

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

June 8, 1999 Hearing Room D

1:00 P.M. Tapes 193 - 196

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

Susan M. Pettey, Administrative Support

MEASURES HEARD: SB 87 Work Session

SB 1184 Work Session

HB 3456 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 193, A		
004	Chair Welsh	Opens the meeting at 8:20 a.m., and opens work session on SB 87.

SB 87 WORK SESSION

034	Bill Cross	Commercial Real Estate Economic Coalition (CREEC). Speaks in support of SB 87.
051	Rick Williams	CREEC. Speaks in support of SB 87. Addresses changes in the -10 amendments (EXHIBIT A) .
069	Cross	Reminds members that language in SB 87 is changed so that inventory and analysis is not the only criteria in evaluating suitable sites for development. Refers to Section 2, which reaffirms that adjustment to an urban growth boundary (UGB) is the last step in the process of addressing the suitable land requirement.
102	Rep. Taylor	Asks about the fiscal impact of SB 87.
112	Kristina McNitt	Committee Administrator. Provides the fiscal impact statement to members.
128	Cross	Addresses the Goal 9 requirement that all jurisdictions submit an analysis of costs. Believes this requirement should be statutory.
141	Rep. Morgan	Asks for clarification of SB 87's 10 amendments regarding residential housing.
152	McNitt	Indicates that residential housing was addressed in the 10 amendments.
154	Bob Clay	Chief Planner, Portland Planning Bureau. Speaks in opposition to SB 87. Submits and summarizes written testimony (EXHIBIT B) . Expresses concern about placing this level of detail in statute. Suggests that the legislature provide a directive to DLCD to address this topic through rulemaking.
198	Clay	Expresses concern that the rulemaking process has an almost immediate deadline. Adds that SB 87 appears to require that a short-term market analysis be melded with a long-term forecast. Believes that the 2040 Plan has the capacity to accommodate Portland's share of the region's forecasted employment. States that there is no shortage of commercially-zoned land inside cities.
229	Clay	Questions what identified need there is for SB 87 in statute, that is not already addressed by DLCD Goal 9, or the ongoing work of Metro.
245	Rep. Kruse	Expresses confusion regarding the 20-year buildable land supply. Asks for clarification.
259	Clay	Believes it relates to the level of detail and specificity being requested. Indicates that Goal 9 addresses broad categories of commercial and industrial uses. Discusses various types of retail, commercial-office, and industrial lands.

		Comments that Metro has identified land available for long-term development.
282	Rep. Kruse	Comments that when the UGB is expanded, resource lands are lost. Favors a higher level of proof before expansion of the UGB. Indicates a higher level of analysis may be appropriate to protect our resource base.
299	Phillip Fell	League of Oregon Cities. Testifies in opposition to SB 87. Describes efforts of the work group involved with this issue. Questions why SB 87 is necessary. Discusses the ramifications of potential litigation. Urges members to contemplate the possible unintended consequences of SB 87, and vote no.
326	Rep. Kruse	Asks what potential litigation Fell is speaking about.
330	Fell	Indicates that land use generates many lawsuits on various issues. Provides examples.
361	Fell	Discusses the necessity of a 20-year supply of land.
383	Rep. Morgan	Remarks that the periodic review process would address this.
391	Chair Welsh	Asks what happens if some of the criteria are not met.
398	Fell	Explains procedures in place if criteria are not met.
409	Rep. Merkley	Refers to current planning for residential land as sufficient. Indicates that possibly industrial/commercial/retail are not being planned for adequately.
430	Fell	Agrees that 20 years is a long time to plan for.
435	Rep. Merkley	Asks about problems statewide regarding lack of available land for industrial/retail/commercial use.
440	Fell	Indicates he is not aware of any shortage.
444	Rep. Kruse	Asks for clarification regarding the 20-year supply of land.
TAPE 194, A		
017	Clay	Describes work researching employment needs with Metro. Adds that there are 14 industrial and commercial zones in Portland that absorb employment capacity.

