

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

March 3, 1993      Hearing Room D 1:30 p.m.      Tapes 35 - 36

MEMBERS PRESENT:    Rep. Bob Repine, Chair Rep. Marilyn Dell Rep. Sam  
Dominy Rep. Bill Fisher Rep. Carl Hosticka Rep. Dennis Luke Rep. Bill  
Markham Rep. Ray Baum

MEMBER EXCUSED:    Rep. Nancy Peterson

VISITING MEMBER:   Rep. Tim Josi

STAFF PRESENT:      Kathryn Van Natta, Committee Administrator Karen  
McCormac, Committee Clerk

MEASURES CONSIDERED:            Work Session - Member Discussion of Land  
Use Issues

Public Hearing and Possible Work Session - HB 2147

Public Hearing - HB 2191 - HB 2595

WITNESSES:      GROVER      SIMMONS,      Independent      Employer  
Association, Pacific      Printing      Industries      Association

CORINNE SHERTON, Land Use Board of Appeals ED SULLIVAN, Citizen MIKE  
FREESE, General Services, Printing Division GREG WOLF, Land  
Conservation and Development

Department BILL MOSHOFSKY, Oregonians in Action DAVE SMITH, Oregonians  
in Action DAVID A. MARTIN, Brookside, Inc., DBA Indian Creek

Golf Course

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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. [--- Unable To Translate  
Graphic ---]

TAPE 35, SIDE A

005      CHAIR REPINE:    Calls meeting to order at 1:35 p.m.

OPENS WORK SESSION ON MEMBER DISCUSSION OF LAND USE ISSUES

049    REP. DELL: Under the "General" section, I would like to see  
additional comments about the mediation process.

084    REP. FISHER: Expresses concern about an application for a  
land-use zoning change in Newport which was denied because the Oregon  
Department of Transportation says they cannot accommodate the additional

traffic.

They have effectively stopped the zone change as though they were LCDC.

093 CHAIR REPINE: Would that come under state agencies and their role regarding appeals?

095 REP. FISHER: That would be fine.

097 REP. DELL: There is a bill introduced this session at the request of the Yamhill County Board of Commissioners regarding historic designation and Goal 5, which I would like to see referenced in the matrix.

231 REP. HOSTICKA: Requests farm and forest tax deferral status be added to rules.

235 CHAIR REPINE: To summarize, we will add to the matrix: state agencies regarding local appeals, requested by Rep. Fisher; mediation at various levels, requested by Rep. Dell; special sitings for special projects;

certainty of policy subject to rule changes, requested by Rep. Hosticka; farm and forest use regarding tax deferrals, requested by Rep. Hosticka; and historical property rights, requested by Rep. Dell.

Staff will provide an additional comment sheet on these issues for the March 8 meeting. Requests that committee members prioritize issues by next meeting with 1 - 3 ranking.

344 CLOSES WORK SESSION ON MEMBER DISCUSSION OF LAND USE ISSUES

OPENS PUBLIC HEARING ON HB 2147

326 KATHRYN VAN NATTA, Committee Administrator: Introduces meeting materials, including a Hand-Engrossed copy of HB 2147 (EXHIBIT A), and a letter addressed to Chair Repine dated February 4, 1993 from the Land

Use Board of Appeals (LUBA) (EXHIBIT B). When this bill was previously before the committee on February 1, we provided a Revenue Impact Statement indicating there is no revenue impact, a Fiscal Analysis, a Staff Measure Summary, and testimony from LUBA.

377 CHAIR REPINE: The committee first heard this bill during the first days of the session. Apparently those who wanted to testify were caught off

guard, so now we're giving them an opportunity to testify by holding another public hearing today. 393 GROVER SIMMONS, Independent Employer Association, Pacific Printing Industries Association: Presents written testimony (EXHIBIT C) in

opposition to HB 2147. Recommends that amendments conform to Oregon's

current public printing statute. We oppose state government printing jobs being printed in another state, which would be possible under the bill as presently drafted.

TAPE 36, SIDE A

047 SIMMONS: Continues testimony. The hand-engrossed version is acceptable. Our amendment would give LUBA the authority to assign work. Our only concern is that the work be

performed in Oregon.

060 REP. BAUM: You have no trouble with the hand-engrossed version? Why would we need Lines 31 and 32?

067 SIMMONS: We tried to come as close to what LUBA was requesting as we could and also use their phraseology.

074 REP. DOMINY: If you had a choice, would you rather this bill had never been drafted?

075 SIMMONS: Yes.

079 CORINNE SHERTON, Land Use Board of Appeals: We would prefer that the -1 amendments be adopted.

098 REP. DOMINY: If we're not going to save money or reduce the number of employees, why change the law?

106 SHERTON: Fiscal impacts show there will be an equivalent reduction in expenditures and revenues. The chief referee and two administrative

employees must currently spend a percentage of their time dealing with the publications process. Because the number of appeals filed with LUBA has more than doubled over the last five years, the time currently spent on publications needs to be used to handle these appeals within the time frame required by law.

