

**SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES**

**March 1, 1999 Hearing Room 50**

**4:30 P.M. Tapes 59- 60**

**MEMBERS PRESENT: Sen. Gary George, Chair**

**Sen. Thomas Wilde, Vice-Chair**

**Sen. Joan Dukes**

**Sen. Bill Fisher**

**Sen. Tony Corcoran**

**MEMBER EXCUSED: Sen. Ted Ferrioli**

**STAFF PRESENT: Brad Harper, Administrator**

**Kristal Hatton-Nease, Administrative Support**

**MEASURES HEARD: SB 12 Public Hearing**

**Introduction of Committee Bills**

**SB 13 Public Hearing**

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
<b>TAPE 59, A</b>		
002	Chair George	Convenes meeting at 4:35 p.m.
<b><u>SB 12 PUBLIC HEARING</u></b>		
009	Brad Harper	Committee Administrator. Explains to committee members they have a letter from Keith Mills. <b>[EXHIBIT A]</b>

012	Jeff Watkins	Sierra Club, Oregon Chapter. Testifies SB 12 is an improvement over the present system. Says the Sierra Club supports the concept of a advisory committee, like the one the Department of Forestry testified about on 2/25/99.
064	Dennis Olmstead	Department of Geology and Mineral Industries (DOGAMI). Testifies the Governor's budget does have money for one position to look at the landslide damage on the coast. Comments DOGAMI has been thinking about doing landslide mapping.
100	Chair George	Says he has heard it will take 3-5 years before there is adequate data for the mapping process. Asks if that timeframe seems reasonable.
105	Olmstead	Answers it does. Adds DOGAMI's budget concept anticipated two people for one biennium.
112	Chair George	Asks if geologists are available to DOGAMI, in the mapping process.
120	Olmstead	Replies DOGAMI anticipates they will recruit for the needed positions. Says the department does have a two or three people who can do landslide mapping but they are on other projects that would need to be shelved until the mapping was completed.
125	Chair George	Comments on the projects mentioned. Asks what is the priority; mapping or the projects.
133	Olmstead	Discusses importance of the work being done on the coast. Emphasizes earthquakes have centered in populated areas. Explains DOGAMI has studied Salem and Portland Metro areas and has completed earthquake hazard maps on them.
166	Sen. Dukes	Comments on all the items DOGAMI will need to do if SB 12 is passed. Asks if it is possible to do all of the tasks set forth in SB 12.
175	Olmstead	Replies that DOGAMI can do all the tasks. Comments technical assistance to local communities would be needed and says DOGAMI anticipates resources for the additional staff would come from the legislature.
188	Sen. Dukes	Asks how many additional employees DOGAMI would need to carry out provisions of SB 12.
190	Olmstead	Replies two FTE would be needed for one biennium. Adds that DOGAMI would need to retain one of the FTE to help local communities interpret the maps made by DOGAMI.
205	Ralph Saperstein	Boise Cascade. Gives information on Boise Cascade. Testifies in support of SB 12 and SB 13. Says Boise Cascade does not believe forest management techniques create landslides. Adds that science has not shown forest management

		practices cause landslides.
257	Fred VanNatta	Oregon Building Industries Association (OBIA). Says Oregon needs to do better job of identifying landslide areas. Expresses some concerns about SB 12.
283	Chair George	Comments the legislature will probably need to establish a workgroup. Says the committee does want to do something with SB 12 and points out that the bill does address some of the issues discussed earlier.
298	VanNatta	Replies OBIA is concerned about SB 12. Adds OBIA is willing to be part of the workgroup to work on SB 12.
300	Sen. Dukes	Comments The Capes in Tillamook had issued a Geotechnical report and that did not stop the beach sands from eroding.
308	VanNatta	Responds landslides caused by oceanic erosion are different from landslides caused by unstable or saturated soils on a hillside.
317	Chair George	Asks what the cost implications of SB 12 are for builders.
320	VanNatta	Replies Oregon should find the hazard areas and not build near them. Says the problem with urban growth boundaries is the only thing to build on is hillsides.
345	Sen. Corcoran	Says there is no way to measure the costs of lives killed by landslides. Comments there is not a lot of time to dwell on SB 12.
377	Chair George	Agrees that landslides are an extremely critical issue.
382	Pete Test	Associate Director, Oregon Farm Bureau Federation. Testifies in support of SB 12. Comments the Oregon Farm Bureau Federation also supports the combination of SB 12 and SB 13.
410	Greg Miller	Public Affairs Manager, Weyerhaeuser Company. Testifies in support of SB 12 and SB 13. Says Weyerhaeuser supports a combination of SB 12 and SB 13. States SB 12 is shared responsibility among landowners. Adds Weyerhaeuser company policy is to put employee safety first.
<b>TAPE 60, A</b>		
006	Joe Brewer	Administrator, Building Codes Division, Department of Consumer and Business Services (DCBS). States the Building Codes Division supports SB 12.
014	Sen. Dukes	Asks how the Building Codes Division carries out the responsibilities set forth in SB 12.

