

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 27, 1993
TAPES: 264 - 265 PLACE: Hearing Room
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TIME: 3:00 PM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,
Vice-Chair Senator Joyce Cohen

Senator Bob Kintigh Senator Bob Shoemaker Senator Gordon Smith

MEMBER EXCUSED: Senator Shirley Gold

STAFF PRESENT: Peter Green, Administrator Chris Warner, Research
Associate Pamela Andersen, Clerk Kus Soumie, Clerk

MEASURES HEARD: HB 3661

[--- Unable To Translate Graphic ---] 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 264, SIDE A

001 CHAIR CEASE: Calls the meeting to order at 3:00 p.m. -We'll have a quick meeting tomorrow at 8:00 a.m. -We have a conference committee on SB 122 at 9:00 a.m. tomorrow. -He opens the work session on HB 3661.

WORK SESSION ON HB 3661

CHAIR CEASE: We want to put on the record what the work group has been working on.

025 CHRIS WARNER, Research Assistant: We're working off of the HB 3661-A80 amendments (EXHIBIT A). -Page 3, line 7 deals with the lot of record and the determinations made by the Class III and Class IV soil. -Last night there was a question about whether the soil in Tillamook County would be included in the bill. -Line 7 is a reference to that. Subsection (3) deals with the high value soil in the Willamette Valley, while subsection (4) deals with the dairy lands in Tillamook County and elsewhere on the coast.

CHAIR CEASE: We didn't limit it to Tillamook County.

WARNER: There was a question in subsection (4), lines 14 through 17. Some of the wording has been changed. -We changed "dwelling as listed" to "dwelling as established." -The issue is if you were in a mixed zone. He's not sure whether you can apply either test.

049 CHAIR CEASE: Thought the issue was that you applied the test which was the predominate use?

WARNER: Is trying to see if the language gets us there.

050 SEN. KINTIGH: "Use of the tract on January 1, 1993." (Page 3, line 17.)

WARNER: That's the language we ended up with this morning.

CHAIR CEASE: Does everyone understand that's what we asked the drafter to do?

WARNER: In subsection (5), page 3, line 18, the question that arose was about the so called "sage brush subdivisions."

CHAIR CEASE: It's left up to the county.

068 SEN. COHEN: Wants to make sure we still have our overlays in terms of habitat.

WARNER: That's on page 2.

SEN. COHEN: Sub (f), line 9.

SEN. KINTIGH: It looks like the county could use that to shutdown anything they'd want to shutdown.

076 SEN. SHOEMAKER: It looks sensible. -The county doesn't want to extend services where it's not economical or feasible. -This seems an appropriate place for that kind of local decision making.

CHAIR CEASE: Thinks the subsection is trying to get at those cases where you might have a proposed dwelling in an area where you couldn't service it with water or something else.

SEN. COHEN: Are we talking about water, sewer?

086 RUSS NEBON, Marion County: Are you talking about a lot of record provision?

WARNER: Yes. It's in section 2.

NEBON: The county's objective on lot of record has been that it be clear and objective. -When you start talking about the overall land use pattern in the area and service availability, be very careful that those things are just fact finding and not things that involve exercise of policy or judgement. -Otherwise we're back to the conditional use process.

CHAIR CEASE: Is not sure the language quite does that. -Sue?

095 SUE HANNA, Legislative Counsel: This is an option the county can put in. They have their basic lot of record as a ministerial decision, but they can move it from a straight ministerial decision if they have an area in which they may need to apply other conditions.

NEBON: Some time ago he asked whether the intent was that counties be able to be more restrictive on lot of record than what the statute

provides. -If we have that ability we can address that problem that way and make sure that in doing it we're clear and objective about it.

SEN. COHEN: We need to look at the language where we talk about allowing the counties to be more restrictive. -If you have a comprehensive plan that says a particular area is in a wetlands and there's no opportunity for septic tanks, the county could say lot of record in this area is not an area they'll talk about or that the county could put some restrictions on the area. -You have to go through the process to get there. -At least this gives some limits to the criteria for some person who owns that lot of record.

