

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 29, 1993

TAPES: 271-273 PLACE: Hearing Room
C

TIME: 3:15 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, Research Associate Pamella Anderson, Clerk
Transcribed byCarolynn Gillson

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.
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TAPE 271, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 4:20 p.m. - Opens the
work session on HB 3661.

WORK SESSION ON HB 3661

ADMIN. WARNER: Reviews the language changes in the HB 3661-A88
amendments (EXH A). > Page 2, line 19 concerning contiguous
consolidated parcels of land.

043 MOTION BY: SEN. CEASE moves to adopt language in (g) (lines
18-20) of page 2. > There are no objections.

ADMIN. WARNER: Deletion of ORS 219.296 on page 3.

055 ANN SQUIER, Governor's Office: Suggests changing "and" to "the" on
page 2 in order to clarify intent.

ADMIN. WARNER: Page 6, line 8, concerning composition of the road. >
Page 7, line 9, concerning deed restrictions. > Page 4, line 7,
concerning definition of owner.

171 SEN. BUNN: Reviews issue addressed in HB 3661-A89 amendment
(EXH. B).

MOTION: Sen. Bunn moves to adopt the HB 3661-A89 handengrossed There
are no objections.

214 ADMIN. WARNER: Committee basically agreed to everything
in HB 3661-A88 last night.

CHAIR CEASE: What issues do we not yet have language drafted on?

SEN. BUNN: We have not adopted language concerning the templated woodlot

issue.

ADMIN. WARNER: Refers to page 7 line 21.

SEN. BUNN: Explains the concept of the template language. > Need to draft amendments stating that one dwelling must be specified in the template itself rather than just on a parcel partially included in the template.

272 MOTION: Sen. Bunn moves to adopt the conceptual amendment which he reviews. > Responds to questions of members. > Sen. Kintigh objects to the amendment. VOTE: In a roll call vote, the motion carries with Sen. Kintigh voting NO. Excused: Sen. G. Smith.

355 ADMIN. WARNER: Refers to Sections 28 and 29 on page 32 concerning LCDC rules.

387 RICHARD BENNER, LCDC: Language in Section 28 attempts to describe the effect of the bill on LCDC rules dealing with farm and forest land. > Conclusion of earlier discussion was to lay out in a memorandum of agreement the understanding about what the LCDC will be doing with it's rules upon adoption of the legislation. > Need language in bill to ensure when and if counties need to revise their plan maps to identify high-value farmland, it would be done through an acknowledgement process rather than through a rulemaking process.

458 CHAIR CEASE: Language in section 28 is all we need in the bill itself and the rest will be dealt with through discussions and a letter of understanding?

BENNER: Additional provisions upon review of high value farmland actions taken by counties.

TAPE 272, SIDE A

026 BENNER: There will probably be some give and take on the language. There was agreement by the counties and representatives from both the House and the Senate.

CHAIR CEASE: When will the letter of understanding be written?

BENNER: Such a letter should be agreed upon by tomorrow.

(For the reader's convenience, a copy of the agreement is included with these minutes (See EXHIBIT G).

048 MIKE EVANS: How the rules impact marginal lands also needs to be addressed.

BENNER: The LCDC would retain authority to apply conditions to any use authorized on marginal lands. It cannot change that criteria.

075 EVANS: The two marginal land counties want clarification that the provisions in ORS 215.213 are retained and not eliminated.

ADMIN. WARNER: Section 49, page 54

CHAIR CEASE: The committee has adopted a provision that would require one elected official from the city and one from the county to

serve on the Commission. We have not changed the membership. The Governor's office is not pleased with the amendment.

098 SQUIER: Our concern is being confined to yet another degree in the choices of people for appointments. > Suggests the target be to retain the current requirement of one elected county official member and one member be a person who has held an elected city office. > Restate the geographic constraint to one member each from Eastern Oregon, Willamette Valley, Western Oregon outside Willamette Valley. > Keep geographic spread but give more flexibility to select a person with city experience without congressional district restraints.

