

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.

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

April 05, 1991Hearing Room E 1:00 p.m.Tapes 105 - 107

MEMBERS PRESENT:Rep. Parkinson, Chair Rep. Courtney Rep. Naito Rep. Norris Rep. Repine Rep. Van Leeuwen Rep. Watt

MEMBERS ABSENT:Rep. Burton Rep. Whitty

STAFF PRESENT: Kathryn VanNatta, Committee Administrator Andy Sloop, Committee Assistant

MEASURES CONSIDERED: HB 2796 (WRK) HB 2795 (WRK) HB 2745 (WRK) HB 2702 (PUB)

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TAPE 105, SIDE A

07CHAIR PARKINSON: Calls the meeting to order at 1:50 p.m. Representatives Burton and Whitty absent and excused. Representative Repine not present and excused.

(Tape 105, Side A) WORK SESSION - HB 2796 Witnesses:Russ Nebon, Marion County and Association of Oregon Counties

12KATHRYN VANNATTA, COMMITTEE ADMINISTRATOR: Reviews status of the bill.

>No amendments.

>No testimony in opposition to the measure.

28MOTION:REP. VAN LEEUWEN moves HB 2796 to the floor with a "do pass" recommendation.

32REP. COURTNEY: Where does Marion County stand on this bill?

44RUSS NEBON, MARION COUNTY AND ASSOCIATION OF OREGON COUNTIES: Testifies in support of the bill. Provides flexibility to burdensome

process.

53CHAIR PARKINSON: Does doing this with a church open lots of loopholes? We talked about the use of the phrase "in conjunction with" for some time at the previous hearing on this measure.

56NEBON: There are other uses of that "in conjunction" phrase in the statute pertaining to exclusive farm use zones. Most of the time, "in conjunction with" means "located on the same property as". Discussion before this committee suggests that phrase could be interpreted more broadly. This bill would give local legal counsel and decision makers some discretion in defining that phrase.

62VOTE:In a roll call vote, the motion carries, with Representative Naito voting NAY and Representatives Burton, Repine and Whitty excused.

70CHAIR PARKINSON: Declares the motion passes. Closes the work session on HB 2796 and opens the work session on HB 2795.

(Tape 105, Side A) WORK SESSION - HB 2795

80VANNATTA: Explains proposed dash 1 amendments (EXHIBIT A), which designate only resource-based living history museums as allowable in exclusive farm use zones.

(Rep. Repine arrives 1:57)

110 CHAIR PARKINSON: Entertains a motion on the amendments.

113 MOTION:REP. NAITO moves to adopt the dash one LC 3070 amendments (EXHIBIT A) dated 4/5/91 to HB 2795.

125 VOTE:Hearing no objection, CHAIR PARKINSON so moves.

128 MOTION:REP. NORRIS moves HB 2795 to the floor as amended with a "do pass" recommendation.

132 REP. COURTNEY: Is there any acreage limitation on this?

134 CHAIR PARKINSON: Don't think so, but it would be a conditional use subject to approval by the county.

138 VOTE:In a roll call vote, the motion carries, with Rep. Courtney voting NAY and Representatives Burton, and Whitty excused.

(Tape 105, Side A) WORK SESSION - HB 2745

145 MOTION:REP. WATT moves to suspend rules to allow Rep. Repine to vote on HB 2796.

150 VOTE:Hearing no objection, CHAIR PARKINSON so moves.

155 CHAIR PARKINSON: Reopens work session on HB 2796.

(Tape 105, Side A) WORK SESSION - HB 2796

160 REP. REPINE: Votes AYE.

165 CHAIR PARKINSON: Closes work session on HB 2745 and reopens work session on HB 2745.

(Tape 105, Side A) WORK SESSION - HB 2745

170 VANNATTA: Gives status report on the measure. Notes that the HB 2745-1 amendments approved 4/1/91 have to be dropped in order for the measure to be moved to the House floor.

180 MOTION:CHAIR PARKINSON moves to rescind the HB 2745-1 amendments (EXHIBIT B) approved by the Committee 4/1/91.

185 REP. NORRIS: By doing this, are we removing the language (on line 7 after the word "churches"), "and cemeteries in conjunction with churches"?

