

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 28, 1993 TAPE: 266 PLACE: Hearing Room CTIME: 8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,
Vice-Chair Senator Joyce Cohen Senator Bob Kintigh Senator Bob Shoemaker
Senator Gordon Smith MEMBERS ABSENT: Senator Shirley Gold STAFF
PRESENT: Peter Green, Administrator Chris Warner, Research Associate
Pamella Andersen, Clerk MEASURES HEARD: HB 3101 HB 2934

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 266, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:12 a.m. - Opens the
work session on HB 3101.

WORK SESSION ON HB 3101

ADMIN. WARNER: (introduces EXHIBITS A and B) Notes the hand-engrossed
changes to the amendments.

016 MOTION: CHAIR CEASE: Moves to ADOPT the hand-engrossed amendments
to HB 310 1-A dated 7-27-93.

SEN. KINTIGH: Does this mean anything different?

ADMIN. WARNER: Responds yes, and explains.

CHAIR CEASE: You have to go through the qualification process first.
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SEN. SHOEMAKER: Was there any opposition to the amendment?

CHAIR CEASE: No.

VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED.
Senators Bunn, Gold and Smith are EXCUSED.

MOTION: CHAIR CEASE: Moves that HB 3101 AS AMENDED, be sent to the
Revenue Committee with a DO PASS recommendation. VOTE: In a roll call
vote, all members present vote AYE. Senators Bunn, Gold and Smith are
EXCUSED.

CHAIR CEASE: The motion CARRIES. - Closes the work session on HB 3101. -
Opens the work session on HB 2934.

WORK SESSION ON HB 2934

067 CHAIR CEASE: This bill relates to training and stabling facilities
for horses. - We have Senator Yih's amendment on straw. - There is a
referral to the Revenue Committee.

SEN. COHEN: My concern is persons can qualify, get exemption, and put up
their house with only one horse and a barn. - I don't have a problem
with the straw amendment.

SEN. BUNN: I have no problem with either part but I am more concerned with the straw part. - The "martini farm" concern doesn't justify invalidating inclusion of horses in an EFU zone.

100 SEN. COHEN: Some assessors have questions. - I don't want to approve everybody, cart blanche.

SEN. BUNN: I don't want to be responsible for destroying the horse part, but I don't think this is going anywhere.

CHAIR CEASE: If we can move the straw part to Revenue we can take another look at the horse part.

SEN. BUNN: If we just put in the straw amendment and limit it to the EFU zone, could we request it not go to Revenue because it would have no revenue impact? Sonato Agrioulturo and Naturd Rosourcoa JUiV 28, 1993 ~
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SEN. COHEN: I believe going to Revenue would not be a problem. SEN. SHOEMAKER: If we are not going with the horse part, will we be reinserting the part about boarding horses for profit? ADMIN. WARNER: We would just do a gut and stuff. CHAIR CEASE: (introduces EXHIBIT C) Notes the hand-engrossed changes to the amendment. ADMIN. WARNER: There is a question of where to place the straw amendment. 148 STEVE MEYER: (Legislative Revenue Office) I originally believed the amendment only changed the things that came under current employment of land, and wondered if something needed to be added to section 2(a) as that is not sufficient in itself; it must be coupled with the purpose of obtaining a profit by engaging in certain farming activities. - The new language in lines 14 and 15 seems to resolve of my concern. 168 ADMIN. WARNER: The language in bold type on the A-engrossed bill on lines 14 and 15 is a printing error. The new material is the next sentence. - Lines 14 and 15 are currently in ORS and would remain. - MOTION: CHAIR CEASE: Moves to ADOPT the HB 2934-A3 amendments dated 7-1-93 and that H8 2934 be further amended as noted on Exhibit C. VOTE: CHAIR CEASE: Hearing no objection the amendments are ADOPTED. Senator Gold is EXCUSED. 174 SEN. BUNN: I would hope to establish legislative intent that by specifying this in exclusive farm use we are not making a decision on that outside of exclusive farm use. MOTION: CHAIR CEASE: Moves that HB 2934-A AS AMENDED by the -A3 amendments, be sent to the Revenue Committee with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senator Gold is EXCUSED. CHAIR CEASE: The motion CARRIES. - Closes the work session on HB 2934. - 239 Adjourns the meeting at 8:23 a.m.

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Submitted by: Reviewed by: Pamella Andersen Peter Green
Clerk Administrator

EXHIBIT LOG:

A Proposed Amendments HB 3101-A - Staff - 1 page BHand-Engrossed
HB 3101-A - Staff - 3 pages C Proposed Amendments HB 2934-A3 - Staff
- 1 page - Information Packet- Committee Staff

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SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 28, 1993
TAPES: 267 - 270 PLACE: Hearing Room
343
TIME: 4:00 PM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,
Vice-Chair Senator Joyce Cohen Senator Shirley Gold Senator Bob Kintigh
Senator Bob Shoemaker Senator Gordon Smith

STAFF PRESENT: Chris Warner, Committee Administrator Pamella Andersen,
Clerk

MEASURES HEARD: HB 3661

[--- Unable To Translate Graphic ---] These minutes contain materials
which paraphrase and/or summarize statements made during this session.
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words. For complete contents of the proceedings, please refer to the
tapes. [--- Unable To Translate Graphic ---]

TAPE 267, SIDE A

005 CHAIR CEASE: Calls the meeting to order. (6:57 p.m.) _ Opens the
work session on HB 3661.

WORK SESSION ON HB 3661

CHAIR CEASE: We need to go through section by section.

