

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

April 10, 1997 Hearing Room D

08:30 AM Tapes 59 - 60 (I) & (II)

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:

HCR 9 Work Session

HB 3698 Work Session

HB 3687 Public Hearing

HB 3688 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 59, A		
011	Chair Starr	Calls the meeting to order at 8:37 am and opens the work session on HCR 9.

<u>HCR 9 WORK SESSION</u>		
019	Judith Gruber	Policy Analyst, refers to (EXHIBIT A). States the -3 amendments are the same as the -1 amendments except for the additional language as requested by Rep. Welsh which adds "including the reservation of a percentage of the district for old growth reserves and for multiple uses including the production and harvest of timber."
032	Chair Starr	Asks if the -3 amendments are in addition to the -2 amendments and states he does not see the -1 amendments.
035	Gruber	Clarifies the -1 amendments are included in the -3 amendments. The members have a hand engrossed version of what would be the bill if the -2 and -3 amendments were adopted.
047	Rep. Luke	MOTION: Moves to ADOPT HCR 9-2 amendments dated 04/02/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
050	Rep. Schrader	MOTION: Moves to ADOPT HCR 9-3 amendments dated 04/08/97.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
055	Rep. SCHRADER:	MOTION: Moves HCR 9 be sent to the floor with a BE ADOPTED AS AMENDED recommendation.
057	Rep. Uherbelau	Thanks the people who brought forward HCR 9 and feels it has very good ideas, however, she has two concerns for the record: * she likes to hear both sides of the issue and feels the testimony from the US Forest Service was lacking quite a bit. * lines 21 and 22 do not have anyone who is the ultimate decision maker.
077		VOTE: 6-1 AYE: 6 - Thompson, Luke, Messerle, Schrader, Wells, Starr NAY: 1 - Uherbelau
082	Chair Starr	The motion CARRIES. REP. VANLEEUVEN will lead discussion on the floor.
085	Chair Starr	Closes the work session on HCR 9 and opens the work session on HB 3698.
<u>HB 3698 WORK SESSION</u>		

090	Gruber	<p>(EXHIBIT B) Outlines the changes the -2 amendments make:</p> <ul style="list-style-type: none"> * deletes the reference to high value farm land and inserts lands classified as prime, unique, Class I or Class II soils in the Exclusive Farm Use (EFU) zone. * exempts land in public ownership on the effective date of the bill. * exempts land within an Urban Growth Boundary (UGB).
110	Chair Starr	<p>Refers to the -2 amendments, reads lines seven through nine. Asks if this means Class I or Class II lands would still be available for prison siting.</p>
115	Virginia Vanderbilt	<p>Legislative Counsel Office. Introduces Chris Crean from Legislative Counsel to assist because he's the land use attorney and she is corrections.</p>
121	Chair Starr	<p>Refers to lines seven through nine beginning at "unless." Asks if a parcel within the UGB is zoned Class I or II, is it still available for prison sitings.</p>
136	Crean	<p>Responds the way he reads this is a corrections facility could be sited on prime, unique, Class I or Class II soils if the land was within an UGB.</p>
143	Rep. Uherbelau	<p>Asks what effect the emergency clause would have on the present siting procedure.</p>
148	Vanderbilt	<p>Responds this law would take effect immediately and would be a factor in the current siting process.</p>
154	Rep. Uherbelau	<p>Comments the department is going through the siting process and is close to the final designation. This bill, if passed and signed by the Governor before the siting process is complete, would stop the process in its tracks.</p>
165	Vanderbilt	<p>Responds that siting is being done under the supersiting provision. She's unaware if there's something in the supersiting provision that would overcome this.</p>
174	Dave Cook	<p>Director, Department of Corrections. States he believes if this passes prior to the siting authority selecting a site to recommend to the Governor, then it will directly impact those sites. Sites have been nominated and hearings are scheduled:</p> <ul style="list-style-type: none"> * the Portland metropolitan area, hearings on April 25 and 26. * Jackson and Lane counties, hearings on May 9th and 10th. * deliberations for the siting authority and recommendations to the Governor will be around May 12th or 13th. <p>If this bill is signed by the Governor and takes effect as an emergency it would preclude the siting of any site affected by</p>

