

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

February 25, 1999 Hearing Room 50

4:30 P.M. Tapes 55 - 58

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Ted Ferrioli

Sen. Bill Fisher

MEMBER EXCUSED: Sen. Joan Dukes

STAFF PRESENT: Brad Harper, Administrator

Kristal Hatton-Nease, Administrative Support

MEASURE HEARD: SB 12 Public Hearing

Introduction of Committee Bill

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 55, A		
005	Chair George	Convenes meeting at 4:34 p.m. Opens public hearing on SB 12.
<u>SB 12 Public Hearing</u>		
019	Bob Kintigh	Forester, Lane County and Former State Senator. Submits [EXHIBIT A] and testifies in support of SB 12. Gives a brief summary of the activity of the Joint Interim Task Force on Landslides and Public Safety. Discusses interim

		committee membership, meeting places, and the task force final report to the 70 th Legislature.
069	Kintigh	Discusses landslides and says landslides are a natural process and are not limited to forestry. States three conditions are necessary for a slide and it is not likely to occur without all three. Adds these conditions are steep slopes, unstable soils, and lots of water. Says slides occur mostly in western Oregon because these three conditions can occur together. Discusses an excerpt from an article published by A.G. Walling in 1884, which is attached to his testimony.
119	Kintigh	Says SB 12 must be considered as a package and not picked apart. Adds SB 12 is based upon shared responsibility and includes all relevant state agencies. Gives committee members suggestions for SB 12, which include not writing detailed rules, basing decisions on research, and trying to get counties involved.
169	Kintigh	Discusses the Society of American Forester's policy statement on landslides. Says the final SB 12 needs to be based on shared responsibility and involve all relevant state and county agencies, otherwise support for it will dwindle.
180	Rep. Jim Welsh	Representative, District #43. Says that some of the most destructive landslides in Oregon have occurred in his district. Testifies in support of SB 12. Expresses concern about Section 4(a), which provides the Land Conservation and Development Commission (LCDC) with open ended rulemaking authority. Says he is willing to discuss this issue and says he will proposed amendments to Section 4(a).
230	Rep. Welsh	Says he is concerned about public safety around landslide areas. Comments on property rights and liability issues. Says there needs to be discussion on what a "high hazard slide area" is and what a "fast landslide" means. Comments SB12 does not say anything about high safety risk areas.
260	Sen. Fisher	Comments he shares Rep. Welsh's concern about LCDC adopting rules. Asks if it would ease Rep. Welsh's concern if there were a stipulation in SB 12 that LCDC would have to adopt rules only in areas that the State Department of Geology and Mineral Industries (DOGAMI) identified.
265	Rep. Welsh	Replies it may help. Says he looks forward to discussing this issue. Comments the public is also concerned about the safety risk around this issue.
270	Sen. Veral Tarno	Senator, District #24. Testifies in support of SB 12. Comments he does have some concern about Section 4. Adds that when a state agency is given the authority to develop rules, the process seems to take a long time. Says the real concern is identifying hazardous sites. Adds he like the idea of having DOGAMI map hazard sites. Comments on the Fiddle Creek landslide that recently occurred. Says that had there been some type of hazard site mapping, the two men may not have died in the Fiddle Creek landslide. Says he does like Section 4c.
300	Chair George	Asks if it is possible to amend building codes to minimize the risk from or vulnerability of building from landslides.

