

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

May 1, 1997 Hearing Room D

08:30 AM Tapes 74 - 75

MEMBERS PRESENT:

Rep. Charles Starr, Chair

Rep. Terry Thompson, Vice-Chair

Rep. Dennis Luke

Rep. Ken Messerle

Rep. Kurt Schrader

Rep. Judith Uherbelau

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Judith Gruber, Administrator

Linda Kowal, Administrative Support

MEASURE/ISSUES HEARD:

HB 3687 Public Hearing and Work Session

HB 3110 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 74, A		
009	Vice Chair Thompson	Calls the meeting to order at 8:35 am and opens the public hearing on HB 3687.
<u>HB 3687</u> <u>PUBLIC</u> <u>HEARING</u>		

013	Don Schellenberg	Oregon Farm Bureau. (EXHIBIT A) States the working group came up with -2 amendments. If a county, city, or state agency wants to regulate a farming practice they have to coordinate with the Department of Agriculture (ODA) to determine the best way to minimize the impact on farming operations.
030	Rep. Luke	Asks for a specific example of what brought the bill forward.
036	Schellenberg	Responds it was a Goal 5 issue.
033	Rep. Luke	Repeats he wants a specific example. Aggregate is a Goal 5 resource.
036	Schellenberg	Responds in order to preserve the Goal 5 resource the farming practice had to be regulated.
040	Rep. Luke	Asks if gravel aggregate is a Goal 5 resource.
042	Schellenberg	Affirmative.
043	Rep. Messerle	Asks that he expand on what is meant by coordinates with the ODA.
045	Schellenberg	Responds he has been told there is a definition but he doesn't know if it is in rule or statute. The intent is when a state agency or other governmental body makes a decision to regulate a farming practice they consult with the ODA to reduce the impact.
060	Rep. Messerle	Asks who has the final authority.
063	Schellenberg	Responds the agency, city, or county.
063	Rep. Luke	Asks will this bill give the ODA a higher standing if the surrounding landowners appealed to Land Use Board of Appeals (LUBA)?
069	Schellenberg	States he doesn't follow the question.
073	Rep. Luke	Under this bill, the county would submit their intent to ODA. Asks, if the county ignores their advice would the determination by ODA be given additional weight by LUBA because they're the experts in the field?
087	Schellenberg	Unless the rule or ordinance conflicts with some policy, he doesn't see it as appealable.
098	Rep. Luke	Comments since this is a mandate to local government, how much is it going to cost them.
100	Schellenberg	Responds local governments seldom regulate farming practices. The position here is for when they do make a decision they coordinate with ODA.
108	Rep. Luke	Clarifies this bill is statewide regulation for something that seldom happens but just in case it does.
109	Schellenberg	Affirmative.
107	Rep. Schrader	States in his district there is urban/agricultural interface that in some cases needs regulation on the city level. In most cases the city tries to reach out for input and this would help.

125	Rep. Messerle	Comments that when the Land Conservation and Development Commission (LCDC) was having the hearings on Goal 5, it was suggested there would be very little impact on the landowners and agriculture. States he is concerned about the Goal 5 implementation and would like to be sure that the language is clear as to who has the authority and how far they can go. Adds this could impact landowners tremendously in the future with regard to irrigation pumps, buildings, proximity to streams, and the pasturing of cattle.
150	Rep. Luke	Comments that he feels this bill goes to far and is a continuation of the aggregate on farmland issue. States he will be a no vote.
165	Rep. Uherbelau	States her interpretation is, if a rule or ordinance is going to affect a farm or forest land, then the governmental body should consult with ODA to minimize the impact. She doesn't see anything in the bill that changes the local governments authority, or, where if this was appealed after the ODA was consulted that LUBA would look at the ODA as the ultimate authority. Asks what is the intention of the bill?
193	Schellenberg	Responds that her interpretation is the intention of the bill. Under current law, cities and counties have the authority to regulate farming practices for health, safety or welfare. All this asks is that they consult with the ODA to minimize the impact.
208	Dave Nelson	Oregon Seed Council and Oregon Dairy Farmers Association. States their interest is in the agricultural practices issue not land use issues. They don't want varying layers of local ordinances overlapping one another and being conflicting in certain areas. As the population increases, three sensitive issues are pesticides, smoke, and smell regulations.
266	Rep. Luke	Comments that every example is under right to farm legislation passed in 1993 and 1995 which he is very supportive of. Gives examples of the non-attainment air quality areas.
281	Nelson	Comments that he has looked at the DEQ reports for a number years and the reasons for those classifications. Every exceedance of the air quality standards is in the months of December through February from wood burning fire places. He believes the right to farm legislation arose from two lawsuits regarding field burning smoke.
320	Schellenberg	Comments his understanding on the right to farm issue doesn't apply inside the urban growth boundary.
331	Rep. Schrader	Comments this is not a field burning bill. It's a common sense approach to local jurisdiction to check with ODA on farming practices. This bill is a pro-active bill that says talk before the problem is created.
353	Phil Ward	ODA States they agreed to the -2 amendments. Adds this does not directly address local ordinances regulating farm practices. One of the intents of the right to farm law was to not restrict