		this legislation. There are sites in the area that would stay on but they're not sure about those in Jackson or Lane counties.
208	Rep. Schrader	Asks if this bill affects siting in eastern Oregon.
215	Counsel	Responds he doesn't know the distribution of soil classifications across the state but he suspects there's significantly less prime, unique, Class I or II soils in eastern Oregon.
239	Rep. Messerle	Asks if this would apply to forest lands.
245	Cook	Responds he's addressing agricultural lands. Currently, none of the proposed sites are forest land that he's aware of. Presently there is one work camp on forest land.
256	Rep. Messerle	Inquires about Shutters Creek.
258	Cook	Responds he's not sure if that facility is on forest land or not.
266	Rep. Messerle	Comments that forest land can grow on all types of terrain whereas prime agricultural land is specific to flat ground. Inquires how forest land got involved.
277	Cook	Responds the proposed Oakridge site is forest land owned by the federal government.
285	Chair Starr	States he brought this bill forward, requested by the Farm Bureau and interested citizens primarily from the tri-county area, with the intention of impacting site selection. Comments he would like to move the bill and allow further debates to occur on the Senate side.
300	Rep. Luke	States he has a personal problem with an outright ban. He believes that farm land should have a higher justification in that it should be harder to site on farm ground, but he would have a real problem with an outright ban as the bill is currently written.
311	Chair Starr	Responds that the bill as written does have an exception process, it's not an outright ban.
315	Rep. Luke	Clarifies the exception is from the counties.
316	Chair Starr	Affirmative, cities and counties.
317	Rep. Luke	Asks if the county says no, that's it.
318	Chair Starr	Affirmative.
317	Rep. Uherbelau	States the tension here is the conflicting policies of saving our farm and forest lands and the need to build prisons because of Measure 11. Her concern is the siting process is pretty far along however, because of the emergency clause this could become law in the middle of the process. The department would have to start from ground zero which is expensive.
339		

	Rep. Schrader	Points out that two of the three sites in the tri-county area would still qualify. The legislature is here to give direction as to the will of the people and while policies may conflict, one takes precedence. This committee can take a stand that says prime Class I and II farm land is the most important. We're not being overly restrictive, there are areas within the UGB.
366	Rep. Thompson	Comments these amendments take a step in the right direction. However, he sees Portland and the Willamette Valley again getting exceptions to the rule that the rest of the state doesn't get an option to make. This bill makes sitings for prisons more difficult.
392	Rep. Messerle	Comments he has no problem with the agricultural part of this but he doesn't recall hearing from the forest industry or from forest landowners. The Corrections Department has not fully analyzed what this would do to them if they looked at it from a forest land point of view. In the coastal areas, between the bottom agriculture ground and the forest lands, there's not a lot left in-between.
426	Chair Starr	Calls a recess for approximately 10 minutes.
TAPE 59, B		
001	Chair Starr	Calls the meeting back to order. States after discussions he would still like to move this bill to the floor understanding there are some things that we'll want to see addressed in the Senate, specifically the mention of Class I and II soils in the forest zone
012	Rep. Luke	MOTION: Moves to ADOPT HB 3698-2 amendments dated 04/08/97.
017	Rep. Messerle	States for the record his concern is not only for forest lands but also the way it's classified. Forest land is site classed. (note: this means it's based on the growth rate of the forest stand) States he'll vote to pass it on but he thinks there are some flaws in this bill.
021	Rep. Uherbelau	States she also will vote to move it along because it will go to the Senate. She's waiting for information about how it impacts those sites already on the selection list and may have to change her vote in the future.
026	Chair Starr	Asks for any opposition to moving the -2 amendments.
	Chair Starr	Hearing no objection, declares the motion CARRIED.
030	Rep. Wells	MOTION: Moves HB 3698 to the floor with a DO PASS AS AMENDED recommendation.
034	Chair Starr	VOTE: 5-2 AYE: 5 - Messerle, Schrader, Wells, Uherbelau, Starr NAY: 2 - Thompson, Luke

