

SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

May 10, 1999 Hearing Room 50

4:30 p.m. Tapes 119 - 121

MEMBERS PRESENT: Sen. Gary George, Chair

Sen. Thomas Wilde, Vice-Chair

Sen. Tony Corcoran

Sen. Joan Dukes

Sen. Ted Ferrioli

Sen. Bill Fisher

MEMBER EXCUSED: Sen. Marylin Shannon

STAFF PRESENT: Brad Harper, Administrator

Patrick Brennan, Administrative Support

MEASURE/ISSUES HEARD: SB 1028 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
TAPE 119, A		
002	Chair George	Calls the meeting to order at 4:47 p.m. Opens a public hearing on SB 1028.
<u>SB 1028 PUBLIC HEARING</u>		
010	Brad Harper	Committee Administrator. Gives a brief description of the bill. Indicates that the ñ4 amendments (EXHIBIT A) have been submitted for consideration by the committee. Offers a section-by-section explanation of the amendments:

		<ul style="list-style-type: none"> • Findings statement • Directs State Fire Marshal to maximize internet access to its databases • Implements an affirmative reporting duty for individuals who possess a certain amount of hazardous substances • Removes existing exemptions for pesticide recording • Requires posting at schools, parks, and child care facilities when pesticides have been applied (adopted from SB 933) • Pesticide study conducted by Oregon State University • Creates a water quality testing program to be conducted by the Oregon Department of Agriculture (ODA) and the Department of Environmental Quality (DEQ) • Directs ODA to implement an urban pesticide use education program • Directs ODA and DEQ to coordinate their research activities • Directs DEQ to identify waters that may contain toxic chemicals based on aquatic life exhibiting signs of toxic exposure; directs DEQ to prohibit the use of such waters as new drinking water sources until certified as not hazardous • Directs DEQ to implement a public pollution complaint program • Requires Oregon Department of Forestry (ODF) to make available to the public any hazardous substances used on their lands • Requires ODA and DEQ to file a joint report to the legislature biennially based on their water testing activities • Clarifies the pesticide study will be carried out by the Department of Environmental and Molecular Toxicology, based on fees and other revenues from pesticide registration • An emergency clause
067	Sen. Thomas Wilde	Senate District 8. Testifies in support of the 4 amendments to SB 1028. Says the task of creating legislation to track and clean up toxic substances began during the interim. Indicates that there are over 60 super-fund sites in his district and notes that urban areas have not been given the attention that rural areas have received regarding toxic contamination. Indicates that the Environmental Protection Agency (EPA) is considering designating the lower Willamette River as a super-fund site. Says the definition of pesticide utilized by SB 617 was too broad and that the definition contained in the 4 amendments is preferable.
115	Sen. Wilde	Discusses the filing of complaints for the purpose of identifying repeat offenders. Expresses the desire to fit a solution into the existing structure, rather than creating "a new layer of government." Argues that the 4 amendments take the bill as far as it can go during this legislative session and that he is satisfied with them. Expresses satisfaction with the inclusion of SB 933 into the amendments. Argues that the individual, rather than the government should make the decision as to what is or is not safe. Expresses support for the stipulations regarding the safety of drinking water.
165	Chair George	Requests a review of the sections dealing with posting of notices in parks.
170	Sen. Wilde	Replies that sending notices to each parent was found to be "burdensome," leading to the compromise of posting in public places, such as schools. Mentions that there are many changes incorporated into the amendments designed to reduce the fiscal impact of the bill. Asserts that DEQ often "pads their estimates" with regard to cost and that ODA is usually more cost effective.

