

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

April 5, 1993 Hearing Room D 1:30 p.m. Tapes 61 - 62

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

MEMBER EXCUSED: Rep. Marilyn Dell Rep. Nancy Peterson

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

MEASURES CONSIDERED: Work Session - HB 2197

Public Hearing - HB 2550 - HB 2792 - HB 3525

WITNESSES: BILL WARREN, Public Utility Commission of Oregon
LIZ FRENKEL, Sierra Club REP. JOHN MEEK BILL MOSHOFSKY, Oregonians in
Action

KELLY ROSS, Oregon Association of Realtors GREG WOLF, Land
Conservation and Development

Department R. CHARLES PEARSON, Washington County Surveyor JOHN CHANDLER,
Urban Land Council of Oregon; Home

Builders Association of Metropolitan Portland STAN MAYFIELD, Real Estate
Agency ARTHUR SCHLACK, Association of Oregon Counties GARY HEER,
Marion County Commissioner; Chair,

Association of Oregon Counties Land Use Committee RUSS NEBON, Marion
County Chief Planner BURTON WEAST, Special Districts Association of
Oregon

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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
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TAPE 61, SIDE A

005 CHAIR REPINE: Calls meeting to order at 1:41 p.m.

OPENS WORK SESSION ON HB 2197

015 KATHRYN VAN NATTA, Committee Administrator: Due to House
activity on March 31, the work session for HB 2197 was rescheduled
for today.

Provides background information regarding HB 2197.

056 BILL WARREN, Public Utility Commission of Oregon (PUC):
Presents written testimony (EXHIBIT A) in support of HB 2197.

100 REP. FISHER: How do utilities obtain money for expenditures which may or may not be recovered?

106 WARREN: For preconstruction projects, a utility will usually acquire a short-term loan. Once a project is viable, they will issue long-term

debt or borrow equity to finance the project to completion. Under current law, if a utility does not bring a project to completion, it has no recourse but to absorb those costs.

122 REP. FISHER: Those costs come out of customers' pockets.

125 WARREN: The lender is paid out of utility-retained earnings.

134 CHAIR REPINE: Requests comment from witness regarding Rep. Markham's recommendation to change Line 5 of the -1 amendments from "may" to

"shall."

139 WARREN: We would want to insure that the costs incurred by a utility were prudent and reasonable. They may meet the three standards outlined in HB 2197 and still be "gold-plated."

172 REP. MARKHAM: The PUC already has sufficient protection under HB 219 7.

175 WARREN: The PUC is dedicated to this kind of regulatory policy. We only want to insure that when a utility requests cost recovery, those

costs were prudently and reasonably incurred. That is not expressly covered in Section 2, (a), (b) and (c).

181 REP. MARKHAM: But doesn't Line 9 (Section 2(b)) expressly cover that?

183 WARREN: No. A least-cost plan is a general resource planning document which doesn't normally identify specific projects.

If the committee is considering changing "may" to "shall" on Line 5 of the -1 amendments, I will need to consult with the PUC.

213 CHAIR REPINE: Encourages witness to notify PUC of potential change.

220 LIZ FRENKEL, Sierra Club: Presents written testimony (EXHIBIT B) in opposition to HB 2197.

265 REP. LUKE: How long can we continue to meet the energy needs of Oregon solely through conservation?

270 FRENKEL: My testimony does not imply that we don't or won't need additional generation, but conservation must come first.

Additions to the record: HB 2197 Hand Engrossed with HB 2197-1
Amendments (LC 815) dated

3-5-93 (EXHIBIT C)

HB 2197 Preliminary Staff Measure Summary (EXHIBIT D) HB 2197 Revenue
Impact Analysis (EXHIBIT E) HB 2197 Fiscal Impact Assessment (EXHIBIT F)

CLOSES WORK SESSION ON HB 2197

OPENS PUBLIC HEARING ON HB 2550

283 KATHRYN VAN NATTA: Introduces meeting materials,
including a preliminary staff measure summary (EXHIBIT G), which
addresses the -1

amendments proposed by Rep. John Meek, and a revenue impact analysis
(EXHIBIT H) and fiscal impact assessment (EXHIBIT I) which show there is
no revenue or fiscal impact to state and local governments by the
original measure. There are basically two bills before you today; the
original HB 2550, and the removal of the original bill language by the
-1 amendments. The -1 amendments deal with land usage in exclusive
farm-use (EFU) zones.