NEBON: Does not mind wording that directs the county towards particular issues they might need to address. -He wants to make sure the generic wording is in here that makes it clear that a county can be more restrictive.

SEN. COHEN: We need both.

NEBON: Sen. Cohen, you're suggesting for example, in a limited ground water area a county could impose a geographic limitation or something that would be clear....

SEN. COHEN: Something that you'd have to justify in some basis. -You'd have to go through your planning, mapping process.

NEBON: It would be handled up front, rather than on a case-by-case basis.

SEN. COHEN: If we can still have more restrictive authorization, this language is not a mandate or limit.

140 SEN. J. BUNN: Has no problem saying the county may be more restrictive. -He wants to be sure we're not applying language that allows someone to force the county to be more restrictive.

CHAIR CEASE: You're point's well taken.

WARNER: Why don't we say, "a county may deny approval."

SEN. COHEN: We're talking about the other side of it.

SEN. J. BUNN: A person can't go to court and say the county was in error by not denying that approval.

SEN. COHEN: We're talking about additional language that says they may be more restrictive under certain circumstances that they define with respect to the use of lot of record proceedings.

CHAIR CEASE: You don't want it to be a discretionary policy. You want it to make sure the reasoning given is clear actual reasoning that the county can't service it, etc. NEBON: We'll have to put this into our ordinances and then we'll have the opportunity to address these planning issues and put in clear and objective standards that would be applied.

159 SEN. J. BUNN: It doesn't become part of an acknowledged plan. It doesn't go through periodic review. -It's your option. You can be more restrictive, but the state cannot come in and make you be more restrictive.

HANNA: Sen. Cohen was talking about allowing the counties to be more restrictive. -The opening language in section 2 is parallel to that in ORS 215.283, where counties use the option, for example, not to allow churches even though it was provided for in the law. -We have precedent for not allowing certain uses. -This is a little more descriptive of how they can go into their plan and carry that out.

SEN. COHEN: It seems we're fine.

176 WARNER: Page 4, line 25 deals with the soils in dairy lands. -Page 5, section 4, line 22, would had a discussion about paved or rock surfaced public roads.

SEN. SHOEMAKER: Does a rock surface have to be maintained?

CHAIR CEASE: Yes.

SEN. SHOEMAKER: The language isn't clear. -It should say, "that is paved or has a rock surface and is maintained."

CHAIR CEASE: We'll get the language cleared up. -The intent is a public road that is maintained and has either a paved, gravel or rock surface.

218 WARNER: Page 6, line 2, last night the committee chose to make that 160 acres.

SEN. SHOEMAKER: Should lines 12 and 17 be 200 or 160?

SEN. J. BUNN: It's 200, the aggregate split from the single tract.

WARNER: Page 7, line 5. There was a question about the percentage of the slope.

SEN. COHEN: Thinks 30% would be better.

244 KEVIN BIRCH, Department of Forestry: A publication we did with the rural fire districts concludes you shouldn't build on something over 40%. That's based on the effect slope has on flame length, the speed you can drive a dozer and whether it's likely to jump a hand fire line. -A publication we did in conjunction with the forest service concludes you shouldn't build on slopes above 30%, probably for the same reasons. -There is no hard and fast number. It will have to be a policy decision in the range of 30% to 40%.

267 SEN. J. BUNN: Is a 100% slope a vertical line?

BIRCH: A 100% slope is a 45% angle. -He describes how the percentages are derived and give some comparisons.

285 MOTION: SEN. COHEN: Moves on page 7, line 5 to change "40 percent" to "30 percent".

SEN. J. BUNN: Would like to see what a 30% grade and a 40% grade look like. -He supported 40%, because he thought it was different than what it was.

CHAIR CEASE: Let's come back on this tomorrow.

SEN. KINTIGH: Will bring an example.