	Chair Starr	The motion CARRIES. REP. STARR will lead discussion on the floor.
043	Chair Starr	Closes the work session on HB 3698 and opens the public hearing on HB 3687.
<u>HB 3687 PUBLIC HEARING</u>		
048	Don Schellenberg	Representing the Oregon Farm Bureau. States that HB 3687 and HB 3688 were a package and were suppose to be in one bill. Asks to testify on both bills at the same time.
052	Chair Starr	Changes the public hearing to include both HB 3687 and HB 3688.
<u>HB 3687 AND HB 3688 PUBLIC HEARING</u>		
054	Don Schellenberg	States it was not their intention that the amendments on page one of HB 3688 eliminate agricultural land from the land use planning process. The -1 amendments remove the new language and reinsert the old language. (EXHIBIT F)
066	Schellenberg	Begins testimony by stating the "Farm Bureau's consistently been a supporter of land use planning because we believe that is the only way to ensure that economic force and stability provided by agriculture will continue, and that a sufficient amount of farm land will remain in agricultural production to sustain the viability of the agricultural suppliers, processors, and markets. Left to the devices of simple market forces, the Willamette Valley would soon look like Los Angles county and Oregon's economy would falter with the fast decline in the domestic and foreign export of agricultural products."
079	Schellenberg	Continues, HB 3687 and HB 3688 are the next step in declaring and affirming that land protected under Goal 3 is protected from other uses for the purpose of agricultural production. * HB 3688 with the proposed amendments would provide that the Land Conservation and Development Commission (LCDC) will continue making the decisions about farm and non farm uses on land regulated under Goal 3 but will not be responsible for how the farming activities are conducted. * HB 3687 takes the authority removed from LCDC in HB 3688 and specifically gives it to the Oregon Department of Agriculture (ODA).

112	Schellenberg	Continues, this provision ensures uniformity in the application of regulations to farming practices. They were not able to secure the support of the Governor to complete this step, however, they do have support for the amendments to HB 3687. These amendments require any state agency, city, county, or political subdivision, when taking an action to regulate a farming practice, must coordinate with the ODA and design a regulation that will have the least impact on farming operations.
124	Schellenberg	Respectfully requests that the committee adopt these amendments and set aside HB 3688.
126	Rep. Uherbelau	Asks do we have the amendments?
129	Schellenberg	Negative, he has only one copy. (EXHIBIT G)
130	Rep. Luke	Comments there have been discussions about siting gravel mines on farm ground. Ask if this would in any way keep the counties or cities from siting mines on farm ground.
135	Don Schellenberg	Negative. This bill deals exclusively with regulating farming practices.
138	Rep. Luke	States mining sites are sited by cities and counties. If they can't pass anything that deals with farm ground, that would say they couldn't site mining sites on farm ground.
141	Schellenberg	Repeats that this bill deals exclusively with a city or county adopting any regulation that regulates a farming activity. It doesn't deal with whether you can site an aggregate mine.
146	Rep. Luke	Comments if you site an aggregate mine on farm ground, you've regulated the farming activity that can take place on that ground.
149	Schellenberg	Responds, if you site a mine you obviously can't farm it, but for this to have an effect, the county would have to adopt an ordinance that says we're going to site this mine and by the way you can't farm it. This would not have an impact in this regard.
158	Rep. Luke	Asks how do you justify taking away local control of a county from regulating the use of their ground as long as they follow state rules.
162	Schellenberg	Responds this doesn't take away the authority of the county. The language they are proposing provides that when a state agency, city, county, or political subdivision adopts an ordinance or regulation that would regulate a farming practice, they would first coordinate with the ODA to design a regulation that would cause the least impact on the farming operation.
185	Rep. Luke	A bill passed out of committee that says cities and counties could site prisons on prime farm grounds under conditional use. Asks if this bill would stop that.
189	Schellenberg	Negative, this bill would have no effect.
191		

