

HOUSE COMMITTEE ON  
NATURAL RESOURCES  
SUBCOMMITTEE ON ENERGY & ENVIRONMENT

Hearing Room  
Tapes - 28

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair  
Rep. Lisa Naito, Vice-Chair  
Rep. Bill Fisher  
Rep. Dennis Luke  
Rep. Chuck Norris  
Rep. Terry Thompson  
Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

Mark Bauer, Committee Administrator  
Sandy Ceballos, Committee Assistant

MEASURES HEARD:

HB 2697 - Public Hearing

HB 2658 - Public Hearing and Work Session  
HB 2707 - Public Hearing

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,  
please refer to the tapes.

TAPE , SIDE A

005 CHAIR LEWIS: Calls the meeting to order at 1:35 PM

Opens PUBLIC HEARING on HB 2658

Witnesses: Jon Chandler, General Counsel, Home Builders Assn. of  
Metropolitan Portland, Portland, OR.

Ernie Platt, Matrix Development, Tigard, OR.  
Jerry C. Reeves, J.C. Reeves Corp., Portland, OR.  
Burton Weast, Metro and Special Districts Assn. of Oregon.  
Michael J. Bercutt, Opus Homes, Portland, OR.  
William C. Cox, Development and Land Use Attorney

008 MARK BAUER, Committee Administrator, summarizes HB 2658

012 JON CHANDLER, GENERAL COUNSEL, HOME BUILDERS ASSOCIATION OF METROPOLITAN

PORTLAND. Testifies in support of HB 2658. EXHIBIT A, Suggests an  
amendment to line 19 to add the words "an acknowledged" before  
comprehensive plan, and another to assure that in those situations where  
local governments have time frames placed on approval, this bill would not  
change that.

045 REP. LUKE: States that his understanding is that when land use laws are  
passed they are intended to add some surety to the system and once in place  
they would not change. Asks if the land use laws are changing in a few  
months period.

050 CHANDLER: Replies that local governments change their ordinances, and  
the attempt of this bill is to avoid getting tripped by those changes when  
assumptions are made at the beginning of a project.

053 REP. UHERBELAU: Asks if there is a difference in how different  
jurisdictions apply the statutes.

057 CHANDLER: Answers in the affirmative.

065 REP. UHERBELAU: Asks if anyone has taken it to LUBA or the court of  
appeals for an interpretation.

068 CHANDLER: Says that they have been told that the 21 day challenge  
period had elapsed some years ago

072 REP. NAITO: You don't want this left at the local level then, you want  
some state assurances.

076 CHANDLER: Believes the state has spoken to the issue, but that the  
interpretive glitch has caused some problems and needs to be corrected.

081 REP. NAITO: Are any of the counties intentionally going back  
retroactively and stopping people from building where they've already said  
that you could build.

084 CHANDLER: Client acquired an approved subdivision, but was met with new

requirements when they we're ready to build.

097 REP. LUKE: Will there be testimony with some examples of that?

098 CHANDLER: Believes there will be.

104 ERNIE PLATT, MATRIX DEVELOPMENT, TIGARD. Testifies in support HB 2658.  
States that reconsideration of the land use at the building permit stage is

not proper and should not happen.

119 REP. LUKE: Asks Mr. Platt if he has any examples of when this has  
happened.

120 PLATT: Gives some examples.

126: REP. LUKE: Asks if they are in any way intending this to impact the  
counties or cities ability to raise or lower fees.

130 PLATT: No

134 JERRY C. REEVES, J.C. REEVES CORP. Testifies in support of HB 2659.  
EXHIBIT B.

160 REP. UHERBELAU: Asks where the highlighted portion of his written  
testimony comes from.

162 REEVES: That was from the original conditions, on which they based  
their decision to purchase the property .

167 REP. UHERBELAU: Asks if the highlighted part of the written testimony  
was a part of the original approval of the subdivision from Portland.

