

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

May 12, 1997 Hearing Room E

1:00 P.M. Tapes 84 - 87

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Michael Fahey

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

MEMBER EXCUSED: Rep. Frank Shields, Vice-Chair

STAFF PRESENT: Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

SB 360 and SB 379 Public Hearing

SB 431 Public Hearing

SB 868 Public Hearing

SB 891 Public Hearing

SB 379 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 84, A		
003	Chair Lewis	Calls the meeting to order at 1:25 p.m. and opens simultaneous public hearings on SB 360 and SB 379.
<u>SB 360 AND</u> <u>SB 379</u>		

<u>PUBLIC HEARINGS</u>		
009	Sen. Kintigh	State Senator, District 22. Explains that SB 360 was brought forward at the request of the Department of Forestry. The bill addresses concerns from all sides. (EXHIBIT A)
025	Rep. Lehman	Asks why there was only one no vote on the Senate floor.
027	Sen. Kintigh	Indicates that the no vote was probably based on the bill's possible infringement on property rights.
038	Rep. Fahey	Asks why there would be a limit on liability for a landowner who fails to reduce fire hazards.
040	Sen. Kintigh	Speaks of insurance liabilities.
049	Rep. Fahey	Asks if there is a similar limit of liability on any other properties.
051	Sen. Kintigh	Explains that forest land owners have a limit if they comply with regulations.
055	Rep. Fahey	Indicates that his concern is with citizens having to pick up the cost of fighting fires that they did not cause.
060	Sen. Kintigh	Explains that the limit of liability was agreed upon.
063	Rep. Simmons	Expresses concern that this might be an unfunded mandate.
066	Sen. Kintigh	Doesn't know how that can be, with the final version of the bill.
074	Sen. Kintigh	Indicates that SB 379 was brought forward at the request of the Small Woodlands Association. The bill would allow forest owners to build dwellings on their land under certain conditions. Explains conditions of the bill. Indicates that owners with dwellings on their property practice aggressive management of their land. Indicates that forest land owners are not people who start fires - they see and report them. (EXHIBIT B)
129	Rep. Lehman	Asks about timber production requirements for the property.
134	Sen. Kintigh	Explains that the land is required to produce 4,000 board feet per year.
140	Rep. Lehman	Asks if there is a requirement that the person living in the dwelling also maintain and work on the property.
143	Sen. Kintigh	No.
146	Rep. Lehman	Asks how many dwellings will be allowed on a property and what the size of the parcel will be.
148	Sen. Kintigh	Doesn't know.

156	Chair Lewis	Recesses the public hearings on SB 360 and SB 379 and opens a public hearing on SB 431.
<u>SB 431 PUBLIC HEARING</u>		
165	Pat Zwick	Policy Analyst, summarizes provisions of the bill.
175	Charles Swindells	Representative, 1000 Friends of Oregon. Expresses opposition to SB 431 and explains that the opposition is on legal, not policy grounds. Explains perceived legal problems with the bill. (EXHIBIT C)
226	Swindells	Explains problems with criteria in the Land Use Board of Appeals (LUBA). Expresses concern with legal interpretation. LUBA can't substitute their interpretations for those of a local government.
292	Swindells	Encourages the committee to better define the Clark vs. Jackson County issues. Reiterates that SB 431 can't work under existing law.
296	Rep. Luke	Discusses problems with an example that Mr. Swindells gave.
322	Swindells	Explains that the problem is with the interpretation of local code by local government. That interpretation can't be challenged by LUBA.
342	Rep. Lehman	Asks what relation the local government decision maker has to LUBA decision makers.
352	Swindells	Indicates that it is a state of mind judgment.
373	Rep. Lehman	Asks if the decision maker at the local government level must make a statement at the LUBA level.
378	Swindells	Explains that LUBA can gather new evidence related to what the local decision maker would do, or new facts in the case.
394	Rep. Lehman	Asks if LUBA is gaining more authority in decision making.
397	Swindells	Indicates that they are losing authority.
401	Rep. Lehman	Indicates that implementation of the bill will allow LUBA to base decisions on information that may not be on the record.
407	Swindells	Describes the impacts of a decision from LUBA.
<u>TAPE 85, A</u>		
016	Mike Farthing	Land Use Attorney from Lane County. Disagrees with the bill interpretation given by 1000 Friends of Oregon. Expresses support for SB 431. Describes how the proposed legislation would level the playing field for those involved in land use disputes. Indicates that the bill will have a limited impact. (EXHIBIT D)
074	Rep. Luke	Asks if subsection 15 on page 3 of the bill is needed.
079	Farthing	Agrees that the section is arbitrary, but explains why it is needed.
097	Rep. Luke	Asks if language can be added that will add a loophole for lack of notice from local governments.