030 ANNE SQUIER, GOVERNOR ROBERT'S NATURAL RESOURCE ADVISOR: We will be
working from the (-A83), (EXHIBIT).

_ On page two, subsection (g), line eighteen; this is a subsection
that is part of the qualifications for getting a lot of record dwelling.

_ This needs to be "if the lot or parcel on which the dwelling will
be cited is part of a tract, any remaining portion is
consolidated...".

_ There were two points on page three; one is the question of what the
circumstances would be for availability of a lot of record dwelling
within the class three and four soils in the Willamette Valley. _ I
believe that has been resolved; the other point had to do with language
in sub four and that language has been corrected.

080 SQUIER: On page five, line fourteen, I believe the intent was
that it would be based on new information resulting from SCS survey
work rather than information coming from anywhere; I would like to
see that language added.

092 SEN. KINTIGH: Would that leave open the possibility of a
competent soil expert submitting a map of the property that would show

the soil types in detail?

SQUIER: That is the question being raised.

SEN. BUNN: We tried to set, in the bill, a set map, but if that is clearly in error, you can go in with a soil specialist; that is what we are talking about.

120 SEN. COHEN: Clearly the Soil Conservation Service the is the agency that will make the recommendations that it be adjusted.

SQUIER: I don't recall discussion that eliminated the exclusion of the United States Forest Service and BLM roads; it is supposed to be in there, at the end of line twenty seven and line one on the following page.

_ The USFS and BLM indicated they did not wish the conflicts caused by building dwellings on forest service roads.

171 SEN. BUNN: On page six, lines six and seven, the language was not clear.

CHAIR CEASE: Make a note.

SQUIER: On line twenty four, page six, there had been discussion of deed restriction.

200 RICHARD BENNER, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: If the tract is rezoned so that it comes out of farm or forest designation, either by bringing it inside the urban growth boundary or an exception area, then the deed restriction would be removable.

SQUIER: I think it is important that that be reflected.

SEN. BUNN: This doesn't preclude a replacement dwelling.

239 SQUIER: It should be after line nine and in line twenty five; (c) has been dropped.

SUE HANNA, LEGISLATIVE COUNSEL: This needs to be restored in sub three, four, five and six to make it consistent all the way through;

SEN. SHOEMAKER: Shouldn't it say "will not" rather than "does not"?

HANNA: Fine.

SEN. BUNN: Regarding page seventeen, line thirteen: why do we have the 1-1-93 date on the dwellings?

HANNA: Yes, that's exactly it.

SQUIER: Back on page eleven, lines seventeen through twenty, sub four; the issue is to clarify if a parcel carved out piece of an unsuitable land has to meet the minimum lot size.

SEN. COHEN: Not the rocks?

SQUIER: Right, the rocks don't; that is what the clarification

needs to be.

HANNA: The language in the (-A84) amendments, (EXHIBIT), addresses that.

SEN. BUNN: You are advocating that the base piece meet the minimum size, but that the unsuitable piece doesn't need to meet the minimum in the area?

SQUIER: Right.

345 SEN. BUNN: Why do we care?

SQUIER: I think the question was whether one was retaining a parcel that met the minimum lot size within the farm use zone.

SEN. BUNN: What is the benefit of retaining it just to achieve a lot size?

BENNER: References Exhibit B; this keeps farm parcels a size that continues to be an effective and efficient unit for agriculture.

SEN. BUNN: Once you have acknowledged that it is not suitable for farming, why do you want to keep it and not allow it to be cut to the 75?

409 BENNER: To make sure the non-farm parcel is the minimum necessary and you don't reduce the parent parcel except to the minimum necessary.

430 SQUIER: This was clarification as there have been questions at the county level.

SEN. BUNN: I would prefer to stay with existing law rather than recreate it.

474 CHAIR CEASE: Since we are operating under current law and it isn't a problem let us keep it that way.

TAPE 268, SIDE A

038 SQUIER: Sections forty nine and fifty were of great concern to the Governor.

060 SEN. BUNN: (-A87) amendments, (EXHIBIT C),; reviews the amendment and its intent.

_ The effort is to prevent a tract with nothing between itself and the Urban Growth Boundary from using the Urban Growth Boundary as an excuse.

CHAIR CEASE: Does this language reflect the working groups intent?

_ I believe this is the final version the working group agreed to.

094 MOTION: CHAIR CEASE MOVES THAT THE (-A87) AMENDMENTS BE ADOPTED.

097 VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

100 SEN. BUNN: On page five, line thirty, (-A83), notes the 2000 feet was scaled back to 1500 and forest service and BLM roads need to be added.

_ On page six, a lot size that allows a dwelling on contiguous acres, that has been dropped from 320 acres contiguous to 240 acres contiguous; the figure was left at 320 for the aggregate number of lots.

