

SENATE COMMITTEE ON WATER AND LAND USE

March 9, 1999 Hearing Room B

1:00 p.m. Tapes 33 - 34

MEMBERS PRESENT: Sen. Veral Tarno, Chair

Sen. Tony Corcoran, Vice-Chair

Sen. Gary George

Sen. Marylin Shannon

Sen. Thomas Wilde

MEMBER EXCUSED:

STAFF PRESENT: Raymond J. Kelly, Administrator

Diana Bronson, Administrative Support

MEASURE/ISSUES HEARD: SB 489 Public Hearing

SB 470 Public Hearing and Work Session

SB 461 Public Hearing

SB 335 Public Hearing and Work Session

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 33, A		
005	Chair Tarno	Convenes meeting at 1:04 p.m. and opens public hearing on SB 489.
<u>SB 489 PUBLIC HEARING</u>		

007	Ray Kelly	Committee Administrator. Summarizes SB 489.
030	Larry George	Oregonians in Action (OIA). Presents (EXHIBIT A) . Testifies in support of SB 489, stating that it allows coastal cities and counties to make planning decisions for their coastal shorelands based upon an analysis of the economic, social, environmental, and energy consequences of protecting or not protecting a resource site.
058	Philip Johnson	Oregon Shores Conservation Coalition (OSCC). Presents (EXHIBIT B) . Testifies in opposition to SB 489, in that it effectively eliminates Goal 17 by removing a crucial defense that protects the state's resources.
110	Johnson	Continues testimony regarding SB 489, and states that Goal 17 constitutes an assurance that the bluffs and headlands, and the shorelines of estuaries and coastal lakes, will remain in good condition for future generations to enjoy.
164	Sam Melsheimer	Lincoln County. Testifies in support of SB 489 in that there are unintended consequences that Ballot Measures 5 and 50 created and now those consequences are showing up in ways that effect the property values and the taxes that are needed.
204	Sen. Corcoran	Asks if he is in support of SB 489.
206	Melsheimer	Replies that he is in favor of SB 489.
216	Sen. Corcoran	States the same situation existed before Ballot Measures 5 and 50.
218	Melsheimer	Replies that it did not exist before.
219	Sen. Corcoran	States that it seems Melsheimer is asking for a bad law on top of another bad law to correct the first bad law and is not sure if he can agree with that.
223	Lori Ann Sheridan	Executive Director, Lincoln City Chamber of Commerce. Presents (EXHIBIT C) . Testifies that the board is wholeheartedly in support of SB 489 because it is fair and reasonable. States the board wants to make intelligent and informed decisions that the Economic, Social, Environmental & Energy (ESEE) process allows. States that Goal 17 is prejudicial to the coastal communities as written.
264	Sheridan	Presents (EXHIBIT D) . States the testimony is from two property owners in Lincoln City that support SB 489.
327	Chair Tarno	Asks if SB 489 was prompted by the LCDC's review of Goal 17 with the proposal of amending those rules.
333	Sheridan	Replies no, that the chamber was dealing with Goal 17 long before the review

		came about.
332	Chair Tarno	Asks if she has reviewed the proposed rule changes to Goal 17.
346	Sheridan	Replies she has reviewed them.
347	Chair Tarno	Asks if red flags were raised.
348	Sheridan	Replies they would like to see a broader definition of "water dependent." States the changes only seem to effect the port changes and there are many properties that do not have ports.
359	Sen. George	Asks about properties that could be effected by the way the review of Goal 17 is being developed.
377	Sheridan	Replies that 99 percent of Lincoln City would be effected. Tremendous amounts of properties are impacted.
397	Sen. George	Asks what would happen if Spanish Head burned.
404	Sheridan	Replies that it would be gone and not rebuilt.
418	Sen. Corcoran	Asks for explanation as to why Goal 17 would not require a study while the other goals do require a study. Feels there was a mistake made in writing Goal 17.
424	Sheridan	Replies that Goal 17 mandates outright protection. States that in Goal 17 there is no ESEE and no consideration of the economic, social, environmental or energy consequences. States that, personally, she feels that somebody made a mistake when they wrote Goal 17.
447	Sen. Corcoran	Asks if Goal 17 is different in scope.
TAPE 34, A		
014	Sen. Corcoran	Asks about the letter from Rose. Asks if he is retired.
017	Sheridan	States Rose is still practicing.
019	Sen. Corcoran	Asks if property is a second home.
020	Sheridan	States the Rose family has owned property in Lincoln City for 30 ñ 40 years and the family is trying to subdivide some of the land for future development and