105	Farthing	Thinks that is a good idea.
116	Rep. Luke	Asks Mr. Swindells if it would be a good idea to include language relating to lack of notice from local governments.
123	Swindells	Indicates that an appellant can present new evidence at LUBA if a local government didn't provide appropriate notice.
140	Dale Blanton	Senior Policy Analyst, Department of Land Conservation and Development. Explains that there are provisions in the Oregon Revised Statutes that would direct LUBA to remand some decisions. Indicates that LUBA must conduct an evidentiary hearing when local governments do not consider applicable standards for a land use decision. Continues to discuss processes at LUBA. (EXHIBIT E)
217	Blanton	States that the current system works well, and that the local government level is a better place to make the decisions, rather than LUBA.
222	Rep. Luke	Asks if the arguments were brought up on the Senate side.
223	Blanton	The Department of Land Conservation and Development did raise concerns and make comments but they weren't as elaborate.
230	Rep. Luke	Asks if the Senate committee moved the amendments the day they saw them.
231	Blanton	Yes.
233	Bob Rindy	Representative, Department of Land Conservation and Development. Explains that the Oregon land use system is far advanced from any other system.
246	Rep. Lehman	Asks if local government decisions will be reversed based on not considering an applicable standard.
256	Blanton	Explains that a reversal would not be a simple decision, and that there would likely be a request for evidentiary hearings.
269	Rep. Lehman	Asks if there would be consequences if LUBA reversed a decision by adding one line that indicates that an applicable standard wasn't considered.
275	Blanton	Answers affirmatively.
280	Art Schlack	Land Use Specialist, Association of Oregon Counties. Expresses concern with SB 431. Indicates that the proposed legislation would limit the ability of local governments to interpret their comprehensive plans. Suggests that the bill be amended. (EXHIBIT F)
315	Rep. Luke	Asks if suggested amendments would be similar to the current problem with the bill.
322	Schlack	Indicates that if the decision is to be subjective, the interpretation should be at the local level.
330	Rep. Luke	Explains how the Land Conservation and Development Commission has told local governments whether or not they are interpreting their land use plan correctly.
334	Schlack	That does occur.

336	Rep. Luke	Doesn't understand the benefits of changing language in the bill.
338	Schlack	Indicates that a difference will be made.
340	Rep. Luke	Asks if he would prefer to not have the bill.
342	Schlack	Explains that he is fine without the bill, but if the bill is moved, the wording must be changed.
350	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for SB 431 and explains the bill. (EXHIBIT G)
TAPE 84, B		
018	Hunnicutt	The bill says that the appellant is required to show that the county would have had a different finding if they had considered a different applicable use.
026	Rep. Lehman	Asks how many decisions are remanded by LUBA that are one sentence changes in the decision.
029	Hunnicutt	Doesn't know off-hand.
044	Rep. Lehman	Asks if a decision goes to LUBA, and an issue raised at a lower level did not have a finding on it, will LUBA have to remand the decision since the issue wasn't discussed.
048	Hunnicutt	States that no finding on an issue doesn't mean that there wasn't evidence for it.
049	Rep. Lehman	To clarify the example, there was no evidence, and no finding, and it's clear that the issue was raised.
051	Hunnicutt	LUBA would remand if the appellant could identify that failure to address the issue produced a different decision.
055	Rep. Lehman	Asks if LUBA must currently remand decisions.
056	Hunnicutt	No, but LUBA may make decisions.
064	Rep. Lehman	If a specific fact arises without a finding, and the appellant thinks that the fact is relevant, LUBA can disagree.
071	Hunnicutt	LUBA is not required to do so.
073	Rep. Lehman	Asks if, with passage of the bill, LUBA must make a further determination that the fact was not raised at the lowest level, it is relevant, and that it would have had an impact on the decision.
076	Hunnicutt	Explains that LUBA makes an objective determination based upon evidence in the record.
083	Rep. Lehman	Asks if a decision isn't made, how can it be determined that they didn't use the fact to not make a decision.
085	Hunnicutt	Explains that if the findings aren't in place, that doesn't mean that LUBA can't determine what the criteria are.
095	Rep. Lehman	Asks how it would be proven to LUBA that relevant criteria were not addressed.

