

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

April 21, 1997 Hearing Room E

1:00 P.M. Tapes 66 - 67

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Michael Fahey

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

STAFF PRESENT:

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 2642 Public Hearing

HB 2644 Public Hearing

HB 2493 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 66, A		
003	Chair Lewis	Calls the meeting to order at 1:30 p.m. and opens a public hearing on HB 2642.
<u>HB 2642</u> <u>PUBLIC</u> <u>HEARING</u>		
006	Pat Zwick	Policy Analyst, summarizes provisions of the bill.

021	Dick Angstrom	Representative, Oregon Concrete and Aggregate Producers Association. Indicates that the proposed legislation is related to SB 1083 from the 1995 Legislative Session. The current proposed legislation intends to do three things to speed up the land use process: increase fees so that they are more prohibitive to frivolous appeal, provide time limits to the Land Use Board of Appeals for extensions to the record, and ensure that decisions must be based on factual information. Expresses support for the bill and the proposed amendments.
074	Rep. Luke	Asks if there is a provision in place that allows fees to be waived if a person doesn't have the funds to cover them.
076	Angstrom	Doesn't know of one.
087	Rep. Luke	Indicates that there might have been testimony on another bill about people not having the funds to appeal a land use decision.
088	Angstrom	That is possible.
091	Rep. Fahey	Indicates that someone might have legitimate concerns, but no funds to appeal.
096	Angstrom	Speaking from personal experiences, indicates that money has never been a problem in his industry.
101	Rep. Fahey	Asks why the fees have to be raised if people that are appealing will have to spend much more anyway.
102	Angstrom	Indicates that the lower fee is easy enough to pay, such that people have filed frivolous appeals.
107	Rep. Luke	Indicates that it would cost more than \$50 to file and appeal.
109	Angstrom	Answers affirmatively.
113	Rep. Shields	Asks how the \$250 fee was decided on.
116	Angstrom	Indicates that a similar fee was approved last session.
123	Chair Lewis	Asks why a particular section is being deleted from the original bill.
130	Angstrom	Indicates that the Land Use Board of Appeals (LUBA) believed that other parts of the bill covered the issues.
151	Christine Cook	Representative, 1000 Friends of Oregon. Expresses opposition to HB 2642, but explains that the opposition has decreased with the -2 amendment. Indicates that there is still a problem with the fee increase. The projected total fee for appeal at (LUBA) will be \$400, and there is no fee waiver available. States that there is already a provision against frivolous appeal in statute (EXHIBIT A).
193	Cook	Indicates that basing decisions on factual information is a great idea. Suggests a change in the wording related to the proposed legislation.
225	Rep. Luke	Asks if positions on comprehensive plans are based on fact.

226	Cook	No. The bulk of comprehensive plans are based on policies, objectives, and goals.
237	Rep. Lehman	Asks how many cases can be appealed each year.
241	Cook	An estimate is 10,000-12,000.
254	Rep. Luke	Asks how many LUBA upheld.
259	Cook	Does not have current statistics, but more cases are remanded and reversed than affirmed.
274	Rep. Lehman	Asks how many cases are affirmed without opinion, or affirmed without appeal, at the Court of Appeals and Supreme Court.
280	Cook	Does not know.
285	Chair Lewis	Asks about the LUBA \$150 deposit for costs.
288	Cook	Indicates that a petitioner that wins will have the deposit returned. A petitioner that loses has the costs of copying deducted from their deposit.
302	Chair Lewis	Asks what fees are charged for filing small claims and other cases.
305	Cook	Knows that it costs \$100 to file at the Court of Appeals.
309	Chair Lewis	Indicates that fees might be raised.
324	Dave Hunnicutt	Representative, Oregonians in Action. Expresses slight opposition to the bill. Indicates that there is a question about the increase of the filing fee. Suggests that the increase apply to parties opposing a land use decision.
363	Jon Chandler	Director of Governmental Affairs, Oregon Building Industry Association. Expresses support for the bill. Indicates that the current system is set up for very easy appeal of land use decisions. Encourages appeal and discussion during the planning stages of a land use decision, but opposes appeal during the implementation stage.
TAPE 67, A		
006	Rep. Luke	Asks if funds are available to waive fees at the Court of Appeals. Asks if something similar would be hard to add to the bill.
010	Chandler	Doesn't know.
012	Rep. Lehman	Asks what an acceptable number of appeals is, since there are 10,000-12,000 cases per year and only 265 appeals.
017	Chandler	The important issue is how many decisions involve density trade offs or other issues that will stall the process.
040	Chair Lewis	Closes the public hearing on HB 2642 and opens a public hearing on HB 2644.
HB 2644 PUBLIC HEARING		