310	Sen. Tarno	Says this is an issue that Don Hull could discuss.
320	Rep. Welsh	Comments there are other practices that mitigate landslides, such as improper drainage. Says language in SB 12 is cumbersome but it is headed in the right direction.
337	Chair George	Comments SB 12 reads that "all local government shall exercise all available authority". Asks if this has any significance in law.
344	Sen. Tarno	Replies he is not certain what that concerns. Says it may have to do with the Department of Emergency Management services. Adds there is a state Federal Emergency Management Administration (FEMA) office in Oregon. Says they deal with emergencies in Oregon.
399	Gail Achterman	Chair, Interim Task Force on Landslides and Public Safety. Testifies in support of SB 12 and explains what the interim task force did and how SB 12 came out of the work conducted during the course of the interim task force.
449	Achterman	Comments on landslides that have occurred in Douglas County, Florence, and in Kelso, Washington. Commends state agency staff who took task force members around the state to show members hazardous landslides.
TAPE 56, A		
017	Chair George	Comments on the slide at the Capes in Tillamook, Oregon. Says private engineers warned about building on the site and state agencies were the ones that allowed homeowners to build on the site.
020	Achterman	Says that is emblematic of the need for SB 12. Says Oregon needs a comprehensive framework in Oregon statute that says what the state agencies are supposed to do. Says there was input from the counties and the cities in the process. Adds Oregon needs to do a better job of providing information to landowners and communities.
070	Achterman	Says Section 3 sets the comprehensive policy out and that Section 4 of SB12 is the heart of the bill. Comments there were assessments conducted on Highway 6 and a mudslide ensued. States the DOGAMI mapping part of SB 12 is the most important part of the legislation. Adds other state agencies and local government needs such maps.
120	Achterman	Comments SB 12 is important legislation that aims to prevent a situation in Oregon like the one that is occurring in Kelso, Washington. Adds this would provide Oregonians the information they need.
120	Sen. Wilde	Asks if "high hazard landslide area" is currently defined in statute.
124	Achterman	Replies no and says the task force had some discussion about that. Adds that a

		definition of "high hazard landslide area" is going to take some careful thought and consideration in terms of identifying the factors associated with landslides. Says it may be more suitable to adopt a definition of "high hazard" in a rule context than it is in a legislative context. Says the interim landslide task force decided to not define "high hazard."
140	Sen. Wilde	Expresses concern about supporting a bill that sets out authority to regulate, without having a definition attached.
152	Sen. Fisher	Comments on DOGAMI mapping.
<u>INTRODUCTION OF COMMITTEE BILL</u>		
<u>LC 3622</u>		
170	Sen. Tarno	Explains LC 3622 allows yurts and other camp structures in farm and forest zones. Says a constituent of his would like to put in a campground and would like to have yurts in it. Says the constituent found out that he could not use them, but state parks could.
200	Chair George	Says he has heard similar requests from people in his district.
210	Sen. Wilde	MOTION: Moves LC 3622 BE INTRODUCED as a committee bill.
215		VOTE: 4-0
	Chair George	Hearing no objection, declares the motion CARRIED.
<u>SB 12 PUBLIC HEARING</u>		
230	Achterman	Urges members to talk with the State Geologist about the definition of "high hazard". Says landslides are a statewide problem. Says the definition is not in SB 12 because the task force did not have time near the end of the interim.
255	Sen. Fisher	Asks why the bill says "fire" and "wildfire". Comments they should be the same thing.
260	Achterman	Replies that Section amends the prior non-conforming use provision of existing statutes. Believes Legislative Counsel was following the drafting style of existing provisions. Adds the interim task force had no discussion about fire and that task force members just wanted to make sure if a person rebuilds in a hazard area something must be done to mitigate the disaster risk.

