

**HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY**

**April 28, 1997 Hearing Room E**

**1:00 P.M. Tapes 73 - 74**

**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 3074 Public Hearing**

**HB 2006 Work Session**

**HB 2466 Work Session**

**HB 2021 Work Session**

**HB 2643 Work Session**

**HB 3084 Public Hearing**

**HB 2515 Work Session**

**HB 3084 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.**

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<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 73, A</b>		
003	Chair Lewis	Calls the meeting to order at 1: 10 p.m. and opens a public hearing on HB 3074.
<b>HB 3074 PUBLIC HEARING</b>		
012	Debi Davis	Legislative Assistant, Rep. Lynn Snodgrass, District 10 <b>(EXHIBIT A)</b> .
019	Gary Aspmo	Requester of the bill. Explains the history behind the bill. His father owned a houseboat used for hunting which was located on the John Day River. The Division of State Lands (DSL) required a lease for use of the submerged property. The lease was not valid as written. The boat was used as a houseboat but a provision exists in statute that describes a houseboat as having onshore sewage which the boat in question doesn't have.
079	Rep. Luke	Indicates that 2250 square feet is bigger than a pleasure boat.
081	Aspmo	States that the boat is single story and it is only his total square footage includes a float, the floorspace, dock, and ramp. Explains that 2250 sq. ft. has been used as a measure of other DSL rules.
093	Rep. Luke	Ask for clarification on an Oregon Revised Statute (ORS).
095	Davis	ORS 274.040 is related to the creation of leases by DSL. Explains provisions of the bill and the exemptions it creates.
110	Rep. Luke	Asks if the exemption is for sewage or electricity and other utilities.
111	Davis	Sewage only.
113	Rep. Luke	Asks if a boat could have gas-powered plumbing.
114	Davis	Describes the type of float that would be exempt.
118	Rep. Luke	Clarifies by asking if there could be a gas-powered pump on board.
119	Davis	Gas pumps are regulated by another statute.
120	Rep. Luke	Asks if any provision of the bill restricts the geographic location to the Columbia River.
124	Aspmo	States that the rules today apply to all rivers in Oregon.
126	Rep. Simmons	Asks what the proximity is to the next nearest similar structure.
128	Aspmo	Approximately 150 feet. Indicates that the boat is no different than a floating trailer house.
142	Rep. Simmons	Indicates that the structures can be elaborate and asks if passage of the legislation would cause a proliferation of similar structures.
146	Aspmo	Suggests that not many requests for leases for similar structures are submitted to DSL, but the current law isn't keeping them from being built.
152	Rep. Fahey	The problem is that the bill isn't specific to duck blinds. Indicates that

		people could use the floats as clubs if they wanted to.
161	Aspmo	Explains that his houseboat is used for recreation purposes only.
165	Rep. Fahey	Asks what accommodations are made for sewage.
166	Aspmo	A port-o-potty is onboard.
168	Chair Lewis	Asks for clarification on dates between written testimony and proposed amendments.
175	Davis	Indicates that a change would need to be made to say "#2 or #3".
183	John Lilly	Assistant Director, Division of State Lands. Explains that the waterways that are subject to the waterways leasing program are those that are navigable and those that are subject to tides. Indicates that the waterway leasing program should be subject to fewer exemptions from leasing. More rule making will occur in the next biennium. States that only one structure is currently under lease and would be subject to exemption. Explains the fee structures for rafts, marinas, and moorages <b>(EXHIBIT B)</b> .
281	Rep. Welsh	Asks what the cost of a lease would be for 2250 square feet.
283	Lilly	\$588 per year.
285	Chair Lewis	Verifies that works out to about \$11,000 per acre.
287	Lilly	States that the fee is per acre not square feet.
295	Chair Lewis	Asks if the 2250 sq. ft. can be expanded to an acre.
298	Lilly	Indicates that he could use the entire acre, but there would be an adjustment and review to the lease agreement.
308	Rep. Luke	Asks if provisions are included to allow the owner to take the craft on the river if a motor is attached.
310	Lilly	The Marine Board needs to determine what a boat is. Explains that if the craft is moved to another area, it could be leased in that area.
321	Rep. Luke	Asks for explanation of pictures that were presented.
330	Chair Lewis	Asks how far navigability has been determined up the John Day River.
335	Lilly	Indicates that the public's ownership extends to the head of tide.
344	Rep. Shields	Asks for more explanation of presented pictures.
367	Chair Lewis	Verifies that the proposed legislation would currently apply to one existing structure.
371	Lilly	Answers affirmatively.
377	Chair Lewis	Asks if other structures in the pictures would fall under the proposed legislation.
382	Lilly	Indicates that all structures on the river are subject to lease, but some may be "grandfathered" structures.
407	Rep. Fahey	Ask if a person could park a house boat on a river next to property that they own on shore.
411	Lilly	That is possible, but the lease rate might be changed due to other rules.