042	Pat Zwick	Policy Analyst, summarizes provisions of the bill.
052	Roy Burns	Intergovernmental Relations Coordinator, Lane County Public Works Department. Expresses support for HB 2644. Indicates that it is hard to have a discussion of the issues when agencies do not appear in person. A personal appearance would lead to reduced appeals in the land use process (EXHIBIT B) .
070	Rep. Luke	Explains that in Deschutes County, the Land Conservation and Development Commission (LCDC) has a field representative who does not always have the authority to make decisions. Asks if a personal appearance would be to negotiate or answer questions.
077	Burns	Indicates that an individual would be able to interact with the Board to resolve conflicts.
086	Rep. Lehman	Asks what distinction is made between someone mailing in testimony and someone walking in and presenting testimony and leaving.
091	Burns	It would be best for the person to stay and interact with the decision makers rather than leave.
094	Rep. Luke	Indicates that the bill does not stop individuals from sending in written testimony.
097	Rep. Lehman	The distinction is between a short appearance to drop off testimony and interacting with the decision makers.
099	Rep. Shields	Asks how many added personnel the Department of Land Conservation and Development (DLCD) would need to satisfy the request.
104	Burns	Indicates that the workload would be limited, therefore, probably not many, but he doesn't know for sure.
108	Rep. Shields	Hopes that an answer will be given since it is a matter of cost.
121	Rep. Lehman	Asks what would happen if DLCD made appearances at every hearing and found out what was going on at the county level.
127	Burns	Indicates that DLCD receives information about all decisions that they are related to and doesn't know how they could have more opportunity to be involved with the process. Involvement at the local level is better than not being involved at the local level.
148	Rep. Lehman	Asks how many appeals were filed with only written testimony and no personal appearance.
152	Burns	Doesn't know.
154	Rep. Fahey	States that committees in the legislature take written testimony if a person can't appear. Asks why the committees shouldn't ban written testimony.
158	Burns	Explains that the proposal before the committee is meaningful.
163	Rep. Fahey	Asks how lobbyists would testify if they have more than one bill that is being heard.
167	Burns	Doesn't know.

176	Bob Rindy	Representative, Department of Land Conservation and Development. Explains that the bill will have a substantial fiscal impact on the agency. The field staff is very limited and they must cover a very large area. Because of the number of cases that are brought forward, participation must be in the form of a phone call or letter. Doesn't know what problem is trying to be solved, but from experience as a field representative, knows that local governments rarely request that someone appear in person. Urges the committee to not adopt the legislation (EXHIBIT C).
234	Rep. Lehman	Asks how many appeals were filed by DLCD.
237	Rindy	Indicates that the agency files about 20 appeals per year. Of those cases that have been appealed since 1983, only eleven were lost.
245	Rep. Lehman	Asks how many appeals are filed without appearing in person.
249	Rindy	The agency has not kept track of that statistic.
254	Rep. Luke	Verifies that the bill affects all people, not just DLCD.
256	Rindy	Answers affirmatively.
258	Rep. Luke	Agrees that it is hard to work with someone when they aren't present.
268	Rep. Shields	Asks if language could be added such that a person appear "if requested." Understands that there are times when someone would show up and the appearance would have no value.
286	Rindy	Indicates that the agency would still be in a tough position. The staff is small, but they try to comply with all requests.
299	Chair Lewis	States that something that has bothered local planning commissions is when they can have no interaction with a person or agency and then the agency requests that the record remain open for discussion. Asks if there is another solution to the problem.
326	Rindy	Indicates that the agency needs to establish written procedures for similar situations. Suggests that the interim committee work with the director to resolve issues. Explains that the appearance of this bill is the first time that the agency has been made aware of the problem.
372	Rep. Luke	Verifies that not all agency procedures are in writing.
380	Rindy	Indicates that procedures are in writing, but there is no written procedure that indicates a contact must be made in every case.
401	Chair Lewis	Indicates that leaving a record open does affect the 120 day rule and forces a volunteer body to meet more often than necessary.
TAPE 66, B		
018	Christine Cook	Representative, 1000 Friends of Oregon. Expresses opposition to HB 2644. The language of the bill is vague, primarily the meaning of "in person". Indicates that 1000 Friends of Oregon can't support the bill since the state