300	Sen. Fisher	Comments on wildfire and fire being used interchangeably.
304	Achterman	Replies in SB 12 the two have no difference.
316	Sen. Corcoran	Gives a personal experience related to landslides.
338	Charlie Stone	Assistant State Forester, Oregon Department of Forestry (ODF). Submits [EXHIBIT C] and testifies in support of SB 12. Says that Oregon's steep mountains and hills are subject to landslides that can threaten public safety, property and natural resources, new measures designed to minimize these effects are appropriate. Adds SB 12 adequately addresses landslide issues across all affected parties.
388	Stone	Explains Oregon needs to do a better job of informing the public where landslides are going to occur. Explains principles the department supports regulation of certain forest practices and having landowners, homeowners, and federal, state, and local governments share responsibility to make decisions.
438	Stone	Continues discussing principles that ODF supports: <ul style="list-style-type: none"> • fully implementing Oregon Land Use Goal 7 to stress active identification and avoidance of dangerous landslide impact locations • ensuring that structures destroyed by landslide be rebuilt in locations that are safe from dangerous landslide and other natural hazards • road-management authorities should provide effective warnings to motorists on roads with significant traffic when and where there is a high risk of rapidly moving landslides impacting vehicles
TAPE 55, B		
030	Stone	States SB 12 is responsive to all principles. Says there is a copy of 2 amendments to SB 12 included in his written testimony. Adds the problem in not defining "high hazard" is that many decisions are site specific situations. Understands the concern for the definition and supports narrowing down the bill to get more precise.
060	Sen. Fisher	Says he does not see where ODF is given the ability to identify the landslide area.
064	Stone	Replies SB 12 does not give ODF that task explicitly. Adds it does require the Board of Forestry to adopt rules to reduce public safety risks.
070	Sen. Fisher	Comments on the duplication of efforts on the part of ODF and DOGAMI.
085	Stone	Responds that a lot of the work ODF does is in cooperation with DOGAMI. Says the Governor asked for an action plan in the 1997 and in it, the plan called on two agencies to develop on hazard maps on a large scale. Adds SB 12 refers to the DOGAMI because that is the logical place to focus the mapping effort.

103	Sen. Wilde	Comments on Section 4. Says this Section will allow ODF the responsibility to review proposed residential construction activity. Asks where that falls into the permitting process and how will it impact the ability to place a house.
110	Stone	Understands Sen. Wilde's concern. Says ODF has not worked out details as to how the review falls under the permitting process.
120	Sen. Wilde	Comments having an open-ended process makes him nervous.
137	Chair George	Asks if there is any provision in SB 12 that would allow the public to review proposed logging operations.
141	Stone	Replies no. States the Forest Practices Act requires written plans before certain types of activities are started.
150	Keith Mills	Staff Geotechnical Engineer, Oregon Department of Forestry. Says the review is intended to review outside areas where there is community development.
168	Sen. Corcoran	Asks if there is a definition of "high hazard" in Mills' technical area of work.
170	Mills	Replies he has general definitions of "high risk sites" and "high risk areas". Comments that landslides that occur on forestland are different from ones that occur in a developed urban setting.
196	Sen. Corcoran	Asks if the committee could get a general definition of "high hazard" by looking at components of steep slope, lots of water, and certain geological formations.
200	Mills	Responds those are the main components that go into making a site prone to landslides. Says stating those in general terms would be helpful to try to put them into specific numbers.
213	Sen. Wilde	Calls attention to line 21, page 2, which reads "and review proposed residential construction". Asks if Mills would feel comfortable if the line were to include "and assist local governments in the review of proposed residential construction".
222	Mills	Responds yes.
223	Chair George	Asks Mills if he can provide the committee administrator with his general definitions of "high hazard areas".
226	Mills	Answers yes.
234	David Hunnicutt	Director of Legal Affairs, Oregonians in Action. Submits [EXHIBIT D] and testifies in opposition of SB 12. Says Oregonians in Action support the concept

