkinson	Asks if SB 406 has compensation for landowners whose property has been devalued due to regulations.
245	Sen. Schrader	Confirms this.
250	Sen. Beyer	Notes that this is a constitutional bill and points out that a 3/5 majority is necessary.
253	Sen. Schrader	Remarks that the intent of SB 406 is to open up a discussion.
255	Sen. Beyer	Remarks that he has a lot of questions, but wants to hear what people have to say.
260	Sen. Atkinson	Asks about 3/5 majority requirement.
261	Sen. Schrader	Stresses that this is a discussion item.
265	Chair Ringo	Comments that the committee will not move SB 406 today, but would like to continue discussion.
270	Sen. Beyer	Wants to hear what people have to say.
275	Chair Ringo	Asks if there is a financial analysis for how much money there is in the short run for the existing claims under Measure 37.
285	Sen. Schrader	Responds that the claims would be categorized and the oldest claims would be addressed first based on dollars available.
305	Chair Ringo	Wonders what incentive there would be for the government to waive claims as opposed to giving compensation.
310	Sen. Schrader	Explains and gives examples.
325	Chair Ringo	Verifies that if there was no money for compensation, the government would have to waive after a year even if they preferred not to waive.
326	Sen. Schrader	Confirms this.
330	Chair Ringo	Asks about 25 percent threshold.
333	Sen. Schrader	Talks about value.
345	Chair Ringo	Asks if work group did any analysis on what the result would be in terms of on the ground development.
350	Sen. Schrader	Explains that he doesn't know how many people would want to waive and how many would want compensation.
355	Chair Ringo	Asks about analysis on the appraisal process.
360	Sen. Schrader	Talks about fair market evaluation process. Brings up question of farm tax deferral.
379	Chair Ringo	Asks how SB 406 addresses farm tax deferral.
380	Sen. Schrader	States that SB 406 does not address it.
382	Sen. Shields	Asks about farmers.
400	Sen. Schrader	Explains different perspectives.
420	Rep. Dingfelder	Refers to section 25 ( <b>EXHIBIT A, Page 2</b> ). Asks how to address the issue of compensation when someone has already been receiving farm tax deferrals.

010	Sen. Schrader	Explains.
020	Sen. Beyer	Asks if this is a reprint of the bill worked on in the 2001 session.
025	Sen. Schrader	Explains that it is similar to the -16 amendments done May 29, 2001 with some changes.
026	Sen. Beyer	Remarks that he does not see anywhere in SB 406 where Measure 37 is repealed.
027	Sen. Schrader	Verifies that is correct.
030	Chair Ringo	Remarks that the intent of it is to essentially replace Measure 37 with something that is functional.
031	Sen. Schrader	Clarifies the goal of SB 406.
035	Sen. Beyer	Talks about constitution. States that Measure 37 is a statute. Wants to know if the intention is to repeal Measure 37.
045	Sen. Schrader	Talks about goal of SB 406.
060	Sen. Beyer	Remarks that the proposed funding mechanism would need to go to the voters.
065	Chair Ringo	Thanks Sen. Schrader and explains that he would like to get more of the financial analysis and supporting information. Asks Sen. Schrader to make it available to committee staff.
080	Roger Kaye	Friends of Marion County. Submits a letter to Senate President Peter Courtney regarding Measure 37 issues and requests to address these issues <b>(EXHIBIT B)</b> . Explains that the ability for neighbors to comment is lacking in Measure 37. Explains that these are the six specific requests <b>(EXHIBIT B, Page 2)</b> that Friends of Marion County would like to see addressed.
130	Chair Ringo	Refers to <b>(EXHIBIT B, Page 2, and Number 3)</b> . Asks question.
135	Kaye	Clarifies that some of these concerns were delivered to him by someone else, but assumes that because neighbors to Measure 37 claims may be adversely impacted, they should have the right to file some sort of equivalent claim based on diminution of property value.
140	Bob Stacey	1000 Friends of Oregon. Submits and highlights written testimony <b>(EXHIBIT C)</b> addressing SB 406.
220	Chair Ringo	Asks if other states that have a compensation mechanism have a threshold requirement.
225	Stacey	Believes that the states contain a threshold and that there is also flexibility in that it triggers a judicial review opportunity.
230	Chair Ringo	Verifies that there would be a threshold before getting to that judicial review.
231	Stacey	Believes this is true. Continues highlighting testimony <b>(EXHIBIT C, Page 2)</b> .
305	Chair Ringo	Clarifies that there would be a lot of details that would be added.
310	Stacey	Confirms this and explains that the legislature put together a measure that will work on the ground.
315	Chair Ringo	Asks who has the expertise to put that together.
317	Stacey	Suggests names of people to help.
335	Chair Ringo	Asks if witness knows of financial analysis that has been done.
340	Stacey	Explains that is a question for someone else. Discusses details.
355	Stacey	Points out that there are issues that are addresses in Measure 37 and are not addressed in SB 406. Gives example <b>(EXHIBIT C, Page 2, and Number 6)</b> .
378	Chair Ringo	Asks question from Kaye's testimony regarding loss of value of neighbor's property Asks witness to describe.
385	Stacey	Explains that SB 406 substitute's payment for the waiver that would cause that damage.