125 MOTION: SEN. BUNN MOVES THAT 4000 CUBIC FOOT REPLACE 3000 IN EASTERN OREGON; 1500 FEET DRIVE LENGTH TO REPLACE 2000 IN EASTERN OREGON AND 240 ACRES TO REPLACE 320 ACRES FOR A CONTIGUOUS LOT IN EASTERN OREGON.

131 VOTE: HEARING NO OBJECTION THE MOTION CARRIES. SEN. KINTIGH:
The blank in three?

ADMIN. WARNER: That is the language on forest dwellings.

HANNA: Introduces (-A86) amendments, (EXHIBIT D).

_ The first thing I want to do is move out the restriction on any other dwellings, other than what is set forth in this section.

163 SEN. BUNN: If the county has taken a road along the edge that counts as well.

HANNA: Yes, anywhere.

_ On the (-A86), there will be sub six and seven that will be the result of your work group; subsection eight is what was sub three.

197 MOTION: CHAIR CEASE MOVES THIS PORTION OF THE (-A86) AMENDMENTS.

BENNER: It is a fairly simple idea that generates a lot of numbers and lines;

_ In addition to those dwelling units that would be built in forest zones as lot of record dwellings, the working group was looking for a way to identify a set of circumstances in which a piece of forest land, because of it's setting would prevent commercial forest management, could be described.

_ These would be instances in which a person could qualify for a dwelling in a forest zone when he or she wouldn't qualify for the lot of record.

_ Continues describing amendments.

_ There are two situations; describes.

309 REP. RAY BAUM, HOUSE DISTRICT 58: This description is adequate; we attempted to try to relieve some of the pressure on forest land and forest dwellings and confine it at the same time to existing parcelized areas that have some dwellings.

SEN. KINTIGH: Western and Eastern Oregon?

BENNER: There are other provisions such as on line nineteen, you couldn't count parcels that are within an Urban Growth Boundary.

_ This doesn't exempt the owner from other provisions of law.

SEN. KINTIGH: Sub seven on page three, would be Eastern or Western Oregon?

BENNER: Correct.

350 HANNA: On page two of the (-A86), line twenty seven, replace "if" with "unless"; reads language for the record.

SEN. BUNN: The goal is to provide some relief.

397 CHAIR CEASE: This is no longer strictly a lot of record program.

SEN. SHOEMAKER: Shouldn't the same tests be applied in these cases; this has to do with the effect of installing a dwelling? Was that discussed within the working group?

410 BENNER: We didn't discuss that in the work group, as the starting point was commission rules which were developed to authorize non-forest dwellings in forest zones.

TAPE 267, SIDE B

017 SEN. SHOEMAKER: Should we apply that same kind of exceptions examination to see if it disturbs forest practices. Or is there an assumption that if you meet these criteria you are by definition not disturbing forest practices.

018 BENNER: It means you have identified a set of circumstances that mean a conflict situation is present. It is also an effort to get at a clear and objective test. If you add a test that would require a hearing, then you no longer have the kind of situation where you could walk in and get a permit. By identifying this set of circumstances you are trying to identify a situation where there is a conflict already.

031 SEN. SHOEMAKER: I'm satisfied.

037 CHAIR CEASE: This appears in the (-A83) on line nine, which is sub three.

MOTION BY: SENATOR BUNN MAKING MOTION TO ADOPT LINES 1 THROUGH 5 ON THE -86 AMENDMENTS.

VOTE: no objection 056 WARNER: Directs attention to fire safety standards.

056 HANNA: When this was first put into the bill we were talking about fire suppression methods that were suitable, but there were concerns that suitable was a discretionary standard and required a contested case hearing and you were looking for clear and objective standards. After gathering information, we inserted the 4000 gallons of water available because that was clear and objective. Question about how a stream was to be measured, so WRD suggested a minimum flow of at least one CFS as equivalent. In addition I have added that this water should be available at all times.

073 KEVIN BIRCH: If there is a water supply available, then ODOF

would like to have access in case of fire, but we don't want to require someone to build a road to the water source. It must be worth our while to tap; that is about 4,000 gallons.

Suggests alternative language: "If a water supply is available," (rather than require) "such as a swimming pool, pond, lake or similar body of water".

101 SEN. BUNN: Does this tell the lot of record owner that if they have a lake on their property, they have to make a road to it so ODOF can get to it to fight a fire other than the one on their property?

103 BIRCH: If the concern is building a long road, we could specify a minimum road length.

107 SEN. BUNN: You want them to provide a road.

107 BIRCH: It is for access to get to the water supply.

BUNN: I did not understand that; I thought this was to provide water for a fire on the property.

108 HANNA: This was written to say if you are not in a fire districts, you are going to have 4,000 gallons. That is why it says, "if a water supply is required."

114 BIRCH: That is the second issue. If we require a system to for the owner to fight the fire themselves, what kind of a system should it be.

122 HANNA: On page 7 of the A-83 amendments, lines 22-27 say if it is practicable to get into a fire district, the governing body may provide for alternate means of protecting the dwelling from fire hazards. Subsection (b) describes those methods--the swimming pool and the long stream. All I am doing is clarifying instead of a long stream all you need is a wide one.