	Rep. Schrader	Refers to HB 3687 line ten. States this addresses only the regulation of farming practices, not land use. Refers to ORS 3930, "farming practice means ..." It has nothing to do with siting.
219	Rep. Messerle	Asks Schellenberg to better identify the problem.
231	Schellenberg	Responds what prompted their concern on this issue was the rewrite of Goal 5, specifically overlays.
267	Rep. Messerle	Asks if there has been discussions with LCDC?
269	Schellenberg	Affirmative.
271	Rep. Messerle	Comments on testimony at the Ways and Means Committee in response to what Goal 5 means to agricultural land operations or timber land operators. The response was that they only have authority in the placing of structures within the Goal 5 riparian zone.
285	Schellenberg	Offers the example that an elk overlay could include restrictions on the height of fences on farmland in the overlay area.
326	Rep. Luke	Asks are they dealing with just one bill and amending that?
328	Schellenberg	Their intent is to drop HB 3688 and deal with HB 3687.
335	John McCulley	Representing the Tree Fruit Growers. States this industry is in favor of HB 3687 as originally drafted. The issue is the potential of overlapping regulations and they would prefer that the ODA determine these types of conflicts.
386	Roger Grahn	Submits written testimony (EXHIBIT H). Refers to ORS 660, the farm income rule. States that the vast majority of farms do not qualify for the \$80,000 income rule.
448	Rep. Schrader	Comments that the bill before the committee focuses on farming practices.
449	Grahn	Responds he recognizes it's an unrelated issue. Farming practices that must generate \$80,000 are an impossibility to attain on any of the small acreage parcels.
460	Chair Starr	States this bill will not in any way impact that situation.
463	Grahn	Asks wouldn't this do away with the administrative rulings that come from LCDC because their sole goal is to prohibit that kind of thing.
TAPE 60, (I)		
024	Chair Starr	States that this bill wouldn't impact that. This is speaking to farm practices and how they're regulated. We're trying to say that it's the responsibility of the ODA.
034	Grahn	Asks, prohibiting the use of Oregon administrative rules, doesn't it apply to other agencies as well, LCDC for example. This isn't directed to any one agency, it applies to all of them.
037		

	Rep. Uherbelau	Comments she thinks he may be referring to HB 3688 which had the prohibition against LCDC doing certain things. States the only bill they're addressing is HB 3687 which states that the city, county, or state agency can't, without the approval of ODA, impose restrictions or regulations on farming practices.
050	Grahn	Clarifies it is exclusive to the ODA.
051	Rep. Uherbelau	Affirmative.
057	Grahn	States he misunderstood the bill.
059	Larry George	Executive Director of Oregonians in Action. States they believe that the LCDC has gone beyond what the legislature intended especially when it come to farm practices.
098	Rep. Messerle	States they heard when they were developing the Salmon Recovery Plan and budget that land use planning from LCDC would only be impacted through Goal 5. Asks how their organization feels about regionalized land use planning.
103	George	Responds their position is either we're all involved in the land use planning or we're all out.
121	Rep. Messerle	States the pressures, demands, and the value of different segments of agriculture vary from one region to another. There's extreme pressure in the Willamette Valley to develop farm land compared to what he sees in the rest of the state. Comments he thinks one of the reasons LCDC is having trouble being accepted is because it doesn't fit all areas.
134	George	Responds that he makes a good point. Different areas have different needs. There are 36 regions in the state that already have a planning process set up. He believes the idea for SB 100 and SB 101 was to lay out some overall concept, a framework upon which the local jurisdictions would implement. Their concern is excepting whole segments of the population out of the land use system completely.
152	Rep. Luke	Comments that in Deschutes County you have to get a permit for a farm building. They're trying to resolve people who build real nice farm buildings and then park their motorhomes, boats, and non-farm vehicles in them. Asks if this bill would keep the cities or counties from doing that.
158	George	Responds he was looking at this from a more simplistic view.
169	Rep. Schrader	Comments that it gets down to the random administration by local jurisdictions as an attempt to fit it into situations. They probably don't have enough guidance.
200	Art Schlack	Land Use Specialist, Association of Oregon Counties. States his appreciation for the comments made by Schellenberg and that they support the withdrawal of HB 3688. The amendments are headed in the right direction but they would like to be part of additional discussions to fine tune the legislation.

