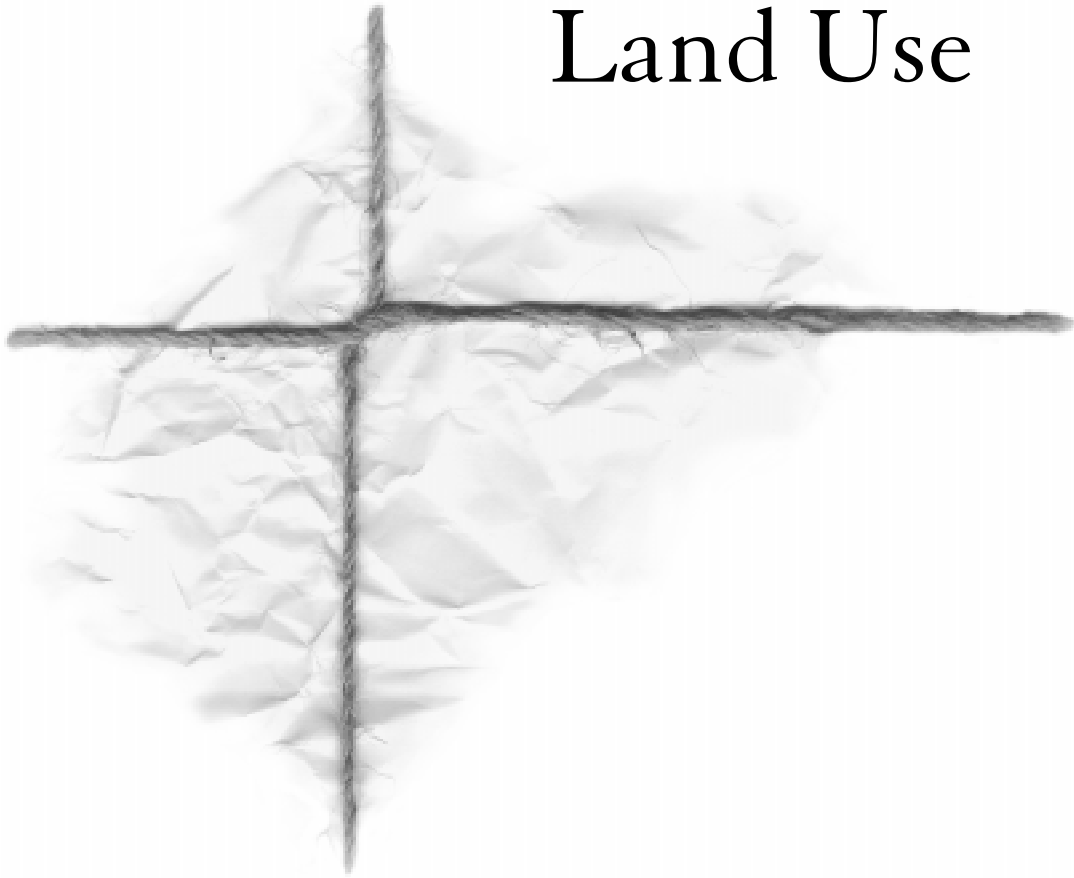


Land Use



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Summary
of Major
Legislation

Senate Bill 920

Relating to regional problem-solving programs.

SB 920 extends the program dates for regional problem-solving programs to June 30, 1999, and removes the statutory limit on the number of authorized programs. The regional problem-solving program offers local governments, state agencies, citizens and affected organizations an opportunity to work together to address land use problems that transcend city or county boundaries, and emphasizes collaboration as a way to reach agreements.

HB 3482 (1996 Special Session) authorized up to four pilot projects and appropriated \$1 million to the Emergency Board for the pilot projects. Four projects were selected from 13 proposals submitted to the Land Conservation and Development Commission: Clatsop County (Clatsop Plains), Deschutes County (LaPine Sub-basin), Josephine County, and Polk County. Jackson County had previously piloted a problem-solving program.

Effective Date: October 4, 1997

House Bill 2006

Relating to procedures for county review of certain land use applications.

HB 2006 revises the time period in a which a county must take final action on applications for certain land use decisions and applications for mineral aggregate extraction. The measure requires a county government to take final action on an application for a permit, limited land use decision, or zone change for land within an urban growth boundary, and an application for mineral aggregate extraction within 120 days after the application is deemed complete.