		governments ability to regulate legitimate needs. This bill requires coordination between the local jurisdiction and ODA.
385	Rep. Luke	Comments that Rep. Schrader suggested that ODA has been too busy to call back local government on a voluntary basis. Asks him to comment on this.
387	Ward	Responds they will make sure a return call is placed if they tell them who to call.
370	Rep. Luke	Asks for an example where this law has been needed.
400	Ward	Refers to water and habitat issues in the state. Gives the example that if a county instituted an ordinance that prescribed a fenced, 250 foot buffer zone on every riparian area in the county, there may be other strategies available other than a no touch 250 foot buffer zone.
418	Rep. Luke	Clarifies he wants to know of something that has happened to bring this bill forward.
440	Rep. Messerle	States his concern is if there's an area such as SB 1010 where the ODA is the specific authority and a county wants to go beyond that, the question is does the ODA have the final authority.
TAPE 75, A		
023	Ward	Responds that SB 502 established exclusive authority to regulate agricultural practices as they relate to water quality in the ODA.
028	Rep. Messerle	Asks in regard to setbacks in the riparian zone isn't the ODA the authority.
030	Ward	If the reasons for the set backs were solely water quality, yes, however there may be reasons beyond water quality.
033	Chair Starr	States as it seems to him, if it were a water quality issue and the local jurisdiction for whatever reason decided they needed to regulate on that basis, this would give a mechanism for them to be notified that they need to consult with ODA. Is this true?
040	Ward	Responds that this appears to be the case according to the amendments.
042	Rep. Schrader	States for example in the Canby area a subdivision was going into an area where there was a stream nearby. There were discussions as to what the appropriate setback was and they tried to get information from a number of agencies and couldn't. This would give someone definitive to talk with. Comments as the legislature are we reacting to problems or taking a pro-active stance and anticipating problems based on what is known and their experiences.
056	Rep. Luke	States that subdivisions are not a farming practice.
058	Chair Starr	Closes the public hearing and opens a work session on HB 3687.
<u>HB 3687</u> <u>WORK</u> <u>SESSION</u>		

061	Chair Starr	States for the record that the League of Oregon Cities spoke with the Chair earlier and indicated their support of the amendments.
064	Judith Gruber	Policy Analyst. States for their information she received a call that there is no fiscal impact on this measure.
066	Rep. Luke	Asks does this mean there's no impact on the local government revenue?
069	Gruber	Clarifies a no revenue impact was already received.
070	Chair Starr	States he believes this is a simple bill and has support.
079	Rep. Schrader	MOTION: Moves to ADOPT HB 3687-2 amendments dated 04/25/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
085	Rep. Schrader	MOTION: Moves HB 3687 to the floor with a DO PASS AS AMENDED recommendation.
086	Rep. Schrader	VOTE: 6-1 AYE: 6 - Thompson, Messerle, Schrader, Wells, Uherbelau, Starr NAY: 1 - Luke
	Chair Starr	The motion CARRIES. REP. SCHRADER will lead discussion on the floor.
096	Chair Starr	Closes the work session on HB 3687 and opens a work session on HB 3110.
<u>HB 3110</u> <u>WORK</u> <u>SESSION</u>		
099	Rep. Tim Josi	District 2. (EXHIBIT B) States this is a fusion of HB 3110 and HB 2613.
111	Rep. Josi	Goes over what the bill does: * section 2 expands the commercial cultivation of plantations (plat's) to include clams and mussels. * section 3 for new plat applications, requires consultation with the appropriate local, state, and federal agencies. * section 4 raises the application fees from \$25 to \$250. Allows for 20 percent usage for clams and mussels applications of existing plats (as of June 1, 1997) but not less than one acre.
151	Rep. Josi	* section 5 has no significant changes. * section 6 has significant language for the removal of unproductive plats.