017	Brewer	Replies the Building Codes Division will take a very measured approach and will bring in building officials to discuss how to implement provisions of SB 12.
024	Sen. Dukes	Says SB 12 says the Building Codes Division will write rules that minimize the risks to or vulnerability of buildings from landslides. Adds the bill says the Building Codes Division will require Geotechnical reports for buildings located in known high hazard landslide areas.
033	Brewer	Says that, with information provided by DOGAMI, the Building Codes Division can minimize risks with proper engineering judgements. Adds people cannot always anticipate what nature will do.
056	Chair George	Asks how many FTE the Building Codes Division would need to carry out their part of SB 12.
063	Brewer	Responds he did not bring the Building Codes Division to the table, but recalls the division is asking for one additional Geotechnical engineer to perform analysis and work with the jurisdictions to identify specific areas of concern.
068	Chair George	Asks how much money the Building Codes Division would need to implement SB 12.
070	Brewer	Responds he does not have that information readily available.
072	Chair George	Understands site specific analysis is used to determine what will be done with a structure when/if a landslide occurs.
077	Brewer	Comments the Building Codes Division would learn over time.
095	Jeannette Holman	Legislative Counsel. Expresses concern about the discussion to insert some of SB 13 into SB 12.
114	Chair George	Asks if Holman knows where definitions of "high hazard", "landslide hazard", and "known high hazard landslide areas" are located in Oregon law.
120	Holman	Replies no. States the committee can define the words any way it wants to because she does not think they are currently defined. Suggests there may be technical understanding of the words.
127	Chair George	Asks what would happen if someone contested the meaning of the words used in SB 12.
130	Holman	Anyone subject to agency rules would be able to challenge the definition when the agency was interpreting the provision the way the committee defined it. Adds that if the committee defines the words, and more clarification is needed, that can

		also be done.
164	Sen. Fisher	Expresses concern about unfunded mandates. Comments on the discussion of defining "high hazard". Asks how can these things get done without duplication or forcing people to go to court.
204	Holman	Says these words are technical terms and reiterates her suggestion to ask technical people how to define them. Says that if the committee defines the words in statutes Oregon will have consistency throughout the entire state. Discusses the flexibility of putting the definitions into statutes. Urges the committee to talk to people with technical background to help define the terms. Says some agencies may already have similar definitions in administrative rules.
223	Sen. Fisher	Asks if the people with the technical background would include DOGAMI personnel.
228	Holman	Replies she knows the Department of Forestry has some definitions of "landslides" and suggests DOGAMI may have some definitions of technical terms as well.
235	Sen. Fisher	Comments on the process of obtaining siting and building permits. Says there ought to be a collaborative process that is user-friendly. Asks if Holman drafted SB 12.
263	Holman	Replies she did draft SB 12 and that it was drafted from language provided by the Joint Interim Task Force on Landslides and Public Safety. Adds that the language can be changed if the committee wants to change it.
272	Chair George	Says he needs to open a work session for the purpose of introducing committee bills. Asks if Holman will stay in the committee room for a little while in case there are other questions from the committee.
276	Holman	Says she will remain in the room and adds she would be happy to work with a workgroup on SB 12.
279	Chair George	Closes public hearing on SB 12. Opens work session for the purpose of introducing committee bills.
<b><u>INTRODUCTION OF COMMITTEE BILLS</u></b>		
285	Harper	Reads LC numbers to be introduced as committee bills: 2772, 2852, 2853, 2877, 3033, 3400, 3401, 3660, 3714, and 3963.
295	Sen. George	<b>MOTION: Moves LC's: 2772, 2852, 2853, 2877, 3033, 3400, 3401, 3600, 3714, 3963 BE INTRODUCED as committee bills. [EXHIBIT B]</b>