170 REEVES: Answers in the affirmative.

174 BURTON WEAST, METRO AND SPECIAL DISTRICTS ASSN. OF OREGON: Does not  
oppose the bill but is concerned that nothing in the language implies that  
a local government may not set a time limit on the validity of an  
application. Wants current time limits to remain valid. Wants to make  
clear that fees and charges are adopted under different ordinances.

207 REP. LUKE: Asks if putting "acknowledged comprehensive plan" in the  
bill takes care of their concern.

210 WEAST: Believes it does, but reserves the right to look at it again and  
perhaps craft additional language to make it clear.

215 REP. LUKE: Asks if Mr. Weast feels that there needs to be additional  
language to take care of the fee problem

217 WEAST: Reserves the right to have others look at that, but feels that  
if fees and time limits are on the record, that should be sufficient.

221 REP. LUKE: Asks if there are jurisdictions under acknowledged  
comprehensive plans that don't have time limits.

224 WEAST: Feels that the majority of jurisdictions have time limits on the  
validity of applications.

229 REP. NAITO: Asks how the time limits would have affected the person  
from Johnson Creek.

235 WEAST: Feels that even if they had a new comprehensive plan they could  
not go back on a previously approved development and apply them.

254 MICHAEL J. BERCUIT, OPUS HOMES. Testifies in support of HB 2658.

310 WILLIAM C. COX, LAND USE AND DEVELOPMENT ATTORNEY, PORTLAND, OR.  
Testifies as to some of the abuses of certain planning jurisdictions.

360 Continues to give examples of misuse of the planning process.

380 REP. LUKE: Asks what kind of permit cost \$3,000.

382 COX: Responds that it was an environmental impact permit.

433 REP. FISHER: Asks if the law were to go into effect if there would be  
retribution by the various governing bodies.

443 COX: Says there are provisions in place which should prevent that.

471 REP. FISHER: Wonders if an amendment would prevent this from happening  
by suspending taxes until project is moving again

483 COX: Responds that that is happening now, and the system is useable.

TAPE 26, SIDE A

057 Continues to testify in support of HB 2658.

067 Closes the PUBLIC HEARING on HB 2658

Opens the WORK SESSION on HB 2658

069 MOTION: VICE-CHAIR NAITO: Moves on line 19 to delete "a" and insert

"an acknowledged."

078 REP. UHERBELAU: Speaks to the language of the bill and wonders if the committee doesn't want to postpone the work session until the language can be dealt with.

086 REP. NAITO: Thought the language was acceptable to all who had looked at it and testified.

091 CHAIR LEWIS: Recalls Burton Weast to testify.

092 WEAST: Has scheduled a meeting for later to see if additional language is necessary.

106 REP. LUKE: States he wishes to go on the record that he is a homebuilder, and a member of the Oregon State Homebuilders Assn., who requested this bill.

119 CHAIR LEWIS: Recalls Jon Chandler to testify.

130 REP. NORRIS: Discusses whether a comprehensive plan may be in affect but is still pending acknowledgment.

134 REP. LUKE: Ask if there are any jurisdictions in the state that do not have current acknowledged comprehensive plans.

138 CHANDLER: Says there may be only one, the city of Jacksonville.

140 REP. LUKE: Are there a lot of jurisdictions going through the review process of their comprehensive plan.

147 CHANDLER: Explains why they had suggested inserting the word "acknowledged."

172 REP. LUKE: Explains that the comprehensive plan takes precedence over time.

178 CHANDLER: Says they have discussed putting time side-boards up on this bill, as well clarifying that it applies only inside of urban growth boundaries.

182 CHAIR LEWIS: Restates Rep. Naito's motion.  
VOTE: Hearing no objections the MOTION IS ADOPTED

187 MOTION: VICE-CHAIR NAITO: Moves HB 2658 As Amended to the full committee with a DO PASS recommendation.

196 CHAIR LEWIS: Hearing no objections, calls for a vote.

VOTE: 7-0 MOTION PASSES  
AYE: Fisher, Luke, Naito, Norris, Thompson, Uherbelau, and Lewis.

201 CHAIR LEWIS: HB 2658 has PASSED.

207 Closes WORK SESSION ON HB 2658.

Opens PUBLIC HEARING ON HB 2707.