CHAIR CEASE: Talks about the proposal.

SEN. SHOEMAKER: Would the Multnomah requirement change?

SQUIER: I was not suggesting changing that.

147 ART SCHLACK, AOC: It would be acceptable to us.

SEN. SHOEMAKER: What about leaving Southern Oregon out?

CHAIR CEASE: Talking about five regions is no different than talking about five congressional districts.

SEN. BUNN: What if we do not change the congressional districts but add the proposed language?

SQUIER: The former and present elected official language expands the range of available people on the governing body. > The Governor must also consider the occupational and geographic makeup of the state.

CHAIR CEASE: Providing for two members at large, one from each congressional district, one county official and one former city official gives you more options.

SEN. KINTIGH: It seems to me you have a large population to pick from.

SEN. BUNN: Would the person in an at large position be eligible for reappointment?

SQUIER: I do not know. Tying the city person to an at large slot would be another constraint.

236 CHAIR CEASE: Suggests leaving the membership at seven and one of the seven would be a current or former elected city official and that person could occupy any one of the slots. Leave the congressional districts alone.

SEN. COHEN: Expresses her concerns.

RECESS UNTIL 7:05 PM

282 SQUIER: Reviews her earlier proposal concerning Commission membership. > Explains her reason for suggesting relaxation of some geographic constraints.

SEN. BUNN: Simpler to say no more than two shall come from any one congressional district.

SQUIER: That sounds reasonable.

SCHLACK: That would be acceptable

347 SEN. CEASE: Talks about the configuration.

424 Further discussion of representation of Multnomah county.

CHAIR CEASE: Two at large and one from each of the three regions, require Multnomah county be with the valley and nor more than two from any congressional district or Multnomah county.

TAPE 271, SIDE B 044 ADMIN. WARNER: Reads where representatives are from now.

CHAIR CEASE: You could end up with a situation where all the metro area didn't have a single seat.

SEN. BUNN: Under the change, it would not be reasonable to assume my congressional district or Multnomah county would have at least one seat.

CHAIR CEASE: Multnomah county represents one-fifth of the state population and the metro area represents 45 percent.

SEN. SHOEMAKER: Maybe we should talk about a metro representative instead of a Multnomah county representative.

SEN. BUNN: I wouldn't have a problem with that.

SEN. COHEN: Can we just say metropolitan area?

MOTION: Sen. Cease moves to retain what is in the bill except the city official could be a current or former elected official. > Sen. Cohen objects. MOTION PASSES: In a roll call vote, the motion carries with Sen. Cohen voting no and Sen. Gold is excused.

117 CHAIR CEASE: Talks about the pesticide question.

SEN. SHOEMAKER: The object is to change as little as possible the existing law regarding pesticides. > On page 2, lines 7-8 of the HB 3661-A90 amendment (EXH. C) the immunity is removed from pesticides to limit it to trespass actions. > Explains how pesticide remains a farming practice if it complies with applicable laws and is done in a reasonable and prudent manner. > Talks about the definition of pesticide as a forestland practice.

219 JOHN DELORENZO, Oregonians for Food and Shelter: Explains how the language returns the definition to the status quo.

SEN. GOLD: Joins the meeting. KELLY CONOVER, Weyerhauser: This language holds pesticide use neutral for forestry.

SEN. SHOEMAKER: Requests explanation of why the language on lines 21 and 22 differs from the language on lines 11 and 12?

260 DELORENZO: Explains why the definitions in law for forest practice and farming practice currently differ.

SEN. SHOEMAKER: I wondered why we have the difference between "necessary for the operation of the farm" as contrasted with "is a customary manner of complying with" the Forest Practices Act.

DELORENZO: I thought there was an objection to requiring a profit because it is not currently part of forest practice.

CONOVER: I see no problem with the language relating to forestry beginning on line 17 and continuing on the second page.