300		<b>VOTE: 5-0</b>
	Chair George	<b>Hearing no objection, declares the motion CARRIED.</b>
300	Chair George	Closes work session. Re-opens public hearing on SB 12.
<b><u>SB 12 PUBLIC HEARING</u></b>		
305	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association (OSWA). Testifies in support of SB 12 and says OSWA supports a combination of SB 12 and SB 13. Expects SB 12, if voted into law, to change over time. Says the public safety issues need to be looked at very carefully and the responsibility needs to be spread to other stakeholders, besides forestland owners.
357	Chair George	Closes public hearing on SB 12. Opens public hearing on SB 13.
<b><u>SB 13 PUBLIC HEARING</u></b>		
365	Harper	Explains SB 13 requires real property seller to disclose information on Geotechnical hazards, including location of the property on a floodway, floodplains, landslide or slump areas, groundwater or drainage hazard area, erosion or accretion hazard area, dune hazard area or earthquake-related hazard areas, at the time of sale or transfer. States SB 13 also requires disclosure of knowledge of any Geotechnical report prepared for these hazards and disclosure of knowledge of records relating to any past hazard related damage to the land or improvements caused by wind, rain or any of the Geotechnical hazards enumerated above. Adds SB 13 also requires disclosure of seismic zone building standard applicable to the property.
395	Genoa Ingram	Oregon Association of Realtors (OAR). Gives background information on OAR. Testifies in opposition to SB 13. Comments on the 1993 legislation that established the present seller disclosure law. Explains it was something an average home seller was to complete but that it was not a requirement. Explains the seller of property could fill out the disclosure form or sign a disclaimer.
445	Ingram	Says one problem with SB 13 is that it requires every property seller to complete the form. Explains a homeowner is best equipped to know how their home functions. States that some homeowners would not have the technical background to fill in some of the disclosure form.
<b>TAPE 59, B</b>		
010	Ingram	Calls attention to page 8 and asks what a "slump area" is. Says she feels OAR will suggest to sellers to fill out the disclaimer instead of the disclosure form because it is too complex for the average home seller. Submits a Statesmen Journal article entitled "Legislation on Landslides, Safety Reviewed".

		<b>[EXHIBIT C]</b>
045	Sen. Wilde	Reiterates OAR's concerns about SB 13. Says the average person could not fully understand all the questions on the disclosure form. Adds he would know more about his house than a average person would know about their own, but even so he does not think he could answer all questions on the disclosure form.
089	Chair George	Comments on the assumption that the average person would not be able to answer the questions on the disclosure form. Asks if the disclosure form questions relate to the entire property.
100	Ingram	Replies it was her understanding that it was to address the two acres around the residence.
108	Chair George	Asks if it is limited to two acres around the residence.
110	Ingram	Answers it is.
117	Chair George	Asks if a homeowner is required to disclose a potential slide area on property that is further away from the residence than two acres. Asks where the cut off point is.
123	Ingram	Responds there is a case in California, <i>Easton v. Strausberger</i> , that prompted seller disclosure laws. Says that in this case there was slippage of land after the home was sold. Adds that if a homeowner was aware of the slide potential, he/she would be required to disclose that information to sellers.
142	Sen. Corcoran	Appreciates Sen. Wilde's concerns. Comments he thinks an average homeowner could answer the questions on the disclosure form.
150	Ingram	Says the problem arises when a homeowner does not know about a particular issue and he/she must prove that she/he did not know about the problem.
155	Sen. Corcoran	Comments a homeowner would probably know how to answer most of the questions, such as the one asking if the homeowner knew of any Geotechnical report issued on the property.
157	Ingram	Says there are times when a previous owner may have a report conducted and the owner filling out the disclosure form is unaware of its existence. Adds the homeowner would have the liability to prove he/she did not know about the report.
185	Charlie Stone	Assistant State Forester, Oregon Department of Forestry (ODF). Submits <b>[EXHIBIT D]</b> and testifies in support of SB 13. Says SB 13 will not directly affect the functions of the department, but that it is an important component of the shared responsibility concept needed to improve protection of the public from the dangers of landslide hazards. Comments on the work of the Joint