Witnesses: Jon Chandler, General Counsel For the Homebuilders Assn. Of Metropolitan Portland,

Ken Bierly, Wetlands Team Leader For The Division Of State Lands.  
Bob Rindy, Department Of Land Conservation & Development.  
Liz Frenkel, Oregon Chapter of The Sierra Club.  
Carol Lewis, Oregon City Planning Directors Assn.

210 MARK BAUER, COMMITTEE ADMINISTRATOR, summarizes HB 2707.

234 JON CHANDLER, GENERAL COUNSEL FOR THE HOMEBUILDERS ASSN., OF METROPOLITAN PORTLAND: Testifies in support of HB 2707. EXHIBIT C.

290 KEN BIERLY, WETLANDS PROGRAM TEAM LEADER FOR THE DIVISION OF STATE LANDS. Introduces EXHIBIT D prepared by Gary Gustafson, Director, Division of State Lands, and testifies in support of HB 2707.

320 BOB RINDY, DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT: States that in April there will be proposals for administrative rules, and he believes they will be similar in concept as those being proposed in this bill.

339 They have met with Mr. Chandler and agree that there are some things to be worked out with regard to the wording of the bill.

358 REP. UHERBELAU: Says there has been talk of amendments. Asks if the committee passed the bill out today, would those amendments be available by the time it came to the full committee.

366 CHANDLER: Answers that that would be their anticipation.

371 REP. UHERBELAU: States that this is a good example of public employees working together with the private sector to attempt to come up with solutions to problems.

383 CHAIR LEWIS: Asks that the involved parties work on the amendments outside and the bill will not be brought back to committee until the amendments are ready.

394 LIZ FRENKEL, OREGON CHAPTER OF THE SIERRA CLUB: Would like to be involved in the process to determine the final language of this bill,

having been involved with the wetlands issue for a long time.

427 CAROL LEWIS, OREGON CITY PLANNING DIRECTORS ASSN. States that their main concern from the cities prospective with the bill as it is written, is that within the standards and the criteria for significant wetlands, there is flexibility for those jurisdictions who are not currently required to do inventories.

475 REP. LUKE: Says it seems strange that a city has not inventoried it's wetlands after 20 years.

TAPE 25, SIDE B

035 Closes the PUBLIC HEARING on HB 2707.

Opens the PUBLIC HEARING on HB 2697.

Witnesses: Bill Perry, Oregon Farm Bureau.

Greg Walden, Oregon State Senator, 28th District.

Gary Gustafson, Director, Oregon Division Of State Lands.

Thomas A. Balmer, Deputy Attorney General Department Of Justice,

Counsel Div., State Of Oregon.

Ron Yokim, Attorney, Representing, The Grant County Court:

Joseph P. Rohleder, Representing Oregon Guides And Packers And The

Northwest Sportsfishing Industry Association:

John R. Urquhart

Kathy Amundson

Beverly Jones

Mike Jones

Glenyce Densem, Representing Sandy River Property Owners Assn.

Nick Kerslake

David Moir

Lynette Kerslake

Lowell L. Kester

Mike Ross, Salem Chapter, Northwest Steelheaders

Vern Cook

Donald A. Watson, Representing The Association Of Northwest

And The Association Of Sports Anglers

John H. Garren, Author "Oregon River Tours", And Regional

For The National Organization For Rivers.

037 REP. UHERBELAU: Expresses concern with HB 2697 with regard to the possibility the bill would preempt federal law. Wants someone from the attorney general's office to testify in that regard.

055 MARK BAUER, COMMITTEE ADMINISTRATOR, summarizes HB 2697.

096 BILL PERRY: Oregon Farm Bureau: Speaks in support of HB 2697. Exhibit

E.

140 REP. NAITO: States that in section 2 there is a definition of navigable. and asks why they inserted that if the bill didn't need to define navigability.