		some for family use.
029	Sen. Corcoran	Asks if the 55 acres is for investment purposes and if it is undeveloped.
031	Sheridan	Replies that the land is undeveloped, at this point.
032	Sen. Corcoran	Asks if Sheridan believes there was uncontrolled growth at the coast and if it would have a negative impact on home values.
033	Melscheimer	Replies that if Sen. Corcoran is specifically talking about Lincoln City, then there is not a question of uncontrolled growth. States the market is going to determine what growth takes place and the prosperity of Lincoln City is dependent upon Portland and Salem.
044	Sen. Corcoran	Inquires as to the growth north of Lincoln City.
045	Melscheimer	Replies that if Sen. Corcoran is referring to Pacific City, Tillamook County, then, yes, there has been growth, but mostly that growth was triggered by the completion of sanitary facilities that allowed for the development of urban densities.
068	Chair Tarno	Questions Sheridan's statement that Lincoln City has ample beach access and if Sheridan envisions losing any of the current accesses to the beach.
073	Sheridan	Replies no, because most of the beach access points are city owned property, maintained by the city and protected.
078	Liz Frenkel	League of Women Voters of Oregon. Presents (EXHIBIT E) . Testifies in opposition to SB 489 as replacing the ranking and standards with an analysis process, basically balancing the economic, social, environmental, and energy consequences of regulatory impacts.
127	Sen. George	States Frenkel describes the ESEE circumstances which amplifies the desperation shown by coming up with SB 489. Asks for ideas and help of where one goes if SB 489 fails.
143	Frenkel	States that Goal 17 is not the quagmire that the ESEE process is.
154	Art Schlack	Association of Oregon Counties (AOC). Testifies in opposition to SB 489. States that SB 489 requires local governments to conduct the ESEE process. States it is an unfunded mandate and the laws that are in place today, do not require local government to undertake the ESEE analysis to look at Goal 17.
164	Sen. George	States that the AOC are responsible for, basically, all the costs for the land use planning system.

169	Schlack	Responds that the statewide planning goals were established by the State of Oregon and the administrative rules that amplify those goals were established by state agencies and are requirements of the state which, because of statute and administrative rules, all of us are required to follow. States AOC is undertaking a partnership to implement a statewide land use plan and to do what is necessary at the local level. States this is a situation wherein the legislature is entertaining a bill that will require local government to go through a process that is extremely costly and time consuming.
188	Chair Tarno	Asks what it costs to go through the ESEE process.
192	Schlack	Responds that normally the ESEE's Schlack has been involved with are scientific and the process can get into thousands of dollars.
197	Chair Tarno	Asks if SB 489 should be killed or if the committee should go forward.
200	Schlack	Responds that at this point the fiscal impact is the problem with SB 489. States the fiscal impact will be extremely high.
224	Sen. George	Asks if he has considered the tax base falling away from the counties because of this application on the coast.
229	Schlack	Replies that it is the decision of Oregon Counties not to support any legislation that is determined to be an unfunded mandate.
236	Sen. George	Asks if Lincoln County supports that decision. Asks if he has considered the economic consequences to the coastal communities if, in fact, Goal 17 is applied to these communities.
244	Schlack	States that the OAC has not looked at that particular question.
270	Chair Tarno	States he has concerns about SB 489 being an unfunded mandate.
287	Randy Tucker	1000 Friends of Oregon. Testifies in opposition to SB 489, as written.
308	Bob Rindy	Department of Land Conservation and Development (DLCD). Presents (EXHIBIT F) . States there are several concerns regarding SB 489, in that it could reduce, or eliminate, protection of major marshes and wetlands.
360	Rindy	Continues with testimony concerning SB 489 and states that adopting a new ESEE requirement will not correct the problems leading to this proposal, but will create other problems of a far greater magnitude.
390	Chair Tarno	Asks if any of the changes have issues with an unfunded mandate.