192 CHAIR PARKINSON: Yes. We'll be going back to the original bill as printed.

195 VOTE:Hearing no objections, CHAIR PARKINSON so moves.

201 MOTION:REP. REPINE moves HB 2745 to the floor with a "do pass" recommendation.

210 VOTE:In a roll call vote, the motion carries, with Representatives Courtney, Norris, Parkinson, Repine, Van Leeuwen and Watt voting AYE, and Representative Naito voting NAY.

215 CHAIR PARKINSON: Closes the work session on HB 2745 and opens work session on HB 2702.

(Tape 105, Side A) PUBLIC HEARING - HB 2702

245 CHAIR PARKINSON: Introduces HB 2702-4 amendments (EXHIBIT C), which effectively replace the original bill.

>This draft (EXHIBIT C) came out of the Vida effort.

>Sen. Kitzhaber and Representatives Katz and Schoon instrumental in developing concepts.

>Lots of participation in shaping ideas.

>No citizen involved in consensus building.

>All "secondary lands" bills have common ground because of Vida work.

>The philosophy underlying HB 2702-4 is to: continue the process to protect farm and forest lands; and to authorize counties to identify, zone and control secondary lands.

240 CHAIR PARKINSON: Reviews process (EXHIBIT D) for designating secondary lands proposed under HB 2702-4.

260 KATHRYN VANNATTA, COMMITTEE ADMINISTRATOR: Explains the bill and gives section-by-section overview (EXHIBIT E). Reviews designation/deliberation process (EXHIBIT F).

TAPE 106, SIDE A

133 REP. NORRIS: Is this business about arbitrators new?

137 CHAIR PARKINSON: Yes, and it is receiving wide-spread support.

160 THOR BERG, SWEET HOME: Testifies in opposition to the measure (EXHIBIT G).

>Afraid this is attempt to appease political action committees, and is unnecessary tampering with good system. >Who will select arbitration panel?

>Why aren't "golf courses" defined?

>Objects to allowing "other uses on secondary lands."

>Need enforcement of current laws.

210 CHAIR PARKINSON: 95 percent of time, problems on rural lands are individuals, not large, private interests.

222 DAVE SMITH, OREGONIANS IN ACTION: Testifies in opposition to 2702-4.

>The purpose statement in Section 1 doesn't address mis-zoning of farm/forest land.

>The terms "commercial farmland" and "commercial forestland" might be better expressed as "primary" to provide a counter term to "secondary". This would make it clear that there are other reasons for protection of resource land besides the fact that they are committed to commercial levels of protection.

>Main problem is that this measure defines secondary lands, which is approaching this issue from the negative.

>Vague terms in Section 3, like "less productive", "limited capabilities", and "hobby ventures". Need to give local technical advisory committees specific standards and terms to minimize potential confusion and appeals.

>Section 3 tends to mix designation criteria for secondary lands, on the one hand, and consideration regarding uses of those lands, on the other.

>Minimum lot size isn't relevant.

>The process outlined in HB 2702-4 is excellent, particularly because it recognizes public participation.

>Vagueness in Section 3 will be aggravated by state review in Section 4.

>In Section 8, "buildings necessary and accessory to farm use . . . raise all sorts of flags."

>Also in Section 8, language used to allow non-farm dwellings on farmland is vague.

>Section 20 regarding rural communities is good.

>Questions feasibility and benefits of tying urban fringe concerns into any secondary lands bill.

399 REP. NORRIS: In your opinion, would we be better off if this bill

passed than we are now?

401 SMITH: Certainly not with exclusive farm use zones. Questions if any farmer could show if a dwelling was "necessary and accessory" to his farm. With regard to secondary land, if the state is going to designate uses, this is pretty good.

TAPE 105, SIDE B

42SMITH: Concerned that local technical advisory committees (TAC) won't designate very much secondary land because of strict designation criteria.

51REP. WATT: Is your organization willing to compromise on secondary lands or is your proposal the only one it will support?

62SMITH: We're willing to work with players to come up with a "workable" and "reasonable" bill. "We do stand ready to work, and we are not locked in concrete on our bill."