126 REP. DOMINY: If this bill passed, could we expect the LUBA process to be shortened?

128 SHERTON: I can't guarantee the magnitude of the overall effect.

139 REP. DELL: Is there some reason why LUBA would want to look outside Oregon for printing and publishing?

141 SHERTON: Explains publication process.

177 ED SULLIVAN, Citizen: Presents testimony in support of bill. Recalls when LUBA's opinions were two years behind schedule. Wants to ensure

that LUBA publishes its opinions in a timely manner. The current bill provides the best opportunity to lower costs and increase efficiency.

204 MIKE FREESE, Department of General Services, Printing Division: Supports the bill as amended.

CLOSES PUBLIC HEARING ON HB 2147

OPENS WORK SESSION ON HB 2147

235 MOTION: REP. BAUM: Moves adoption of the HB 2147-1 AMENDMENT.

241 CHAIR REPINE: Restates motion and calls for discussion.

248 REP FISHER: Does this bill as amended ensure that the publication will be produced in Oregon?

281 CHAIR REPINE: Refers to ORS 282.210 regarding public printing, and the conditions under which printing could be done outside Oregon.

316 FREESE: In general, the statute does not allow the exportation of printing. Printing must be done in Oregon unless there are certain

conditions, such as Oregon vendors not being able to comply due to specific manufacturing requirements or perhaps the job could not be done in Oregon competitively.

333 REP. DOMINY: I will be voting against the amendment for the same reason I'll be voting against the bill. Refers to ORS 282.210 (2) (b) regarding printing jobs awarded to out-of-state companies which bid lower than

Oregon companies.

350 REP. HOSTICKA: I have interpreted that subsection to mean that a job can be awarded outside Oregon only if Oregon printers quote a state

agency a higher price than they quote the private sector.

371 SIMMONS: If the industry tries to charge the government a price which differs from what they would charge private sector customers, that is

reason enough for the public printer to send that work out of the state.

388 REP. DOMINY: What happens if the state of Oregon bids \$500,000 and a company in New York can do it for \$450,000?

401 SIMMONS: When a public printer does the work, there is no bidding process. When they cannot do it in-house, it is given to the private

sector. If the public printer determines that all bids received from Oregon printers are excessive or unreasonable, the work could be sent to a printer outside the state.

426 REP. DOMINY: So the only time the work would be contracted out is

if we didn't have the resources in Oregon?

435 SIMMONS: Are you referring to this LUBA project or to state printing in general?

436 REP. DOMINY: The bill before us deals with contracting out LUBA contracts.

449 SIMMONS: You are correct. If the work can be done by the Oregon Printing Division, they ought to do it.

TAPE 35, SIDE B

015 CHAIR REPINE: This bill enables LUBA to have someone else do the editing, printing and marketing. Let the record show that Rep. Dominy is in opposition to the -1

amendments.

046 MOTION: REP. BAUM: Moves HB 2147 to the full committee with a DO PASS AS AMENDED RECOMMENDATION, AS AMENDED BY THE HB 2147-1

AMENDMENTS, LC 519, dated 1-29-93.

048 CHAIR REPINE: Restates motion and calls for discussion.

050 VOTE: In a roll call vote, REPS. BAUM, DELL, FISHER, HOSTICKA, LUKE and CHAIR REPINE vote AYE. REP. DOMINY votes NO. REP. PETERSON is

EXCUSED. REP. MARKHAM is ABSENT.

053 CHAIR REPINE: The motion CARRIES. REP. LUKE will lead discussion at the full committee and on the floor.

CLOSES WORK SESSION ON HB 2147

OPENS PUBLIC HEARING ON HB 2191

071 CORRINNE SHERTON: Explains Land Use Decision Appellate Review Process (EXHIBIT D).

133 CHAIR REPINE: Let the record show we are officially going into full subcommittee.

135 SHERTON: Continues testimony.

163 CHAIR REPINE: Do interveners have standing?

165 SHERTON: When a motion to intervene is filed, we require the intervener to be treated as a party. If there is no objection, we rule on the

motion and grant the motion when we issue our final opinion. If there is an objection, we generally resolve that before proceeding further with the case.

172 REP. LUKE: You said that approximately fifteen percent of your cases are appealed. Could you estimate how many are upheld?

175 SHERTON: Between 1989 - 1991, the average was eighty-two percent.

186 GREG WOLF, Land Conservation and Development Department: Presents copy of mediated agreement between several parties regarding gravel

extraction from Tillamook County Rivers and Upland Sites (EXHIBIT E).

We have had great success in the recent use of mediation in land-use cases. Last week, a mediator resolved a case in Tillamook in which some citizens had objected to the siting of a duplex, and effectively headed off a LUBA appeal. Recently in St. Helens, a homeless shelter was sited through the mediation process using a mediator hired by the local government with a grant from LCDC. That shelter had been to LUBA twice and to the Court of Appeals once, and thousands of dollars had been spent to resolve the issue. With the mediator, we were able to solve the case within one week with \$800 in mediator expenses. Current statutes allow parties to stay the appeals process and provide for mediation, but not enough people know that the option is available. The notice provision in this bill would remedy that problem.

