

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

March 31, 1997 Hearing Room E

1:00 P.M. Tapes 45 - 46

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

MEMBER EXCUSED: Rep. Michael Fahey

STAFF PRESENT:

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HCR 22 Work Session

HB 2502 Work Session

HB 2641 Work Session

HB 2584 Public Hearing

HB 2460 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 45, A		
003	Chair Lewis	Calls the meeting to order at 1:13 p.m. and opens a work session on HCR 22.

<u>HCR 22</u> <u>WORK</u> <u>SESSION</u>		
006	Pat Zwick	Policy Analyst, explains provisions of the resolution and Parks subcommittee proceedings related to HCR 22.
014	Rep. LUKE:	MOTION: Moves HCR 22 be sent to the floor with a BE ADOPTED recommendation.
017	Rep. Shields	Asks what the purpose and need of the resolution is.
020	Chair Lewis	Explains that the resolution was brought forward in response to actions taken last year by the federal government in Utah. The request is for a public hearings process.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Fahey
035	Chair Lewis	The motion CARRIES. REP. SIMMONS will lead discussion on the floor.
036	Chair Lewis	Closes the work session on HCR 22 and opens a work session on HB 2502.
<u>HB 2502</u> <u>WORK</u> <u>SESSION</u>		
038	Pat Zwick	Policy Analyst, Reviews progress of the bill and discusses the -1 amendments (EXHIBIT A).
045	Rep. Luke	MOTION: Moves to ADOPT HB 2502-1 amendments dated 3/31/97.
047	Chair Lewis	Hearing no objections, declares the motion CARRIED.
049	Rep. Luke	MOTION: Moves HB 2502 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Fahey
056	Chair Lewis	The motion CARRIES. REP. JOHNSTON will lead discussion on the floor.
060	Chair Lewis	Closes the work session on HB 2502 and opens a work session on HB 2641.

<u>HB 2641</u>		
<u>WORK</u>		
<u>SESSION</u>		
063	Pat Zwick	Policy Analyst, Reviews progress of the bill and discusses the -2 amendments (EXHIBIT B).
075	Chair Lewis	Verifies that -2 amendments completely replace the -1 amendments.
077	Rep. Luke	Expresses confusion about why certain amendments were made.
080	Chair Lewis	Asks if the amendments are acceptable.
081	Rep. Luke	Answers affirmatively.
083	Chair Lewis	Verifies that the League of Oregon cities will not oppose the bill with -2 amendments.
089	Rep. Shields	MOTION: Moves to ADOPT HB 2641-2 amendments dated 3/27/97.
094	Chair Lewis	Hearing no objections, declares the motion CARRIED.
095	Rep. Shields	MOTION: Moves HB 2641 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0
		AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 1 - Fahey
103	Chair Lewis	The motion CARRIES. REP. SHIELDS will lead discussion on the floor.
107	Chair Lewis	Closes the work session on HB 2641 and opens a public hearing on HB 2584.
<u>HB 2584</u>		
<u>PUBLIC</u>		
<u>HEARING</u>		
110	Chair Lewis	Explains that HB 3304 will be heard and moved by the committee, but it is related to HB 2565 and HB 2584. Indicates that written testimony provided during the public hearing on HB 2565 on 2/21/97 should be referenced during the public hearing on HB 2584 (EXHIBIT C).
136	Henry Reeves	Yamhill County resident. Discusses the history of Lester Lukas, requester of HB 2565. Describes the history of Mr. Lukas' property. Explains that the County Board of Commissioners cited several reasons for denying Mr. Lukas' appeal to allow a non-family member to live in a second dwelling on his farm. Indicates that HB 2584 would allow a temporary dwelling to be of any form of construction. States that a permanent dwelling should not be used to solve a temporary need. States that the proposed legislation would weaken current land use laws (EXHIBIT D).