72CHAIR PARKINSON: Request OIA written critique of this "first draft."

107 CHAIR PARKINSON: What's the other term you said would be superior to "necessary and accessory?"

112 SMITH: ORS 215.213 and 215.283 use the expression "dwellings customarily provided in conjunction with farm use." "There is some case-law baggage that goes along with the term 'customarily provided in conjunction with' but I believe that is, for all of it's problems and case law, still a better expression than 'necessary and accessory'."

115 HAZEL PETERSON, MARION COUNTY RESIDENT: Testifies in support of HB 270 2-4, especially Section 8 language on non-farm dwellings.

>Brother would like to build a house on 3.6 acres he owns in Marion County, but for four years the County has told him he should be farming this land.

145 BLAIR BATSON, 1000 FRIENDS OF OREGON: Testifies in opposition to HB 270 2-4.

>Local governments don't always have broad perspective necessary to protect state interests.

>HB 2702-4 represents a fundamental retreat from the original tenets of Oregon's land-use system, which voters have upheld at the polls three times.

>HB 2702-4 prohibits any citizen or business from appealing LCDC decisions on secondary lands designation maps.

>Overall, HB 2702-4 is "unworkable, unnecessary, and undesirable."

180 REP. WATT: Is there anything about this proposal that you do like?

184 BATSON: There are better approaches to the secondary lands issue being drafted elsewhere in the Legislature.

194 CHAIR PARKINSON: "I guess it's almost official position that 1000 Friends of Oregon doesn't believe any future housing should occur

outside of urban growth boundaries. Isn't that pretty much the case?"

200 BATSON: No. We think the only lands that should be designated for secondary uses are lands that cannot be managed on an economically efficient basis as part of a commercial operation, and we think that criteria should be set by LCDC.

224 DONALD BEALE, SILVERTON: Testifies in opposition to HB 2702-4.

>Objects to Section 9, in which uses are very detailed, yet vague. What doesn't this section allow?

267 CHAIR PARKINSON: The intent of this proposal is to allow local control with lots of citizen input. "The statements you have made are exactly contrary to the intent." The criteria are loose to give flexibility to local governments and citizens.

283 BEALE: The current land-use system has failed; and to add another layer of government doesn't seem to be a good solution.

337 REP. NAITO: You mentioned Section 9 on allowable uses on secondary lands. Are you saying you would prefer that land designated as secondary should be open for any use, or that uses on that land should only be allowed after some input from neighbors and local planners?

346 BEALE: It's wrong to begin the discussion on secondary lands with a long list of permitted uses. Once this list is fixed, it's "impossible" to determine the "best" use for a given parcel of land.

374 REP. NAITO: Who do you think should decide what uses should be allowed?

381 BEALE: Couldn't be any level higher than the county.

TAPE 106, SIDE B

27GREG WOLF, DLCD: Pleased that committee ready to begin debate on this issue. Proposed amendments build on work of LCDC and are in line with other secondary lands bills under consideration. Concerned, however, that designation criteria are too general and will invite needless litigation. Notes that Section 3 on criteria is really the crux of difference among secondary lands bills.

53CHAIR PARKINSON: Would you say this is more subjective than other bills you've seen?

55WOLF: Yes.

57CHAIR PARKINSON: "It was intended to be."

60WOLF: Continues comments.

>Factors to be considered by technical advisory committees under this proposal should be more closely linked to the definition of secondary resource land.

>To the extent possible, should clearly establish that lands which have low productivity are secondary and those which have high productivity are prime.

>TACs could be better balanced by including representatives of commercial farmers and industrial forest operators.

67CHAIR PARKINSON: Do you have any idea how big technical advisory committee should be?

70WOLF: Not greater than 15 people.

75WOLF: Continues comments.

>TACs also could be improved by including representatives from the Department of Agriculture, the SES, and Agricultural Conservation and Stabilization Service. Those groups have the best information on the needs of commercial agriculture statewide and in each county as well.

>The bill uses a "predominance" standard to designate secondary resource lands. "Predominance" has been interpreted in Oregon law to mean "at least 50 percent". This standard could allow vast amounts of good resource land to be inappropriately designated as secondary.