405	Sen. Atkinson	Addresses those who would want to be part of a work group. Expresses concerns that those who would be a part of a work group are all opposed to Measure 37 and therefore the outcome will be skewed. Asks if there is any other state in the union that stops people from building on their land just because it is zoned farm land.
<b>TAPE 17, B</b>		
010	Stacey	Discusses Washington state. Gives example in Washington County.
025	Sen. Atkinson	Remarks that the rule doesn't work in southern Oregon and eastern Oregon. Explains frustration of counties who passed Measure 37.
030	Stacey	Recognizes frustration.
043	Sen. Atkinson	Explains that both of the farm bureaus in his district broke away and supported Measure 37. Expresses concern about issue of payment, not waivers. Hopes that some supporters of Measure 37 will be a part of the task force.
060	Chair Ringo	Wants to address frustration. Explains that if there will be any solution, it will have to be broad based.
070	Sen. Atkinson	Believes that people knew what they were doing when they voted for Measure 37.
075	Chair Ringo	Believes that it is the legislature's job to make it work.
076	Sen. Beyer	States that every county in the state except Benton County supported Measure 37. Explains that Benton County was the only county in the state where Measure 37 was defeated.
090	Stacey	Recognizes that if only people who campaigned against Measure 37 are a part of the work group, then it is not a work group. Wants to work to implement the will of the voters and explains that it is the details that need to be talked about.
100	Harlan Levy	Senior Staff Attorney, Oregon Association of Realtors (OAR). Explains that OAR did not take a position on Measure 37 but explains that they will be affected by it. Discusses points of opposition to SB 406: <ul style="list-style-type: none"> <li>• New tax on real property</li> <li>• Believes that SB 406 does not provide land use reform</li> <li>• Waivers are not provided for in SB 406</li> <li>• States that Oregon is the only state in the union that prohibits a single dwelling because it is farmland</li> </ul>
165	Sen. Beyer	States that SB 406 is clearly unconstitutional and that is a good reason to not support it as drafted.
166	Levy	Points out that this is a revenue raising bill.
175	Scott Ashcom	Executive Director, Oregon Agricultural Alliance. Submits written testimony ( <b>EXHIBIT D</b> ) in support of SB 406. Refers to an article included in the testimony.
225	Bruce Miller	Office of the State Court Administrator. Introduces Jill Tanner.
230	Jill Tanner	Presiding Magistrate, Tax Court. Gives some preliminary observations. <ul style="list-style-type: none"> <li>• The Tax court is a trial court, not an appellate court, but SB 406 would give them appellate court functions.</li> </ul> Describes effect of change.
255	Chair Ringo	Verifies that this would be a shift in focus because currently the