039	Chair Welsh	Asks for questions or concerns.
043	Rep. Devlin	Refers to the Metro area. Remarks that as the region has grown, large undeveloped parcels for industrial/commercial development are becoming scarce. Asks if this part of the impetus for SB 87.
056	Clay	Replies that he does not know. Agrees that large parcels are scarce in the Metro area. Discusses redevelopment in industrial and commercial zones.
079	Clay	Describes the City of Portland urban reserve, which is designated and approved.
111	Chair Welsh	Indicates that the discussion here is Goal 9, which has been prioritized near the bottom, and SB 87 pushes it toward the top. Discusses the group involved in bringing SB 87 forward. Describes problems with Goal 9.
129	Rep. Taylor	Asks if this can be accomplished by directing DLCD to address Goal 9, rather than create a statutory requirement.
134	Cross	Indicates that the rules implementing Goal 9 require analysis by type, size, and location for commercial and industrial lands. Comments that beyond doing the analysis, jurisdictions must take the appropriate actions, ensuring that suitable lands are addressed and identified. Emphasizes the importance of the process being in statute rather than rulemaking.
169	Rep. Kruse	Comments that if rules are statutory, they cannot be ignored.
187	Cross	Indicates a desire for more specificity.
210	Don Shellenburg	Oregon Farm Bureau. Speaks in opposition to SB 87. Expresses concern that the UGB would be expanded "sooner than later" under SB 87.
230	Ralph Groener	American Federation of State, County, and Municipal Employees, Metro Area. Takes neutral position on SB 87. Describes experience as a former legislator and county commissioner. Indicates he carried SB 100 as a freshman legislator.
273	Groener	Describes historical discussions regarding Goal 9.
311	Groener	Refers to SB 87 as "milktoast." Indicates that 65 percent of Clackamas County residents commute to work out-of-county. Adds that housing has been prioritized over industrial development. Refers to the 2040 Plan. Favors the expansion of the UGB in Clackamas County for industrial/commercial purposes.
360	Groener	Indicates the amount of commuters out of Clackamas County should have been reduced by now if appropriate planning were in place. Refers to this as an environmental issue. Comments on the need for decent wage jobs in Clackamas

		County.
416	Groener	Wants jobs developed proportionately in each county to eliminate commuting out-of-county. Commends members for their work on SB 87.
431	Rep. Taylor	Asks, if additional parcels are available for retail/commercial development, would this promote less out-of-county commuting.
439	Groener	Answers that he favors decent-wage, light-industrial based jobs that will support families.
457	Rep. Devlin	Indicates that 25 percent of residents in Washington County commute to work out-of-county. Comments on the opposition in Clackamas County to expansion of the UGB. Asks how commercial/industrial zoning in Clackamas County is accomplished while jobs being created are in a different area.
TAPE 193, B		
068	Groener	Refers to Kruse Way Corridor, a campus-industrial development in Clackamas County. Describes the City of Lake Oswego's objection to this development. Supports the development of industrial property along Highway 212.
107	Groener	Opines how Clackamas and Washington Counties should be developed. Thinks that SB 87 is not strong enough.
125	Rep. Taylor	Asks, in view of his testimony, if he is in favor of SB 87.
129	Groener	Indicates a neutral position on SB 87.
137	Bob Rindy	Department of Land Conservation and Development (DLCD). Speaks in favor of SB 87. Indicates that the language in SB 87 was agreed upon with many parties working on this bill. Indicates that the -10 amendments incorporate the changes.
178	Rep. Kafoury	Asks why this process must be accomplished via statute as opposed to rulemaking.
181	Rindy	Believes that SB 87 could be accomplished by rule. Indicates that SB 87 puts into statute limits and directions for rulemaking. Mentions that without SB 87, DLCD is not required to address Goal 9.
202	Rep. Merkley	Indicates that SB 87 may cause rapid expansion of UGBs. Asks if DLCD has an opinion if this could be a result of SB 87.
212	Rindy	Explains that SB 87 does not provide for a more rapid expansion of UGBs than

