

## HOUSE COMMITTEE ON WATER AND ENVIRONMENT

March 19, 1999 Hearing Room D

1:00 p.m. Tape 74 - 76

**MEMBERS PRESENT:** Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

**STAFF PRESENT:** Kristina McNitt, Administrator

Nancy Geisler, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2355 Public Hearing

HB 3054 Public Hearing

HB 2801 Public Hearing

HB 2406 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 74, A		
002	Chair Welsh	Opens meeting at 1:12 p.m. and opens public hearing on HB 2355.

**HB 2355 PUBLIC HEARING**

006	Kristina McNitt	Administrator. Explains HB 2355, which expands membership of the State Fish and Wildlife Commission.
018	Rep. Terry Thompson	District 4. Testifies in support of HB 2355. Notes the workload is heavy in the State Fish and Wildlife Commission (hereinafter "the Commission"). States he would like the Commission to be formed into subcommittees and have HB 2355 sent down to the Salmon and Stream Restoration Committee. Reports the commercial fishing industry is frustrated by the lack of commissioners who have expertise in fishing matters.
063	Rep. Taylor	Observes it is difficult to get people to serve on the Commission, and HB 2355 would require 10 additional members. Discusses whether the Commission could be in subcommittees and reach out to other task forces for help.
075	Rep. Thompson	Explains the reason it is difficult to get commissioners is that few people understand the issues involved. Adds if commissioners could concentrate on specific issues, more people would be willing to serve.
083	Rep. Merkley	Expresses concern about the director, who is a state employee, having voting power. Asks Rep. Thompson if he is concerned about this.
090	Rep. Thompson	Answers yes. States the reason the director votes is that he can break a tie. Explains he is flexible on this issue.
098	Chair Welsh	Asks if there has been discussion in the Salmon and Stream Restoration Committee concerning HB 2355.
101	Rep. Thompson	Notes they have touched on this issue, but have gone no further with it. Adds the Governor's Office is a key player. Reports they will try to solve the problem and develop a solution.
110	Rep. Kruse	Mentions the effort concerning the Commission has been collaborative, and he believes it is appropriate to have HB 2355 in the Salmon and Stream Restoration Committee for a full discussion.
114	Chair Welsh	States he will write a letter to the Chair and Speaker requesting that HB 2355 be referred to the Salmon and Stream Restoration Committee.
120	Phil Donovan	Lobbyist, Northwest Sport Fishing Industry Association. Presents testimony in opposition to HB 2355 ( <b>EXHIBIT A</b> ). Comments that the Northwest Sport Fishing Industry agrees with the intent of establishing a more responsive Commission. Stresses they are concerned about the Commission being burdened with information. Recognizes the Commission lacks expertise in certain areas, especially in areas of fishing.

140	Donovan	Notes they have formulated a plan for the establishment of oversight committees, whose mandate would be to provide recommendations on long-term policies. Addresses concern about information and coordination reaching the field level.
170	Chair Welsh	Closes public hearing on HB 2355 and opens public hearing on HB 3054.
<b><u>HB 3054 n PUBLIC HEARING</u></b>		
202	Stephen Piucci	Trial Lawyer, Oregon Trial Lawyers Association. Presents testimony in opposition to HB 3054 ( <b>EXHIBIT B</b> ). Describes the main problem with HB 3054 is that case law allows an exception for young children who trespass. Suggests that in such cases, the law is restrictive in terms of burden of proof. States HB 3054 would cut children out of the courts and allow dangerous conditions to exist on private land.
234	Chair Welsh	Asks if Piucci thinks the language in case law is redundant with HB 3054, except for protection of children.
239	Piucci	Answers yes. Explains that in case law, it would have to be proved that a landlord intentionally caused injury to a trespasser.
243	Chair Welsh	Inquires if protection of children could be put into statute.
245	Piucci	Answers this could be done.
249	Rep. Merkley	Inquires if the outcome of adult cases regarding "attractive nuisances" would be affected by HB 3054.
262	Piucci	Responds the civil jury instruction uses the term "wanton" instead of "attractive nuisance," and he has not seen a case won on that basis. Clarifies attorneys do not generally take trespassing cases.
279	Rep. Kruse	States it is preposterous that the landlord is held liable for somebody who is breaking the law. Notes that even if the landlord wins the case in court, he incurs costs because he has been sued.
287	Piucci	Reports that the prevailing party will recover their legal costs.
289	Rep. Kruse	Asks if this would occur in all cases.
294	Piucci	Clarifies if the landlord wins the verdict, the legal costs will be recovered. Stresses all trial lawyers take cases on a contingent basis, and almost all spend their own money to fund the case. Adds it would be foolish to spend money on a case which would probably not be heard in court.