		land use agency will be "muzzled". States that appeals before LUBA are not frivolous (EXHIBIT D) .
059	Art Schlack	Land Use Specialist, Association of Oregon Counties. Expresses support for HB 2644 indicating that it will have a positive effect on local land use programs (EXHIBIT E) .
072	Rep. Luke	Asks how much additional time phone calls concerning written testimony add to the land use decision process.
076	Schlack	It's hard to tell, but at times when written testimony is presented, questions need to be answered in a timely manner. The biggest impact of written testimony comes from not being able to fall within the 120 days.
088	Rep. Luke	Asks Mr. Schlack if his planning staff is impacted when people do not appear in person to testify.
089	Schlack	It is an impact on the whole process.
098	Rep. Shields	Asks if conference calls or current technology can be used as a solution.
109	Schlack	Agrees that the concept is a good one, but calls can be awkward. States that they would be better than nothing.
122	Rep. Luke	States that agencies and the public should be able to use the same technologies.
128	Jon Chandler	Director, Governmental Affairs, Oregon Building Industry Association. Expresses support for HB 2644. Indicates that the bill would engage people in the actual process. Explains that DLCD has not been the major culprit in providing written testimony only, but agrees that there is a problem. States that the bill will move the land use process forward.
180	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for HB 2644. Clarifies that the bill will not stop participation at local land use hearings. Suggests that DLCD could have had participants at appeals over the last biennium since there were so few of them. Explains that the bill will weed out persons that are not truly interested in a particular land use decision. Applicants should have the opportunity for cross-examination (EXHIBIT F) .
235	Hunnicutt	Indicates that appearance before the decision maker allows that person to question opponents also. Suggests that the bill will facilitate settlements. Both parties could be involved with reaching decisions that everybody can live with.
272	Larry Campbell	Representative, Seneca Jones Timber Company. Explains that with written testimony, people put themselves in a position of standing. Indicates that most times, people don't read letters and more importantly, there can be no appeal to the letter. Suggests that if people don't appear in person then their appeal should be limited to what is in their letter. The real problem with land use is that the decisions are a vehicle for delay of the process.
329	Rep. Luke	Explains that the problem with limiting the appeal to the content of the letter is that the letters will get longer and everything will be included in the letter.

353	Rick Roberts	Citizen, Indicates that because of his work schedule, the only way he can testify on land use issues is by sending a letter.
TAPE 67, B		
018	Chair Lewis	Closes the public hearing on HB 2644 and opens a public hearing on HB 2493. Combined written testimony was presented for HB 2642 and HB 2644 (EXHIBIT G) .
<u>HB 2493</u> <u>PUBLIC</u> <u>HEARING</u>		
022	Rep. Luke	State Representative, District 54. Speaks of density requirements and how neighboring residents request developments to lower densities. HB 2493 requires mitigation of different densities if a development reduces density that is required by the comprehensive plan.
040	Bob Rindy	Representative, Department of Land Conservation and Development. Indicates that the department supports the concept of requiring local governments to maintain the overall density in the urban growth boundary required by the comprehensive plan. Explains that problems arise in how the plan needs to be carried out. Indicates that the agency is willing to work on the details (EXHIBIT H) .
073	Rep. Luke	Explains that when a development lowers density, that forces the city to move its urban growth boundary out faster. Indicates that population should be moved to another part of the city if density is lowered in a development.
089	Rindy	Suggests that a better way to solve the problem is with HB 2501 which does not allow a city to arbitrarily reduce the density of a development. Explains the risk of having to open the periodic review process after every quasi-judicial process.
104	Rep. Luke	Asks if most areas have already gone through periodic review.
106	Rindy	At least once.
107	Rep. Luke	Asks if the point of periodic review is to inventory the land and verify the zoning.
111	Rindy	States that the agency has been working for years to make it harder for cities to arbitrarily lower densities. Indicates that the practice is illegal, but it continues.
128	Rep. Luke	Asks what solutions there are to a city requiring a development to lower density.
133	Rindy	Explains that a city would be violating it's comprehensive plan. A developer must appeal to the Land Use Board of Appeals. Developers tend to not want to appeal to the Land Use Board of Appeals.
147	Rep. Luke	Verifies that a developer would then have to lower density and nothing else could be done.
149	Rindy	States that the problem is serious. Wishes the department was able to provide more information, but they do not receive notice of applications.

159	Rep. Fahey	Asks if DLCD can condition reviews.
161	Rindy	A city government can condition an application and should be doing that. Indicates that the proposed legislation would require a local government to condition a future application to raise density if density is lowered on a present application.
167	Rep. Luke	The intention of the bill was to require a local government to find a location for additional population before the lower density application is approved.
174	Rindy	Based on the intention of the bill, indicates that the agency is willing to work on the language, but suggests that HB 2501 is a better vehicle.
183	Jon Chandler	Director, Governmental Affairs, Oregon Building Industry Association. Agrees that the concept of the bill is good, but it needs some work.
198	Chair Lewis	Closes the public hearing on HB 2493 and adjourns the meeting at 3:10 p.m.

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2642, Written testimony, Christine Cook, 3 pp.

B - HB 2644, Written materials, Roy Burns, 2 pp.

C - HB 2644, Written testimony, Bob Rindy, 2 pp.

D - HB 2644, Written testimony, Christine Cook, 2 pp.

E - HB 2644, Written testimony, Art Schlack, 1 p.

F - HB 2644, Written testimony, Dave Hunnicutt, 1 p.

G - HB 2642 and HB 2644, Submitted testimony, Committee Staff, 9 pp.

H - HB 2493, Written testimony, Bob Rindy, 1 p.