<b>TAPE 74, A</b>		
008	Rep. Fahey	Indicates that there is no provision in the bill that would prohibit such an action.
011	Lilly	Indicates that a structure under 2250 sq. ft. would be exempt under the proposed legislation.
014	Rep. Fahey	Asks if the bill would stop the construction of an outside dining float.
018	Lilly	Explains that changes would be made to the lease because of the commercial uses.
021	Rep. Fahey	Indicates that the bill does not prohibit the land owner and structure owner from being the same person.
025	Lilly	Answers affirmatively.
027	Rep. Luke	Asks if there is a provision that stops a person from having several floats together.
030	Lilly	Indicates that with the bill as written, several structures can be floated together.
037	Rep. Fahey	Asks if there is another way to address the problem, other than legislation.
040	Lilly	Indicates that the laws in the DSL are straightforward. Explains that it must be public policy to exempt a particular structure from leasing.
050	Rep. Luke	Asks what the lease price is for an acre of land and a half acre.
053	Lilly	\$588 for a portion of land up to one acre.
058	Chair Lewis	Closes the public hearing on HB 3074 and opens a work session on HB 2006.
<b><u>HB 2006 WORK SESSION</u></b>		
066	Art Schlack	Land Use Specialist, Association of Oregon Counties. Describes the effects of the -2 amendments. Indicates that work will continue during the interim.
086	Rep. Fahey	Asks if 1000 Friends of Oregon approves of the amendments.
088	Schlack	Indicates that they did express some concern.
096	Christine Cook	Representative, 1000 Friends of Oregon. Indicates that the organization will support the bill as amended.
107	Rep. Luke	<b>MOTION: Moves to ADOPT HB 2006-2 amendments dated 4/21/97.</b>
109	Chair Lewis	<b>Hearing no objections, declares the motion CARRIED.</b>
110	Rep. Luke	<b>MOTION: Moves HB 2006 to the floor with a DO PASS AS AMENDED recommendation.</b>
114	Rep. Luke	Indicates that the bill is not perfect but work can be done on the Senate side.
<b>VOTE: 6-0</b>		