307	Chair Welsh	Mentions there was testimony from property owners who owe millions is pay-outs on recovery from trial cases.
316	Piucci	Ventures the main issue in these cases might be a question of whether the party was a trespasser or not.
320	Chair Welsh	Responds this is probable.
323	Rep. Merkley	Adds there has been testimony from railroads wanting to discourage people from walking on the railroad tracks. Inquires if HB 3054 would impact the railroads' interests.
333	Piucci	Suggests that if a child trespasser was injured from a hidden danger, the railroads would be immune from claims.
336	Rep. Merkley	Clarifies this would not apply to someone jumping back and forth between the rails.
338	Piucci	Responds if that is trespassing, the case would not make it past summary judgment.
341	Rep. Taylor	Asks if HB 3054 would alter existing laws regarding rail crossing guards.
357	Piucci	Answers no. Reiterates people are supposed to obey all traffic devices.
366	Rep. Kevin Mannix	District 32. Testifies in support of HB 3054. States a criticism of HB 3054 is that the language is redundant since current Oregon law already covers trespassing. Explains the difference between judge-made law and legislative-made law. Adds that HB 3054 establishes a firm basis for understanding what obligation property owners have to trespassers.
411	Rep. Mannix	Explains that common law is subject to exceptions, and one of these in Oregon law protects child trespassers from attractive nuisances. Notes the problem is in defining attractive nuisance. Reiterates that property owners should not be held liable because there is something on their property which they should have realized might be dangerous. Refers to frequent trespassers as another exception in common law.
<b>TAPE 75, A</b>		
028	Rep. Mannix	Reports that HB 3054 will not allow the litigation mentioned above. Comments it ensures people will not go onto private property if they want to be protected. States there are other ways to sanction people who violate ordinances and codes in terms of property upkeep. Explains that someone who violates the law should not benefit from an event which occurred while they were trespassing.

046	Rep. Merkley	Inquires how someone would know they were trespassing on property which has not been marked.
052	Rep. Mannix	Answers the property could be posted, if desired.
054	Rep. Merkley	Agrees, but notes that HB 3054 does not require posting.
057	Rep. Mannix	Responds that property owners who want to protect their property could fence or post it, but adds they should not be penalized for not doing so. Reiterates the law should protect property owners from unlawful violation of their land. Stresses that citizens should know whether they have a right to be on certain property.
062	Rep. Atkinson	Asserts it is illogical to argue that the citizens have such a responsibility when the property is not marked.
064	Rep. Mannix	Answers that in the case of public property, the government must post the property. Adds he does not think the private landowner has the same obligation.
071	Rep. Merkley	Inquires if Rep. Mannix can provide actual cases which illustrate the need for HB 3054.
075	Rep. Mannix	Clarifies this is a prophylactic measure. Adds he does not have a case to bring which shows a need to react. Reiterates he just wants to protect property owners in the future.
083	Raymond Godfrey	Property owner. Presents testimony in support of HB 3054 ( <b>EXHIBIT C</b> ). Notes he understands the negative effect of lawsuits from injuries incurred on property, but believes it should be proven that the property owner had the intent to injure someone before they are held liable.
111	Rep. Taylor	States children are naturally attracted to playgrounds. Expresses concern that if a child is injured on a playground, there would be no recourse under HB 3054.
131	Rep. Kruse	Affirms the purpose of HB 3054 is to determine who is responsible. Asks why someone else should be responsible because parents are not watching their children.
146	Rep. Gianella	Notes that playgrounds and other areas have closed down because the owners do not want people on their property. Acknowledges it is easier to tell people to stay off your land than to give permission for them to be there.
162	Rep. Atkinson	Expresses he does not think HB 3054 would prohibit action being taken on an attractive nuisance claim. Adds attractive nuisance is something businesses need to be aware of. Thinks the precedents around attractive nuisance are difficult to establish.