214	H. Reeves	Indicates that HB 2584 will allow for more permanent dwellings to be built on farmland and asks if legislators have considered the consequences of the proposed legislation. States that the Willamette Valley is ranked fifth nationally among endangered resource areas. States that the proposed legislation runs against the common good.
250	Merilyn Reeves	Representative, Friends of Yamhill County. States that a problem in rural areas occurs when people have temporary opportunities for housing which illegally turns to permanent housing. States that this is a county problem that should be taken care of at the county level. Agrees that any hardship should be given due consideration. Expresses opposition to HB 2584 (EXHIBIT E) .
292	Rep. Luke	Asks if Ms. Reeves has seen the -2 amendments.
296	M. Reeves	No.
308	Headley Chambers	Resident of Lebanon. Expresses support for HB 2584. States that he has farmed most of his life and owns a farm of considerable size. Expresses concern for the environment. States that temporary or permanent residences should be allowed on farms when feasible, without question.
TAPE 46, A		
166	Chair Lewis	Tells Mr. Chambers that Right to Farm laws have been passed by the legislature.
169	Rep. Simmons	Expresses appreciation for Mr. Chambers' common sense approach towards the proposed legislation.
173	Clif Kenagy	Resident of Benton County, Expresses support for the Land Conservation and Development Commission. Supports the idea for hardship dwellings, but does not support HB 2584.
197	Blair Batson	Representative, 1000 Friends of Oregon. Expresses opposition to HB 2584 as written. Discusses alternate amendments that will be circulated. Explains that temporary hardship dwellings aren't the problem, but the enforcement of making sure residents are out of the dwellings when the hardship has ended is a problem. Suggests an annual review of the residents and dwellings.
234	Rep. Luke	Suggests that language be included to indicate automatic renewal of a permit to stay in a temporary residence if hardship conditions haven't changed.
243	Chair Lewis	Explains that 3304 will add the temporary hardship dwelling provisions to forest zones also. Asks if there are problems with the concept.
249	Batson	States that the major concern with temporary dwellings is the abuse and lack of enforcement associated with them.
251	Rep. Luke	Verifies that -2 amendments have language relating to forest zones.
260	Chair Lewis	Answers affirmatively, and states that HB 3304 will be moved by the committee instead of HB 2584.
		Representative, Department of Land Conservation and Development. Expresses concerns with HB 2584 as written. Discusses the -2 amendments

273	Bob Rindy	which were drafted based on testimony and concerns with HB 2565. States that more amendments will be made (EXHIBIT F) .
294	Ron Eber	Representative, Department of Land Conservation and Development (DLCD). Discusses additional amendments which indicate that a temporary dwelling may be used in the event of a hardship, or an existing structure can be used as a dwelling temporarily. States that interested parties associated with the amendments thought they resolved questions. Goals of the amendments were to define existing and manufactured dwellings and clarify that use of an existing building would not qualify for a replacement dwelling later.
345	Rep. Luke	Asks if a temporary residence can be replaced if it is damaged by natural causes.
352	Eber	Answers affirmatively, indicating that it would still be a hardship structure if the hardship still remained.
366	Rep. Luke	States that in the past, people would have a manufactured home on a property and then take it off when they were ready to build a permanent home, but counties would deny the permanent home.
380	Eber	Explains that there are provisions that allow for the rebuilding of a dwelling to its original state before it was damaged by natural causes. Related to Section 5 of the -2 amendments which allows for the hardship dwellings in forest zones, it is a new issue for DLCD.
405	Chair Lewis	Explains that the hardship and caretaker residences in forest zones are at the request of Rep. Schrader.
TAPE 45, B		
008	Eber	States that in Oregon Revised Statutes (ORS) 215.720, language indicates that only certain types of dwellings are allowed in a forest zone. At one time there was an intent to include language related to hardship dwellings in forest zones, but it did not happen. Some counties have allowed hardship dwellings and others haven't.
017	Rep. Luke	States that ORS 215.215 indicates that counties may rebuild dwellings destroyed by natural causes.
020	Eber	Agrees with the statement, but indicates that most of the language in 215 uses enabling language, such as "may."
035	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for the -2 amendments to HB 2584 and indicates that language needs to be included to amend ORS 215.283.
041	Chair Lewis	Appreciates the suggestion and will fix the amendment.
045	Chair Lewis	States that a work group will be formed to work on HB 3304.
050	Chair Lewis	Closes the public hearing on HB 2584 and opens a public hearing on HB 2460.
<u>HB 2460</u> <u>PUBLIC</u>		