236 CHAIR REPINE: Will this change affect mediation on other levels?

243 WOLF: This amendment affects the cases which are filed. In some cases, that is really too late in the process. The Tillamook County mediation

occurred before any appeal was filed, because we anticipated there would be a problem.

Additional entries to the record: HB 2191 Staff Measure Summary (EXHIBIT F) HB 2191 Fiscal Impact Assessment (EXHIBIT G) HB 2191 Revenue Impact Analysis (EXHIBIT H)

256 CLOSES PUBLIC HEARING ON HB 2191

OPENS WORK SESSION ON HB 2147

MOTION: REP. BAUM moves to SUSPEND THE RULES to allow REP. MARKHAM to vote on HB 2147.

264 CHAIR REPINE: Restates motion and calls for discussion.

VOTE: REP. MARKHAM votes AYE.

267 CLOSES WORK SESSION ON HB 2147

OPENS PUBLIC HEARING ON HB 2595

269 VAN NATTA: Outlines HB 2595 (EXHIBIT I), which amends ORS 197

.830 Sections (1) and (2), and amends ORS 197.350. This bill was printed at

the request of Oregonians in Action. There is no revenue impact (EXHIBIT J). Advises committee to review Fiscal Impact Statement (EXHIBIT K).

293 BILL MOSHOFSKY, Oregonians in Action: This bill is in response to widespread consternation and objection to the excessive appeals and the threat of appeals that we have seen in Oregon, which have resulted in

excessive costs and delays in the land-use process. 287 DAVE SMITH, Oregonians in Action: Presents written testimony (EXHIBIT L) in support of HB 2595.

TAPE 36, SIDE B

DAVE SMITH: Concludes testimony.

079 SULLIVAN: Does not see need for change in language on Page 1, Line 14. Present laws already require participation before the local government

or state agency.

Refers committee to substitution of "decision" for "order" on Page 3, Lines 15 - 18. A final agency action is usually called an order. Calling it a decision is confusing.

Refers committee to Page 3, Lines 19 - 21 regarding the effectiveness of LUBA decisions. There is currently a way to deal with the finality of LUBA order. Once LUBA rules, that decision should provisionally remain in effect until it is reversed or remanded by the Court of Appeals.

Refers committee to Page 3, Lines 32 - 35 regarding attorneys' fees.

There is no standard for the granting or denial of attorneys' fees. The fiscal impact on state agencies is in the Fiscal Impact Statement.

Refers committee to Page 4, Lines 2 - 9 regarding "burden of persuasion" recommending that the term be repealed since it is not used.

Agrees to provide committee with written testimony.

212 REP. BAUM: I have questions I would like to ask, but I realize we are out of time. Requests presence of witness at next public hearing.

218 DAVID A. MARTIN, Brookside, Inc., DBA Indian Creek Golf Course: Presents written testimony (EXHIBIT M) regarding lengthy land-use

appeals process.

353 REP. DOMINY: Do you believe this bill will help or hurt the process?

357 MARTIN: It is a beginning. The burden of proof is placed on the applicant, since it is difficult to prove that a development will be an asset to the community. We need to return land-use decisions back to

the counties.

380 REP. HOSTICKA: Requests clarification of county involvement.

386 MARTIN: The county did not do the job correctly when they wrote D-9 into the county's comprehensive plan. However, it was written by

volunteers on our planning commission instead of by an attorney.

402 REP. HOSTICKA: So your problems were not due to LUBA?

389 MARTIN: That is correct. Problems occurred due to misinterpretations of rules and standards. 439 CHAIR REPINE: We requested Mr. Martin's testimony as an example of problems which may exist in the current process.

Kelly Ross with the Oregon Association of Realtors and Greg Wolf with the Land Conservation and Development Department will forego their testimony until our next public hearing.

CLOSES PUBLIC HEARING ON HB 2595

Adjourns meeting at 3:22 p.m.

Submitted by:

Reviewed by:

Karen McCormac  
Administrator

Kathryn Van Natta Assistant

EXHIBIT LOG:

A - HB 2147 with Hand-Engrossed -1 Amendments dated 1-29-93 (LC 858) - Staff - 4 pages B - HB 2147 Letter addressed to Chair Repine dated 2-4-93 - Corinne Sherton - 4 pages C - HB 2147 Testimony - Grover Simmons - 3 pages D - Land Use Decision Appellate Review Process - Corrinne Sherton - 2 pages E - Mediated Agreement for Decision-Making Process - Greg Wolf - 3 pages F - HB 2191 Staff Measure Summary - Staff - 1 page G - HB 2191 Fiscal Impact Assessment - Staff - 1 page H - HB 2191 Revenue Impact Analysis - Staff - 1 page I - HB 2595 Staff Measure Summary - Staff - 1 page J - HB 2595 Revenue Impact Analysis - Staff - 1 page K - HB 2595 Fiscal Analysis - Staff - 1 page L - HB 2595 Testimony - Dave Smith - 6 pages M - HB 2595 Testimony - David A. Martin - 7 pages