134 REP. BAUM: A work group would be willing, if the committee adopts a concept, to work on the language.

147 SEN. BUNN: I haven't heard anyone suggest this amendment does not do what we want it to do. It appears it does, but the new issue is one we never intended to include in the bill. That issue is providing water in a lot of record to fight a fire that has nothing to do with the dwelling.

153 CHAIR CEASE: Asks Rep. Baum if he is suggesting the wording needs to be changed?

156 REP. BAUM: There is some discussion about what words are appropriate. I don't think the committee is off deck on the concept.

162 SEN. KINTIGH: Notes the cubic feet per second requirement is 27,000 gallon a hour.

194 MOTION BY: Sen. Bunn TO: Accept the A-86 amendment on page 3, lines 9-15, replacing (b) on page 7 of the A-83 amendment.

202 SEN. BUNN: On page 3 of the A-86, lines 17-22 were a concern of Rep. Baum. I had to make it explicit in the bill that a county that had an acknowledged plan which had gone through a periodic review would not have, to because of the bill, go through and argue their lot size again if they had already had a smaller lot size accepted. The intent of the bill is not to change current statute, but simply to make it clearer what we have. We are not giving or taking away anything from the counties as far as minimum lot size.

213 MOTION BY: Sen. Bunn TO ADOPT lines 17-22 on page 3 of the A-86 amendments, replacing lines 1 and 2 at the top of page 8 in the larger document.

225 VOTE: No objection.

225 SEN. BUNN: Sen. Shoemaker has pointed out that the wording on line 18 of the amendment, after line 28, should say "insert". 226 SEN. BUNN: The last portion of the A-86 amendments deal with the right-to-farm provisions and tries to maintain neutrality on the question of pesticides.

230 CHAIR CEASE request that the committee hold this issue until later to provide more opportunity for discussion.

238 SEN. BUNN: The committee has the A-85 amendments (EXHIBIT) that were requested by the counties relating to the Smith Case. We decided that in the Willamette we would allow dwellings on the unsuitable land, but we would not allow the creation of new parcels. This is a change from that; it would allow creation of new parcels if the entire parcel were composed of Class 6 through 8 soils and the lot or parcels created were at least 20 acres.

254 SEN. COHEN: Do we have a lot size of the original parcel before we start chopping it into 20-acre subdivisions?

259 REP. BAUM: This is for soils that are entirely composed of Class 6 through 8. Twenty acres would be the smallest lot. It will apply in very limited circumstances.

265 SEN. COHEN: I don't see any limiting language. It may be a drafting concept.

278 SQUIER: I believe the discussion had revolved around being sure that the entire parcel was composed of soils that were Class 6 through 8 and were not capable of producing 50 cubic feet of wood fiber per acre per year; there was an alternative approach to say "and are not forested as of January 1, 1993".

294 SEN. COHEN: The committee had a discussion about minimal production. The 50 cubic feet is not in the draft.

310 SEN. COHEN: I don't know what the "not forested as of January 1, 1993".

318 SEN. BUNN: I would believe if your capability is less than 50 cubic feet, even though you have some trees, that would not be an issue that blocks it.

326 SEN. COHEN: What was the rationale for "forested as of January

1, 1993?"

330 SQUIER: The point was to assure that where there is an overlap where the property is Class 6 to 8 soils but is forested and can be managed for forest uses, the intent is definitely not to allow that to be cut up just because it happens to be in an EFU zone.

350 SEN. BUNN: Does setting a 50 cubic feet standard get us where we need to be? It recognizes it is junk land that may have some trees on it whether they are cut or ready to cut and you are recognizing the soil class and the productivity. Are we opening ourselves up if we say "forested" and how do we determine that?

361 SQUIER: I understand your questions. Kevin Birch might respond whether 50 cubic feet is the proper cut off for junk land in the Willamette Valley.

363 SEN. BUNN: In an EFU zone?

363 BIRCH: In an EFU zone we would still require that if the land is capable of producing more than 50 cubic feet per acre per year that you reforest it under the Forest Practices Act. Fifty is probably a pretty good number.

370 SEN. COHEN: It would have to lower than 50?

372 SEN. BUNN: That is correct. It has to be Class 6 through 8 and have a production capability of less than 50 cubic feet for forestry.

379 BAUM: It seems when we are talking about forest soils, prime forest soils are ones, twos and threes and we are talking about farm forest soils that would four and above falling out at the 50 cubic feet. We are getting into the marginal stuff.

SEN. COHEN: That is the only reason I would be willing to support parcelizing. You could still have impacts on adjoining areas. I just want to make sure we are not inviting something the counties cannot control.

403 BAUM: We are talking about less impact by 20 acre parcels than by 160 by 100 foot lots.

408 SEN. BUNN: Rep. Baum, does the 50 cubic feet not work as you had envisioned the bill?

414 BAUM: The folks who were concerned about this issue would say that if a parcel falls in a Class 6-8 soils, and site class five or six forest soils, you have the right terminology.