316 JOEL ARIO, OSB IRG: I only looked at the farmland language.

SQUIER: Talks about the use of pesticide.

SEN. SHOEMAKER: There is a necessary standard in the bill for forest practice. > Talks about regulating nuisances as addressed in Section 39 in the HB 3661-91 amendments (EXH. D) and how it does not seem appropriate.

420 SEN. COHEN: Talks about the nuisance law and wonders why it should be amended.

SEN. SHOEMAKER: If we are trying to protect farming practice from nuisance suits, we should not encourage local ordinances for new residents to get at a farming practice. > Language in Section 39(3) should come out because we are trying to discourage legal action that interferes with farming practices.

TAPE 272, SIDE B 025 SEN. SHOEMAKER: If something is regulated in a public health manner, there ought to be a challenge on the grounds that the law really concerns a nuisance. > Talks about other changes in the amendment are appropriate and agrees with deletion of (1) and (2).

055 ARIO: We simply are protecting the status quo in regard to pesticides by repeating the language of the current statute in the -91 amendment. We are not trying to blow up the whole bill over this issue.

CHAIR CEASE: We need a comfort level on this issue because it is explosive.

104 LARRY KNUTSON, Assistant Attorney General represent Department of Agriculture: These provisions regarding nuisance and trespass are related solely to agriculture practice issues. They are not provisions in the general laws of nuisance. > No need for the additional language in the -91 amendment. > Expresses concern with provisions on lines 1-8 because they speak to private right of action on behalf of any person or governmental body.

156 SUE HANNA, Legislative Counsel: It was difficult to determine what the group decided. We don't have a position. It's not going to work very well with the governmental action.

DELORENZO: We support the -A90 amendments and not the -A91 amendments. Section 39 in the -A88 amendment was intended to clean up language as it pertains to forest and farm practices in general. > The subsections in section 39 should satisfy most of the concerns raised.

SEN. COHEN: Are we only talking about pesticides? Could a local

government regulate as a nuisance a dog kennel located in a farm zone area or does this bill prohibit that?

DELORENZO: My reading of Section 39 in the -A88 amend is that it would potentially be a prohibition if nuisance or trespass law were phrased in law. 200 KNUITSEN: I am not sure a dog kennel would be included as a farming practice.

REP. BAUM: Talks about regulating other farm practice.

SEN. SHOEMAKER: We need to see if ORS Chapter 30 reaches beyond farming practices.

244 TERRY WITT, Oregonians for Food & Shelter: Talks about the language in Section 32a(d) and (e). > We are trying to address conditions that affect safety and health in a responsible manner.

297 HANNA: Talks about the language on page 40 and 41 in the -A88 amendments. It would not regulate other questionable activities.

SEN. SHOEMAKER: Does that series of sections in current statute relate only to farming practices?

HANNA: That is correct.

MOTION: Sen. Shoemaker moves to adopt the -A90 amendments. There are no objections.

376 REP BAUM: There are two remaining issues the House needs to work on - template and soil.

CHAIR CEASE: This bill is not open to new amendments.

SQUIER: I have discussed the soils issue Rep. Baum but not the template issue.

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034 SEN. CEASE: I only want to deal with any technical things in the morning.

BENNER: The language on page 3, line 29 (5) was intended to be an authorization and not a limitation on county authority to issue lot or dwelling permits. > Suggests the following language for line 29: "A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section..."

089 Committee accepts that language.

BENNER: On page 11, line 10, the language is appropriate but not complete. Suggests adding the following language on line 10: "A county with a minimum lot or parcel size acknowledged after January 1, 1987 or ..." The Commission rules were adopted in 1986.

125 SQUIER: I believe there was an amendment relative to Von Lubkin.

CHAIR CEASE: We don't have that amendment so we will talk about HB 3661-A92 (EXH. E).

BENNER: Reviews the new language in the amendment which concerns the commission's acknowledge process and substitutes for the Commission's rulemaking process.