178	Rep. Taylor	Acknowledges if children entered property and placed themselves in danger, there would be no recourse for injuries under HB 3054.
193	Rep. Gianella	Stresses she understands concern for children, but, if children go on property, the property owners are responsible for any injuries incurred.
205	Chair Welsh	Explains he was always responsible for his children when they went on other people's property.
221	Rep. Merkley	Emphasizes the problem of inviting people on private property and being at risk of being sued is a non-trespass situation.
237	Rep. Gianella	States children come on property out of curiosity, and the trespassing portion of HB 3054 could be a problem because the property owners would be liable if someone came on their property uninvited.
245	Rep. Devlin	Reports HB 3054 poses some difficult legal questions which would be better addressed in a civil judiciary environment.
269	Chair Welsh	Close public hearing on HB 3054 and opens public hearing on HB 2801.
<b><u>HB 2801 - PUBLIC HEARING</u></b>		
275	Kristina McNitt	Explains her research on trespass and posting. Adds there is a lot of case law dealing with civil trespassing, but that HB 2801 pertains to criminal trespassing.
305	Chair Welsh	Inquires if there are amendments to HB 2801.
307	Rep. Atkinson	Notes there is a bill amendment which changes certain language regarding posting. Reports they have talked with various groups, and there is no opposition to HB 2801, only questions about clarity.
322	Justin Burns	Cunningham Sheep Company. Testifies in support of HB 2801. Comments posted signs are usually gone within a year due to vandalism or weather. Reports problems with people not knowing which lines are boundary fences and which are internal fences. States he believes HB 2801 clears up these problems.
351	Chair Welsh	Asks Burns to outline clarification problems in HB 2801.
353	Burns	Reads from HB 2801, Section 1(a), line 9, regarding "each outer gate and normal point of access." Believes this could be clarified as to which gates are included. Refers to HB 2801, Section 1(a), line 10, concerning "body of water." States clarification is needed to signify if this means every existing stream or intermittent streams. Continues the language is not clear about whether the paint on fence posts must be maintained for the entire length of the fence or only at

		points of access. Adds HB 2801, Section 1(a) changes premises through which the public has no right-of-way and, under Section 1(b), changes to premises along which the public has an unfenced right-of-way. Points out there is an omission for fenced right-of-ways.
389	Chair Welsh	Notes he would prefer these changes be made to HB 2801 before it is passed on.
401	Burns	States he would be happy to assist in clarifying the problems mentioned.
406	Rep. Morgan	Asks if a fence post is painted on the top six inches, if only one side of the post will be painted.
415	Burns	Responds all sides of the post would be painted.
417	Rep. Morgan	Inquires how someone would know on which side of the fence they were trespassing.
420	Burns	Responds the person should know where they are in the first place; if not, they are probably trespassing.
<b>TAPE 74, B</b>		
007	Rep. Merkley	States that when a person is hunting on someone's property, they would not know who the orange post belongs to.
009	Burns	Reiterates that someone who has permission to be on property would know the boundaries. Explains HB 2801 addresses this problem.
015	Rep. Taylor	Asks about the aesthetic effects of orange-painted fence posts.
019	Chair Welsh	Answers this is not a concern, especially if markings are just around access points and not down the entire fence.
021	Rep. Kafoury	Comments that landowners are currently not required to post any markings on their property.
023	Burns	Answers they are supposed to mark their property.
025	McNitt	Explains this concerns cross statutes because, for criminal trespass purposes, land must be posted. Clarifies that HB 2801 address how to post. Notes that civil trespass involves the wildlife statutes, where posting is not required.
030	Rep. Atkinson	Indicates he has no problems with HB 2801 as it stands.