427 BIRCH: It may be site class 6 rather than class 5.

428 BAUM: We are quibbling between 85 cubic feet and 50 cubic feet. In between the two is not very productive forest soil. 433 BIRCH: It would be site class 6.

433 SEN. COHEN: We want a site class 6 rather than less than 50 cubic feet.

436 REP. BAUM: I suggest 5 and 6.

SEN. COHEN: You don't get 5 past me. You have to add some language that talks about "and forest class soils, 6" to make it clear that you are talking about agricultural type soils.

TAPE 268, SIDE B

018 SEN. BUNN: I don't disagree with Sen. Cohen on the quality of land we are talking about. When we get on the fringe, I am concerned. Does one piece of land have a soil class for agriculture and a forest class? If you have a piece of land in Marion County that has a soil class for farm land, but it is not near a forested area, it probably won't have a forest classification and it would not be a problem under this bill. If you say "and", there is a problem.

035 SQUIER: That is why I suggested if you want to use the capability limit, that it be less than 50 cubic feet of wood fibre per acre per year.

044 SEN. BUNN: We don't want to allow the spillover from an EFU into a forest zone.

046 REP. BAUM: We could use: if it was 5 and 6 and not actively growing trees--

053 CHAIR CEASE: Six through 8.

053 REP. BAUM: The 6-8 is farm land soil types. Five or 6 soils are in those transition areas that are in farm zones that have not been forested for years and haven't been managed for that purpose.

058 SEN. COHEN: So what is the problem with just leaving them 6 and 8?

REP. BAUM: We are talking about 35 cubic feet. It is not going to make a difference.

074 SEN. COHEN: There are lands with production capabilities between 50 cubic feet and 84 cubic feet that you would not want to summarily cut into 20-acre parcels. It does not prohibit one from going through "the exception". We give them a carte blanche if we use the 6.

084 SEN. BUNN: Does it make sense to tie it to the proximity of a forest zone?

088 SQUIRE: It does not to me. The issue is do you have resource land capable of growing trees at a rate at which they would be required to restock that land under the Forest Practices Act, which is anything above 50 cubic feet of wood fiber per acre per year.

SEN. BUNN: If you are in a class 6 farm soil and you are not in a timbered area you are not required to stock anything, are you?

096 BIRCH: If the land is below 50 cubic feet per acre per year in Western Oregon, you are not required to restock the land.

101 SEN. BUNN: If you have a Class 6 agricultural soil, will it always have a timber classification?

103 BIRCH: Many times there is an overlap between the soils.

104 SEN. BUNN: My concern is if there is no overlap, they can't possibly meet the two tests because they don't have available the soil typing.

123 SEN. BUNN: If there is no site class, can you can determine the productively level from the soil class?

BIRCH: Explains. Where there is no site class and no reforestation, then the 50 cubic per acre would apply. It would be assumed that since there is no soil rating there is no issue.

137 SEN. BUNN: I have no problem if that is the intent and that is the way it works. how do you determine.... - i am assuming you are talking about site class...

144 SEN. KINTIGH: You can get the U. S. Soil Conservation Service list. That shows the capability of the soils.

157 MOTION BY: Sen. Cohen TO: Amend the A-85 amendments: somewhere past line 12, add "and forest site class soils number 6.

173 SEN. COHEN: I am just moving to say to add forest site class 6 soils. My purpose in offering that amendment is not to include site class 5 soils.

188 CHAIR CEASE: Sen. Kintigh, will this do the trick? 189 SEN. KINTIGH: I think so. There is a site class 7, but you probably won't find any; it is less than 20 cubic feet.

195 CHAIR CEASE you could say a classification of 6 or more. Is that agreeable?

197 HANNA: Roman numerals and arabic numbers make a big difference. What do we do with them in this one?

205 SQUIRE: Conclusion: If you are using the cubic foot site class, you are adding arabic numbers.

207 SQUIRE: Do you mean "or"--that is entirely composed of class 6-8 soils or site class 6 or more.

210 COMMITTEE: Or 7.

210 VOTE: No objection.

217 HANNA: About a dozen changes will have to be made in the bill to accommodate this. Because this is an amendment to ORS 215.283 and that section is mentioned in about 30 other statutes, I can do the changes automatically when it is printed because there would be nothing terribly substantive.

226 SEN. SHOEMAKER: On this same amendment, should we include in the criteria, the provision that we are reinserting "will not materially alter the stability of the overall land use pattern of the area?"

232 SQUIER: That would have to parallel as well.

237 SQUIRE: The original discussion in the work group was generated because of my belief that there are circumstances where Class 6-8 soils are capable of producing more than 50 cubic feet of wood fiber

per year and those soils ought not to be cut up because they could be used for production. If you use an alternative here, you could say it is all 6-8. It may be class site but they don't have to pay attention to that because it is 6-8. I believe the debate had been about how you make sure it is not suitable for either--it is junk lands for both purposes.

256 SEN. BUNN: We are talking about farmland that is junk, but we are also trying to make sure we don't have some on the fringe. My only concern is we have excluded the fringe but we pick up some farmland that is junk but is no part of the forestry, but technically might meet the standards and would not be available.