>The designation process only requires consideration of goals 5, 7 and 17. Other goals, such as water quality, public services, schools, transportation and urbanization, also need to be evaluated in the identification and designation of secondary lands.

>Section 4 does not provide for any review of the zones to be applied to commercial and secondary resource lands. Under existing law, these would be handled through plan amendments subject to LCDC review and appeal to LUBA.

>HB 2702-4 doesn't provide additional protection for farm and forest lands, and LCDC is on record favoring adequate protection for these lands. The Commission believes this objective is best achieved through legislation, and the Governor has made it clear that the cornerstone of Oregon's planning program is the protection of commercial farm and forest lands. If the Legislature cannot agree on the secondary lands issue, SB 100 gives LCDC full authority to protect lands that are not found to be secondary.

>Objects to language allowing "any industrial or commercial use" on secondary resource lands.

105 CHAIR PARKINSON: The intent of that language is to allow counties flexibility.

108 WOLF: Our concern is that language could set up a conflict with rural residential uses.

112 WOLF: Continues comments.

>There may be conflicts between Section 11 and Sections 20 and 21. Exception areas in rural communities are not treated differently under many county plans. In order to implement this bill, changes to current zoning and land development standards may be required.

>Concerned about limitation on adoption of rules to identify and protect urban reserve areas in the Portland-metro area. Several cities face comparable growth pressures as Portland, and should have access to the urban reserve planning tool. Favor statewide approach on the urban reserve question.

136 CHAIR PARKINSON: Calls for break at 3:20. Reconvenes at 3:40.

145 LARRY TROSI, OREGON FARM BUREAU: Comments on the measure, especially "right to farm" and "right to forest" sections. (EXHIBIT H)

185 BOB STACEY, PLANNING DIRECTOR, CITY OF PORTLAND: Testifies in support of Section 21 on urban fringe issues.

>Participated in the Vida Group discussions.

>Rural residential pattern in urban fringe areas has become increasingly dense, especially in Clackamas and Washington Counties.

>Anticipate proposals in 10 years to expand Portland metro urban growth boundary.

>HB 2702-4 identifies urban reserve areas as areas where expansion in the future is appropriate and interim use is controlled.

>Urban fringe areas are an urban issue, but how these areas are managed directly affects rural lands.

250 CHAIR PARKINSON: Cities and counties could enter into agreements to form what would, in effect, be urban reserves, so this proposal wouldn't preclude implementation of the urban reserve concept in cities other than Portland. Some counties have indicated that they don't need legislation for urban reserves.

265 STACEY: If inclined to have one pilot project for urban reserve, it should be Portland.

270 STACEY: Continues comments.

>Concerned about Section 11 (3), which would prevent alteration of zoning of existing exception areas. This could undermine urban reserves.

294 CHAIR PARKINSON: This was deliberate. If don't protect existing exception areas, many property owners could lose ability to subdivide, which, in turn, would devalue their property.

300 STACEY: Portland hopes to avoid a new version of rural residential patterns that could be created through designation of an abundance of secondary land around urban growth boundaries. Notes that in the future, transportation infrastructure won't be able to deal with expanding exception areas.

355 CHAIR PARKINSON: Wouldn't it be in urban Counties' interest to prevent that?

360 STACEY: Yes. However, there is always a temptation to build additional tax base in counties. The more focused the secondary lands definition and uses are, the more reassurance urban planners will have about preventing exception area problems. Urban scale industrial uses should be discouraged on rural secondary lands.

395 RUSS NEBON, ASSOCIATION OF OREGON COUNTIES: Testifies in support of HB 270 2- 4.

>Addresses all county issues raised in the Vida context.

>Proposal recognizes that the secondary lands issue is complex and that solution concepts will need refinement.

>Difference between HB 2702-4 and other bills is that it says planning is a process that involves many players and much input.

>HB 2702-4 addresses the "ping pong" effect in which appeals tend to bounce back and forth between local/county governments and LCDC.

TAPE 107, SIDE A

00NEBON: Continues comments.

>Important to recognize that there is a local interest and a statewide interest, and that LCDC can represent state interest.

>"Unbearably cumbersome" to translate the latest LCDC proposed secondary lands definition into legislation.