048	Chair Welsh	Responds that sometimes a bill is passed from the House and problems are found later. Notes everything possible must be done to prevent this from occurring.
052	Phil Donovan	Lobbyist, Northwest Sport Fishing Industry and the Oregon Guides and Packers Association. Testifies in support of HB 2801. Notes HB 2801 is a tool to assist river recreation, respect private property rights, and protect the interests of landowners.
072	John Colburn	Former resident of Montana. Explains Montana trespass law. Asks if there will be a penalty for wrong marking of property. Suggests some people will mark posts even though it is not their land.
101	Rep. Atkinson	Answers they will look at the difference between civil and criminal law. Theorizes that if someone posts land which is not theirs, they are technically trespassing.
117	Donovan	Asserts HB 2801 will be a good bill.
143	Chair Welsh	Closes public hearing on HB 2801 and opens public hearing on HB 2406.
<b><u>HB 2406 n PUBLIC HEARING</u></b>		
160	Richard Benner	Director, Department of Land Conservation and Development. Presents <b>(EXHIBIT D)</b> . Reports the committee is interested in regional problem solving. Indicates regional problem solving was developed so the state could assist local governments in addressing problems involving more than one jurisdiction. Adds a problem is more likely to be solved if state interests are presented at the beginning of the process. Continues that this process is voluntary and locally initiated.
211	Benner	Explains the process is collaborative all the way so there will likely be no objections at the end. Remarks if state and local people agree on a solution involving an amendment, the commission can approve it because the agencies and interests have been balanced during the entire process.
233	Benner	Describes four regional problem solving pilot programs in Oregon. Details the problems being worked on by these projects and the areas covered. Reports they have learned from these pilot programs that the collaborative model is a good one. Adds they have also learned that the process is resource-intensive.
277	Benner	States the people who have participated in this process are supportive. Comments the projects are progressing at different paces, but each has identified a range of solutions.
311	Benner	Continues to explain solutions arrived at by the pilot programs.
343	Benner	Remarks that each time the concept of regional problem solving was endorsed by



		the legislature, a sunset was placed on it. Explains they have a bill in to remove the sunset. Reiterates this concept has spun off into different initiatives because local governments like the prospect of having field people address problems with them.
387	Rep. Taylor	Inquires about the current composition of the Land Conservation and Development Commission (LCDC).
395	Benner	Answers there are seven members on LCDC, one from each of the five congressional districts. Explains the makeup and requirements of membership.
405	Chair Welsh	States that communities in his district often did not collaborate with agencies when problem solving, and this left some requirements not addressed. Asks if the model presented by Benner strives to avoid this problem and the problem of requirements changing in the midst of problem solving.
<b>TAPE 75, B</b>		
003	Benner	Reports they are getting as far away from the old model as possible. Addresses difficulties local government have when working on a problem and something changes in the midst of problem solving. Notes that most changes made have been to add flexibility to the rules rather than to make things more rigid.
045	Rep. Lynn Lundquist	District 59. Presents <b>(EXHIBIT E)</b> . Explains his concept of regional planning standards. Indicates that once a regional standard was established, it would follow the same course of action as a state standard, but each region would have their own standard. States it is time for the regions to have an ability to function.
090	Chair Welsh	Remarks there has been a lot of discussion about regionalization and regional problem solving. Adds the committee will look at these issues and see if there is some common ground.
107	Rep. Devlin	Asks, if regional standards are developed, would they still be under statewide goals.
113	Rep. Lundquist	Answers they would have to be under statewide goals to have any merit.
117	Rep. Atkinson	Remarks there are several bills which address these issues. Explains the difference between the two bills. Cites the differences between different districts.
141	Rep. Atkinson	Comments these bills are trying to improve land use laws and that they are basically all going in the same direction.
165	Chair Welsh	Remarks there may be work groups in the future on the concepts involved in HB 2406.