262 BAUM: That is the debate over 50 versus 85.

264 SEN. BUNN: I think it also includes the debate on whether or not it is forested because if it is not forested, it may not need to be a part of the debate.

265 SEN. COHEN: If you want to insert the forested piece back in, I would be happy to do that.

271 SEN. BUNN: I think if we say "and forest site class 6 or more if forested" we would take care of that. If it is bare land and it is class 6-8 in an EFU zone, I think that is getting to the kind of piece we can call junk land as far as farm land and if it is not in timber production and if it is forested, it has to be pretty crummy.

SEN. COHEN: Maybe I misunderstood the intention of Ann Squire's amendment because I thought she wanted to go the other way.

288 SEN. KINTIGH: I think Sen. Bunn has stated a good way to handle it.

294 SEN. BUNN: The motion would be "--the dwelling is situated upon a lot or parcel of at least 20 acres created after the date of this Act is entirely composed of Class 6-8 soils and forest site class 6 or higher if forested."

301 SEN. COHEN: If it is forested, why would you want to cut it up?

302 SEN. BUNN: Because if it is forested in Class 6 or 7 it is so poor it justifies allowing a home on it.

304 SEN. COHEN: It is not a home; it is a parcel.

305 SEN. BUNN: If it is barely in an EFU zone, Class 6-8, even if it happens to hit the Class 5, basically you are not going to have somebody go out and make an effort to plant trees in a Class 6-8 EFU zone that has nothing on it today.

316 SEN. COHEN: The amendment I am offering just says 6 or 8 like farmland 6 or 8. I just want to stick with that and leave it clean. We can get into how many trees is a forest. 325 SEN. BUNN: My concern is our fear of the transition my bog down the whole thing.

341 SEN. COHEN: Restates her motion: on line 12, "or forest sites

class 6 or 7".

368 HANNA: Is that cubic foot or plain site class?

368 CHAIR CEASE: It is cubic foot.

368 SEN. COHEN: Explains that Class 6 is 20 - 49 cubic feet.

SEN. SMITH: Can you grow crops on this site class?

SEN. KINTIGH: Grass could grow on it.

SEN. SHOEMAKER: If you can use it for pasture, you don't want it built upon, which is the effective result of parcelization.

432 VOTE: CARRIES. SEN. SHOEMAKER votes NO. SEN. GOLD is EXCUSED.

TAPE 269, SIDE A

030 CHAIR CEASE: The pesticide issue is on pages 39 and 40 of the A-83 amendments, and in lines 24-31 on page 3 of the A-86 amendments.

050 BRUCE ANDREWS, Director, Oregon Department of Agriculture: We have been trying to hold pesticide issues neutral. - "nuisance" may not be protected as we originally intended in law. - page 3 of the A-86, language would resolve the problem that without this persons could litigate against persons lawfully using pesticides because of noise, etc.

(introduces EXHIBIT E) by terry witt

100 JOEL ARIO, Oregon Student Public Interest Research Group: This is attempt to pick up the protection from litigation in the current law for non-negligent farming practices. An issue with this is that in current law there are certain qualifications on the protection against nuisances. We would want to make sure those qualifications were also picked up. In looking at this language I am not convinced it is all there yet. This is more like an issue of conceptual agreement that is what we are trying to do.

123 DAVE NELSON, Oregon Seed Council and the Oregon Dairy Farmers Association: From the agricultural community point of view, we have agreed with Joel on the restoration of that language.

129 JOHN DELORENZO, Oregonians for Food and Shelter: If this committees adopts the provisions in the A-86 amendments in conjunction with the A-83 amendments we will maintain the status quo for any forest practice or farm practice using pesticides. - notes the resulting legal impact of the amendment. 153 - in section 39 on page 41, in line 15, of the A-83 amendments we propose keeping section 39 but in line 19 after "trespass" include "or that" and restore the language of line 23, "prohibits or regulates the use or physical condition of facilities that adversely affect public health or safety regardless of whether it purports to prohibit or regulate a situation as a nuisance". - notes memo from Peter Green dated July 28 proposing alternative language. Takes exception to the alternative language in that it would only protect a farmer from a private right of action. Under the current law a farmer is protected from private or public rights of action.

164 CHAIR CEASE: I think we do need to get some additional language.

174 SEN. COHEN: If we are going back to current law, we ought to go back and not fool around with new language on page 3 of the A-86 amendments.

198 SEN. BUNN: I would hope to adopt a concept to be drafted and returned tomorrow with the understanding it may not be what we need.

203 CHAIR CEASE: Everyone seems to agree it should be current law.

210 SEN. SHOEMAKER: Section 34 (1) is giving immunity from private rights of action based on nuisance or trespass. - in (5) why don't we just say that that immunity shall not apply to a right of action of claims for relief for trespass from pesticides?--remove the trespass immunity that is otherwise granted under (1)

225 DELORENZO: The only reason the amendment was stated as (6) was directly because of (5) which provides that (1) will not apply to a right of action or claim for relief. We did consider proposing it the way Sen. Shoemaker suggested, but this was my call and I probably complicated things greatly.