>HB 2702-4 should provide a framework into which LCDC specifics can be incorporated.

>Discussion of urban reserves and exception areas is important, and HB 270 2-4 provides guidance on these issues.

85CHAIR PARKINSON: Seems to be apprehension about allowing counties flexibility to determine uses of secondary resource lands.

90NEBON: Counties will define commercial and industrial uses "carefully" and "narrowly" because county and local governments don't want to deal with extensive appeals.

103 CHAIR PARKINSON: HB 2702-4 needs work on notification of property owners, especially during the TAC stage of process.

112 NEBON: As you know, we have testified against HB 2759, which would require notification of every property owner for certain kinds of land-use decisions. We hope that funds will be available for notification for secondary lands. Expect review process issues to get worked out before the technical advisory committee stage. Also expect citizen involvement committees to generate participation in the public hearing phases of the designation process.

131 REP. NORRIS: Would the TACs be doing what heretofore has been done by planning commissions?

135 CHAIR PARKINSON: No. TACs would develop secondary lands maps, which would be reviewed by local planning commissions.

145 NEBON: Most planning commissions would appreciate expertise of TAC in planning process.

152 REP. NORRIS: But isn't this an additional formal step before the planning commission stage?

155 NEBON: Yes. Notes that there have been technical advisory committees before.

170 KELLY ROSS, OREGON ASSOCIATION OF REALTORS: General comments.

>Association hasn't taken a position on this yet.

>Compliments Rep. Parkinson and staff on proposal. Past proposals generally have failed because they haven't involved people actually going out and evaluating land under consideration. Also, HB 2702-4 sets up a general framework for secondary lands designation without forcing statewide implementation of one specific definition.

209 CHAIR PARKINSON: Did you like the "fringy" stuff?

212 ROSS: We've been concerned about the urban reserve concept because of the way it would limit uses in exception and rural residential areas.

220 CHAIR PARKINSON: Closes public hearing on HB 2702.

244 REP. COURTNEY: Inquires about status of secondary lands bills and Rep. Parkinson's intentions.

245 CHAIR PARKINSON: Speaker Campbell and President Kitzhaber collaborated for a time but did not reach an agreement on secondary lands. President Kitzhaber printed SB 91 which was distributed today. Speaker Campbell and Rep. Schoon are interested in this, too. "There's at least one more big bill that will look like this."

250 REP. COURTNEY: If there's another house bill on this, are we going to get that, too?

255 CHAIR PARKINSON: At least one more big bill to this committee. "I had no direction from anyone. We had to get started, and I beat them with my draft, so that's why we're hearing mine first. While my name is not on the bill, I'm convinced my approach is the only one that will work. The committee will have all the input they want, and I guess we'll just decide what will work or what won't work."

265 REP. COURTNEY: So we're not going to wait for any other major house bills on secondary lands to catch up with this version. We're going to go on this version?"

268 CHAIR PARKINSON: "I'm planning a session on this as fast as it's constructed -- possibly every other meeting -- but I wouldn't say this is on a faster track than the other ones. I don't have it clear in my mind how the process is going to work out, and I need all the help I can get from the committee."

273 REP. NORRIS: Would passage of this or other secondary lands bills render all local and county comprehensive plans obsolete?

280 CHAIR PARKINSON: No. Adjourns at 4:17.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee

Administrator

EXHIBIT LOG:

A -Proposed Dash 1 Amendments to HB 2795 - Washington County
Historical Society - 6 pages B -Proposed Dash 1 Amendments to HB 2745
- Environment and Energy Committee - 1 page C -Proposed Dash 4
Amendments to HB 2702 - Rep. Parkinson - 67 pages D -HB 2702-4
Amendments Overview - Rep. Parkinson - 2 pages E-Section Analysis of
HB 2702-4 Amendments - Committee Staff - 7 pages F -HB 2702-4
Amendments Secondary Lands Designation and Appeal Process Flow Chart -
Committee Staff - 2 pages G -Testimony on HB 2702-4 Amendments - Thor
Berg, Registered Republican, Linn County - 2 page H -Testimony on HB
2702-4 Amendments - Larry Trosi, Oregon Farm Bureau - 9 pages