316 REP. JOHN MEEK: Presents proposed -1 amendments to HB 2550
(EXHIBIT J). The amendments were originally for another bill, but it
was easier to

add them to HB 2550. Current Land Conservation and Development
Department (LCDC) rules restrict farmers from selling produce from other
farms on their property.

I believe that the -1 amendments eliminate Section 1 and do not include
the current language regarding forestlands.

412 VAN NATTA: That is correct. The HB 2550 -1 Amendments are
an evisceration of the present bill.

415 REP. JOHN MEEK: I'd like the committee to reconsider retaining
that language in the -1 amendments.

423 REP. LUKE: Could you clarify why "bed and breakfasts" should be
allowed in EFU zones?

426 REP. JOHN MEEK: Larger farmhouses which could accommodate a
bed and breakfast operation would still be required to meet county
codes.

457 REP. HOSTICKA: Do we need more refinement of the language
regarding sales of farm products? McDonald's or Safeway probably
believe that

sales of farm products make up 51% of their gross income. Adding

specific language such as "produced raw farm products" or "produced unprocessed products grown in the same geographic area" would help to clarify your intent.

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023 REP. JOHN MEEK: That's a good point.

028 REP. DOMINY: I am concerned about "small recreational attractions." What is that? I would hate to see a carnival operating in the middle of forestland.

036 REP. JOHN MEEK: We're referring to farmland attractions such as hay rides.

096 BILL MOSHOFSKY, Oregonians in Action: Presents written testimony in support of HB 2550 (EXHIBIT K). Refers to previous analysis and

correspondence (EXHIBIT K-1) regarding an analysis of LCDC's Farm and Forest Research Project.

252 REP. MARKHAM: Agrees with analysis, and provides anecdotal evidence regarding forest fires and forest dwellings.

303 KELLY ROSS, Oregon Association of Realtors: Provides written testimony (EXHIBIT L) in support of HB 2550.

330 GREG WOLF, Land Conservation and Development Department: Testifies in opposition to HB 2550. The provisions of the bill are confusing because they refer to the Forest Practices Act (FPA). LCDC has developed rules

which implement part of the FPA in response to HB 3396, which was passed about three sessions ago, and those changes allowed forest practices outright in forest zones. HB 3396 prohibited counties from regulating forest practices.

There are new rules regarding fire safety measures, such as setbacks from forested areas in forest zones. I assume that language in HB 3550 would repeal those. Fire safety measures are not to prevent "houses from causing fires," but to protect houses from fires once they occur, no matter how they occur. It would be difficult to transfer some of the provisions for EFU zones to forest zones. For example, in an EFU zone, we allow dwellings which are customarily used in conjunction with farm use. If we only allowed dwellings customarily used in conjunction with forest use, we may end up with more restrictive policies than we

currently have.

We have had discussions with Washington County about the -1 amendments. A fundamental question is whether you want the statute to be this specific. Defining the marketing activities this way would limit a county's interpretation of that provision. We'd be happy to help work to find language that we could support. The "small recreational attractions" could also be a problem.

420 REP. LUKE: Has LCDC had discussion regarding bed and breakfasts in EFU zones?

423 WOLF: Yes. There is already a home occupation provision which allows limited bed and breakfast lodging in an EFU zone, although it has not

been utilized much. Last session, another provision was adopted to allow for the renting out of rooms in existing dwellings, which could also be utilized.

CLOSES PUBLIC HEARING ON HB 2550

OPENS WORK SESSION ON HB 2197

TAPE 61, SIDE B

009 REP. MARKHAM: After conferring with Bill Warren and other utilities representatives, I am now willing to go with the -1 amendment as

written.

012 MOTION: REP. MARKHAM moves to adopt the HB 2197-1 AMENDMENTS as submitted by the Public Utility Commission, dated 3-5-93.

019 CHAIR REPINE: Restates motion and calls for discussion. Hearing no objections, the motion CARRIES.

024 MOTION: REP. MARKHAM moves HB 2197 to the House Committee on Natural Resources with a DO PASS AS AMENDED RECOMMENDATION, as amended by the HB 2197-1 AMENDMENTS, LC 815, dated 3-5-93.

026 CHAIR REPINE: Restates motion and calls for discussion.

028 REP. HOSTICKA: Requests clarification of Lines 2 and 3 of the -1 amendments regarding "projects which were intended to increase

efficiency in the consumption of energy."