203	Chair George	Says a major issue when considering the bill was the cost to implement the program. Discusses material safety data sheets (MSDS). Says an inexpensive book containing MSDS information will be kept on all sites using pesticides. Refers to the many available materials that provide notification about pesticide use.
255	Chair George	Gives an overview of the present requirements for pesticide reporting in the 50 states, noting that Oregon's requirements are relatively strong. Offers a visual presentation describing the commodities available that will serve to meet the requirements of the bill, indicating the total price is about \$50. Mentions that materials are bilingual, in both English and Spanish. Mentions that training videos can be purchased or checked out from the Occupational Safety and Health Administration (OSHA).
325	Chair George	Discusses the fiscal impact of SB 1028, as amended by the ñ4 amendments. Asserts that the bill provides a "balanced approach" to pesticide control. Mentions the potential use of university volunteers to gather data.
385	Lauri Aunan	Representative, DEQ. Discusses the ñ4 amendments to SB 1028. Indicates the amendments cover important issues, such as provision of information regarding water toxicology. Says the key concerns for DEQ are financial, indicating that the provisions of the ñ4 amendments would require additional resources to be allocated to DEQ. Says the testing procedures will be expensive. Discusses the problems associated with cause and effect analysis. Expresses frustration with being required to split staff time between enforcement and complaint assistance with less than adequate resources.
TAPE 120, A		
030	Chair George	Indicates that those in rural areas could look into complaints.
040	Aunan	Replies that there are a number of jurisdictions that could look into complaints, but that those offices are often short of resources.
045	Rick Gates	Laboratory Administrator, DEQ. Says that there are areas of ambiguity, particularly the definition of a hazardous substance, considering the large number of chemicals that have MSDS. Asserts that the large number of chemicals that would need to be monitored is "extremely overwhelming."
060	Chair George	Inquires whether are chemicals in use that cannot be tested for.
064	Gates	Replies that all chemicals have MSDS information, but that not all discharge points have tests for all chemicals. Indicates that analysis would be necessary to determine what substances should be tested for.
075	Chair George	Mentions that section 18 of the amendments would attempt to address the concerns laid out in the bill.

080	Aunan	Suggests the amendments should be clarified if they are intended to set up a "pilot program."
085	Chair George	Requests information regarding the laboratory and its testing capabilities.
090	Gates	Replies that the laboratory is a "full environmental testing lab" and that it tests for all hazardous substances, save for most pesticides, microbiological samples, and dioxin. Indicates that ODA and the Division of Health Laboratory carry out testing for the aforementioned substances. Asserts that the number of samples specified by the amendments would require nearly 10 samples per workday, which would be a "tremendous workload."
106	Chair George	Requests clarification regarding the capacity of the lab.
109	Gates	Indicates that a larger staff would be necessary to conduct the estimated number of tests. Mentions that many tests are listed for temperature, rather than chemistry.
116	Chair George	Mentions that lesser chemical hazards would be tested less often.
121	Gates	Says that DEQ would like input as to how to put the testing program together and that limiting unnecessary tests would make the testing process easier.
127	Sen. Wilde	Asks how DEQ determines what to test for when receiving a water sample.
131	Gates	Replies that the tests used are determined by the provider of the sample, although it is possible to do a "complete scan" upon request.
138	Sen. Wilde	Wonders how DEQ knows what is being discharged into a river if it does not test for every hazardous substance.
143	Gates	Explains that tests would have been performed at some point to look for materials that each entity is permitted to use.
146	Sen. Wilde	Concludes that the state may be telling the public that water is safe for consumption when there may be hazardous substances in the water that have not been tested for.
147	Gates	Indicates that there is no way to test for all of the 80,000 chemical agents known to be in use.
152	Sen. Wilde	Argues that if something is listed as dangerous it should not be allowed to be present in discharges. Says the amendments are an attempt to develop consistency throughout the process. Submits that the state should follow substances from where they originate to where they end up and analyze their

		impact on everyone who comes in contact with them during the process.
164	Aunan	Concurs that there is not enough testing done in all cases. Explains that DEQ focuses on meeting water quality standards for federal compliance, which does not involve searching for every chemical that may be present in water. Suggests that going beyond that will require guidelines as to what to look for.
175	Gates	Refers to "mixing zone studies" that analyze discharge points for biological effects related to toxicity problems.
185	Chair George	Asks for information about sewage treatment plants.
200	Gates	Indicates that treatment plants must report to DEQ regarding toxicity testing. Acknowledges that the department does not know everything about what may be in those discharges.
207	Chair George	Concludes that only the Fire Marshal seems to have a definitive list of all chemicals found in waters in Oregon. Argues there should be a central source for such data, which is one of the reasons the amendments were brought forth.
225	Bob Albers	Hazardous Materials Services Program Manager, Office of the State Fire Marshal (EXHIBIT B). Indicates that the Fire Marshal sends question and answer documents to all businesses and agencies in the state in order to determine the amount, type, input, output, and location of hazardous substances.
290	Albers	Asserts that the surveys conducted by the Fire Marshal allow for better use of resources in testing for hazardous substances. Says the State Office of the Fire Marshal office has a staff of 12 that analyzes data and processes it in a variety of formats. Argues that the data requested in the surveys is less complex than others. Says the information gathered does not provide information as to what is being released into the environment, but rather gives researchers a better idea of where to focus their efforts.
340	Chair George	Suggests that the Fire Marshal would be able to direct DEQ testing for pesticides.
351	Albers	Concurs with the chair. Indicates that all pesticides are catalogued and numbered by the EPA and that the Fire Marshal can profile its searches for a particular substance by request. Mentions that farm operations are not required to submit surveys.
382	Chair George	Asks if commercial farmers are surveyed.
383	Albers	Replies that the Fire Marshal is required by law to survey businesses and agencies in the state with the potential for possessing hazardous substances. Says current law does not require businesses in possession of hazardous substances to notify the Office of State Fire Marshal unless they receive a survey. Explains that agencies and businesses are analyzed based upon their standard industrial