099	Hunnicutt	Describes how criteria would be provided to LUBA.
124	Rep. Lehman	Verifies if the opponent can also be involved.
127	Hunnicutt	The record would show that the land is capable of producing more than what it is now.
136	Dale Riddle	Attorney, Lane County. Encourages the committee to not consider the proposed amendment from Mr. Schlack. Expresses other concerns with the bill. States that LUBA would not be guessing on their decisions, since the decisions must be based on facts in the record. Indicates that local governments will have more local control with implementation of the bill.
201	Rep. Lehman	Asks if this will require LUBA to make one more decision to remand or not remand.
204	Riddle	No, the one final decision will be made.
211	Rep. Welsh	Asks if LUBA would study the case before they make any decision.
216	Riddle	Indicates that LUBA probably wouldn't do that, since it is the responsibility of the attorneys.
226	Chair Lewis	Closes the public hearing on SB 431 and opens a public hearing on SB 868. Written testimony was presented to the committee (EXHIBIT H)
<u>SB 868</u> <u>PUBLIC</u> <u>HEARING</u>		
238	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for SB 868. Indicates that the bill clarifies the replacement dwelling statutes and pertains to issues of split zone parcels. Describes a case in Multnomah County of property owners having a split zone parcel. (EXHIBIT I)
258	Rep. Luke	Asks if the owners bought the property as a split zone parcel.
259	Hunnicutt	Indicates that the property was a split zone prior to purchase.
261	Hunnicutt	Continues to describe the split zone property in Multnomah County and the owner's desire to build a replacement dwelling on the property.
316	Hunnicutt	Does not oppose amendments that will be proposed by the Association of Oregon Counties.
323	Rep. Luke	Indicates that when a dwelling is being built in an exclusive farm use zone, it is best to place it away from productive farmland. Indicates that the law will have to apply to situations across the state.
342	Hunnicutt	Indicates that the bill will allow for siting of the dwelling on any part of the parcel, but it must comply with siting standards.
352	Rep. Luke	Asks if a replacement dwelling might require a new septic system.
352	Hunnicutt	Answers affirmatively.

361	Rep. Luke	Asks if an abandoned septic system could be reused in the future.
367	Hunnicutt	Indicates that the language states that a dwelling can't be sited on a part of the parcel that is zoned for exclusive farm use. A hardship dwelling would not be allowed.
391	Chair Lewis	Indicates that she has heard that a replacement dwelling could have a new septic system, but the old system would have to be destroyed.
399	Hunnicutt	Responds affirmatively. In order to replace a dwelling, the old one must be torn down.
TAPE 85, B		
004	Hunnicutt	No dwellings would be added to the property. The dwelling would move from one location to another.
007	Rep. Luke	Asks what a section of page 2 of the bill means.
011	Hunnicutt	Indicates that siting and approval standards need to be differentiated.
036	Rep. Simmons	Asks if the bill could be used to force property owners to build a dwelling elsewhere on the property.
042	Hunnicutt	Probably not. Explains where the bill can be applied.
052	Rep. Luke	Asks what language in the bill is related to split zone parcels.
054	Hunnicutt	The bill doesn't specifically say split zone only, but without additional language, it works for a split zone.
066	Rep. Luke	Expresses discomfort with writing laws that resolve one problem.
068	Hunnicutt	Indicates that there are split zones throughout the state.
070	Cathee Brown	Property owner, Multnomah County. Describes a four year conflict with Multnomah County over her property, and ability to build a replacement dwelling.
089	Rep. Welsh	Asks if there was an opportunity to make amendments to the local zoning plans.
092	Hunnicutt	Indicates that there was an opportunity to amend the plans. Explains why rezoning of the property did not occur.
108	Rep. Welsh	Verifies that the property owners did not follow through to finish applying for a rezoning.
110	Hunnicutt	Explains that the Multnomah County Commissioners would not approve the rezoning.
112	Rep. Welsh	Asks if this type of situation has occurred before.
116	Hunnicutt	He's not aware of any other situation.
125	Art Schlack	Land Use Specialist, Association of Oregon Counties. Suggests that amendments be made to the bill, possibly related to deed restrictions. Indicates that the issue is broader than the Multnomah County issue.

