

HOUSE COMMITTEE ON
ENVIRONMENT AND LAND USE

March 06, 2003 Hearing Room HR E
8:30 AM Tapes 31 - 32

MEMBERS PRESENT: Rep. Bill Garrard, Chair
Rep. Dennis Richardson, Vice-Chair
Rep. Cliff Zauner, Vice-Chair
Rep. Robert Ackerman
Rep. Dan Doyle
Rep. Mitch Greenlick

MEMBER EXCUSED: Rep. Diane Rosenbaum

STAFF PRESENT: Ray Kelly, Committee Administrator
David Peffley, Committee Assistant

MEASURE/ISSUES HEARD: HB 2610 – Public Hearing
HB 2611 – Public Hearing
HB 2431 – Public Hearing and 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 31, A		
003	Chair Garrard	Calls the meeting to order at 8:38 and opens a public hearing on HB 2610.
<u>HB 2610 – PUBLIC HEARING</u>		
007	Ray Kelly	Summarizes HB 2610.
018	Linda Ludwig	League of Oregon Cities (LOC). Submits (EXHIBIT A) in opposition to HB 2610, as it would have an adverse impact on economic development by switching the burden at LUBA and discouraging investment in Oregon.
153	Rep. Richardson	Asks if HB 2610 is a criminal issue or a property rights issue.
158	Ludwig	Agrees that this really isn't about guilt and innocence.
160	Rep. Richardson	Asks if Ludwig would support an amendment protecting individual property owners.
162	Ludwig	Replies that she believes that the rights of individual property owners are not at stake.
165	Rep. Richardson	Asks Ludwig if appeals to a state agency are on the same level as appeals to an independent judiciary.
183	Pam Beery	Responds that her testimony will address appeals and that local government will act in a quasi-judicial or even legislative capacity.
208	Rep. Greenlick	Asks Ludwig to confirm the appeals process with LUBA, and that it isn't an issue of one side versus the other.
230	Ludwig	Confirms that is correct.
233	Beery	Attorney, Beery & Elsner LLP. Submits (EXHIBIT B) and

		testifies in vehement opposition regarding the burden of proof inherent in the judicial system and that this bill would override that precedent. Also notes that the cost to local governments would be \$2.5 million.
333	Rep. Ackerman	Asks for clarification regarding the fact-finding process works at the local level or the hearings level.
341	Beery	Replies that the current standard is created at the local level and that LUBA simply reviews that record.
356	Rep. Ackerman	Asks for confirmation of LUBA's jurisdiction.
361	Beery	Offers clarification to the process.
365	Rep. Ackerman	Asks if LUBA takes additional testimony.
370	Beery	Notes that they do not.
373	Rep. Ackerman	Asks what the record consists of.
380	Beery	Addresses the conformance criteria of the appeals process.
385	Rep. Ackerman	Notes the consequences of that action.
391	Beery	Confirms Rep. Ackerman's assertion.
393	Rep Ackerman	Asks whether Beery believes that this fact-finding process works in the best interest of all concern.
398	Beery	Asserts that she believes it does.
402	Rep. Ackerman	Asks Beery if it appears that the bill creates a presumption against the local government decision.
406	Beery	Responds that it does.
410	Rep Zauner	Asks who pays the \$2.5-5 million dollar fee.
413	Beery	Responds that it is an overall increase.
424	Rep. Greenlick	Asks if this places a new standard on the appeals court.
428	Beery	Agrees that it does.
430	Rep. Greenlick	Asks if there is a precedent.
TAPE 32, A		
003	Beery	Replies that she can not think of a precedent. Affirms the uniqueness of this bill.
011	Rep. Zauner	Asks if the 2.5 million figure is cumulative.
014	Beery	Affirms that it is cumulative and explains how that figure is calculated.
024	Art Schlack	Oregon Associated Counties (OAC). Reaffirms the previous testimony and testifies that HB 2610 would create a very costly unfunded mandate which would put an unmanageable burden on local governments.
083	Chair Garrard	Asks for clarification of the intent of HB 2610.
085	Harrison Connolly	Legislative Counsel. Explains the sections of HB 2610 relating to LUBA.
103	Rep. Greenlick	Asks if Section 3 is in conflict with Section 1.
107	Connolly	States that there may be some inconsistency which needs to be addressed.
111	Rep. Greenlick	Restates the alleged contradiction.
116	Connolly	Agrees with Rep. Greenlick's interpretation.
121	Don Schellenberg	Oregon Farm Bureau (OFB). Submits (EXHIBIT C) and testifies supporting the conditional use premise in HB 2610. States though, that HB 2610 might not be the best way to address the problem.
162	Doug Riggs	Central Oregon Cities Organization. Affirms previous testimony and opposes HB 2610 as written. Notes concerns with the bill as written.
210	Chair Garrard	Closes the public hearing on HB 2610 and opens a public hearing on HB 2611.