		the current process. Discusses the periodic review process. States that SB 87 is not a departure from the current process.
223	Rep. Taylor	Expresses concern about specificity in the statute leading to more litigation. Asks for Rindy's view on this matter.
231	Rindy	Indicates that DLCD is involved in litigation approximately 20 times per year. Opines that there is always potential for different interpretation. Indicates that DLCD will address that problem through rulemaking.
258	Williams	Indicates that there is more to SB 87 than the Goal 9 rule. Describes the process: <ul style="list-style-type: none"> • Establishing the benchmark • Public discussion • Corrective action to meet employment forecasts
294	Mary Kyle McCurdy	1000 Friends of Oregon. Speaks in opposition to SB 87. Expresses concern regarding the mandated 20-year forecast. Supports retaining flexibility. Explains concerns regarding the specificity of SB 87. Refers to SB 87 as a working draft of a rule.
322	Rep. Kruse	MOTION: Moves to ADOPT SB 87A-10 amendments dated 6/8/99.
		VOTE: 9-0
Chair Welsh		Hearing no objection, declares the motion CARRIED.
334	Rep. Kruse	MOTION: Moves SB 87A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-3 AYE: 6 - Atkinson, Gianella, Kruse, Merkley, Morgan, Welsh NAY: 3 - Devlin, Kafoury, Taylor
Chair Welsh		The motion CARRIES. REP. WELSH will lead discussion on the floor.

340	Rep. Devlin	Serves notice of a potential minority report.
344	Chair Welsh	Closes work session on SB 87A, and opens work session on SB 1184A.
<u>SB 1184A WORK SESSION</u>		
348	Rep. Kruse	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 1184A.
358	Rep. Morgan	Asks for clarification of the reconsideration.
360	Chair Welsh	Invites Jon Chandler to explain reasons for reconsidering SB 1184A.
367	Jon Chandler	Oregon Building Industries Association. Provides reasons for the amendment to SB 1184A. Expounds on a potential problem with the way the A-Engrossed version was written.
410	Rep. Merkley	Refers to a grammatical change in line 10 of the ñ10 amendments.
415	Chandler	Explains that change will happen automatically in the redraft. Refers to HB 1184A, line 8, which changes "denying" to "stopping."
		VOTE: 8-0 EXCUSED: 1 ñ Kafoury
		Chair Welsh Hearing no objection, declares the motion CARRIED.
428	Rep. Kruse	MOTION: Moves to RECONSIDER the vote by which SB 1184A was sent to the floor with a do-pass recommendation.
		VOTE: 8-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Kafoury
		Chair Welsh The motion CARRIES.

439	Chair Welsh	Declares that the motion carries, and the vote to send SB 1184A to the floor with a do-pass recommendation has been reconsidered. Indicates that the bill is now before the committee as if it were never reported to the floor. Adds that all amendments adopted by the committee are still in effect.
462	Rep. Kruse	MOTION: Moves to ADOPT SB 1184A-2 amendments dated 6/3/99.
		VOTE: 8-0 EXCUSED: 1 - Kafoury
Chair Welsh		Hearing no objection, declares the motion CARRIED.
473	Rep. Kruse	MOTION: Moves SB 1184A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Kafoury
Chair Welsh		The motion CARRIES. REP. MERKLEY will lead discussion on the floor.
TAPE 194, B		
<u>HB 3456 PUBLIC HEARING</u>		
050	Jim Whitty	Eugene Water & Electric Board (EWEB). Speaks in opposition to HB 3456, and the ñ4 amendments (EXHIBIT C). Submits and summarizes written testimony (EXHIBIT D). Indicates that HB 3456 creates a new independent cleanup process for contaminated sites. Discusses EWEBís recent experience in the Department of Environmental Quality (DEQ) Voluntary Cleanup Program.
095	Whitty	Indicates that the committee does not fully realize the implications of HB 3456. Addresses contamination problems. Discusses geological data.