307 CHAIR CEASE: Sen. Bunn and Sen. Cohen, bring the group up to date on what the group did the last couple of hours.

328 SEN. J. BUNN: There were six topics dealt with. -In the Class III and IV listed soils in the Willamette Valley, there is still disagreement on the IIIe and IVe versus the IIIw and IVw. -The general consensus is that a parcel would be under 21 acres to allow lot of record and that parcel would be surrounded on 67% of it's perimeter by other parcels 21 acres or smaller, and have two dwellings on those surrounding parcels. Or if it fails that test, would have 25% of its perimeter with parcels 21 acres or less and four homes within one-quarter mile. -There's still some question on how to deal with an urban growth boundary. -One of those is you not allow the counting of an urban growth boundary except on adjacent parcels. -Sen. Cohen has some concern about that skewing the results and we may want to look at that. -That's pretty well brought us to an understanding of how to prevent these 20 acre parcels from being out in the middle of farmland. -The six House concerns are....

364 CHAIR CEASE: Do you want the committee to indicate acceptance of the two-pronged approach?

SEN. J. BUNN: Would like to see if anyone has a major problem. We still have some fine tuning and he's not ready for a conceptual motion.

SEN. SHOEMAKER: Who comprises the work group?

CHAIR CEASE: Responds.

SEN. J. BUNN: The House concerns are: -In eastern Oregon, changing the cubic foot threshold from 3,000 to 4,000 feet under which a lot is allowed. We need to visit this later. -In eastern Oregon, changing the 1,500 feet to a longer distance. Tentative consensus is to leave it the way it is. -The 320 acre size for a forest dwelling. In eastern Oregon 240 acres for a single tract and leave 320 for an aggregate, but this is not finalized. -In section 7, minimum lot size. Add clarifying language which the department will work on--this does not require the counties with an approved plan to go back through the process to get that. -If a county has not finished periodic review, they'd have to go through the process to defend their 20's and 40's. -The House requested we revisit the Clark language in section 43. The decision was not to revisit that. -We did not deal with the Smith case. -We've left this committee with the question of Smith in western Oregon; in creating a new partition we would allow development under ___ percent growth. -It's up to this committee to fill in the blank. -He has no motions. This clarifies where we are.

TAPE 265, SIDE A

046 SEN. COHEN: Wants to reconfirm that this committee has discussed what Sen. Bunn is talking about. -She wants to clarify that these are not new issues.

CHAIR CEASE: The two pronged approach is new, but we're pretty close on that issue.

057 WARNER: Page 6, line 21, is language dealing with deed restriction.

HANNA: Subsection (5) has been changed several times today and it may have some slight changes by tomorrow.

WARNER: Page 7, line 11 has some added language.

075 SEN. KINTIGH: Suggests we change "asked" to "has petitioned".

SEN. J. BUNN: The language is fine, but wants to establish legislative intent. If you petition, but are rejected, you are not kicked out under the contract provision. But you have to make the effort.

SEN. KINTIGH: That's unlikely to happen, fire protection districts don't like to have houses that aren't protected.

SEN. J. BUNN: Just wants to make sure someone isn't caught in a grey area.

WARNER: Page 8, line 4 has a small correction, "a business entity owned by any one or combination...." -We'll be working on the language on page 8, lines 20 through 24. -Legislative Counsel raised a concern about repealing the marginal lands provisions. -We're asking that we keep marginal lands in ORS and exclude other counties from doing it.

103 HANNA: One statute that's providing a conflicts problem is ORS 215.213. That's the one we'd keep in the statute. -We'd not keep the enabling legislation for counties to become new marginal lands counties. -That will change the appearance of the bill. -There will be no new marginal lands counties. Counties will not be able to expand their use of marginal lands.

SEN. KINTIGH: What section is that? HANNA: It's all of the cross references to ORS 215.213.

WARNER: The other question that arose is if both of those counties opt out of marginal lands into the lot of record provisions, we'd put something into the bill to repeal 215.213.