168	Rep. Lundquist	Notes it would be good if there were a local planning level.
172	Charles Swindells	Lobbyist, 1,000 Friends of Oregon. Presents written testimony in opposition to HB 2406 ( <b>EXHIBIT F</b> ). Elaborates purposes set out in HB 2406 are already in existing law. Notes that 1,000 Friends focuses on citizen involvement with planning commissions and departments. Comments that nothing influences LCDC like local constituents coming forward to explain how statewide policies affect their areas.
210	Swindells	Comments Rep. Lundquist's draft bill only involves minimum parcel sizes and non-resource dwellings. Emphasizes there is considerable flexibility in the planning process already. Notes that HB 2406 infers that eastern or southern Oregon have not been adequately represented on LCDC; however, this is not true. Asks what would be different if the makeup or regional makeup of LCDC were changed and what the objectives really are.
253	Swindells	Describes areas of HB 2406 with which he agrees. States any other issues in HB 2406 can be taken care of through existing mechanisms.
288	Rep. Kafoury	Inquires about HB 3661 in 1993, which Swindells made reference to.
292	Swindells	Explains secondary lands debate and how it is difficult to define secondary lands. Elaborates on the history of HB 3661.
315	Swindells	Notes the issues being dealt with are technical planning issues. Comments the regional planning committees under HB 2406 have expertise because so many members are with the agricultural industry.
336	Rep. Gianella	Asks what a non-resource development pattern is.
344	Swindells	Responds that under land use laws, land which has nothing to do with farming can be located in the farm zone.
361	Rep. Gianella	Asks about non-resource land.
365	Swindells	States some land is non-resource land because it does not conform to the predominant land use pattern in the area. Notes that a non-resource development pattern occurs when predominant use of land is better characterized by rural residential than commercial rural resource use.
390	Rep. Gianella	Asks if he could repeat the last part.
398	Swindells	Explains the planning program wants to avoid reaching the conversion of resource land. Notes there is a critical limit to how much development an area can sustain, and the goal of the planning program is to slow this process.

425	Rep. Atkinson	States he is offended by Swindells' comments that the committee does not know anything about growth management. Adds he sees some merit to regionalization.
<b>TAPE 76, A</b>		
022	Swindells	Offers his apologies, but adds that 1,000 Friends has objections to HB 2406 based on experience.
034	Rep. Devlin	Inquires if there is recognition within the goals of the Land Use Program of differences in economy and landscape in Oregon.
038	Swindells	Answers that within the statewide planning goals there are not a lot of differences between parts of the state. Reiterates the goals are supposed to be statewide.
050	Don Schellenberg	Associate Director, Governmental Affairs for the Oregon Farm Bureau. Presents written testimony in support of HB 2406 ( <b>EXHIBIT G</b> ). Emphasizes the issue in HB 2406 is regionalization. Adds that land use planning is a geographic issue, and the composition of LCDC is based on population criteria and congressional districts. Suggests changing LCDC's makeup to recognize geographic areas of the state would be a good first step.
094	Rep. Kruse	Mentions it is not possible to accomplish all the desired issues regarding land use planning right now, in spite of what LCDC says. Explains the system is broken and needs to be fixed.
127	Rep. Taylor	Comments her district uses secondary lands to grow cottonwood fiber for pulp mills, and other secondary lands are used to grow wine grapes. Explains these uses must also be considered.
134	Rep. Devlin	Reports problems in the system do not necessarily require throwing out the system. Cites his experience with land use issues.
150	Rep. Kruse	Acknowledges comments from committee members. Notes problems complying with land use goals which were designed for a different area than the one which is being addressed.
156	Rep. Atkinson	Comments on the use of secondary lands.
163	Chair Welsh	Expresses interest in further discussion on these issues. Adjourns the meeting at 3:17 p.m.

Nancy Geisler, Kristina McNitt,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ HB 2355, written testimony, Phil Donovan, 2 pp**

**B ñ HB 3054, written testimony, Stephen Piucci, 1 p**

**C ñ HB 3054, letter, Raymond Godfrey, 1 p**

**D ñ HB 2406, Report to the Emergency Board, 16 pp**

**E ñ HB 2406, Legislation Concept of HB 3486, Rep. Lynn Lundquist, 2 pp**

**F ñ HB 2406, written testimony, Charles Swindells, 2 pp**

**G ñ HB 2406, written testimony, Don Schellenberg, 2 pp**