		<b>AYE: In a roll call vote, all members present vote Aye.</b>
		<b>EXCUSED: 1 - Welsh</b>
122	Chair Lewis	<b>The motion CARRIES.</b> <b>REP. SIMMONS will lead discussion on the floor.</b>
128	Chair Lewis	Closes the work session on HB 2006 and opens a work session on HB 2466.
<b><u>HB 2466</u></b> <b><u>WORK</u></b> <b><u>SESSION</u></b>		
136	Pat Zwick	Policy Analyst, describes effects of the -1 amendments.
146	Rep. Luke	Explains the purpose of the bill.
158	Chair Lewis	Asks if the -1 amendments are satisfactory.
160	Rep. Luke	Answers affirmatively.
165	Chair Lewis	Asks if the Department of Land Conservation and Development approves of the amendments.
167	Bob Rindy	Representative, Department of Land Conservation and Development. States that there is one problem that still needs to be fixed.
173	Ron Eber	Representative, Department of Land Conservation and Development. Explains what changes need to be made to the amendment.
195	Rep. Luke	Asks how long the Department has known of the amendment.
196	Eber	They got the amendments today.
199	Rep. Luke	Asks if Legislative Counsel agrees with the suggestions.
200	Eber	Answers affirmatively.
202	Rep. Luke	Asks if the problem can be fixed on the Senate side.
204	Eber	Either side.
216	Chair Lewis	Indicates that the bill should be fixed in the House.
218	Rindy	Explains what problems could arise if the problem isn't fixed.
220	Rep. Luke	Indicates that he will assist in the drafting process.
233	Chair Lewis	Closes the work session on HB 2466 and opens a work session on HB 2021-A.
<b><u>HB 2021-A</u></b> <b><u>WORK</u></b> <b><u>SESSION</u></b>		
235	Rep. Luke	<b>MOTION: Moves to ADOPT HB 2021-A5 amendments dated 4/3/97.</b>
241	Chair Lewis	<b>Hearing no objection, declares the motion CARRIED.</b>
242	Rep. Luke	<b>MOTION: Moves HB 2021A to the floor with a DO PASS AS</b>

		<b>AMENDED recommendation.</b>
		<b>VOTE: 6-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 1 - Fahey</b>
253	Chair Lewis	<b>The motion CARRIES.</b> <b>REP. SOWA will lead discussion on the floor.</b>
261	Chair Lewis	Closes the work session on HB 2021-A and opens a work session on HB 2643.
<b><u>HB 2643</u></b> <b><u>WORK</u></b> <b><u>SESSION</u></b>		
270	Don Schellenberg	Representative, Oregon Farm Bureau. Expresses opposition to HB 2643 ( <b>EXHIBIT C</b> ).
299	Rep. Shields	Asks about the Farm Bureau's concerns of not being able to watch over land use decisions.
306	Schellenberg	Explains that there are so many land use decisions occurring that the farmers and ranchers don't have the opportunity to follow everything. If the proposed legislation is passed, then the Department of Land Conservation and Development (DLCD) won't be able to monitor changes that would be in non-conformance of land use.
343	Rep. Shields	Verifies that since the farmers and the Farm Bureau are so busy they are relying on the DLCD to monitor land use actions.
347	Schellenberg	Indicates that DLCD was not asked to monitor land use for the farmers, but they just do it.
350	Rep. Luke	Asks if the Farm Bureau board voted on the policy decision.
351	Schellenberg	Indicates that it came from the manual.
376	Rep. Fahey	Asks if DLCD has an opportunity to approve county land use plans from the beginning of the process.
379	Schellenberg	Indicates that the DLCD does review comprehensive plans, but some county decisions may not conform to the comprehensive plan.
388	Rep. Fahey	Indicates that problems encountered should be worked out between the county and the department, without the property owner in the middle.
400	Schellenberg	Indicates that the responsibility of DLCD is to determine if the county is following it's comprehensive plan.
<b>TAPE 73, B</b>		
005	Rep. Fahey	Indicates that when a county approves a permit, the first thing they need to look at is planning for the county.
		States that the counties are working very hard to put planning together,