		classification in order to determine whether they are likely to have such substances on hand. Says the best source for such information is employment records. Says that companies with multiple operations present a problem for reporting requirements. Recognizes that there are companies using hazardous substances that are not currently reporting to the Fire Marshal.
TAPE 119, B		
036	Chair George	Says the reporting process sounds complex. Asks if there are any efforts to seek out companies not reporting to the Fire Marshal.
040	Albers	Replies that the office seeks out companies that are not currently reporting to it. Indicates that more than half of the 40,000 companies surveyed report that they are below the minimum threshold for hazardous substances. Says that such companies are kept within the system. Explains the process by which hazardous substance information can be accessed. Indicates that information is made available via the internet.
089	Chair George	Requests confirmation that there are a total of 12 members on staff at the Office of Fire Marshal who deal with hazardous substances.
093	Albers	Confirms the information and notes that there are three other staff who deal with the study of hazardous materials.
096	Chair George	Asks if there is cooperation with other agencies and departments to coordinate reporting of hazardous substance information.
105	Albers	Replies that the task force requires state agencies to make reports regarding their information programs, evaluates the reports, and makes recommendations for an evaluation plan.
113	Chair George	Asks if the agencies are sharing information.
115	Albers	Indicates there are efforts to coordinate information, although there is no established method of doing so. Asserts that the primary challenge is determining how to gather the information together. Says there are gaps in the available information and that it is scattered. Suggests that internet access is a good way to disseminate information, although not all agencies have the information available electronically.
145	Sen. Corcoran	Wonders what percentage of households in Oregon has internet access.
148	Albers	Replies that he does not know the percentage of households with access to the internet. Indicates that the library system participates in the bulletin board program to disseminate the information. Reiterates that the difficulty is determining where to look for specific information. Says there are no dedicated staff for collating the data electronically. Discusses the potential for creating a "one stop" source for hazardous material information.

188	Albers	Discusses the advantages of internet-accessible hazardous materials information. Asserts that users would need to be able to manipulate the data themselves. Indicates the Fire Marshal is moving towards centralized internet access at this time. Mentions there is no additional cost to the state for affirmative reporting via the internet, other than an additional information specialist.
224	Chair George	Wonders if reports are being submitted electronically.
226	Albers	Replies that efforts are being made to accept electronic reports from businesses. Indicates that the Fire Marshal is the recipient of federally required information and that such information is received electronically.
251	Lorna Youngs	Representative, Oregon Department of Agriculture. Suggests that the definition of "pesticide operator" be clarified in the amendments to include public entities, explaining that the requirements would make more sense. Submits that the law has been difficult to deal with.
285	Sen. Corcoran	Inquires when Ms. Youngs first saw the ñ4 amendments.
289	Youngs	Replies that she saw them at the beginning of the meeting. Indicates that the ñ4 amendments are similar in most regards to the ñ3 amendments. Discusses the requirement for monitoring water quality. Argues that such monitoring has the potential for high expenditures and suggests a pilot program be developed based upon the available funds for monitoring. Discusses the difficulty of making cost estimates for complex monitoring processes.
324	Chair George	Asks if the elimination of the phrase "and implement" would be beneficial. Indicates that agencies will need to develop the plan and the legislature should review that plan prior to implementation.
338	Youngs	Concurs with the chair. Mentions that the pesticide use education program outlined in section 19 in the ñ4 amendments could be implemented with resources from the Governor's budget.
355	Sen. Wilde	Emphasizes the importance of the fact that section 19 applies to urban areas. Comments on the need to educate those who live in the city about the potential effects of pesticides they may be using.
376	Youngs	Concurs with Sen. Wilde.
394	Tom Johnson	Assistant Administrator, Oregon Health Division. Indicates DEQ will determine the appropriateness of drinking water programs. Clarifies that the Oregon Health Division regulates the quality of water at the time of consumption, rather than the source of the water or the treatment program. Asks how DEQ will determine whether a source is appropriate for drinking water.
TAPE 120, B		