180	Rep. Josi	* section 7 raises use taxes for oysters from 5 cents to 10 cents per gallon. It raises 1/2 cent per gallon for clams and mussels and raises the cultivation fee from \$2 to \$4 per acre.
198	Rep. Josi	* states there are three classifications of fees: application , use taxes, and cultivation fees. In 1995, the state took in \$8,285. According to ODA it takes about \$41,427 to make the program self sustaining. Under the -2 amendments, the fee income is raised to \$18,894.
206	Rep. Josi	* section 9 requires a 30 day notice to ODA when selling, transferring, or abandoning a plat and a filing fee of \$100 per plat.
225	Rep. Josi	* in terms of policy, this bill is a significant improvement in existing language for the following reasons: * this is public land and the public should have better control of the oversight of that plat and the ability for the state to reclaim it when they are underutilized. * it gets the industry closer to cost responsibility. * the productive growers are allowed access to unproductive plats.
248	Rep. Messerle	Refers to section 6, and asks shouldn't this read "if after a period of three years from filing date, if there are unproductive lands they can be taken back?"
243	Rep. Josi	Responds that section 6, sub 1 deals with the first three years; sub 2 deals with unproductive lands, and after that is the process the state would go through to remove those lands.
267	Chair Starr	Clarifies the qualifying word is "after" in line 7, three years after the filing.
276	Rep. Uherbelau	Asks if he has a copy of the League of Women Voters testimony which addresses several areas of concern. (EXHIBIT C)
280	Rep. Josi	Responds he has not. (staff provides a copy to him.)
289	Rep. Uherbelau	Refers to their concern in regard to public notice in the newspaper and their request that additional information to be added to that notice.
292	Rep. Josi	States that this would be an appropriate question for Les Gardner from ODA.
295	Rep. Uherbelau	States the other area they discuss is changes in section 11. Asks what his comments are.
312	Rep. Josi	Responds the estuaries are out of sight of the beaches. Plats are not on Oregon beaches.
324	Chair Starr	States HB 3110 has been scheduled for a work session but in light of the amendments he will allow testimony outside of what is traditionally done. There is no sign up sheet.

334	Rep. Josi	Offers that Paul Hannenman and Ron Phillips would like to make a few comments.
347	Ron Phillips	Oregon Oyster Farms, Newport. Representing as president, Oregon Shellfish Association. Comments the bill with the latest amendments is ready to go. It clarifies and improves the existing statutes.
370	Rep. Schrader	Asks what is the range of income of a plat per acre and what's the goal?
373	Phillips	Responds from about \$1, it depends.
378	Rep. Schrader	Asks why would they agree to a fee increase of \$4.
383	Phillips	Responds, hope springs eternal. The goal is to turn the marginal lands into profitable lands with technology from OSU, increasing markets and better efficiency.
398	Rep. Schrader	Refers to Section 2, line 10 (EXHIBIT C). Clarifies that commercial regulation is done by the ODA and the estuaries that are not plated out would still be the province of ODF&W.
413	Phillips	Affirmative. States this separates the commercial cultivation from the natural growth.
426	Rep. Schrader	Refers to section 4, line 10 and suggests an amendment that says published at least twice in the paper. Concern has been expressed in other committees with people being away for that consecutive 2 week period.
TAPE 74, B		
014	Phillips	Responds this has always been adequate notice.
017	Rep. Schrader	Subsection 4, of section 4. Clarifies that the existing plat owners will not have access under this legislation to the full plat they now have as an effort to encourage others to come into the market.
024	Phillips	Responds the intent is to limit the amount of clams and mussels and let it evolve slowly so they can evaluate it.
029	Rep. Schrader	Refers to page 3, section 6 regarding unproductive nature. Asks what is determined unproductive?
036	Phillips	Responds this allows the ODA to study on a site specific basis.
049	Rep. Schrader	Refers to section 9 regarding heirs and assignees.
055	Phillips	Responds that these are crops that take 3 - 5 years to grow. If the owner dies and everything goes back to the state and he's lost his business. In the Oregon system most of these plats are owned by the state.
073	Rep. Schrader	As time passes on your capital investment there's a need to protect the taxpayers interest. The fees will generate \$8,000 and cost \$40,000 to administer.
090	Phillips	Responds they are limited in use of the land and in many cases there are grounds out there that people are not interested in.