128	Whitty	Explains the appeals process that places DEQ at a disadvantage. Addresses the Independent Action Review Board.
139	Rep. Merkley	Refers to ñ4 amendments, Section 2. Asks if Whitty is referring to the last sentence.
141	Whitty	Answers yes.
143	Rep. Merkley	Asks why that language is not broad enough to give DLCD the authority it needs.
149	Whitty	Answers that the language is woven into existing law. Explains that evidentiary requirements are not easily met by DLCD in evaluating the after-the-fact remedy that was implemented.
159	Rep. Merkley	Asks if HB 3456 creates incentives for landowners to select the least costly cleanup remedy, such as capping the sight, and then to seek a "stamp of approval." Asks if this is the core of the challenge to HB 3456.
169	Whitty	Replies that much depends on the attitude of the landowner. Opines that HB 3456 allows this scenario to happen more easily.
175	Rep. Merkley	Asks Whitty to expand on the concept of hot spots, relative to other pending legislation.
182	Whitty	Believes hot-spot determination may never be made in HB 3456. Discusses the higher standard of proof required to remedy a hot spot. Opines that the hot spot analysis is obliterated by this bill.
196	Rep. Merkley	Refers to page 3 of (EXHIBIT D, pg. 3), which indicates that DEQ has the burden of proof before an appeals board. Asks why the burden shifts to DEQ.
203	Whitty	Replies that HB 3456 requires that DEQ meet standards for the appeals board, and is compelled to develop the evidence.
207	Rep. Merkley	Asks about the makeup of the appeals board.
209	Whitty	Answers that it is a tribunal, but he cannot comment on the process.
214	Rep. Kruse	Comments that if a landowner chooses to cover up a fraudulent cleanup, no one will know. Asks if HB 3456 gets to a process where a landowner can come up with a remedy to a problem, and not worry that DEQ will "run me through a decade of worthless what-ifs," which they can do now.

230	Whitty	Believes all landowners are "not evil," but some choose not to cooperate. Indicates that cleanups can happen right now, but a government stamp of approval is necessary.
254	Rep. Kafoury	Refers to ñ4 amendments, which indicates that DEQ has the authority to write the rules. Asks what language says that if a landowner goes through the process fraudulently, DEQ must give a "stamp of approval."
260	Whitty	Indicates that Section 2 rearranges the analysis for DEQ, focusing on results which may not address short-term risk. Discusses DEQ rulemaking authority.
272	Rep. Kruse	Asks if the results are more important than the process. Discusses the purpose of HB 3456.
280	Whitty	Responds that geological test results are known, as well as the implementation of the remedy. Adds that more is known than simply capping the site and assessing the risk.
291	Rep. Kafoury	Asks for information about the appeals board.
294	Whitty	Refers to written testimony (EXHIBIT D, pg 4).
319	Keith Leavitt	Port of Portland. Speaks in opposition to HB 3456ñ4 amendments. Indicates his primary interest is that the Port of Portland and its tenants are regular participants in the Voluntary Cleanup Program. Discusses participation in the ñ4 amendments work group. Feels HB 3456 creates another set of what a no-further-action (NFA) letter really means, versus what it means under the current program. Agrees with the expediting of the review process. Expresses concern about prescribing this process in statute. Discusses DEQ implementation of HB 3456.
354	Jeff Ring	Assistant General Counsel, Port of Portland. Addresses concerns regarding the NFA letter of determination under HB 3456.
402	Ring	Discusses the standards suggested for cleanup, which emphasize short-term versus long-term results.
441	Ring	Addresses the appeals board process.
TAPE 195, A		
024	Rep. Kafoury	Asks if there should be more emphasis on negotiation and mediation.
029	Leavitt	Prefers language in the ñ4 amendments that encourages mediation and negotiation.