217	Phil Fell	<p>League of Oregon Cities. States that they appreciate Schellenburg's comments and acknowledge Rep. Luke's support of home rule. Agrees that the amendments are a significant step in the right direction however, he's concerned about:</p> <p>* the bold language in lines eight and nine which is not defined in statute</p> <p>* the language deleted in line 10 which suggests that some practices can be regulated inside an urban growth boundary.</p> <p>To exclude city/county authority to control land use practices is inappropriate. Encourages the committee the either define or delete the bold language in lines eight and nine.</p>
271	Bob Rindy	<p>Department of Land Conservation and Development, (LCDC). (EXHIBIT I) States they also support the amendments and feel they go in the right direction. They concur that farm structures are not defined and LCDC rules do not regulate farm practices on farm land. In regard to the Governor's Salmon Plan, all regulation of farm practices on EFU land is under the ODA however, in exception lands that are residential and inside urban growth boundaries, LCDC regulates farm practices in regard to wetlands, stream corridors, and vegetation removal.</p>
317	Rep. Uherbelau	<p>Asks if under existing statute there is some case law or agency ruling that defines what a farm structure is.</p>
330	Rindy	<p>Responds the word "farm structure" is in existing statute. Note that Section 2 provides authority to local governments and LCDC to adopt rules for farm structures in certain cases.</p>
340	Rep. Uherbelau	<p>Asks if it's helpful that the amendments restore the language in Section 2.</p>
345	Rindy	<p>Responds it's important to remember not to cause confusion. Everyone needs to have an understanding of what a "farm structure" is and to what extent it is or isn't regulated.</p>
359	Rep. Messerle	<p>Asks if it's true that the way it's presently implemented, local governments regulate building permits for dwellings but for other farm structures just the siting is regulated.</p>
366	Rindy	<p>Responds just the siting is regulated. Their concern was that the authority to site these appeared to be taken away.</p>
369	Rep. Luke	<p>Comments this isn't true of all counties. Deschutes requires building permits to be sure of the intended use of the building and that it's structurally sound.</p>
379	Rindy	<p>Comments that Goal 5 was amended last year by LCDC. It clearly states that local governments are not required to regulate farm practices on EFU land or forest land in order to meet Goal 5.</p>
400	Rep. Luke	<p>Confirms these goals are for the entire state and set policy.</p>

401	Rindy	Affirmative.
401	Rep Luke	Asks when the legislature can take a look at the amendments and approve or disapprove them.
404	Rindy	Answers they can present Goal 5 as amended to the legislature at any point. They did report to the interim committee as they adopted those rules.
415	Rep. Luke	Asks can a non-elected state agency and board set goals for the entire state and the legislature doesn't have to look at them?
421	Rindy	Responds that statute states LCDC must adopt goals of that nature and must present copies of those goals to the interim committee prior to adoption, which they did.
TAPE 60, (II)		
008	Phil Ward	Oregon Department of Agriculture (ODA)
009	Rep. Luke	Asks for clarification, if the bold language for cities and counties is being deleted, the cities and counties don't have to consult with the ODA anymore?
012	Chair Starr	Affirmative, they do in the amendments. (note: not for the health, safety, welfare..)
014	Rep. Luke	States as the bill was originally written to consult with ODA, ask if the department has expertise in land use?
018	Ward	Responds the intent of the bill requires to consult or coordinate with ODA on issues relating to farming practices.
024	Rep. Luke	Asks if he foresees this as an appeal process?
030	Ward	Answers it may be.
032	Rep. Luke	Confirms the amount of consultation isn't spelled out and this could be an issue of appeal.
034	Ward	Responds the mechanics of consultation could be defined, perhaps in the rule making process.
036	Rep. Schrader	Suggests when the amendments come back, they could discuss the issue more consistently. This just encourages the different jurisdictions to talk to one another to avoid problems.
047	Rep. Uherbelau	States she has a concern about "without first coordinating." If you're only asking them to coordinate and let's say it's discussed and they don't agree, they can go ahead and do it anyway. It doesn't say that ODA has the final decision. That's an issue.
057	Rep. Luke	Comments little words have been the basis for big appeals. Unless you have absolute legislative intent and spell it out, you can have all kinds of problems.
063	Chair Starr	Asks for those who are principally involved to bring language forth that is acceptable. Declares the meeting adjourned.

Submitted By, Reviewed By,

**Linda M. Kowal, Judith Gruber,
Administrative Support Administrator**

EXHIBIT SUMMARY

A - HCR 9, hand engrossed bill including -2 and -3 amendments, staff, 4 pp.

B - HB 3698, hand engrossed bill including -2 amendments, staff, 2 pp.

C - HB 3698, faxed testimony, Wanda S. Ballentine, 1 p.

D - HB 3698, faxed testimony, Porter Lombard, 1 p.

E - HB 3698, faxed testimony, Susan Delles 1 p.

F - HB 3688, hand engrossed bill including -1 amendments, staff, 3 pp.

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

H - HB 3688, written testimony, Roger Grahn, 3 pp.

I - HB 3687 and HB 3688, written testimony, Bob Rindy, 2 pp.

J - HB 3688, faxed testimony, Susan Delles, 3 pp.

K - HB 3688 and HB 3698, faxed testimony, Wanda S. Ballentine, Porter Lombard, Joyce Coleman 3 p.