The measure also requires county government to take final action on all other applications for a permit, limited land use decision, or zone change, including resolution of all appeals, within 150 days after the application is deemed complete. The measure sunsets on September 30, 1999.

Effective Date: October 4, 1997

House Bill 2014

Relating to uses of land zoned for exclusive farm use.

HB 2014 allows establishment of a guest ranch in conjunction with an existing livestock operation that qualifies as a farm use in exclusive farm use, zones

in eastern Oregon.

The measure establishes guest ranch conditions, number of rooms, square footage, and acreage requirements. Other conditions for siting a guest ranch require a distance of ten air miles from an urban growth boundary with a population greater than 5,000, prohibition against siting on high-value farmland, allowance of recreational activities (with a prohibition against intensively-developed recreational facilities), and provision of food services. The measure prohibits separation of the guest ranch from the lot on which the dwelling of the person conducting the livestock operation is located. The measure requires the Department of Land Conservation and Development, Department of Agriculture, and the Economic Development Department to report to the Seventieth and Seventy-first Legislative Assemblies on implementation of the measure. The measure is repealed on December 31, 2001.

Effective Date: October 4, 1997

House Bill 2021

Relating to nonconforming land uses.

HB 2021 prohibits counties from imposing additional conditions on a lawfully established nonconforming land use. The measure provides that an initial decision by the county on a proposal for the alteration of a use shall be an administrative decision, without public hearing, and allows a local government to adopt implementation standards and procedures.

Effective Date: October 4, 1997

House Bill 2245

Relating to local government proceeding on application for land use decision.

HB 2245 allows a local government to provide local appeal of a limited land use decision. The measure requires written notice of a decision to be given to all parties who appeared at the hearing.

The measure establishes a process for the return of application fees for local government failure to act on a land use application within a specified time period. The measure also authorizes the award of reasonable attorney fees and costs of trial and appeal to a prevailing applicant in an action for the recovery of an unpaid refund, and to a prevailing local government if the court finds the petition to be frivolous.

Effective Date: October 4, 1997

House Bill 2389

Relating to Land Use Board of Appeals.

HB 2389 requires the Land Use Board of Appeals, consisting of up to three members, to be composed of a chief hearings Administrative Law Judge and such other Administrative Law Judges as the Governor considers necessary. The measure specifies that administrative law judges are not judges for the purpose of any provision of the Oregon Constitution, or for the purpose of the judges' retirement.

When the Land Use Board of Appeals was created, it served as an information gathering body which referred information to others for decisions. The Land Use Board of Appeals is currently the final decision maker and decisions of the board can only be referred to an appellate court. Changing the title of the current chief hearings referee and other referee positions to administrative law judge more accurately reflects their responsibilities and is consistent with changes made to the Workers' Compensation Board by Senate Bill 369 (1995).

Effective Date: October 4, 1997

House Bill 2493

Related to urban housing density.

HB 2493 requires a metropolitan service district to complete its initial inventory, determination, and analysis of buildable land by January 1, 1998, and conduct the inventory and analysis at least every five years thereafter.

The measure requires the district to take actions necessary to accommodate one-half of a 20-year buildable land supply within one year of completing the analysis, and to accommodate the other one-half within two years. The measure authorizes the Land Conservation and Development Commission to grant an extension of time for good cause.

A report on performance measures must be presented to the Department of Land Conservation and Development at least once every two years. The measure requires the adoption of performance measures, including analysis of the rate of conversion of vacant land to improved land, density and price ranges of residential development, level of job creation within individual cities and urban areas of a county inside the district, the number of residential units added to small sites and conversion of existing spaces into more compact units,

the amount of environmentally sensitive land protected and developed, the sales price of vacant land, residential vacancy rates, public access to open spaces, and transportation measures.

HB 2493 requires the district to determine if actions taken have established the buildable land supply and housing densities necessary to accommodate estimated housing needs. The measure requires a corrective action plan if the actions are inadequate. Failure of the district to demonstrate the buildable land supply and housing density necessary to accommodate housing needs may be the basis for initiation of enforcement action.

The measure further requires a local government with a comprehensive or functional plan to compile and report annually to the Department of Land Conservation and Development the number of applications received for residential development, the number of applications approved, including the approved density, and the date each application was received and approved or denied.

1995 legislation required local governments with a population over 25,000, or with a higher than average growth rate, to identify and ensure the availability of buildable land to meet estimated growth needs over the next 20 years. An inventory and analysis of urban growth boundaries are required as a part of the periodic review process of comprehensive plans. If insufficient buildable land is available to meet the 20 year requirement, current law requires local government to expand the urban growth boundary, amend the comprehensive plan or land use regulations to increase densities, or a combination of the two actions.