<u>HEARING</u>		
060	Pat Zwick	Policy Analyst, summarizes the provisions of HB 2460.
073	Fred VanNatta	Representative, Oregon Association of Realtors. Explains the history of HB 2460 and describes provisions of the bill. The bill describes a process of what happens when a person believes that they have an application refund due if a local government has not acted on a land use application. Explains the refund process and deadlines related to it.
110	Rep. Luke	Explains that he doesn't have a problem with the bill, but indicates that there is a possibility of problems arising if mistakes are made during the reimbursement request process which delays notification of refund. Asks if attorney fees could be awarded in such a case.
121	Jon Chandler	Representative, Oregon Building Industry Association. Expresses support of the bill and explains that if a local government defaults on paying a claim, there should be legal remedies for the situation. States that local governments are working hard to make sure this type of situation doesn't occur.
135	Rep. Luke	Asks if building permit fees are refunded if the local governments don't take action on them.
137	VanNatta	States that HB 2460 is related to land use decisions associated with the 120 day rule.
140	Rep. Welsh	Asks if language is included related to agencies that don't take a payment when applications are submitted.
145	VanNatta	Knows of no jurisdiction that doesn't charge a fee for an application.
154	Rep. Luke	Asks if the League of Oregon Cities and the Association of Oregon Counties have had the chance to comment on HB 2460.
156	VanNatta	Explains that they had an opportunity to study the bill last fall.
162	Chair Lewis	Closes the public hearing on HB 2460 and opens a work session on HB 2460.
<u>HB 2460 WORK SESSION</u>		
167	Rep. Luke	MOTION: Moves HB 2460 to the floor with a DO PASS recommendation.
170	Rep. Lehman	States that creating a right for attorney fees in one direction creates the rights for attorney fees in the other direction also. Indicates that a person wanting to file a suit against a local government and request attorney fees might be obligated to pay similar fees if they lose.
197	Jon Chandler	Representative, Oregon Building Industries Association. Indicates that the reciprocity of attorney fees is not implied by the bill.
207	Rep. Lehman	Asks if there was a Supreme Court decision that indicates if a person has a right to attorney fees, then both sides have the same right.
211	Chandler	That is a possibility.
	Chair	Asks if the language of HB 2460 specifically means judgments in regards to

213	Lewis	the refund involved.
218	Chandler	Answers affirmatively.
227	Rep. Lehman	Indicates that if a judgment is ruled in favor of a local government, no attorney fees would be paid to the applicant.
240	Dave Hunnicutt	Representative, Oregonians in Action. States that the language should remain as "shall" in HB 2460 but add language that says the county won't be awarded attorney fees unless the case is frivolous.
257	Rep. Lehman	Agrees that the suggestion would be helpful. Asks if language should be changed from "shall" to "may".
267	Rep. Luke	Suggests that "shall" remain in the language.
275	Hunnicutt	Agrees that "shall" should be left but encourages the addition of language regarding the county not obtaining attorney fees unless the case is frivolous.
289	Fred VanNatta	Representative, Oregon Association of Realtors. States that he likes the suggestion from Oregonians in Action and encourages its inclusion as an amendment.
312	Rep. Lehman	Indicates that it is hard to solve a problem without creating a new one and suggests that the bill will be adding one more attorney to the land use process for citizens.
336	Chair Lewis	Verifies that Mr. VanNatta would like an amendment drafted from Oregonians in Action comments.
341	VanNatta	Answers affirmatively.
344	Rep. Welsh	Suggests that fees be awarded to the prevailing party instead of identifying if a case is frivolous or not.
355	Chair Lewis	Verifies that the suggested language should indicate that fees be awarded to a prevailing party only.
360	Rep. Welsh	States that lawsuit would drag on if frivolous lawsuit issues were to be raised. Prevailing party language would make for clean endings.
363	Rep. Luke	Asks if mediation or arbitration could be used to resolve issues.
378	Hunnicutt	States that he sees the proposed legislation being used in situations where the county has taken more than 120 days to make land use application decisions. A case would not be filed to argue land use issues, just the 120 day time period. Urges the committee to follow Mr. VanNatta's previous suggestions.
TAPE 46, B		
007	Rep. Lehman	Discusses a hypothetical situation of awarding attorney fees in a small case and asks if that is a realistic situation.
017	Hunnicutt	Answers affirmatively.
019	VanNatta	Hopes that local governments would be willing to settle small cases without having to go to court.
021	Hunnicutt	States that if local governments want to litigate over small amounts, it takes two parties to decided to do that.