025	Chair George	Indicates the amendments are designed to deal with new water sources. Asks if the Health Division makes the determination whether treatment plans should be implemented.
035	Johnson	Replies that the Health Division makes the determination whether plans will bring about compliance with standards.
040	Chair George	Asks what resources are used to test samples.
051	Johnson	Replies that the Health Division laboratory tests for biological contamination and chemical tests are performed through contracts with testing facilities. Explains that the division becomes involved at the time the plan is submitted for review.
066	Chair George	Inquires whether a city such as Wilsonville would need to submit a plan prior to beginning construction of a water treatment plant.
070	Johnson	Explains that plans would need to be approved prior to breaking ground. Explains that data would be reviewed and plans studied to determine whether the plan would achieve the desired result.
081	Chair George	Asks how the ñ4 amendments would affect the current process.
085	Johnson	Replies that DEQ would be asked to determine if there are signs of toxic contamination and declare the source as inappropriate, if necessary.
105	Lauri Aunan	Indicates that the section of the amendments highlights the difficulty in scientifically determining the effects of toxicity as a cause and effect relationship. Asserts that such determinations have not historically been the responsibility of DEQ.
120	Rick Gates	Discusses the problems related to deformity analysis. Indicates that only large spills present high correlation and that most ambient levels present too many variables to establish causality.
135	Chair George	Suggests that when determinations can be made there should be suggested alternatives made. Mentions that Wilsonville has already made such determinations.
147	Aunan	Indicates that DEQ does not consider the prohibition of local decision making to be a proper role for the department.
159	Sen. Wilde	Expresses concern about deformities and lesions found in fish, which offers proof that contamination is taking place. Acknowledges that standards do not take care of the problem with certainty. Says that DEQ and the Health Division should not be declaring water fit for consumption under such circumstances.

174	Johnson	Explains that the 84 indicators that are tested for are considered to be the greatest threats to public health. Asserts that only water that meets the standards for consumption is approved.
190	Sen. Corcoran	Inquires about the proposed compromise regarding SB 617.
196	Chair George	Replies that he has no knowledge of such a compromise.
200	Charlie Stone	Assistant State Forester, Oregon Department of Forestry (ODF). Indicates that ODF uses a large number of vehicles and buildings that use materials that may or may not be considered as hazardous materials. Suggests that the phrase "used on public lands" be changed to "applied to public lands."
221	Chair George	Asks if records are kept by ODF regarding pesticides.
224	Stone	Replies that ODF currently keeps such records and that the bill would not create a significant additional burden in that regard.
226	Chair George	Indicates that there are insignificant controls on the accidental release of hazardous materials, which would not be considered to be application to public lands.
236	Stone	Suggests that the matter could be addressed by prohibiting such materials on forest lands.
251	Sen. Dukes	Asks if the proposed changes would include paint sprayed on trees.
254	Stone	Says he is not sure, mentioning that ODF marks trees with paint to identify them for thinning or other purposes. Determines that the language in the amendment probably considers such paint to be a hazardous substance.
270	Jim Lockwood	Government Relations Officer, Oregon Parks and Recreation Department. Comments on pesticide application in parks. Says that licensed applicators are required for application and that staff could post notice in advance where pesticides will be applied. Indicates there are no foreseen problems with meeting the requirements in the amendments.
300	Chair George	Asks if a regular schedule of pesticide application could be posted to reduce the imposition upon manpower requirements.
308	Lockwood	Replies that such a requirement would not present a problem.
320	Sen. Fisher	Asks why there is a requirement for 48-hour notification prior to pesticide application.