HB 2611 – PUBLIC HEARING

213	Kelly	Summarizes HB 2611.
221	Rich Angstrom	OCAPA. Opposes HB 2611 as an anti-aggregate bill. Cites ORS 215.213 and 215.296 as examples of how this bill affects the aggregate industry, raising costs exorbitantly and changing standards.
322	Harlan Levy	Oregon Association of Realtors (OAR). Reaffirms the previous testimony in his opposition to HB 2611. Cites the necessity of access to rock as integral to OAR's interests.
345	Art Schlack	Oregon Association of Counties (AOC). Testifies in opposition to HB 2611, reaffirming the previous testimony.
396	Rep. Greenlick	Asks if Goal 5 is the Natural Resource Objective.
400	Schlack	Reaffirms Rep Greenlick and concludes testimony, stating that HB 2611 would create an unfunded mandate.
414	Rep. Ackerman	Asks for clarification on the counties' responsibility regarding the permitting process.
430	Schlack	Responds to Rep. Ackerman's concern. States that aggregate is to be protected in the process.
450	Rep. Ackerman	Asks if this act is triggered by any other action.
TAPE 31, B		
003	Schlack	Replies that a conditional use permit is triggered by an applicant.
010	Chair Garrard	Closes the public hearing on HB 2611 and opens a public hearing on HB 2431.

HB 2431 – PUBLIC HEARING

016	Duane Smith	Oakcreek Mitigation Bank, Benton County. Affirms that he supports the aims of the bill, but isn't sure that this bill accomplishes those aims. Testifies to the process and costs for the mitigation banks.
090	Rep. Richardson	Wants to confirm that Smith would support this bill if amended. Asks what amendments he would propose.
094	Smith	Gives areas of concern which, if addressed, he would support HB 2431.
113	Rep. Richardson	Asks if all wetlands are of equal value and equal function.
117	Smith	States that this change doesn't make that distinction.
123	Mark Knaupp	Mud Slough Wetland Mitigation Bank. Submits (EXHIBIT D) and testifies to the importance of mitigation banks. Asserts that HB 2431 is flawed, but could potentially be an effective bill.
174	Chair Garrard	Asks how Knaupp got into mitigation banking.
176	Knaupp	Explains how he proceeded from grass seed farming and took on mitigation farming for his own enterprise.
210	Chris Bayham	Association of Oregon Counties (AOC). Submits (EXHIBIT E) and speaks to the importance of mitigation banks.
235	Rep. Greenlick	Asks how Bayham reads the bill in regard to the permit process.
240	Bayham	Elaborates on the permit process.
250	Rep. Greenlick	Asks Bayham if he could support this model which has people working through the permit process.
254	Bayham	Responds affirmatively.
260	Rep. Richardson	Asks about functional values regarding current mitigation science.
263	Bayham	Clarifies the difference between wetland function and wetland values.
279	Rep. Richardson	Asks about the difference between functional attributes and functional value.
281	Bayham	States that he is unfamiliar with the term. Clarifies his previous

310 John Lilly answer.
Division of State Lands (DSL). Submits **(EXHIBIT F)** and testifies, addressing DSL's amendment suggestions. Asserts that DSL does not approve of the bill as written, but could if suitable amendments were introduced.

TAPE 32, B

001 Lilly Concludes testimony on HB 2431 by addressing mitigation banks.

040 Rep. Zauner Asks what was done differently to speed up the process.

044 Lilly Addresses the application process.

055 Rep. Greenlick Asks for clarification on the deletions contained in Sections 12 and 13.

063 Lilly Explains his confusion in the bill and DSL's position.

083 Rep. Greenlick Confirms the section Lilly would like to delete.

086 Lilly Restates that he prefers the current language in the law.

087 Rep. Richardson Asks for a definition of the term minimum acreage replacement rules. and DSL's status on that term and position regarding SB 830.

102 Lilly Refers to the way the current regulations work in regard to Rep. Richardson's concerns.

141 Liz Frenkel League of Women Voters (LWV). Submits **(EXHIBIT G)** and opposes HB 2431. States concern for clean water and good public policy.

150 Chair Garrard Closes the public hearing on HB 2431 and opens a work session on HB 2431.

HB 2431 – WORK SESSION

170 Rep. Greenlick Asks about other amendments discussed in the DSL memo to Rep. Kropf.

172 Chair Garrard Restates that he has no amendments other than those submitted by Mel Stewart. Closes the work session on HB 2431.

175 Rep. Ackerman States confusion with the amendments to follow.

177 Kelly Informs that Brendan McCarthy is presently preparing the amendments.

184 Chair Garrard Adjourns the meeting at 10:22.

EXHIBIT SUMMARY

- A – HB 2610, written testimony, Linda Ludwig, 4 pp.**
- B – HB 2610, written testimony, Pamela Beery, 2 pp.**
- C – HB 2610, written testimony, Don Schellenberg, 2 pp.**
- D – HB 2431, written testimony, Mark Knaupp, 1 p.**
- E – HB 2431, written testimony, Chris Bayham, 2 pp.**
- F – HB 2431, written testimony, John Lilly, 10 pp.**
- G – HB 2431, written testimony, Liz Frenkel, 2 pp.**