096	Rep. Uherbelau	Comments that the language is in existing statute for the cultivation of oysters.
099	Rep. Thompson	Asks what is the total production in Yaquina Bay.
102	Phillips	Responds approximately 10,000 gallons or bushels.
106	Rep. Thompson	Clarifies that's about \$1,000. Ask what do you project the size potential is with the new aquaculture production capabilities.
109	Phillips	Responds ten times that.
111	Rep. Thompson	Comments the existing site with new aquaculture practices of the future will exceed the money needed.
118	Rep. Schrader	Comments that as the industry evolves and becomes more profitable, the state will also become more profitable and not only recover it's cost but get something in return for it's assets.
118	Paul Hannemen	Cloverdale, OR and working with the Shellfish Association. Met with ODA, ODF&W, LCDC, and the Division of State Lands and states these are fairly reasonable amendments and agreed to by the agencies. Refers to section 11 and states the reason it's there is to insure that the ocean shores are protected. The ocean shore is defined by coordinates in ORS 390. No commercial shellfish of any kind can be grown there.
165	Rep. Thompson	Clarifies for the record that there can be a harvest of existing shellfish on ocean floors.
169	Hannemen	Responds that recreational use is regulated by ODF&W in conjunction with the health division and others.
177	Rep. Thompson	Makes the point that shellfish can be harvested but can't go into an aquaculture procedure.
181	Hannemen	Clarifies there's commercial harvest but not commercial production, no farming operations.
195	John Stahl	Netarts Bay, OR. States the estuaries are being referred to as agriculture and not as being priceless. The lands are leased for \$2.00 an acre and they are leased and sold at will. Regarding the production of oysters, if all they're making is \$1 an acre perhaps it should go back to the state. One bag of seed (about a bushel) can plant up to 100 to 500 bushels on an acre of spat seed. One bag can produce up to 30 - 40 bushels in a 2 - 3 year period depending on the growth of the oyster. At \$24 a bushel, he questions the stated earnings.
235	Stahl	Continues regarding the survey of these properties. States they are not surveyed by a registered surveyor and the boundaries are questionable according the Department of Lands.
250	Stahl	Continues regarding the intent of the lessors. In Netarts Bay for example, there is a 10 year period where 224 acres of land from 1981 - 1992 averaged 63 gallons a year. The oystermen made about \$2,000 average. Considers this unproductive. Comments the bill refers to pests: sand shrimp, ghost shrimp and mud shrimp.

		These are not pest for all things. We have take care of the land for the people not just for an industry.
272	Stahl	Continues that mussels have to be on stakes and the stake culture is detrimental to the estuaries.
298	Stahl	States he thinks the lands should be returned to the state.
311	Ves Garner	Water Resources Specialist, ODA. Manages the oyster leasing program. The department is in support of the bill and the amendments.
329	Rep. Uherbelau	Refers to (EXHIBIT C) and clarifies they have a public notice system when they give the leases.
334	Garner	Affirmative. The applicant is required to publish a notice which includes name, type of operation, and description of the area.
338	Rep. Uherbelau	Clarifies that there is a public notice system that allows people to object.
339	Garner	Affirmative. In addition to the published notice, copies of the application are sent to the affected and interested state and local agencies.
341	Rep. Uherbelau	Asks whether the notice has language that provides information on objections and describe the process.
342	Garner	Responds it does not describe the process of how the public may be involved.
346	Rep. Uherbelau	Addresses Chair and states she thinks this is a very good bill, however, she feels the League of Women Voters of Oregon have raised some legitimate concerns that the notice is not as thorough as it should be and explains why.
359	Ward	ODA. Comments the law has been on the books since 1969. There is more public interest now then ever before. They believe that while this bill may not get at everything that it ultimately should, this program they believe is a start and they support it.
377	Rep. Uherbelau	Asks does the ODA have the rule making authority to extend the requirements of the notice?
386	Ward	Responds that existing statue describes the notice requirement specifically. Any flexibility where it doesn't speak to an issue, they can address that issue.
392	Rep. Uherbelau	Comments that the requirements state what you have to have name, type of operation, and area. This is not adequate for a public notice. It doesn't require printing who to contact if you object.
407	Ward	Responds that ODA would have the flexibility to add some information to a notice as described.
TAPE 75, B		
004	Rep. Luke	Asks if there is an administrative procedure act that covers notice.
006	Ward	

		Affirmative, but unclear if it addresses some of the concerns of Rep. Uherbelau's.
009	Chair Starr	States these are legitimate concerns and Rep. Josi and Rep. Thompson can take them up on the Senate side.
015	Rep. Thompson	MOTION: Moves to ADOPT HB 3110-2 amendments dated 04/28/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
017	Rep. Thompson	MOTION: Moves HB 3110 to the floor with a DO PASS AS AMENDED recommendation.
028		VOTE: 6-1 AYE: 6 - Thompson, Luke, Messerle, Wells, Uherbelau, Starr NAY: 1 - Schrader
	Chair Starr	The motion CARRIES. REP. JOSI will lead discussion on the floor.
	Rep. Schrader	Explains that although he thinks this is a good bill he will vote no in order to raise the concern level in regard to perpetuity leases and public notice requirements.
	Rep. Uherbelau	Explains that she will vote yes even though she feels the notice requirements are deficient. She will rely on the good will of the sponsors to pursue this on the Senate side and the ODA to look into their administrative rule.
035	Chair Starr	Closes the work session on HB 3110 and adjourns meeting at 9:50 am.

Submitted By, Reviewed By,

Linda M. Kowal, Judith Gruber,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 3687, proposed amendments, Don Schellenberg, 1 p.

B - HB 3110, proposed amendments, Rep. Tim Josi, 5 pp.

C - HB 3110, written testimony, staff, 1 p.