HANNA: Those marginal lands counties will continue to have lands designated as marginal lands. They will need some statutory parameters on how to deal with them. -She's working on that with someone from the department.

131 WARNER: We're still working on Smith.

SEN. J. BUNN: Is not sure the working group is getting any closer on that.

CHAIR CEASE: Was it your intent to have a motion that you could use?

SEN. J. BUNN: If we have a blank in that, we may not have something we could adequately explain to the House members. -His motion will be to adopt 3%. -The information you've just been handed (EXHIBIT B) represents, roughly, a two-year time period. -We're dealing with those counties in western Oregon that are outside of the Willamette Valley. -There's an asterisk by the counties that are exempted. -The only county under 3% that would be picked up would be Curry County, with about a 5% growth. -The state average is 2.4%. -Jackson and Josephine are slightly below the state average. -Anything at the state average or higher would

not impact those two counties. -The concern expressed by the House was that we either define Jackson and Josephine as part of eastern Oregon or we use the 3% level.

CHAIR CEASE: We can leave this until tomorrow or can continue to discuss it. -Sen. Bunn, what are you suggesting?

172 MOTION: SEN. G. SMITH: Moves Sen. Bunn's conceptual amendment.

SEN. COHEN: What soils are we talking about?

CHAIR CEASE: We're talking about a 3% growth rate for those counties not in the valley or in eastern Oregon.

SEN. SHOEMAKER: If we cut it to 2% we would continue to apply Smith to Hood River, Jackson, Josephine and Tillamook.

198 SEN. J. BUNN: Smith doesn't matter one way or the other. -We have the bill snagged on something that is a non-issue. -He would not want to see the bill go down over two counties being expressed as a major problem for it. -If we look at what has happened: For example, Deschutes County has been exempted. It was the biggest fear that was brought forward early on. -Deschutes only had 13 parcels created last year at a 5% growth rate. -It has not become a problem for the creation of parcels.

SEN. COHEN: Would hate to have Hood River divided up. -How critical is this to the House?

SEN. J. BUNN: Has been told this was important by Sen. Smith and Rep. Baum. -Dick, do you have the 1992 Smith figures for Jackson and Josephine? -This has not been a problem for any of the counties we've been talking about.

SEN. COHEN: Hood River was a new one.

SEN. SHOEMAKER: Is concerned about Hood River and Tillamook counties.

SEN. J. BUNN: For the purposes of this, can we define Jackson and Josephine as eastern Oregon and leave the 2% figure?

SEN. SHOEMAKER: That's okay.

SEN. G. SMITH: That's fine. -In regards to Hood River, there's a House member who has a real interest and has not been able to achieve a retroactivity issue.

SEN. J. BUNN: Is willing to argue that we've addressed the Jackson and Josephine problem and not to add another one.

CHAIR CEASE: We haven't finally resolved it.

250 DICK BENNER, LCDC: Between September 91 and August 92, prior to the Smith decision, there were no non-farm parcels in Hood River County, three in Tillamook County, Jackson had three, Josephine had none. -For comparison, Klamath had 20, Clackamas had 27 and Marion had 19.

274 SEN. G. SMITH: It's time to recognize the politics and the

emotion. It doesn't relate to the substance. Let's vote.

CHAIR CEASE: Sen. Bunn, your motion is 3%?

WARNER: This would exclude Curry.

SEN. J. BUNN: They would be excluded, unless they dropped in their growth rate.

SEN. COHEN: What about Curry?

BENNER: None in this reporting period.

280 ROLL CALL: The motion carries 6 to 0. EXCUSED: Sen. Gold.

CHAIR CEASE: We'll continue with the work group when floor session is over. -He closes the work session and adjourns at 4:25 p.m.

Transcribed by,

Edward C. Klein, Committee Assistant

EXHIBIT LOG:

A - HB 3661-A80 Amendments - Staff - 54 pages B - Population Change by County - Sen. Bunn - 1 page