Effective Date: October 4, 1997

House Bill 2502

Relating to intervention in appeal of land use decision to Land Use Board of Appeals.

HB 2502 limits the period to intervene in an appeal of a local land use decision to 21 days. The measure also specifies that failure to comply with the 21-day deadline results in denial of a motion to intervene.

Current law allows a person a reasonable time to seek intervenor status in a local land use decision. This provision has allowed local governments latitude in determining what is a reasonable time and has prolonged the appeal process.

Effective Date: October 4, 1997

House Bill 2515

Relating to notice of proposed land use action by local government.

Upon voter approval in November, 1998, HB 2515 requires a local government to provide affected property owners with notice of a zoning change, adoption or amendment of a comprehensive plan, or adoption or change of an ordinance in a manner that limits or prohibits previously allowed uses.

The measure specifies that the notice provisions do not apply to legislative acts of local government resulting from action of the Legislative Assembly, the Land Conservation and Development Commission (LCDC), or a court decision for which notice is provided to local government by the Department of Land Conservation and Development (DLCDC).

The measure specifies the content of the required notice to property owners for land use changes and permits the notice to be included with tax statements or sent by first class or bulk mail. DLCDC is required to reimburse a local government for notification costs regarding changes made pursuant to a requirement of periodic review.

The measure requires DLCDC to provide written notice to local governments 50 days prior to the effective date of a new or amended LCDC rule, or a new or amended land use planning statute that limits or prohibits otherwise permissible land uses. The measure requires DLCDC to reimburse local governments for notification costs for these actions.

Under the measure, a metropolitan service district is required to provide written notice to a local government of a new or amended ordinance that will affect the permissible uses of the property within the jurisdiction of the local government, and the district is required to reimburse the local government for the notification costs. Current law, repealed by HB 2515, does not require individual notice to be given by counties if DLCDC funds are not available.

The measure will be submitted to voters for approval or rejection at the next regular general election in November 1998.

Effective Date: October 4, 1997

House Bill 2641

Relating to zoning for manufactured dwelling parks.

HB 2641 prohibits a city or county from adopting a

minimum lot size in excess of one acre for a manufactured dwelling park within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed.

The measure allows local governments to adopt standards addressing roof pitch, exterior siding, roof color, material, and appearance for the approval of manufactured homes in dwelling parks smaller than three acres.

Effective Date: October 4, 1997

House Bill 2642

Relating to land use appeals.

HB 2642 requires the Land Use Board of Appeals to issue an order within 60 days of receiving a motion objecting to the record. The measure requires a local government to base all land use decisions on factual information. The measure also increases from \$50 to \$175 the fee for notice of intent to appeal a land use decision.

Effective Date: October 4, 1997

House Bill 2755

Relating to dwellings on land zoned for forest use.

HB 2755 allows siting of certain dwellings within 1,500 feet of certain United States Forest Service roads on land zoned for forest use. The measure permits the siting if the road is paved, has a minimum paved width of 18 feet, has at least one defined lane in each direction, and is subject to a maintenance agreement between the United States Forest Service and either landowners adjacent to the road, a local government, or a state agency.

Effective Date: October 4, 1997

House Bill 2774

Relating to imposition of development conditions by local government on approval of local land use application.

HB 2774 prohibits a local government from attaching approval standards or special conditions regulating appearance or aesthetics to an application for development of needed housing, or to a permit for residential development, in a manner that will deny the application or reduce the proposed housing density, provided the proposed density is otherwise allowed in the zone. The measure provides an exemption from these standards for a city with a population of 500,000 or more

and historic areas designated for protection under a land use planning goal.

A jurisdiction is allowed to adopt an alternative approval process provided the applicant retains the option of proceeding under the clear and objective standards or the alternative approval process.

The measure requires the Court of Appeals to award attorney fees and expenses to a party prevailing on a claim that an approval condition imposed by a local government on a permit application is unconstitutional under the Oregon or United States Constitution.

Effective Date: October 4, 1997

House Bill 2924

Relating to land use.

HB 2924 requires the State Parks and Recreation Director to adopt rules to establish a process for the development of a master plan for each state park. The director is required to submit an adopted state park master plan to the local government with land use planning responsibility for the subject park. The measure requires the director to recommend policies and permissible uses and activities in state parks to Land Conservation and Development Commission (LCDC) by November 30, 1997.