145 PERRY: Responds that the definition is the one they must use outside of federal court.

165 REP. UHERBELAU: Asks if in state court you can apply state law instead of federal law.

165 PERRY: Responds that the reason for the bill is because of four cases that have basically said this is a federal questions and not a state question.

180 REP. UHERBELAU: Asks if the bill is to address a particular problem.

184 PERRY: States that on the McKenzie river the process wasn't working

188 GREG WALDEN, OREGON STATE SENATOR, 28TH DISTRICT: Testifies in support of HB 2697. EXHIBIT F.

236 PERRY: Cites the example of a landowner living 7 miles up the Lewis & Clark river, who received a fill and removal violation.

248 REP. FISHER: Asks if Mr. Walden or Mr. Perry could explain the process used to determine navigability in an incident in Roseburg, in 1983.

252 PERRY: Legislature asked the Division of State Lands to determine what was navigable. The resulting legislation was to meant to alleviate the clouds on titles.

297 GARY GUSTAFSON, DIRECTOR, OREGON DIVISION OF STATE LANDS: Testifies in opposition to HB 2697. EXHIBIT G.

347 States the bill would put in statute an archaic definition of navigable that would take us back to yesteryear. The definition of navigable that is included in section 2, subsection 4, tracks an Oregon State Court decision from 1918.

411 THOMAS A. BALMER, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, GENERAL COUNSEL DIV., STATE OF OREGON: Testifies in opposition to HB 2697.

EXHIBIT H.

TAPE 26, SIDE B

030 Continues to discuss conflicts with the term "navigability."

068 RON YOKIM, ATTORNEY, REPRESENTING, THE GRANT COUNTY COURT: Testifies in support of HB 2697. EXHIBIT I.

118 Outlines a series of studies conducted by the State of Oregon to determine where there was sufficient historical and physical flow features that would support its claim of navigability.

142 REP. UHERBELAU: Asks when he is talking about the Grant County Court is he talking about the district and circuit court.

143 YOKIM: Responds that in some of the eastern Oregon counties, they have a different type of county government. They have a county judge and two commissioners and they make up the court.

149 REP. UHERBELAU: Asks if they had discussion about the possible problem of preempting federal law with this particular statute.

153 YOKIM: Responds that they did not get into that issue.

156 JOSEPH P. ROHLEDER, REPRESENTING OREGON GUIDES AND PACKERS AND THE NORTHWEST SPORTSFISHING INDUSTRY ASSOCIATION: Testifies in opposition to HB 2697. EXHIBIT J.

186 REP. FISHER: Points out that in prior litigation the State of Oregon recognized the right of the public to float on the waters of the state regardless of the ownership of the bed. Asks if that would not most of his questions.

182 ROHLEDER: Says questions arise as to whether you can anchor, get out and fish on parts of the river, depending on whether the water has been declared navigable.

204 REP. FISHER: Asks if he felt it would be possible to amend the bill with a right to fish clarification

230 ROHLEDER: Hopes something can be worked out so they won't have to go to court.

249 JOHN R. URQUHART: Testifies in support of HB 2697. EXHIBIT K.

275 Reads from letter prepared by Gail Achterman, their attorney, regarding the Division of State Land's determination that the Sandy river was navigable to mile 37.5.

326 REP. THOMPSON: Asks the date the deed was given to them by Multnomah County.

328 URQUHART: Federal grant was 1867, after statehood, the state conveyed to their private property predecessor, an interest in 1873.

342 REP. FISHER: Asks if the county decreased their property taxes by 29% when they did this.

344 URQUHART: They said because your talking about river bank land you couldn't build on it or use it anyway.

350 KATHY AMUNDSON: Testifies in support of HB 2697. EXHIBITS L and M.

400 Gives history of varying and conflicting determinations as to the navigability of the Sandy river.

450 Continues to outline problems they have had with Division of State Lands to determine the navigability of the Sandy river.