256	Tanner	Tax Court doesn't do any appellate work. Confirms this.
		<ul style="list-style-type: none"> <li>• Speaks about staff and timeline. Talks about timeline SB 406 would implement and explains that this would be added to the court's current tax load and some of those cases already have statutory precedence. Explains that there may or may not be issues with staffing and deadlines.</li> <li>• Explains that the process would begin in the Magistrate Division in the Oregon Tax Court.</li> </ul>
290	Miller	Explains that it was unclear from language in SB 406 whether it meant the Tax Court Judge or the Tax Court. Explains importance of distinction.
295	Tanner	Explains that the Regular Division is a court of record and that the Magistrate Division is not a court of record.
		<ul style="list-style-type: none"> <li>• SB 406 talks about the appeals from Oregon Tax Court going to the Court of Appeals. Explains that currently appeals from the Regular Division of the Tax Court go to the Supreme Court and appeals from the Magistrate Division go to the Regular Division of the Tax Court.</li> </ul>
310	Miller	Explains that they are not suggesting there is a problem with this process, just pointing out the difference.
320	Tanner	Asks for additional guidance.
325	Chair Ringo	Comments that this is a long way from being ready.
330	Art Schlack	Association of Oregon Counties (AOC). States that there needs to be some discussion about concepts in SB 406. Discusses issues.
375	Chair Ringo	Asks witness if the concept of transferable development credits has merit.
378	Schlack	Believes it has some viability, but discusses limitations. Expresses willingness and interest to help.
400	Rep. Dingfelder	Verifies that currently cities, counties, and special districts provide services that benefit many landowners in Oregon.
415	Schlack	Confirms this.
418	Rep Dingfelder	Asks if Oregon requires landowners to compensate cities, counties, and special districts for the added value received.
423	Schlack	Responds, no. Explains.
430	Rep Dingfelder	Explains that some landowners receive more benefits than other landowners.
<b>TAPE 18, B</b>		
015	Schlack	Remarks that SB 406 does address increases in value accrued to a piece of property because of services by local govt. Wonders how to balance between the increases that are attributed to the property by actions of local government versus limitations through restrictions that would have a negative impact.
025	Rep Dingfelder	Clarifies if witness considers it a new tax.
030	Schlack	Explains.
040	Rep Dingfelder	Explains that Measure 37 does not address any of the benefits; it only addresses the loss.
045	Schlack	Discusses appraisals.
050	Chair Ringo	Closes public hearing on SB 406 and opens work session on introduction of committee measures.

## **INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION**

055	Matt shields	<p>Reads Legislative Counsel (LC) Draft numbers and relating to clauses.</p> <p>Lists bills: 1367 (became SB 648) <b>(EXHIBIT E)</b>, 2109 (became SB 651) <b>(EXHIBIT F)</b>, 2166 (became SB 653) <b>(EXHIBIT G)</b>, 2175 (became SB 654) <b>(EXHIBIT H)</b>, 2183 (became SB 655) <b>(EXHIBIT I)</b>, 2450 (became SB 658) <b>(EXHIBIT J)</b>, and 2729 (became SB 662) <b>(EXHIBIT K)</b>.</p>
060	<p>Sen. Ringo</p> <p style="margin-top: 20px;">Chair Ringo</p> <p style="margin-top: 20px;">Chair Ringo</p>	<p><b>MOTION: Moves LC's: 1367, 2109, 2166, 2175, 2183, 2450, 2729 BE INTRODUCED as committee bills.</b></p> <p><b>VOTE: 3-0-2</b></p> <p><b>EXCUSED: 2 - Burdick, Shields</b></p> <p><b>Hearing no objection, declares the motion CARRIED.</b></p> <p>Closes work session on introduction of committee measures and adjourns meeting at 4:36 p.m.</p>

## **EXHIBIT SUMMARY**

- A. SB 406, summary, Sen. Kurt Schrader, 2 pp**
- B. SB 406, letter, Roger Kaye, 3 pp**
- C. SB 406, written testimony, Bob Stacey, 3 pp**
- D. SB 406, written testimony and article, Scott Ashcom, 16 pp**
- E. Introductions, LC 1367, Staff, 3 pp**
- F. Introductions, LC 2109, Staff, 5 pp**
- G. Introductions, LC 2166, Staff, 6 pp**
- H. Introductions, LC 2175, Staff, 1 p**
- I. Introductions, LC 2183, Staff, 2 pp**
- J. Introductions, LC 2450, Staff, 5 pp**
- K. Introductions, LC 2729, Staff, 2 pp**