236 ARIO: That would work for the trespass issue and clarify it for trespass, but the issue of nuisance isn't clear cut in the sense that the current statute does include providing immunity from all nuisance suits. It qualifies that and you get into the issue of how to pick up qualifications. It would change current law by providing broader immunity to nuisance, as I understand the situation.

252 SEN. SHOEMAKER: Are you saying Section 34 (1) might inappropriately change the present immunity that nuisance enjoys?

257 ARIO: Yes.

258 SEN. COHEN: On page 41 of the A-83 amendments, lines 23 and 25 which have been deleted are the conditioning of the nuisance. That is what people are interested in not losing.

272 ARIO: These probably are the conditions we want to pick up, but because we have only looked at this tonight, there may be other things that need to be picked up, too.

281 HANNA: We prepared this to address farm and forest. The section you are referring to is a farming section, Section 39. We tried to cover everything in Section 34. You are talking about picking up language and putting it back in, I don't know if you are going to be changing the balance of the test. We tried to keep all the conditions in one place. Amending this in committee will probably cause lawsuits.

297 CHAIR CEASE: There is general agreement here, but getting the language to where everyone agrees may be a problem. Sen. Shoemaker will work with a group to work out suggested language for consideration by the committee.

Discussion continues on issues to be considered by the work group.

TAPE 270, SIDE A

002 ADMINISTRATOR WARNER: On page 44 of the bill, the work group addressed the language relative to Von Lubken. They wanted to get all the jurisdictions involved in periodic review.

025 DICK BENNER, Director, Department of Land Conservation and Development: The language is similar to what the committee amended into the bill the other night. There is a change first appearing on line 20. This protects applications for land use decisions submitted to a city or county after Feb. 17, 1993. That is the date of the Von Lubkin decision. If you make this change, we are still talking about a plan provision or a change to an ordinance regulation that preceded this, but is now being used for as the basis for application of land use decisions made after this February 17, 1993.

044 The change is on lines 20-23. Previously the section had talked about changes to comprehensive plans, land use regulations adopted and then (a) and (b).

046 CHAIR CEASE: Is the language on page 44 the language we want?

047 BENNER: You previously had talked about (a) and (b) as applied to plan and land use regulation amendments. The provisions of (a) and (b) would also be made applicable to land use application, those filed or submitted to the city or county after February 1, 1993.

052 SEN. COHEN: Do we need to change anything in the A-83 or are you just pointing out change from the earlier one?

056 BENNER: What you see is the change.

057 SEN. COHEN: Is there any change we need to make to get where we need to go?

058 BENNER: Asks Ann Squire if changes need to be made on lines 28 and 29.

SQUIER: I have not seen (b) previously. I am not sure it gets to the targeted things Mr. Curtis was concerned about.

065 BRENT CURTIS, Planning Manager, Washington County: (b) at line 26 was in the last draft. We have added on line 28 the word "goals". The truly new section is on line 20 - 22 stopping at February 17, 1992.

075 SQUIER: Why does the (b) need to have "goals?"

077 CURTIS: We suggested goals because the topic of ORS 197.646 is the requirement that local governments amend their plans when new or amended goals, rules or statutes become applicable. Goals simply rounds out the requirements that local governments have to comply with under 646.

083 SQUIER: What is excluded? I thought the attempt was to draft very narrow language that would allow certain prior county or city amendments that had been made in response to periodic review requirements or to specific newly applicable rules or statutes not to be able to be treated as things will be treated in the future, but to be very careful not to sweep in just everything. I don't see that specificity now.

095 CURTIS: Our intent is the same as Ms. Squire's. We were just covering the instance where you would have a newly adopted goal or rule and we just wanted to cover the whole domain of 646 thinking that was the correct thing to do here. The change that cures our most sensitive problem is found on line 20.

102 SQUIER: What is the specific substantive problem that was not covered by (a), the periodic review reference?

103 CURTIS: Washington County adopted four ordinances in November 1992. Previous to that we had our periodic review terminated; we were not in periodic review. In analyzing this with county counsel, we hoped the amendments in (b) in the previous draft, i.e. the 646 requirements for rules and statutes would cover everything we did. But in a close look at 646, we determined that a number of things we did on our own as a local matter dealing with transportation issues strictly did not fall under the applicability provisions of 646. Therefore, we suggested we add the provisions on lines 20 - 22.

117 SQUIER: As a result anything that a local government has done prior to this date would fall into this change--nothing is excluded.

121 CURTIS: I think we would exclude some things--any application made prior to February 17, 1993 would not be covered.

125 CHAIR CEASE: This is in danger of coming unglued. I agree with Ann that we are trying to do too much. Let's look at the language previously adopted.

148 SEN. COHEN: Brent's most important change is on lines 20-23 and go back to the original language in (b) and move on.

156 MOTION BY: SEN. COHEN: TO: accept the new language under (d) and retain the earlier language that was adopted.

CHAIR CEASE: we have an amendment subject to language we need to clarify. - intent of motion is clear.... - provide for the change on lines 20-23.

185 VOTE: No objection.

189 ADMINISTRATOR WARNER: The committee can address the commission on page 51.

199 CHAIR CEASE: We voted to keep the membership at seven, but to provide that one member should be a county-elected official and one should be a city-elected official. That has caused some concern and we are reopening this issue for discussion.