The measure requires the LCDC to adopt rules and land use planning goal amendments necessary to provide for allowable uses, local government planning, coordination and dispute resolution, and continuance of existing uses and facilities by April 30, 1998.

The measure allows a local government to continue to protect agriculture or forestry resources and practices and allows the continuance of uses and facilities in all state parks existing on the effective date of the measure.

Effective Date: July 25, 1997

House Bill 3063

Relating to permissible uses of lands zoned for exclusive farm use.

HB 3063 allows a county to approve the use of an existing public school site determined by the district school board to be no longer required for school purposes for any use allowed under ORS 215.283, subject to all applicable approval and siting standards. The measure permits conversion of an existing school building on the site to a single-family dwelling if the lot or

parcel containing the building is not larger than five acres.

The measure prohibits a county from approving series partitions or subdivisions on exclusive farm use lands for a dwelling not provided in conjunction with farm use. Series partition provisions apply only to applications for a land division submitted after July 1, 1997.

The measure clarifies that on-site filming and accessory activities in exclusive farm use zones exceeding 45 days in a one-year period, or erection of sets that would remain in place for longer than 45 days, may be conducted only upon approval of the governing body.

Effective Date: October 4, 1997

House Bill 3304

Relating to manufactured dwellings in certain rural areas.

HB 3304 allows the temporary residential use of an existing building for the term of a hardship in an exclusive farm use zone, and the temporary residential use of one manufactured dwelling or an existing building for the term of a hardship in a forest zone. The measure requires a governing body to periodically review the hardship and specifies that the temporary dwelling shall not qualify for replacement.

The measure allows alteration, restoration, or replacement of a lawfully-established dwelling, subject to certain conditions, and establishment of caretaker residences for public parks and public fish hatcheries in a forest use zone.

Effective Date: October 4, 1997

House Bill 3459

Relating to divisions of land.

HB 3459 specifies that a person who subdivides or partitions real property shall be liable for the reasonable and necessary costs of continuing utility service to existing structures on the property. The requirements of the measure apply only if the subdividing or partitioning results in the moving of utility lines or interruption of service. The measure also allows the option of granting an easement to the utility service provider to accommodate continuing utility service to the structures.

Effective Date: October 4, 1997

Measures Vetoed by the Governor: Senate Bill 379

Relating to the establishment of dwellings on lands zoned for forest use.

SB 379 allows counties to permit the establishment of dwellings on certain lands zoned for forest use. Although dwellings in forest land are allowed under current law, the parcel size and time restrictions result in inconsistent policies regarding the protection of forestry and reasonable housing opportunities for owners of small woodlands.

In 1974, the Land Conservation and Development Commission (LCDC) adopted statewide planning Goal 4, relating to forest lands. In 1990, LCDC adopted a “template” test, designed to identify forest areas with heavy parcelization and some existing development where more residential development should be directed. HB 3661 (1993) revised state rural land policy and replaced the necessary and accessory forest dwelling standard with a codification of LCDC’s template rule. It also established new provisions for dwellings and partitions for dwellings in farm and forest zones.

Several Requirements regarding parcel size, fire safety provisions, ownership, and forest management provisions apply to the dwellings permitted under SB 379.

Governor’s Veto Message (August 15, 1997):

I am returning herewith Senate Bill 379 unsigned and disapproved.

Senate Bill 379 was sponsored by the Oregon Small Woodland Association which has the laudable goal of attempting to improve the productivity of non-industrial private forest land. I share this goal but do not feel that SB 379 will accomplish it.

The premise of the bill is that small woodland owners can manage forest resources better when they live on their land. While this argument has merit, the bill does not provide an enforceable way to ensure that the new homeowner will manage the land for forestry. Consequently, SB 379 would enable large amounts of Oregon’s forest land to be converted to rural residential use because it would reduce the minimum lot size needed for a dwelling on land zoned for forest use from 160 acres to 60 acres in western Oregon and from 240 acres to

80 acres on the eastside.

Forestry is one of the most important industries in Oregon. The viability of the forest industry is dependent on protection of the forest land base. Senate Bill 379 would allow forest land to be converted to rural residential uses thereby affecting timber production both directly and indirectly.