145	Rep. Welsh	Asks if particular language is needed to make a decision either way.
148	Schlack	An advantage of split zone parcels is that they are easy to partition.
163	Ron Eber	Representative, Department of Land Conservation and Development. Suggests that work continue on amendments.
169	Chair Lewis	Asks that the work group work with Rep. Luke.
179	Sharon Timko	Representative, Multnomah County. States that there is a local option to solve the case in question.
187	Chair Lewis	Closes the public hearing on SB 868 and opens a public hearing on SB 891. Written testimony was presented to the committee. (EXHIBIT J)
<u>SB 891</u> <u>PUBLIC</u> <u>HEARING</u>		
195	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for SB 891. Explains that the bill will allow for the extraction of spring water and the bottling of it on exclusive farm use land. Explains how counties currently approve spring water bottling operations. States that spring water operations would be a conditional use and counties are free to regulate the operations. (EXHIBIT K)
262	Roy Martin	Resident, Curry County. Explains how he got into the spring water business. Curry County said it was an outright use, but a neighbor objected to the plan. Indicates that the operation fits very well in the area.
330	Niels Martin	Resident, Curry County. Explains progress of the bill and hearings before the Senate committee. Limitations of the bill should be developed and implemented at the local government level.
350	Rep. Fahey	Asks if they have water rights for the spring water.
354	R. Martin	Explains that the spring is an exempt spring since it rises and drops on their property. Indicates that they have obtained water rights to other springs on the property.
361	Rep. Fahey	Verifies that they must stay within guidelines of the water rights.
364	R. Martin	Answers affirmatively.
365	Rep. Fahey	Asks if it is a spring or an artesian well.
366	R. Martin	States that it is a spring that rises from an artesian aquifer.
367	Hunnicutt	Indicates that the Department of Land Conservation and Development will probably propose an amendment.
381	Rep. Fahey	Verifies that livestock is not involved in any way with the streams.
386	R. Martin	Answers affirmatively.

392	Hunnicutt	Expresses approval for the -1 amendments, but indicates that the bill will be fine if the committee does not want them.
416	Rep. Simmons	Expresses opposition to the amendments and discusses water rights.
TAPE 86, A		
004	Chair Lewis	Explains potential water right problems from a neighbor.
013	Ron Eber	Representative, Department of Land Conservation and Development. Indicates that there are two places in current law where counties can approve similar operations. Expresses support for the amendments. The amendments clarify that the water to be bottled is from the same property where the bottling will occur.
046	Rep. Fahey	Asks if a neighbor could have access to water rights if they had the need, and the property owner wasn't using the water.
051	Eber	Doesn't know for sure.
057	Rep. Fahey	Asks what the bottling process is for milk.
059	Eber	Explains how the bottling of milk happens.
067	Chair Lewis	Asks about water rights of a neighbor, and if they can bottle the water.
082	Eber	A neighbor could not bottle water.
087	Chair Lewis	Verifies that the neighbor could not bottle water even though the property owner agrees to it.
089	Eber	Answers affirmatively.
090	Chair Lewis	Closes the public hearing on SB 891 and opens a public hearing on SB 379. Written testimony was presented to the committee (EXHIBIT L)
<u>SB 379</u> <u>PUBLIC</u> <u>HEARING</u>		
100	Rep. Roger Beyer	State Representative, District 28. Expresses support for SB 379. Indicates that vandalism is a great problem for small woodland owners, but the proposed legislation would allow for owners to live on their property.
138	Jim Denison	Consulting Forester. Expresses support for SB 379. Explains that woodlands owners take pride in their land and protect it. Having a dwelling on the property allows for enhancement of the woodlands. Reads a letter from a client who wanted to build a home on woodland property. (EXHIBIT M)
200	Rep. Fahey	Asks how many homes might be built in woodlands.
201	Denison	Does not have the information, but possibly at least 100 in Lincoln County over the next 20 years.
209	Rep.	Asks if woodland owners would waive rights to have their dwellings