205 ADMINISTRATOR WARNER reviews currently statute provisions on

representation on the Land Conservation and Development Commission. The question the committee needs to address is which slot we want the at-large member to fill.

223 CHAIR CEASE: The governor's office has control. If we were to retain these slots, the appointment of the officials could be in any of those slots.

231 SEN. BUNN: I don't see a need to maintain what we have done. I believe we should abandon this language and support the governor's position on it. The governor will pick the kind of person he/she wants and we are not accomplishing anything by this language. We should eliminate it and simplify the bill.

238 MOTION BY: Sen. Bunn TO: restore original language on lines 15 - 17 of page 51.

246 VOTE: Carries. SEN. KINTIGH is excused.

256 ADMINISTRATOR WARNER: Two meetings ago, some language was agreed on by an industry group and the department on limited land use decisions.

270 DALE BLANTON, Department of Land Conservation and Development: Some provisions related to a presumption of buildability in a previous draft and agreed to by the cities and other parties and were proposed basically by the home builders have been drafted in a more limited fashion than was originally intended (EXHIBIT F). The simplest approach to this issue would be simply to

add to ORS 197.752 a subsection (3): "For purposes of a land use decision, limited land use decision for LUBA review lands inside urban growth boundaries identified as buildable land pursuant to ORS 197.295 and commercial and industrial sites identified pursuant to ORS 197.712 (2)(c) as further identified by rule are presumed to be buildable at the densities and uses allowed in the comprehensive plan and land use regulations.

301 SEN. SMITH: Suggests a comma be inserted in line 16.

315 SEN. SHOEMAKER: What does it have to do with urban and rural lands and why are we doing it?

321 CHAIR CEASE: We will hold this for another time.

324 SEN. BUNN: There are a few minor things to work out in work group including the question of the commission makeup

334 REP. BAUM: A few things that have just been briefly mentioned or were never discussed or agreed upon such as temporary dwellings on acreage above 10 acres that we are requiring them to stock, etc. There are some tract and parcel things that need to be worked out.

346 CHAIR CEASE reviews activities that committee members, Rep. Baum, staff and others will be working on to resolve issues for the next work session.

393 SEN. SHOEMAKER suggests that the language "will not

materially alter the stability" should be put back in in subsection (5) and (6) also (pages 18 and 19).

TAPE 270, SIDE A

405 REP. DELL, District 29: There are a couple of concerns. In the A-83 amendments, page 2, line 3, (c) requires that the dwelling under the lot of record has to comply with the requirements of the comprehensive plan. My assumption is that we are not going to require counties to rewrite their comprehensive plans.

427 BENNER: The understanding and perhaps the implication, is that because this is written to override those provisions in a plan and land use ordinance having to do with the siting of dwellings and farm and forest zones that cities and counties would not get stuck by those by this language. You can remove any doubt about it simply by adding language. This overrides the current provisions in a comprehensive plan or land use regulation dealing with the siting of dwellings under Goals 3 and 4.

455 SEN. BUNN: The work group needs to address that.

460 SQUIER: Appropriate language can be drafted to take care of Rep. Dell's concerns.

TAPE 269, SIDE B

043 REP. DELL: On page 8, Section 6, defines "owner" and what "owner" means elsewhere in the bill. We distinguish between a "lot" and a "tract" by ownership. We have defined owner in a very broad way for special reasons in the bill to include all kinds of relatives. I don't think we mean to say whether that will have any bearing on whether you were determining whether something is a tract. I think the simplest way is to reference, when you give the definition, the very specific part of the bill that you are covering which is Section 2 (1)(a).

066 HANNA notes how she will amend the bill.

070 SEN. BUNN: So that will tie it to Section 2(1)(a).

083 MOTION BY: Sen. Bunn TO reconsider the vote on the commission in order to fine tune the language and restore the language to where it was.

100 VOTE: Carries. SEN. COHEN votes NO.

102 MOTION BY SEN. BUNN: TO restore language on the A-83 amendments, page 51, relating to the commission.

116 VOTE: Motion Carries. SENS. COHEN AND GOLD vote NO.

123 BENNER: I notice the purpose statement is missing from the A-83 amendments.

125 ADMINISTRATOR WARNER: It is on page 53, Section 52.

131 CHAIR CEASE closes the work session on HB 3661 and declares the meeting adjourned at 9:50 p.m.

Transcribed by:

Reviewed by:

Annetta Mullins
Administrator

Chris Warner Assistant

EXHIBIT LOG:

A Proposed Amendments HB 3661-A83 - Staff - 55 pages B Proposed Amendments HB 3661-A84 - Staff - 1 page C Proposed Amendments HB 3661-A87 - Staff - 1 page D Proposed Amendments HB 3661-A86 - Staff - 4 pages E Proposed Amendments HB 3661-A85 - Staff - 1 page F Proposed Amendments HB 3661-A81 - Staff - 3 pages G Memo on Right to Farm and Pesticides - Staff - 1 page H Annotated 1991 Oregon Revised Statutes - Terry Witt - 1 page - Information Packet - Committee Staff