330	Sen. Wilde	Replies that it was part of the rules developed for application on school grounds. Asserts that the fact that visitors do not come daily makes it important to post notice in advance but mentions the issue may be negotiable for parks.
343	Chair George	Asks if there is a requirement for a report regarding when and where application of pesticides takes place.
350	Lockwood	Replies that there are such requirements.
353	Chair George	Requests that Mr. Lockwood consult with pesticide applicators regarding where postings could be placed. Wonders how often Parks Department employees visit each site.
365	Lockwood	Replies that Parks Department employees typically visit sites 2-4 times weekly.
373	Chair George	Offers an example regarding spraying for termites.
379	Lockwood	Says he does not foresee problems, so long as Parks Department employees are allowed to post the signs.
400	Jan Lee	Executive Director, Oregon Water Resource Congress (OWRC). Explains that irrigation districts use many pesticides that would be regulated by terms in the bill. Comments on the beneficial and hazardous classifications of pesticides. Says water districts currently report to the Fire Marshal.
TAPE 121, A		
012	Chair George	Asks for clarification as to where the language in question is located.
015	Lee	Indicates the language is on page 1, lines 17-18 of the ñ4 amendments and page 9, lines 7-8. Indicates that the EPA and the state may treat the substances differently. Wonders how the pesticides listed as "beneficial" will be affected by the amendments.
044	Albers	Says the definition of hazardous substances is the broadest of all reporting requirements, including anything for which MSDS are required. Asserts the amendments would not change the definition currently in use.
060	Sen. Dukes	Asks if the list of hazardous materials contains antibacterial spray and other related products.
062	Albers	Reiterates that the existence of an MSDS is the trigger for reporting. Indicates he is unsure about anti-bacterials. States that all pesticides are considered to be hazardous materials.

081	Sen. Dukes	Suggests that anti-bacterials kill bacteria, which could be considered to be pests, meaning they may be considered to be hazardous substances.
084	Albers	Explains that the amendments try to cover as many hazardous substances as possible for purposes of reporting. Says the reporting program only concerns businesses, owners, and operators of fixed site facilities.
094	Chair George	Wonders if anyone would consider pesticides to be "beneficial substances."
102	Albers	Reiterates that the definition is used solely to identify where hazardous materials are located so as to allow interested parties to develop programs to deal with them.
110	Chair George	Asks how the application of pesticides is recorded.
113	Lee	Explains that there is an application schedule that is announced via the media. Argues that the bill does not consider whether farmers are to report to OWRC regarding pesticide use.
130	Chair George	Indicates that OWRC would seem to be currently meeting the requirements of the bill.
134	Lee	Mentions subsection D, which refers to the escape of pesticides into crops. Says registered pesticides may escape into the environment, causing injury to people, fish, animal life, and crops.
141	Chair George	Mentions that everything listed in the subsection are currently illegal.
145	Lee	Indicates that using such materials according to the directions does not have that result. Suggests that there be a criminal penalty for the first item of subsection 10 on page 19.
150	Chair George	Asks if Ms. Lee is aware of the criminal penalties outlined in SB 1010. Asks if they now apply to agriculture.
155	Lee	Comments on SB 1010.
164	Terry Witt	Representative, Oregonians for Food and Shelter. Says the bill "levels the playing field." Expresses concern about sections 13 and 14 in that only section 1 would currently apply to school and child care facilities. Explains that posting, maintaining, and removing signs is the responsibility of landowners and recommends the school and parks sections clearly state that responsibility. Asserts the definition of pesticides should contain anti-microbial agents. Mentions that common household bleach is more toxic than some pesticides.

233	Chair George	Explains that such considerations were in the original version of the bill but were removed due to cost considerations. Acknowledges the potential hazards of anti-microbial agents.
242	Witt	Mentions that pesticides are always considered hazardous substances and that used samples are considered hazardous waste.
251	Chair George	Mentions that all are covered by MSDS and thus are considered hazardous by the amendments.
256	Witt	Comments on the definition of bleach as an anti-microbial agent.
266	Chair George	Asks for input regarding the development of additional amendments. Closes the public hearing on SB 1028 and adjourns the meeting at 6:50 p.m.

Submitted By, Reviewed By,

Patrick Brennan, Brad Harper,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 1028, -4 amendments, staff, 21 pp.

B ñ SB 1028, testimony and information packet, Bob Albers, 21 pp.