MOTION: Chair Cease moves to adopt the -92A amendments. There is no objection.

191 CHAIR CEASE: Is there anything else before we have Dick Benner or someone tell us briefly about a couple of other issues?

191 SEN. COHEN: We have the VonLubkin..

193 SUE HANNA: "VonLubkin--I thought that was an agreed-to item and I have put it in the -88 amendments."

193 SQUIRE: "It is in the -88's. I failed to mention it when I went through the bill."

195 HANNA: "On page 48, line 16." 196 CHAIR CEASE: "Does this come back to what we did last night?"

198 SQUIRE: "This is a change from what the committee did last night and that is why I wanted to be sure it was pointed out. I didn't realize it was incorporated in this draft. As you recall, there was some debate last night and the committee removed the word "goals" from (B) on line 16 on page 48. That was because of my concern that the language that was there went beyond what the committee had expressed its intent, which was to try to deal with those amendments that counties had done pursuant to periodic review or in anticipation of the requirements, or in carrying out the requirements of 197.646 and that it would sweep in and cause specific results as to other actions that the committee had expressed an intent not to accomplish. And we would not know how many of those there were.

"What we have done in lines 16 and 17 is shorten that section to simply say that provisions apply to comprehensive plan and land use regulation amendments adopted after June 1 (a) pursuant to periodic review, and (b) after June 1, 1991 to meet the requirements of ORS 197.646. 197.646 has within it the concept that when there are new goals, rules or statutes, counties shall amend their ordinances and plans in order to comply with them. That captures the concepts that the other words in this section we are trying to get at that they were doing it without using the words of the statute and therefore reached more broadly--didn't incorporate all the statute. I believe this does what you intended. I have checked it with as many people as possible and believe it accomplishes it. But I wanted to be clear for the record that the intent was not to reach back and reverse individual things that were not part of a county attempt to respond to either periodic review or new goals, statutes and rules they would have to conform to under 197.646."

235 CHAIR CEASE: "I think that is correct--that is what our intent was as we accepted the amendments."

239 SEN. COHEN: "This is a much cleaner way of doing it than reciting a bunch of words and debating about what they meant."

239 SEN. CEASE: "Will you move the changes from last night? Any objection to it? If not, we will accept it."

MOTION: Sen. Cohen moves those changes. There are no objections.

> A fiscal analysis on the amendments is provided to the committee (EXH. F.).

253 BENNER: Talks about an agreement the working group has concerning use of the template. REP. BAUM: When that agreement was reached, the House was not represented. > The other issue is soils.

295 BENNER: New language was discussed last night to provide an opportunity to create new parcels in the Willamette Valley for nonfarm dwellings based upon the soils at the site of the dwelling. > Work group needs to discuss both issues.

SEN. BUNN: It seems to me the Senate members do not need to be involved, and the House needs to resolve their differences.

CHAIR CEASE: We adopted an amendment earlier that reflected a change agreed upon by the work group. It is understood we will come back to full committee with any other last minute items.

MOTION BY: Sen. Cease moves HB 3661-A92 as amended conceptually to the floor with a do pass recommendation and to rescind the Ways and Means referral. VOTE: In a roll call vote, the motion carries with all members voting AYE.

405 SEN. CEASE: Makes final comment about the bill and adjourns the meeting at 8:30 p.m.

Submitted by: Verbatim of 191-239 of Tape
273 transcribed by:

Carolynn Gillson
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Annetta Mullins Assistant

EXHIBIT LOG: A - HB 3661-A88 amendment - committee staff - 58 pages B - HB 3661-A89 amendment - committee staff - 2 pages C - HB 3661-A90 amendment - committee staff - 2 pages D - HB 3661-A91 amendment - committee staff - 1 page E - HB 3661-A92 amendment - committee staff - 12 pages F - Fiscal Analysis on HB 3661-A83 and A-86 - LFO - 4 pages G - HB 3661, (For readers' convenience) letter of understanding, 2 pages