013	Rep. Luke	but DLCD keeps changing the rules.
017	Schellenberg	Agrees with Rep. Luke, and indicates that change always causes confusion.
019	Rep. Fahey	States that he wasn't picking on the counties.
020	Chair Lewis	Describes her experiences on a county planning commission.
029	Schellenberg	Indicates that the counties are doing the best job that they can.
032	Chair Lewis	States that many decisions aren't overturned, they're remanded.
035	Dick Angstrom	Governmental Affairs Manager, Oregon Concrete and Aggregate Producers Association. Indicates that he has seen appeals of land use decisions that were frivolous and justified. Expresses opposition to HB 2643. Explains that DLCD's ability to appeal decisions reduces litigation across the state. Understands that the -3 amendments will allow the Land Conservation and Development Commission (LCDC) to continue to appeal decisions. There may still be concerns that haven't been addressed.
073	Chair Lewis	Explains how the -3 amendments do not prohibit DLCD from appealing decisions that involve Goal 5 resources.
080	Angstrom	Indicates that a similar statement needs to be made on the floor if the bill moves out of committee.
088	Jon Chandler	Director of Governmental Affairs, Oregon Building Industry Association. Indicates that he would have had opposition to the bill as written, but the -3 amendments resolve some concerns. Explains that the -3 amendments restrict LCDC appeal of quasi-judicial actions, but not their ability to intervene.
123	Dave Hunnicutt	Representative, Oregonians in Action. Explains what the bill doesn't do. It doesn't prohibit neighborhood groups from appealing land use decisions. It doesn't prohibit DLCD from appearing in local hearings. It doesn't prohibit DLCD and LCDC from appealing zone change applications. The bill does prevent DLCD and LCDC from initiating a land use appeal. Indicates that the importance of the bill is to direct the DLCD and LCDC to resolve issues with the periodic review process, or through the enforcement order process.
208	Rep. Luke	Asks for an example of when an agency used a property dispute to challenge a county decision.
210	Hunnicutt	Relates a story from Polk County. Neighbors did not object to the land use, but DLCD had a problem with the interpretation of an administrative rule. Does not know how many people the bill would help, but if it helps one person per biennium it will be worth it.
234	Rep. Lehman	Indicates that the bill doesn't really do anything.
237	Hunnicutt	Indicates that it will help property owners when nobody is appealing a land use decision except DLCD.
		Relates experiences in Yamhill County with periodic review and DLCD

241	Chair Lewis	putting pressure on them to accept 80 acre zones.
269	Rep. Lehman	Asks if DLCD was the only agency to appeal the decisions.
270	Chair Lewis	Doesn't know for sure, but thinks that DLCD was the primary agency that was appealing the decisions.
272	Hunnicut	Indicates that he has 17 cases in Washington County that are related to the 120-day rule. Explains that the only party intervening in those cases in DLCD.
302	Rep. Shields	Explains that the bill is narrowly targeted and that the monitoring process will suffer. States that if DLCD can't initiate appeals, they can't monitor the land use process.
338	Hunnicut	Indicates that the department would still have the periodic review and enforcement order avenues to monitor and enforce land use decisions.
387	Rep. Shields	Asks if the Governor's office has been notified about the amendments.
389	Hunnicut	No.
392	Rep. Luke	Relates a story from Deschutes County where DLCD challenged a county decision through a private property owner.
<b>TAPE 74, B</b>		
001	Hunnicut	Expresses a preference for the original bill as drafted, but the -3 amendments are more politically correct. Suggests that a requirement be included that parties wanting to appeal should prove they have an interest in the case more than not liking it.
<b>019</b>	<b>Rep. Lehman</b>	<b>MOTION: Moves to ADOPT HB 2643-3 amendments dated 4/18/97.</b>
<b>021</b>	<b>Chair Lewis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>023</b>	<b>Rep. Lehman</b>	<b>MOTION: Moves HB 2643 be sent to the floor with a DO PASS AS AMENDED recommendation.</b>
027	Rep. Simmons	Indicates that the bill was good before the amendments were added.
		<b>VOTE: 6-1</b> <b>AYE: 6 - Fahey, Lehman, Luke, Simmons, Welsh, Lewis</b> <b>NAY: 1 - Shields</b>
<b>033</b>	<b>Chair Lewis</b>	<b>The motion CARRIES.</b> <b>REP. LEHMAN will lead discussion on the floor.</b>
037	Chair Lewis	Closes the work session on HB 2643 and opens a public hearing on HB 3084. E-mailed testimony was presented to the committee. <b>(EXHIBIT D)</b>
<b><u>HB 3084</u></b> <b><u>PUBLIC</u></b>		