397	Rindy	States that since the passage of Ballot Measure 30, that issue is raised in each and every action the LCDC takes.
422	Chair Tarno	Closes public hearing on SB 489 and opens public hearing on SB 470.
<u>SB 470 PUBLIC HEARING</u>		
TAPE 33, B		
001	Kelly	Summarizes SB 470.
018	Larry George	Oregonians In Action (OIA). Presents (EXHIBIT G) . Testifies in support of SB 470 as limiting the period for which a landowner must prove the continual use of a nonconforming land use activity.
054	Ed Shattuck	States he has property in Multnomah County and requested a partition on his property two years ago. States the best he could provide was 15 years of utility bills to show occupancy on his dwelling.
077	Chair Tarno	Asks Shattuck if he has a problem with 20 years time frame of proving occupancy.
078	Shattuck	States he can prove 20 years in July of 1999.
082	Chair Tarno	Closes public hearing on SB 470 and opens work session.
<u>SB 470 WORK SESSION</u>		
094	Sen. Corcoran	MOTION: Moves SB 470 to the floor with a DO PASS recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Tarno	The motion CARRIES. SEN. TARNO will lead discussion on the floor.
<u>SB 461 PUBLIC HEARING</u>		

097	Kelly	States this is the second hearing on SB 461. Summarizes SB 461.
109	Richard Whitman	Department of Justice. Presents (EXHIBIT H) . Reads statement on SB 461. Asks that careful consideration be given to whether codification of the judicial doctrine of ripeness is desirable.
191	Sen. George	Asks if legal counsel and the Justice Department ever communicate. Asks when Whitman found out about SB 461.
197	Whitman	States the Justice Department found out about SB 461 three days ago. States he has not had an opportunity to speak with legislative counsel regarding SB 461. States the Justice Department did try to communicate with the sponsors of SB 461 when they knew they had concerns.
212	Sen. George	Asks if legislative counsel feels they can communicate with the Justice Department.
214	Whitman	Replies that he does communicate with legislative counsel on a regular basis.
216	Chair Tarno	Asks Kelly if he has had contact with any of the Governor's staff on SB 461.
218	Kelly	Replies that he has not spoken with the Governor's office regarding SB 461.
223	Sen. Wilde	Discusses "other use" issues like having a bar next to a school. Asks at what point the takings rule might go too far.
239	Whitman	States there are different tests available. States it would fall under the category of unconstitutional conditions on a particular use and the test is that there needs to be a reasonable relationship between the condition being imposed and the impact of the use. States this is also known as the rational nexus test.
276	Sen. Shannon	Asks if a bar next to a school is a viable example.
286	Whitman	States this example could result in a taking if the bar was the only use that was allowed on that property.
293	Sen. Corcoran	Asks if Sen. George contacted the Justice Department. Asks if Oregonians in Action contacted the Justice Department.
316	Whitman	Replies that neither Sen. George nor the Oregonians in Action contacted the Justice Department. States that one problem with SB 461 is that it would not accomplish its intent as it does not codify the ripeness doctrine. The second problem is conceptual, concerning who decides when all uses of a piece of property are, or are not, going to be allowed.

324	Sen. Corcoran	Short questions and answers between Sen. Corcoran and Whitman concerning the sponsorship of SB 461 and the role between legislative counsel, Sen. George, and the Justice Department.
395	Sen. Corcoran	Asks Sen. George what the intent of SB 461 is.
396	Sen. George	States the intent is very clear. States that Whitman did not contact his office and asks Whitman to go to legislative counsel and clarify the wording of SB 461.
416	Art Schlack	Association of Oregon Counties (AOC). Presents (EXHIBIT J) . States that, if a work group is formed to work on SB 461, the AOC would be happy to participate.
439	Chair Tarno	Asks Schlack if ripeness is an issue that needs to be addressed.
443	Schlack	Replies that he was not aware that ripeness was necessarily an issue.
TAPE 34, B		
012	Chair Tarno	Asks if Schlack was aware of the ripeness before, or if this is a new issue.
013	Schlack	Replies that he believes ripeness was an issue that was raised in the 1997 Session, but it did not go anywhere.
022	Chair Tarno	Committee stands at ease at 2:08 p.m. and resumes committee hearing at 2:23 p.m.
<u>SB 335 PUBLIC HEARING</u>		
045	Kelly	Summarizes SB 335.
061	Stephanie Hallock	Administrator of the Eastern Region of the Department of Environmental Quality (DEQ). Presents (EXHIBIT K) . Introduces Dennis Illingworth. Testifies in support of SB 335. States the purpose of SB 335 is to remove overly burdensome and outdated regulatory requirements. States the result will be a more efficient program which protects human health and the environment.
128	Chair Tarno	Asks questions regarding fees. Asks if fees can be updated at will.
130	Hallock	States that fees are adopted during the interim by a legislative rule making commission.
146	Sen. George	Asks for clarification of wording on page 2, line 22.