In terms of direct impacts, forest land would be lost due to conversion to homesites, residential access roads, and service corridors for powerlines. Indirectly, the state’s forest resources would be affected by a potential increase in conflicts between rural residents and timber owners over forest practices such as spraying. Other effects include increased public costs for roads, utilities, and police and fire protection.

Finally, on the issue of fire hazards. Increased development anywhere increases the risk of fire hazard and the cost of fighting fires. Woodland owners make a good case that when a small scale harvester lives on the land, he or she is more apt to provide an early warning of fire as well as to fight fires when they arise. This benefit must be weighed, however, with the added costs associated with a potential increase in fire hazards and in fire suppression.

For these reasons, I cannot sign this bill.

Senate Bill 470

Relating to notice and hearing requirements provided for limited land use decisions.

SB 470 requires that applications for certain zoning classifications of local government be subject to the same notice and hearing requirements provided for limited land use decisions.

Currently, determinations by cities and counties of the appropriate zoning classification for a particular use are excluded from public notice and hearing requirements. Proponents state that a city, for example, may determine that a probation office is allowed on a parcel zoned for office use without notifying adjacent residents.

SB 470 replaces statutory provisions removed by 1995 legislation which created an expedited land division process and revised the land use appeals process, requiring notification of property owners within 100 feet of a zoning action. The notified parties will then have the opportunity to comment on the proposed action and receive an explanation of their appeal rights.

Governor's Veto Message (August 15, 1997):

I am returning herewith Senate Bill 470 to you unsigned and disapproved.

This bill was drafted with the intention of increasing public notice and involvement in local decisions regarding the types of uses allowed in specific zone code designations. Specifically, the sponsors wanted to require notification of adjacent property owners on those use determinations which may have a high impact on surrounding parcels (e.g., a decision regarding whether a parole office is allowed in a specific zone).

This is a laudable goal. However, the bill was drafted very broadly. If adopted, it would affect all zone code use determinations regardless of impact beyond the subject site. Commonly-made decisions such as whether a grocery store is allowed in a commercial zone or a wood-working shop in an industrial zone may be subject to requirements for notification, a 14-day comment period, and an opportunity to appeal. Literally thousands of these decisions are made yearly in communities throughout Oregon.

To understand this bill and its companion Senate Bill 475, it is useful to put it into the context of existing law. In 1991, the legislature approved House Bill 2261 to make clear distinctions between "zone code use determinations", "limited land use decisions", and "land use decisions". The definitions reflect a carefully crafted compromise between the need to notify surrounding property owners of potential impacts and the level of impact that actually may result from a decision. Underlying this is the premise that zoning laws should provide property owners with some certainty about what to expect from development.

Decisions about what use is allowed in a particular zone were classified as ministerial decisions because they are made in accordance with provisions outlined in a zoning code. Anyone buying or renting property has access to a community's zone code and comprehensive plan designations to assess what might be expected on neighboring parcels.

Senate Bill 470 would make zone code use determinations subject to the decision-making procedures applicable to "limited land use decision" requirements. What this means is that prior to making a decision regarding whether a use is allowed in a particular zone, a local government would have to notify property owners within 100 feet of the affected site, provide a 14-day comment

period, and provide an opportunity to appeal the local decision to the Land Use Board of Appeals.

Because it applies to all zone code use decisions, the bill would unnecessarily delay development and overburden local government without a clear benefit to citizens in the vast majority of cases.

Senate Bill 475

Relating to criteria and performance standards for local land use decisions.

SB 475 requires local government land use decisions to be nondiscretionary with clear and objective criteria or performance standards in order to qualify for exemption from certain notification, hearing, and appeals procedures.

Current law excludes from public notification and appeal requirements the determination of appropriate zoning classification for a particular use within the local zone. SB 475 limits the exclusion to nondiscretionary decisions with clear and objective criteria or performance standards.

Governor's Veto Message (August 15, 1997):

I am returning herewith Senate Bill 475 to you unsigned and disapproved.

Similar to its companion bill, Senate Bill 470, this bill was drafted with the intention of increasing public notice and involvement in local decisions regarding the types of uses allowed in zoning classifications. Specifically, the goal of the sponsors was to require jurisdictions to notify adjacent property owners when a zone code use decision may have impact beyond the subject site.

The procedures outlined in the bill for accomplishing this are written very broadly, however. The bill amends the definition of a "permit" (ORS 215.402 (4)(b)) to exclude "a non-discretionary decision that determines the appropriate zoning classification for a particular use by applying clear and objective criteria or performance standards defining the uses permitted within the zone".