025	Rep. Lehman	States that in small cases, the only party that has a motivation to be rational is the local government. States that an applicant does not have to be rational in their claims.
030	Hunnicutt	Suggests that a local government would be wise to settle if cases are small. Indicates that he will draft amendments for the bill.
049	Chair Lewis	Asks if Rep. Lehman would be satisfied by the amendments.
051	Rep. Lehman	Indicates that he still has concerns; the first being a question of whether the Supreme Court has already dictated over similar situations. The second problem is that when a party wins a case their action can not be called frivolous.
057	Chair Lewis	Asks Mr. Hunnicutt and Mr. VanNatta to work with Rep. Lehman.
062	Rep. Luke	Asks for suggestions about Rep. Welsh's suggestion of a prevailing party being awarded fees.
064	Hunnicutt	Indicates that either proposed language would be suitable to the bill, but indicates preference for Mr. VanNatta's suggestions.
070	Chair Lewis	Asks Mr. VanNatta if he is ok with Rep. Welsh's suggestions.
076	VanNatta	Indicates that he approves of the bill as is, but would like to speak with attorneys about similar cases to possibly rewrite language.
095	Chair Lewis	Asks if the committee would like to move the bill.
097	Rep. Luke	Explains that a local government or an applicant could continue to appeal a case.
101	Hunnicutt	States that there is much litigation about the 120 day rule.
102	Rep. Luke	States that there must be a better way to get fees refunded than going to court. Expresses disappointment with having to add another attorney to the land use process.
116	Chair Lewis	Indicates that she's been told that mediation doesn't result in a final determination of a case.
119	Chandler	Suggests the addition of a binding arbitration clause but that is more elaborate than what is really needed.
123	Rep. Luke	Explains that the state does have arbitrators.
125	Chair Lewis	Explains that the state has a dispute resolution process that uses mediators, but no final decisions are made.
128	Rep. Luke	States that if parties sign an agreement that they will abide by, it is a court action.
137	Rep. Lehman	Explains that attorney fees are usually litigated anyway.
149	Chair Lewis	States that a motion has been made on the bill and the committee must take an action. Explains that the bill sponsors will be able to work on

		amendments before it gets to the Senate.
159	Rep. Luke	Verifies that the committee would agree on amendments within reason.
		VOTE: 4-1 AYE: 4 - Luke, Simmons, Welsh, Lewis NAY: 1 - Lehman EXCUSED: 2 - Fahey, Shields
169	Chair Lewis	The motion CARRIES. REP. WELSH will lead discussion on the floor.
180	Chair Lewis	Closes the work session on HB 2460.
182	Rep. Luke	States that the discussion was good and hopes that the Senate will have a similar discussion.
185	Chair Lewis	Explains that the solution can't be mediation.
189	Rep. Lehman	Indicates that attorneys are their own worst enemies, but believes that cases related to the proposed legislation would probably be solved before they are taken to court.
204	Chair Lewis	Adjourns the meeting at 2:50 p.m.

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2502, -1 amendment, Committee staff, 1 p.

B - HB 2641, -2 amendment, Committee staff, 1 p.

C - HB 2584, Written testimony from HB 2565, Committee staff, 23 pp.

D - HB 2584, Written testimony, Henry Reeves, 4 pp.

E - HB 2584, Written testimony, Merilyn Reeves, 1 p.

F - HB 2584, Proposed amendments, Bob Rindy, 2 pp.