TAPE 27, SIDE A

101 BEVERLY JONES: Testifies in support of HB 2697. EXHIBIT N.

144 REP. LUKE: Clarification. Are we talking about losing 33 acres?

145 REP. LUKE: Is that just the width of the river, or the river plus the food area.

147 MIKE JONES: They don't know. States they are paying taxes on property they don't own.

163 GLENYCE DENSEM, REPRESENTING SANDY RIVER PROPERTY OWNERS ASSN.: Speaks in support of HB 2697.

199 NICK KERSLAKE: Speaks in support of HB 2697. EXHIBIT P

234 DAVID MOIR: Speaks in support of HB 2697.

276 LYNETTE KERSLAKE: Testifies as to the amount of money the Division of State Lands will have to spend to defend the lawsuits filed by the property owners along the Sandy river. Asks for the committee's support in passing HB 2697.

303 LOWELL L. KESTER: Testifies in support of HB 2697.

345 REP. THOMPSON: Asks if his land is also deeded from Multnomah County.

347 KESTER: Responds in the affirmative.

354 MIKE ROSS, SALEM CHAPTER, NORTHWEST STEELHEADERS: Speaks in opposition to HB 2697.

369 VERN COOK: Speaks in opposition to HB 2697.

419 Says if someone gives a deed to land they don't own, that is not the responsibility or the fault of the people of Oregon.

465 Says it's not all that mysterious to figure out where the ordinary high water mark is.

TAPE 28, SIDE A

157 REP. LUKE: Asks if it's the high water mark or the flood plain.

161 COOK: Says he can establish where the ordinary high water is by the level of the water that he saw each morning for ten different mornings.

179 DONALD A. WATSON, REPRESENTING THE ASSOCIATION OF NORTHWEST STEELHEADERS AND THE ASSOCIATION OF SPORTS ANGLERS: Testifies in opposition to HB 2697. EXHIBIT O.

226 Says they are taking away a public resource and not getting any reimbursement for it

267 JOHN H. GARREN, AUTHOR "OREGON RIVER TOURS", REGIONAL REPRESENTATIVE FOR THE NATIONAL ORGANIZATION FOR RIVERS. Testifies in opposition to HB 2697.

304 States if this bill is passed it would create never ending legal conflict and public opposition

335 CHAIR LEWIS: Closes PUBLIC HEARING on HB 2697

ADJOURNS the meeting at 4:07 PM

Submitted by, Reviewed by,

Sandy Ceballos Mark Bauer  
Committee Assistant Committee Administrator

EXHIBIT SUMMARY:

A -- Testimony on HB 2658 -- Jon Chandler, General Counsel, Home Builders Assn. of Metropolitan Portland -- 1 page

B -- Testimony on HB 2658 -- Jerry C. Reeves -- 4 pages

C -- Testimony on HB 2707 -- Jon Chandler, General Counsel, Home Builders Assn. of Metropolitan Portland -- 1 page

D -- Testimony on HB 2707 -- Gary Gustafson, Director, Division of State Lands -- 1 page

E -- Testimony on HB 2697 -- Bill Perry, Director Governmental Affairs, Oregon Farm Bureau -- 3 pages

F -- Testimony on HB 2697 -- Sen. Greg Walden, Oregon State Senator -- 3 pages

G -- Testimony on HB 2697 -- Gary Gustafson, Director, Division of State Lands -- 8 pages

H -- Testimony on HB 2697 -- Thomas A. Balmer, Deputy Attorney General, Oregon State Department of Justice, General Counsel Division -- 1 page

I -- Testimony on HB 2697 -- Ron Yokim, Representing the Grant County Court --

J -- Testimony on HB 2697 -- Joe Rohleder, Representing Oregon Guides and Packers -- 2 pages

K -- Testimony on HB 2697 -- John R. Urquhart -- 25 pages

L -- Testimony on HB 2697 -- Kathy Amundson -- 23 pages

M -- Testimony on HB 2697 -- Kathy Amundson -- 1 page

N -- Testimony on HB 2697 -- Mike & Beverly Jones -- 19 pages

O -- Testimony on HB 2697 -- Donald A. Watson, Office Administrator, Association of Northwest Steelheaders -- 3 pages

P -- Testimony on HB 2697 -- Nick & Lynette Kerlake -- 2 pages