		of SB 12 and understands the need for public protection from landslides. Says Oregonians in Action believes SB 12 needs more discussion. Says he shares Sen. Wilde's concern about ODF getting into land use planning. Adds it is the legislature's call to define a "landslide hazard" or a "high hazard landslide area" and not LCDC's. Says state agencies should play a role in assisting the legislature to come up with that definition, but that the ultimate call must be with the legislature.
284	Hunnicut	Comments Oregonians in Action would be happy to work with all interested parties in further refining SB12 to come up with some hard language so the legislature can be aware of what land they are regulating before the bill is debated. Urges the legislature to make the decisions on what lands are going to be included, rather than passing that decision off to a state agency.
312		Questions and answers between Sen. Corcoran and Hunnicutt about OIA's position on SB 12. Hunnicutt says that OIA is willing to work with interested parties to define "high risk areas".
349	Sen. Wilde	Says the issue of landslides has a lot of interest. Points out that 40 people drowned in rivers in 1997. Gives personal experience. Says the committee needs to put definitions in SB 12.
395	Chair George	Comments that last year, seven people died from railroad accidents, 98 people died from falls, and 40 people died from drowning.
400	Hunnicut	Says he is more than happy to work with people.
TAPE 56, B		
005	Doug Tindall	State Maintenance Engineer, Oregon Department of Transportation (ODOT). Submits [EXHIBIT E] and testifies that language in SB 12 should be more specific about which potential high hazards areas ODOT should provide warnings to motorists.
027	Sen. Corcoran	Comments there is a potential for snow slides up the Santiam Canyon. Asks when ODOT would contemplate closing the highway to the canyon, if there were a snow slide potential.
036	Tindall	Replies those judgments are left to the engineers near the canyon.
049	Sen. Corcoran	Comments on the difficulty on assessing high hazard areas. Says that former Sen. Kintigh cautioned the committee to be careful to not put specific language in SB 12 because it is a hard issue to analyze.
060	Chair George	Comments he believes the state could get close to a definition.
068	Tindall	Agrees.

070	Bob Rindy	<p>Director, Department of Land Conservation and Development. Submits [EXHIBIT F] and testifies in support of SB 12. Says SB 12 is important legislation for two reasons:</p> <ol style="list-style-type: none"> 1. The bill would provide a number of innovative safeguards for the protection of life and property. 2. Any precautionary measures within forested areas would not rest solely with timber operators.
095	Rex Storm	<p>Certified Forester, Associated Oregon Loggers. Submits [EXHIBIT G] and gives in formation on Associated Oregon Loggers. Testifies in support of the concept of SB 12. Says there are several conditions</p> <ol style="list-style-type: none"> 1. Restoration or replacement of dwellings only be permitted in hazardous sites only if warranted by state or local government to be safe from natural disaster risk. 2. Language in Section 4 needs to be stronger to reduce public safety risks during the siting approval dwellings. 3. Multi agency responsibilities need to be all retained in SB 12 4. Says the Oregon Department of Forestry and the Board of Forestry suggest implementation rulemaking should consult with an advisory board made up of forest landowners and forest operators. 5. Redefine "public" in Section 7 to apply to all heavily used roadways and residences or dwellings.
145	Storm	<p>Continues discussing conditions of support:</p> <ol style="list-style-type: none"> 6. Define "damage" in Section 1 to indicate the significance of damage. 7. Elements of SB 13 be concurrently enacted with SB 12.
175	Chair George	Asks if Storm could get the committee a copy the conditions.
179	Storm	Answers yes. Comments the removal of any of the elements discussed earlier would dissolve the framework of the legislative concept of the Joint Interim Task Force on Landslides.
190	Chair George	Asks if there is anything in SB 12 that would have the potential to create a public safety risk and, if so, would Storm notify the landowner that he/she may be in harms way in the future.
201	Storm	Replies a logging harvest contractor is typically on a site for a period of time, until the work is completed.
205	Chair George	Suggests disclosing to a forest landowner the potential risk after following a logging operation.