031 WARREN: That means conservation activities or "demand side resources" as we call them. They are not supply side activities which produce

energy, but activities which conserve energy.

041 VOTE: REPS. BAUM, DOMINY, FISHER, HOSTICKA, JOSI, LUKE, MARKHAM and CHAIR REPINE vote AYE. REPS. DELL and PETERSON are EXCUSED.

054 CHAIR REPINE: The motion CARRIES.

Calls for ten minute recess, to reconvene at 2:50 p.m. Reconvenes meeting at 2:56 p.m.

OPENS PUBLIC HEARING ON HB 2792

068 VAN NATTA: Introduces meeting materials, including a staff measure summary (EXHIBIT M), a fiscal analysis (EXHIBIT N), and a revenue impact analysis (EXHIBIT O) which show no fiscal or revenue impact. We have

included copies of ORS Chapter 92 regarding subdivisions and partitions, since HB 2792 requires us to delve into real property.

081 R. CHARLES PEARSON, Washington County Surveyor: Presents written testimony (EXHIBIT P) in favor in HB 2792.

175 CHAIR REPINE: On Page 7, Line 11 of HB 2792, is the term "alley" included in these public right-of-ways?

179 PEARSON: I believe "public street or road" is defined as any public way, which would include a public alley, if one was created.

183 CHAIR REPINE: Requests elaboration of property easements.

189 PEARSON: Refers committee to Page 2, Lines 15 - 17 of HB 2792. If you needed a private easement for a drainage way across your neighbor's

property, and this was shown on the plat and granted by the plat, the so-called "Doctrine of Merger," which is a common-law principle, says you cannot grant yourself an easement. This language would allow private easements to be created by law.

207 REP. FISHER: If you buy an adjacent property, is it always a merger?

210 PEARSON: It's my opinion that if you buy another piece of property and have an easement, you no longer need an easement across your property to reach the second piece of property.

212 REP. FISHER: So even if you bought property with the intent to resell in future, you would just have to recreate the easement?

221 PEARSON: That's correct. Most deeds use the easement language from the previous deed. This would automatically be included by the inclusion of this language.

240 JOHN CHANDLER, Urban Land Council of Oregon, Home Builders Association of Metropolitan Portland: We generally support this bill. We had some

concerns with the language, but have been working with the surveyors to reach agreement, and intend to work with legislative counsel to draft amendments. Historically, subdivisions have been platted without replatting the remaining land, even though the law requires it. We will be seeking to eliminate this requirement by amending HB 2792. New language on Page 7, Line 11 will be addressed as well. We will also try to define terms not currently defined, such as "lot," "tract," or "parcel."

267 CHAIR REPINE: Requests that witness work with committee administrator to merge recommendations into cohesive amendments.

274 STAN MAYFIELD, Real Estate Agency: We don't have a problem with this bill. My previous concern was regarding the elimination of the

tentative approval of a plat. My current understanding is that individuals will still have to receive some sort of tentative approval.

299 CHAIR REPINE: Requests staff to work with Mr. Pearson, Mr. Chandler and Mr. Mayfield regarding amendments.

CLOSES PUBLIC HEARING ON HB 2792

OPENS PUBLIC HEARING ON HB 3525

296 VAN NATTA: House Bill 3525 is from the Association of Oregon Counties, and deals with the composition and number of commissioners who serve on the Land Conservation and Development Commission. This bill expands the number of commissioners to nine members, and prescribes that two shall

be elected county officials and two shall be elected city officials.

There may be fiscal impact, but we have not yet received the fiscal analysis due to the increase in membership. There is no revenue impact. Statutes regarding the composition of LCDC commission members are in Chapter 197.

321 ARTHUR SCHLACK, Association of Oregon Counties (AOC): Presents written testimony in support of HB 3525 (EXHIBIT Q).

384 GARY HEER, Marion County Commissioner, Chair, Association of Oregon Counties Land Use Committee: Testifies in favor of HB 3525. Believes

local input has been eroded, and that problems could be avoided if there was a more balanced commission.

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013 RUSS NEBON, Marion County Chief Planner: The County Planning

Directors Association supports HB 3525.