151	Dennis Illingworth	Manager of the on-site program, DEQ. States this program only relates to onsite sewage disposal systems which are commonly considered to be septic tanks and drain fields. States they only deal with waste that is domestic but that can include commercial office buildings. States this program is 95 to 98 percent residential waste.
176	Sen. George	Asks if industrial use is being refused where there is also domestic use.
187	Illingworth	States those types of systems are usually split on the premises. States the commercial waste may be on a different system.
202	Sen. George	Asks what the effect is on systems that were in place before anyone was issuing permits.
205	Illingworth	Replies that it would not effect them since the systems are in the ground. States this statute is used for construction permits wherein someone puts in a system, covers it up, and forgets it until there is a problem.
220	Chair Tarno	Asks if there is a written definition of domestic.
222	Illingworth	Replies that domestic may be defined in SB 468, but is not sure.
228	Chair Tarno	States he assumes it would be in the Webster's Dictionary. Asks for explanation of the n2 amendments. (EXHIBIT L) .
238	Illingworth	Explains minor changes needed for SB 335 to be correct.
275	Bob Wilson	Environmental Health Director for Benton County. Testifies in support of SB 335. States it is an improvement to the statute
301	Cliff Porter	Northwest Sanitation. States his company is a portable toilet company with 20 years of experience. Testifies in support of SB 335. States that if the licensing time limits were extended it would help to reduce the extraordinary amount of paperwork.
341	Art Schlack	AOC. Testifies in support of SB 335. States local governments can go above state fees. States this is an efficiency process.
360	Chair Tarno	Closes public hearing on SB 335 and opens work session.
<u>SB 335 WORK SESSION</u>		
362	Sen. Corcoran	MOTION: Moves to ADOPT SB 335 amendments dated 3/9/99.

	Chair Tarno	VOTE: 3-1 AYE: 3 - Corcoran, Shannon, Tarno NAY: 1 n̄ George EXCUSED: 1 n̄ Wilde
	Chair Tarno	The motion CARRIES.
365	Sen. Corcoran	MOTION: Moves SB 335-2 to the floor with a DO PASS AS AMENDED recommendation.
406		VOTE: 3-1 AYE: 3 - Corcoran, Shannon, Tarno NAY: 1 n̄ George EXCUSED: 1 n̄ Wilde
	Chair Tarno	The motion CARRIES. SEN. TARNO will lead discussion on the floor.
407	Chair Tarno	Closes work session on SB 335 and adjourns at 3:08 p.m.

Submitted By, Reviewed By,

Diana Bronson, Raymond J. Kelly,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 489, Written testimony, David Hunnicutt, 2 pp

B ñ SB 489, Written testimony, Phillip Johnson, 1 p

C ñ SB 489, Written testimony and map, Lori Ann Sheridan, 2 pp

D ñ SB 489, Written testimony, Thomas S. Moore, 1 p

E ñ SB 489, Written testimony, Gene C. Rose, 1 p

F ñ SB 489, Written testimony, Liz Frenkel, 1 p

G ñ SB 489, Written testimony, Bob Rindy, 4 pp

H ñ SB 470, Written testimony, Larry George, 1 p

I ñ SB 461, Written testimony, Richard Whitman, 1 p

J ñ SB 461, Written testimony, Art Schlack, 1 p

K ñ SB 335, Written testimony, Stephanie Hallock, 6 pp

L ñ SB 335, -2 amendment, staff, 1 p

M ñ SB 461, Written testimony, City of Portland, 1 p