		Interim Task Force on Landslides and Public Safety. Says debris flow of slides is important. Says landslides do not always occur on steep slopes.
240	Sen. Wilde	Comments DOGAMI just got completed mapping of Portland Metro area for earthquake hazards. Comments on where his house is located in relation to earthquake-related hazard area. Says definitions are needed.
271	Stone	Comments he does not know potential for lawsuits.
277	Chair George	Expresses concern about logging above residential areas in parts of his district. Asks if the seller of forestland is supposed to disclose the potential for a slide when sale of timberland occurs.
302	Stone	States he is not present to defend language of bill. Offers assistance to put together a technical presentation of landslides.
334	Chair George	Comments on the mapping of Oregon for slide areas. Asks if ODF is working with DOGAMI.
345	Stone	Replies that in terms of the mapping of hazards ODF is already working together with agencies to determine high hazard areas.
372	Chair George	Asks if ODF has the authority to override DOGAMI's site specific analyses.
375	Stone	Responds that can happen, according to law. Says that if technical experts had a strong difference of opinion professionally between the two agencies, then ODF and DOGAMI would work it out.
385	Ray Wilkeson	Oregon Forest Industries Council (OFIC). Says OFIC supports SB 13.
396	Bob Rindy	Division of Land Conservation and Development. Submits <b>[EXHIBIT E]</b> and testifies in support of SB 13. Explains that state law requires seller of real property to inform potential buyers about certain aspects of the property or to complete a disclaimer. Adds disclosure information would include, for example, the property's title, source of water, insulation, structure, and geology. Says SB 13 clarifies the type of information to be disclosed about geologic hazards.
<b>TAPE 60, B</b>		
002	Sen. Fisher	Comments there was some advice given to LCDC about what they were supposed to do and not do during the work group about landslides. Says there is nothing about that in SB 13. Says he would like to know why that has not shown up on SB 13.
010	Rindy	Replies there were agency meetings to coordinate the various views of the



		agencies, in relation to SB 12. Adds he that he was not involved in the meetings. States there were no meetings like those that took place for SB 13.
025	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association (OSWA). Testifies in support of SB 13. Comments on the summary of SB 13. Says OSWA does not believe Geotechnical statements are very technical. Adds real estate agents will have a summation of what each of the disclosure form statements mean.
053	Sen. Wilde	Comments that current statute seems to be clearer in terms of floods.
073	Lamers	Explains that previous language does not require some situations to be disclosed, for example, beach movements. Adds new language would require disclosure of that.
095	Sen. Wilde	Says there are some people who are aware of past history of the home. Comments it seems that if SB 13 is impacting the sale of a property it might be better to implement such a disclosure law after DOGAMI maps Oregon's landslide hazard areas.
118	Sen. Fisher	Comments on the technical terms on the disclosure form of SB 13. Suggests the committee forget about SB 13.
142	Chair George	Asks Bob Rindy to come back to the witness table. Comments on the reference to current disclosure law. Asks what the committee is missing.
155	Rindy	Says SB 13 does not require disclosure of information that people do not know. Adds SB 13 just gives a more detailed list of information to disclose.
193	Chair George	Asks what DLCD thought sellers were not disclosing, that would need this type of legislation.
201	Rindy	Replies DLCD's testimony stated it was in support of the work conducted by the Joint Interim Task Force on Landslides and Public Safety in identifying places where the disclosure could be clarified. Adds he can not go back and completely map out the thought process of task force. Says it appears that SB 13 gives a more detailed list about disclosure information.
242	Sen. Wilde	Comments the committee is losing track of who SB 12 is intended to help and adds that the more technical it becomes for the average citizen the less likely it will be of use in a court proceeding
284	Sen. Fisher	Comments he would like to see something turned out for landslides from the committee, something that is well defined and that is restrictive on how far agencies can go. Adds he would like to see a bill limited to landslides where "severe risk" and "high risk" are defined. Suggests taking out the earthquake information. Asks what the committee chair plans to do in regards to SB 12.

323	Chair George	Replies he is going to make up a work group.
327	Sen. Fisher	Asks if the workgroup will get input from people.
328	Chair George	Replies it will.
330	Sen. Fisher	Points out Keith Cubic, a member of the Joint Interim Task Force on Landslides and Public Safety, is present.
352	Chair George	Adjourns at 6:28 p.m.

Submitted By, Reviewed By,

Kristal Hatton-Nease, Brad Harper,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ SB 12, Written testimony, Keith Mills, 2 pp.**

**B ñ LC Drafts, Staff, 22 pp.**

**C ñ SB 13, Statesman Journal article, Genoa Ingram, 1p.**

**D ñ SB 13, Written testimony, Charlie Stone, 2 pp.**

**E ñ SB 13, Written testimony, Bob Rindy, 1 p.**

**F ñ SB 12, Written testimony, Jane Graybill, 11 pp.**