211	Storm	Responds a concept like that could be discussed and developed.
214	Sen. Fisher	Calls attention to Section 6 on page 4 (line 18-19). Asks how the two references to "public safety" differ from the one Storm discussed in his testimony about conditions of SB 12. Asks if Storm wants to remove "public" from this Section.
227	Storm	Answers he does not want it removed, just clarified and suggests the same being done throughout the bill.
243	Sen. Fisher	Comments on Section 4 about putting the identifying process into DOGAMI. Asks if Storm wants LCDC to do it.
253	Storm	Answers no and says he still wants those agencies to identify process.
265	Jerry Schmidt	Oregon Association of Realtors (OAR). Gives background information on OAR and submits [EXHIBIT H] . Testifies that OAR is supportive of the concept of landslide protection but that more parameters need to be set before moving forth with SB 12. Adds OAR appeared before the Ways & Means committee in support of having DOGAMI mapping. Says he represents the Oregon Groundwater Association and that it is available as a resource to the committee as well.
331	Sen. Wilde	Calls attention to page 3, lines 11-15, which says if a person has had a natural disaster in all likelihood he/she would not be able to replace the structure in the area where that natural disaster happened.
369	Schmidt	Replies he is on a committee in Clackamas County that uses taxpayer money to attract development. Adds the group is trying to stimulate development. Says the language in that Section of SB 12 is troublesome and says it is a concern to the Oregon Realtors Association.
TAPE 57, A		
002	Sen. Corcoran	Asks how floodplains are determined.
005	Schmidt	Replies most of the time flood plains are provided by FEMA maps, which are based on a 100-year flood plain. Says the difficulty with DOGAMI mapping is that a lot of FEMA maps are not entirely accurate.
019	Sen. Corcoran	Comments on the accuracy of the maps. Asks if it is difficult to get flood insurance if a person owns a house in a floodplain.
036	Dennis Sigrist	State Hazard Mitigation Officer, Oregon Office of Emergency Management (OEM). Comments this is timely because the OEM just issued a press release relating to flood insurance. States that every homeowner is eligible to purchase flood insurance. Adds that the cost of that flood insurance depends on where the home is in the floodplain.

066	Sen. Corcoran	Comments on the compensation to Marcola (an area of his district) homeowners after the 1996 floods. Adds constituents said they were unable to get flood insurance.
077	Sigrist	Says the Flood Insurance Program has been in effect since 1968 and there have been extensive hydraulics studies to determine how frequently a flood will occur.
091	Chair George	Understands OEM has criteria defined by risk and has rates for insurance coverage based on that risk.
096	Sigrist	Comments on many flood maps being out-of-date.
108	Sen. Fisher	Says not only is it easy to get flood insurance it is also required for many home loans.
116	Schmidt	Comments there are some insurance carriers that carry flood insurance and others that do not. Says Sen. Corcoran's constituent may have been told his/her information by an insurance agent who did not sell flood insurance.
155	Sen. Wilde	Asks what Schmidt thinks of his addition to page 2, line 21.
160	Schmidt	Says he would still be concerned about that Section. Says he has no problem with agencies giving their expertise to people but just wants to make sure this process works smoothly. Says LCD is the primary agency responsible for these types of situations under Goal 7. Comments on the need to identify these areas.
217	Sen. Wilde	Expresses concern about Department of Consumer and Business Services (DCBS) and the concept of amending building codes.
239	Schmidt	Shares Sen. Wilde's concern.
245	Sen. Fisher	Comments forest owners must bend over backwards and are putting a lot of money on the line. Says he just wants to make sure there will be fairness on this issue.
262	Schmidt	Agrees and says his organization will try to protect all landowners equally.
275	Peggy Collins	Building Official, Building Codes Division, Department of Consumer and Business Services. Submits [EXHIBIT I] and testifies that DCBS supports concepts that improve regulations and that mitigate the effects of landslides on property owners and the public. Discusses the impacts SB 12 has on the Building Codes Division. Explains the responsibilities set out in Section 4(1)(d) will cost and additional 500 hours of one time contracted technical consultation during the 1999-2000 biennium. Says this would provide input for development of code amendments, and rules to determine the requirements for Geotechnical reports. Adds the division would need to hire an additional Geotechnical engineer to review the technical aspects of building plans, train code users on the new codes