039	Tom Gallagher	Schnitzer Industries, Gunderson, and ARCO. Speaks in support of HB 3456. Describes experience as a participant in work groups. Believes HB 3456 involves a power struggle. Indicates property owners have the absolute responsibility for cleaning up contamination.
061	Gallagher	Addresses voluntary and involuntary cleanups. Indicates that objections have been stated regarding the "hoops" that must be jumped through. Describes difficulties between DEQ and the companies providing cleanup.
085	Gallagher	Addresses the NFA letter.
109	Gallagher	Discusses the purpose of the Independent Board.
122	Rep. Taylor	Asks for a response to the previous testimony that indicated that DEQ has the burden of proof in the appeals process.
131	Gallagher	Addresses the Voluntary Cleanup Program standards. Explains that the purpose is to protect health, and meets standards.
160	Jeff Watkins	Sierra Club, Oregon Chapter. Speaks in opposition to HB 3456. Submits and summarizes written testimony (EXHIBIT E). Describes the effects of HB 3456 as significant. Urges members to vote no on HB 3456.
192	Lori Aunan	DEQ. Provides previously-requested information to members (EXHIBIT F).
231	Chair Welsh	Asks for questions.
235	Rep. Merkley	Asks for an explanation of where DEQ is in the mediation process.
238	Aunan	Describes the biggest issue for DEQ as protecting human health and the environment. Discusses dispute issues and resolutions. Indicates that HB 3456 sets up a "new track" to ensure the process protects human health.
260	Rep. Merkley	Asks if caveats are in place to establish rules to allow an issuance of a broad range of letters giving different degrees of approval.
269	Paul Slymon	Cleanup Manager, DEQ. Indicates that under HB 3456, DEQ would conduct a rulemaking under the auspices of Section 2. Discusses the capping of a hot spot. Discusses rulemaking as a subset of the present NFA, based on the legislative intent of HB 3456.
296	Rep. Devlin	Asks if standards change, how often is a problem experienced, and what guarantees landowner has. Asks how often this might occur.

339	Slymon	Indicates this happens rarely. Describes the process in place to address changes in contaminate standards.
366	Rep. Devlin	Asks if there are disclaimers on the NFA letter indicating standards may change.
373	Slymon	Answers yes.
379	Chair Welsh	Closes the public hearing on HB 3456, and opens work session.
<u>HB 3456 WORK SESSION</u>		
383	Rep. Kruse	MOTION: Moves to ADOPT HB 3456-4 amendments dated 6/3/99.
		VOTE: 9-0
Chair Welsh		Hearing no objection, declares the motion CARRIED.
391	Rep. Kruse	MOTION: Moves HB 3456 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways & Means by prior reference.
402	Louise Weidlich	Informs Chair Welsh that she has signed up to testify. Demands that she be allowed to testify.
425	Chair Welsh	Admonishes the witness that rules must be followed when testifying before the committee. Explains that Weidlich will be removed from the hearing room if she remains disorderly. Agrees to receive her testimony if it is germane to the issues being discussed.
460	Weidlich	Claims she does not know what the rules are. (A statement of rules is provided to Weidlich by the committee assistant.) Submits written testimony (EXHIBIT G). Speaks in opposition to HB 3456.
TAPE 196, A		
039	Chair Welsh	Asks members for further comment on the pending motion.
059	Rep. Kafoury	Comments on objections to HB 3456. Refers to Section 2, the change to result-based requirements.

063	Rep. Taylor	Indicates reasons for opposition to HB 3456. Explains she does not want to lessen the effectiveness of the citizen board currently in place.
072	Rep. Devlin	Discusses objections to HB 3456. Addresses concerns with the Voluntary Cleanup Program.
090	Chair Welsh	Asks for further comments from members. Instructs the clerk to call the roll.
109		VOTE: 5-4 AYE: 5 - Atkinson, Gianella, Kruse, Morgan, Welsh NAY: 4 - Devlin, Kafoury, Merkley, Taylor
119	Chair Welsh	The motion CARRIES.
		Written testimony is submitted and entered into the record as follows: Jeff Allen, Executive Director, Oregon Environmental Council, in opposition to HB 3456 (EXHIBIT H); William C. Scott, Director, Oregon Economic Development Department, in opposition to HB 3456 (EXHIBIT I).
132	Chair Welsh	Closes the work session on HB 3456. Adjourns the meeting at 11:50 a.m.

Submitted By, Reviewed By,

Susan M. Pettey, Kristina McNitt,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 87A, -10 amendments, staff, 4 pp.

B ñ SB 87, written testimony, Bob Clay, 2 pp.

C ñ HB 3456, -4 amendments, staff, 15 pp.

D ñ HB 3456, written testimony, James Whitty, 4 pp.

E ñ HB 3456, written testimony, Jeff Watkins, 1 p.

F ñ HB 3456, written information, Lori Aunan, 6 pp.

G ñ HB 3456, written information, Louise Weidlich, 1 p.

H ñ HB 3456, written testimony, Jeff Allen, 3 pp.

I - HB 3456, written testimony, William C. Scott, 1 p.