	Fahey	protected from fire before the woodlands are.
219	Denison	Indicates that siting standards would eliminate some of the problems associated with firefighting.
237	Rep. Fahey	Explains that he doesn't want to see the practice of fighting fires changed because of additional dwellings in the forests.
242	Denison	Indicates that siting standards will eliminate problems.
246	Rep. Fahey	Asks if there are any requirements for sprinkling houses.
249	Denison	Explains that there is fire prevention zoning around homes.
257	Chair Lewis	Indicates that Sen. Kintigh has stated that the dwellings would be subject to siting standards to reduce fire hazard.
272	John Foster	Representative, Oregon Small Woodlands Association (OSWA). Discusses a poll taken of small woodlands owners about their properties. Many owners believe that living on their properties would improve the management of the forests. Explains requirements placed on woodland property owners. Expresses support for SB 379. (EXHIBIT N)
371	Rep. Fahey	Asks what percentage of OSWA members live on the west side of the Cascades.
374	Foster	Doesn't know the exact number, but definitely a majority.
381	Rep. Fahey	Asks what percentage of OSWA members raise fruit or Christmas trees.
384	Foster	Doesn't know if fruit and Christmas tree farmers belong to OSWA.
395	Gary Munkhoff	Woodlands owner. Expresses concern with the accuracy and meaning of statements from the Department of Forestry.
TAPE 87, A		
003	Munkhoff	Indicates that statements from the Department of Forestry are considered to be insults to the small woodlands owners. Explains that the Federal Government does not allow for homes on their land, and their timber production is much lower than it can be.
017	Chair Lewis	Asks how much land Mr. Munkhoff owns.
020	Munkhoff	Explains that he is 1/3 owner of Oregon Tree Farms which has 300 acres.
021	Chair Lewis	Asks if he lives on the property.
022	Munkhoff	No, but another owner does.
027	Don Duhrkopf	Polk County resident and tree farm owner. Expresses support for SB 379. Explains that no additional parcels will be created with the passage of the bill. Forest management has changed dramatically since land use laws were created. Understands why some people are reluctant to pass the bill, since there is a slight possibility of abuse. Explains that the fire issues are relevant but are being addressed in another bill. Indicates that vandalism

		is a problem, and forest owners feel strongly about protecting their property. (EXHIBIT O)
100	Rep. Lehman	Asks if Mr. Duhrkopf lives and works on his forest land.
101	Duhrkopf	Answers affirmatively.
102	Rep. Lehman	Verifies that no part of the bill requires the same person to live on and maintain the farmland.
103	Duhrkopf	No.
105	Rep. Fahey	Asks if a house could be built on the land and then rented out.
107	Duhrkopf	Assumes that is possible.
110	Rep. Simmons	Asks where production figures came from.
112	Duhrkopf	Doesn't know for sure, but they are accepted figures.
119	Rep. Simmons	Asks why there is a difference in production volume from east and west of the Cascades.
122	Duhrkopf	The difference is based on growing abilities.
123	Rep. Simmons	Discusses the difference in production between east and west.
125	Duhrkopf	Indicates that the figures were negotiated in the Small Woodlands Association.
131	Rep. Fahey	Asks how many cubic feet are in 1000 board feet.
133	Duhrkopf	Explains that it is a hard conversion due to the amount lost to sawdust.
139	Rep. Simmons	There are 11 board feet to one cubic foot.
144	Dan Green	Forester. States that there are about 7 board feet to a cubic foot. Expresses support for SB 379. Indicates that houses on small woodlands do not negatively affect productivity of the land. In rough terms there over 7000 lots that might be built on, but in reality only 200-600 houses might be built, providing that they meet siting requirements.
224	Rep. Lehman	Asks if Mr. Green's view of allowing dwellings to be built on woodland would change, knowing that the resident would not have to work on the property.
230	Green	Not entirely.
245	Rep. Lehman	The point is that the law does not require the resident to work on the property.
246	Green	Understands, but the property must be fully stocked with timber.
248	Rep. Lehman	Restates that the resident does not have to work on the property.
251	Green	Answers affirmatively.

253	Chair Lewis	Doesn't understand what distinction is being made.
264	Rep. Lehman	The distinction is that the bill allows for a dwelling to be built, but it does not require the dwelling to be occupied by the woodland operator.
275	Chair Lewis	Closes the public hearing on SB 379 and adjourns the meeting at 4:06 p.m.

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - SB 360, Written testimony, Sen. Kintigh, 3 pp.

B - SB 379, Written testimony, Sen. Kintigh, 2 pp.

C - SB 431, Written testimony, Charles Swindells, 6 pp.

D - SB 431, Written testimony, Mike Farthing, 2 pp.

E - SB 431, Written testimony, Dale Blanton, 1 p.

F - SB 431, Written testimony, Art Schlack, 1 p.

G - SB 431, Written testimony, Dave Hunnicutt, 2 pp.

H - SB 431, Presented testimony, Committee Staff, 1 p.

I - SB 868, Written testimony, Dave Hunnicutt, 2 pp.

J - SB 868, Presented testimony, Committee Staff, 2 pp.

K - SB 891, Written testimony, Dave Hunnicutt, 2 pp.

L - SB 891, Presented testimony, Committee Staff, 1 p.

M - SB 379, Written testimony, Jim Denison, 1 p.

N - SB 379, Written testimony, John Foster, 9 pp.

O - SB 379, Written testimony, Don Duhrkopf, 4 pp.