This represents a fundamental shift in the way all permits are processed. It would require jurisdictions to provide notice on such everyday decisions as issuing a building permit for a house in a single family zone because the planning director must interpret, or use dis-

cretion, in applying the zone code criteria. This would result in costly delays to development.

Finally, the bill would not serve its intended purpose. Senate Bill 475 requires notification at the point when a building permit is issued; not when a tenant occupies the building. Once a jurisdiction approves a permit for an applicant to build or remodel a building, there may be no other point in the development process for the jurisdiction to actually review a tenant use of the building.

For example, a builder or developer may obtain a permit to build office space to lease or sell on speculation. At the point the permit is issued, the jurisdiction is approving the applicant's plans to build an office building in a commercial zone. The tenant who eventually occupies the office space is under no obligation to return to the jurisdiction for a zoning permit. He or she is free to use the space for any of the uses allowed in a commercial zone. Depending on the zone code provisions, that could mean anything from a video rental store to an office complex.

I feel that communities have a responsibility to notify the public when a proposed development may negatively affect surrounding property owners. This must be balanced, however, with the need to provide a reasonable and efficient process which enables citizens to develop their property in a timely fashion. Senate Bill 475 does not improve the balance established under existing law.

Major Legislation

Not Enacted

Senate Bill 431

Relating to appeal of local decision on land use application.

SB 431 would have prohibited the Land Use Board of Appeals and local governing bodies from reversing or remanding a land use decision on the grounds of failure to consider an applicable standard, unless that consideration would have changed the decision.

Senate Bill 619

Relating to review of buildable lands within urban growth boundary.

SB 619 would have required the Land Conservation and Development Commission to consider amending

land use planning goals to minimize expansion of urban growth boundaries onto the most productive agricultural land.

Senate Bill 632

Relating to land use.

SB 932 would have established the criteria and procedures for the identification of secondary lands.

Senate Bill 870

Relating to destination resorts.

SB 870 would have allowed a county to map as eligible for a destination resort a site that is within three miles of a high value crop area if the site is separated by one or more natural barriers. The measure would have conditioned the siting on the requirement that it would not significantly interfere with high value crops in areas within three miles of the site.

Senate Bill 1137

Relating to annexation of territory to cities.

SB 1137 would have prohibited cities from adopting charter provisions or ordinances that require the submission of proposed annexations to electors of the city.

Senate Bill 1169

Relating to farm dwellings in exclusive farm use zones.

SB 1169 would have established conditions for siting a dwelling in conjunction with a farm use in an exclusive farm use zone. The measure would have allowed a dwelling if, for the last two years or three of the previous five years, a tract had produced at least \$80,000 in gross annual income from the sale of farm products, or gross annual farm income equal to or exceeding the average gross annual income from parcels of similar size located in the same county.

House Bill 2466

Relating to division of land zoned for exclusive farm use.

HB 2466 would have allowed division of a lot or parcel in an exclusive farm use zone outside of the Willamette Valley if the lot or parcel was created before January 1, 1993, and contained an existing non-farm dwelling.

House Bill 2643

Relating to appeal from local government land use decision.

HB 2643 would have prohibited the Land Conservation and Development Commission and the Department of Land Conservation and Development from petitioning the Land Use Board of Appeals for review of a quasi-judicial land use decision or limited land use decision on an application for a conditional use except for a decision of local government regarding the use of land subject to a land use planning goal protecting open space, scenic and historic areas, and natural resources.

House Bill 2645

Relating to siting of single-family dwellings.

HB 2645 would have allowed the siting of a single-family dwelling on a lot or parcel in any area zoned for exclusive farm use or forest use if the dwelling could have been established when the lot or parcel was acquired by the owner making the application for the dwelling.

House Bill 3405

Relating to kennels.

HB 3405 would have granted immunity from civil or criminal liability to the owner, operator, or lessee of a commercial or hobby kennel. The measure would have prohibited a court from enjoining the kennel on the basis of noise or noise pollution if the allegations resulted from normal and accepted kennel activity between 7 a.m. and 10 p.m. and the owner or operator complied with all laws in effect when construction of the kennel began.

House Bill 3698

Relating to siting corrections facilities.

HB 3698 would have prohibited the siting of corrections facilities on lands zoned for farm use if the land was predominately classified as prime, unique, Class I, or Class II soil. The measure would have further prohibited siting within one mile of a school or neighborhood.