058 REP. JOSI: On Lines 9 and 10 of HB 3525, it states that there will be one member from each congressional district and the rest from "at

large." This may result in political mischief. Since elected officials have more accountability, would you consider placing elected officials in the category of "one member from each congressional district" instead of leaving it wide open?

077 NEBON: In filling commission vacancies, the Governor must insure that each congressional district is represented. Sometimes the local

government representative might be at-large, and sometimes they may be filling one of the congressional district seats. There is already quite a lot of flexibility.

085 REP. JOSI: Why not appoint commissioners who will be more accountable?

097 NEBON: I cannot speak for the AOC, but we're open to other configurations. We're hesitant to impose a majority, since the

commission needs to reflect a statewide perspective. If we proposed a majority (five out of nine positions), it may raise questions as to whether that is an appropriate proportion.

113 REP. JOSI: We could propose four out of nine.

116 REP. LUKE: There are occasions when LCDC must impose sanctions upon local governments. Would that be tougher with increased participation

by local government?

118 SCHLACK: More local government representation would probably provide for more dialog and discussion before an enforcement order was entered

into.

130 REP. FISHER: Current law states there should be at least one representative but no more than two from Multnomah County. I don't

understand why one county should be guaranteed one member. There are 36 counties in Oregon.

136 REP. MARKHAM: The state of Oregon is composed of 96% rural property. Perhaps 96% of the commission should be composed of representatives from rural areas.

151 SCHLACK: The AOC looked at the existing composition of the commission, and determined that four members from local government would balance the state perspective.

159 BURTON WEAST, Special Districts Association of Oregon (SDA): Testifies in opposition to HB 3525. With four votes controlled by cities and

counties, the voting margin is more slim. Special districts appear regularly before the commission regarding disputes between districts, cities and counties on land-use implementation. The Metropolitan Service District (MSD) in Portland has statutory responsibility for land-use planning, yet HB 3525 would prohibit the appointment of a representative from MSD.

We would have no concerns if city and county interests were represented by two or even three representatives. We also would not object if the county representative was representing either a county or a special district, depending on the preference of the Governor.

224 REP. DOMINY: How many special districts are there?

227 WEAST: Currently there are 998.

232 REP. LUKE: Are all people who represent special districts elected?

234 WEAST: Most of them are. Special service districts are all elected boards. A county service district is controlled by a county board of

commission.

238 REP. LUKE: If we amended HB 3525 to include special districts, would we want to require that the representative is elected?

240 WEAST: Yes.

258 CHAIR REPINE: Recommends discussion between the AOC and the SDA.

Additions to the record: HB 3525 Preliminary Staff Measure Summary (EXHIBIT R) HB 3525 Revenue Impact Analysis (EXHIBIT S)

CLOSES PUBLIC HEARING ON HB 3525

Adjourns meeting at 3:48 p.m.

Submitted by:

Reviewed by:

Karen McCormac

Kathryn Van Natta Assistant

Administrator

EXHIBIT LOG:

A - HB 2197 Testimony - Bill Warren - 3 pages B - HB 2197
Testimony - Liz Frenkel - 2 pages C - HB 2197 Hand-Engrossed with HB
2197-1 Amendments (LC 815) dated 3-5-93 - Staff - 2 pages D - HB
2197 Preliminary Staff Measure Summary - Staff - 1 page E - HB 2197
Revenue Impact Analysis - Staff - 1 page G - HB 2550-1 Amendments
Preliminary Staff Measure Summary - Staff - 1 page H - HB 2550
Revenue Impact Analysis - Staff - 1 page I - HB 2550 Fiscal Impact
Assessment - Staff - 1 page J - HB 2550 Proposed -1 Amendments (LC
1240) dated 4-5-93 - Staff - 13 pages K - HB 2550 Testimony -
Bill Moshofsky - 3 pages K-1 - HB 2550 Testimony - Bill Moshofsky - 4
pages L - HB 2550 Testimony - Kelly Ross - 4 pages M - HB 2792
Preliminary Staff Measure Summary - Staff - 1 page N - HB 2792
Fiscal Impact Assessment - Staff - 1 page O - HB 2792 Revenue
Impact Analysis - Staff - 1 page P - HB 2792 Testimony - R. Charles
Pearson - 5 pages Q - HB 3525 Testimony - Arthur Schlack - 1 page R
- HB 3525 Preliminary Staff Measure Summary - Staff - 1 page S
- HB 3525 Revenue Impact Analysis - Staff - 1 page