<b>HEARING</b>		
047	Marjo Nelson	Representative, Darrow Rocks Community Association. Indicates that the bill is too narrow in scope and describes how her community association might be impacted by the proposed legislation. Explains that utilities have caused damage in easement corridors ( <b>EXHIBIT E</b> ).
089	Rep. Luke	Asks if the association appealed to the Public Utility Commission (PUC)
090	Nelson	States that they did not know to do so.
091	Rep. Luke	Asks if they had an attorney working for them.
092	Nelson	They didn't have the money to do so. They called the state for help.
095	Rep. Luke	Asks why they called the state.
096	Nelson	The utility was working in a state right-of-way.
102	Nelson	Indicates that the sociological impact of actions taken is also a problem. States that when the problems started, the county told them that they didn't have to go through land use laws to site the facility.
121	Chair Lewis	Recesses the public hearing on HB 3084 and opens a work session on HB 2515.
<b>HB 2515 WORK SESSION</b>		
124	Rep. Fahey	<b>MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING the vote on HB 2515.</b>
130	Chair Lewis	Provides explanation for the reconsideration of HB 2515.
141	Rep. Luke	Clarifies the reason for reconsideration.
		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Welsh</b>
151	Chair Lewis	<b>The motion CARRIES.</b>
154	Rep. Fahey	<b>MOTION: Moves to RECONSIDER the vote by which HB 2515 was sent to the floor with a do pass as amended recommendation</b>
		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Welsh</b>
163	Chair Lewis	<b>The motion CARRIES.</b>
165	Chair Lewis	Indicates that the bill will be heard at a later date.
167	Chair Lewis	Closes the work session on HB 2515 and reopens the public hearing on HB 3084.

<b>HB 3084 PUBLIC HEARING</b>		
171	Jon Chandler	Representative, Oregon Building Industry Association. Expresses opposition to HB 3084. States that the bill as written causes concern, but the amendments head in the wrong direction. Explains that the bill might not be necessary and that there is a good set of rules already in place.
189	Bob Rindy	Representative, Department of Land Conservation and Development. Expresses support for the bill and explains that there are technical concerns with the -4 amendments ( <b>EXHIBIT F</b> ).
206	Rep. Luke	Asks if there are examples of farmland that has been lost due to siting of utility facilities.
208	Rindy	Indicates that there are no statistics related to land lost.
214	Rep. Luke	Asks if this is a bill for a problem that doesn't exist.
215	Rindy	Doesn't know if that is the case.
219	Rep. Luke	Indicates that it is troubling not to know if farmland is being lost.
226	Ron Eber	Representative, Department of Land Conservation and Development. Indicates that with the exclusive farm use reporting process, the types of facilities that are approved are known.
235	Rep. Luke	Indicates that from the testimony, he understands that the water line was never placed across the farmer's property.
240	Eber	Explains that they convinced the utility that there were alternatives.
247	Rep. Luke	Explains that the question is what the tradeoffs are when utilities need to be sited across farmland.
262	Rindy	Indicates that the department doesn't know how bad the problem is. Expresses the desire to bring the opposing sides together to work on the issue.
270	Rep. Luke	Asks where the problem is.
281	Chair Lewis	Asks if the farmland disturbed by the utility should be replaced to its original condition.
290	Rindy	Agrees that is a major issue, but there are times when a utility can't replace everything, such as buildings.
303	Eber	Explains that the two major issues are that the utility use is a sub 1 (1) use and therefore it is hard to get public hearings on the issues and second is the clarity of the law of requiring a utility to show the necessity of crossing farmland.
330	Rep. Luke	Indicated that testimony states that there is very limited use of condemnation. Still can't see what problem the bill is addressing.
355	Chair Lewis	Closes the public hearing on HB 3084 and adjourns the meeting at 3:00 p.m.

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

**EXHIBIT SUMMARY**

**A - HB 3074, Written testimony, Debi Davis, 1 p.**

**B - HB 3074, Written materials, John Lilly, 131 pp.**

**C - HB 2643, Written testimony, Don Schellenberg, 1 p.**

**D - HB 2643, Faxed testimony, Committee Staff, 2 pp.**

**E - HB 3084, Written testimony, Marjo Nelson, 3 pp.**

**F - HB 3084, Written testimony, Bob Rindy, 3 pp.**