		and rules and evaluate Geotechnical reports for buildings sited in the state jurisdiction.
312	Chair George	Asks what a Geotechnical report cost.
314	Collins	Replies she does not know but that she can find out and get back to the chair.
315	Sen. Fisher	Comments the report depends on the site and is a very costly process.
318	Collins	Agrees that it would vary considerably depending on the type of property. Says the division has estimated a cost of \$83,770 for the 99-2001 biennium and \$130,426 the following biennium.
370	Sen. Wilde	Comments this is like the riff raff situation on the coast.
404	Collins	Comments this is similar to seismic site hazard reports. Says she envisions the definition of "high hazard areas" will have the impact of having very few buildings in a risk area.
437	Chair George	Expresses concern that Oregon is one of least affordable states for the average family to live in. Comments on the definition of "high risk area".
TAPE 58, A		
022	Ray Wilkeson	Oregon Forest Industries Council (OFIC). Submits [EXHIBIT J] and testifies in support of SB 12. Explains OFIC takes issues related to public safety very seriously and says that regulating logging will not prevent landslides. States that landslides, particularly in the Oregon Coast Range, have been occurring by the thousands for many centuries and will continue to for many years. Commends work of the members and staff of the Joint Interim Task Force on Landslides.
072	Wilkeson	Explains OFIC endorses State Forester Jim Brown's concept of "shared responsibility". Says state agencies, local governments, landowners, realtors, homebuilders, and others have a role to play in minimizing risks and ensuring that people do not unwittingly put themselves in harms way.
111	Wilkeson	Continues and comments there is no Oregon law that prevents a Kelso-like slide happening in Oregon.
150	Chair George	Comment the goal of SB 12 is to come up with something that is fair for everybody involved.
170	Don Hull	DOGAMI. Introduces John Beaulieu.

185	John Beaulieu	DOGAMI. Submits [EXHIBIT K] and testifies that the DOGAMI supports, in principle, the concepts contained in SB 12 and looks forward to participating in cooperative efforts to reduce the impact of landslides when fiscal resources are identified for this purpose.
235	Beaulieu	Says losses due to landslides totaled \$25 million for the February 1996 storm in the Portland Metro area. Says the most noticeable landslide loss is in Los Angeles.
285	Beaulieu	Says DOGAMI is involved in a pilot program in Salem and Marion County to characterize landslide hazards and provide assistance to the city and county in developing the maps.
325	Chair George	Asks if Beaulieu can get a copy of the California definitions.
335	Beaulieu	Responds he can and reminds the committee that the definitions will differ because hazard areas in California are different from those in Oregon. Says he wants to see this bill through.
355	Chair George	Comments the committee will take the pace that is necessary to take in order to get SB 12 through the legislature.
360	Beaulieu	Says he had the impression SB 12 was in trouble.
363	Sen. Fisher	Says he does not think SB 12 is in trouble. Discusses the usage of the word "wildfire" on page 3.
411	Hull	Agrees that broader language needs to be looked out. Says he will work with the committee on the language.
422	Sen. Wilde	Comments he believes DOGAMI to be truthful in their statements.
TAPE 57, B		
017	Sen. Fisher	Declares a partial conflict of interest.
040	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association. Submits [EXHIBIT L] and testifies that OSWA would like to see SB 12 and SB 13 combined.
084	Charlie Stone	Assistant State Forester, ODF. Adds it may be helpful to make a technical presentation to the committee on landslides. Says the Forest Practices Act deals with scenic consideration.

Submitted By, Reviewed By,

Kristal Hatton-Nease, Brad Harper,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 12, Written testimony, Bob Kintigh, 3 pp.

B ñ LC 3622, Staff, 18 pp.

C - SB 12, Written testimony, Charlie Stone, 10 pp.

D - SB 12, Written testimony, David Hunnicutt, 1 p.

E - SB 12, Written testimony, Doug Tindall, 2 pp.

F - Written testimony on SB 12, Bob Rindy, 1 p.

G ñ Written testimony on SB 12, Rex Storm, 2 pp.

H - Written testimony on SB 12, Jerry Schmidt, 2 pp.

I - Written testimony on SB 12, Peggy Collins, 1 pp.

J - Written testimony on SB 12, Ray Wilkeson, 3 pp.

K - Written testimony on SB 12, John Beaulieu, 2 pp.

L - Written testimony on SB 12, Terry Lamers, 2 pp.