

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: March 29, 1993 TAPES: 93-96 PLACE: Hearing Room C TIME: 8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn, Vice-Chair Senator Joyce Cohen Senator Shirley Gold Senator Bob Kintigh Senator Bob Shoemaker Senator Gordon Smith STAFF PRESENT: Peter Green, Administrator Chris Warner, Research Associate Kus Soumie, Clerk MEASURES HEARD: SB 116 SB 392 INFORMATIONAL HEARING: Earthquake Preparedness

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TAPE 93, SIDE A

009 CHAIR CEASE: Calls the meeting to order at 8:00 a.m. - Opens the work session on SB 392.

WORK SESSION ON SB 392

020 DALE BLANTON: (Policy Analyst, Department of Land Conservation and Development) Reviews the proposed "-2" amendments to SB 392. - The bill has been redrafted for simplification. - The amendments clarify two of Metro's planning functions would be subject to acknowledgment.

072 SEN. COHEN: I wish to verify that we are not exempting Metro from any requirement expected of other local governments.

BLANTON: Changes were not made to any other sections. Senate Agriculture and Nalural Resources March 29, 1993 Page 2

086 SUE MANNA: (Legislative Counsel Office) Provides line review of SB 392 -2.

MOTION: CHAIR CEASE: Moves to ADOPT the SB 392-2 amendments dated 3-26-93. VOTE: CHAIR CEASE: Hearing no objection, the amendments are ADOPTED. All members are present.

MOTION: CHAIR CEASE: Moves that SB 392 AS AMENDED, be sent to the Floor with a DO PASS recommendation. 135 VOTE: In a roll call vote, all members present vote AYE.

CHAIR CEASE: The motion CARRIES. CHAIR CEASE will lead discussion on the Floor.

CHAIR CEASE: Closes the work session on SB 392. - Opens the public hearing on SB 116.

PUBLIC HEARING ON 116 - EXHIBITS B through D WITNESSES: Doug Roberts, Oregon Tilth Larry Knudsen, Attorney Generals Office Bruce Andrews, Oregon Department of Agriculture Larry Trosi, Oregon Farm Bureau Joe Hobson, Oregon Farm Bureau Charlie Williamson, Oregon Trial Lawyers Association Peter Sorenson, Oregon Trial Lawyers Association Lynn Lundquist, Oregon Cattlemen's Association, Crook County Planning Commission Paul Kirsch, Kirsch Family Farms, Inc. Liz Frenkel, Oregon Chapter of the Sierra Club

150 DOUG ROBERTS: (introduces EXHIBIT B) Offers testimony in opposition to SB 116. - Notes Oregon Tilth's policy on "drift" which is undermined by this bill. 218 - Mentions he has personally experienced spray drift when vegetables were sprayed by a neighbor. 233 LARRY KNUDSEN: Offers testimony and review of SB 116-3 amendments. 251 BRUCE ANDREWS: Offers testimony on SB 116-3. - Notes pesticide drift is already illegal and the bill does not change that. - Reviews what the bill does that is not currently in law.

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- Lists examples of "nuisance." - Provides examples of law suits related to "nuisance."

290 SEN. SHOEMAKER: If a community were to determine a farming practice was unsafe and against the public interest, would they have the right to pursue farmers engaging in that practice? 313 ANDREWS: A local entity may regulate through regulation and not declaration. SEN. SHOEMAKER: Could they regulate generically, such as for dust? 333 KNUDSEN: A jurisdiction would be able to regulate activities such as noise, dust, etc., by criminal law or civil penalty. - This disallows private individuals bringing their own nuisance actions.

381 SEN. SHOEMAKER: Perhaps we should consider amending sections 3 and 4 to permit injunction actions against certain practices which threaten death, serious physical injury or otherwise hazardous or abnormally dangerous repercussions. KNUDSEN: I am not sure that it limits it to damage actions. 417 LARRY TROSI: (introduces EXHIBIT C) Offers testimony in support of SB 116. Reviews history of the right to farm bill. - We prefer to have this bill stand alone, rather than as part of a land use bill.

TAPE 94, SIDE A

028 JOE HOBSON: (introduces EXHIBIT D) Offers testimony on SB 116, and presents overview of EXHIBITS D. - Reports on amendments the Farm Bureau proposes to SB 116. States the problem to be urban development in rural areas. - Delineates the specifics the Farm Bureau sought in a right to farm bill. Notes problems with the current right to farm law. - States need to inform land purchasers of the law relative to their right to cause of action. 115 TROSI: Offers to research authority to attach such information to property records.

130 HOBSON: Addresses changes they propose to SB 116-1. - Make the same changes to ORS 527.800-810 as are made in the agricultural section to maintain continuity.

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- In section 6(2)(a) substitute the words, "conducted on or pertaining

to agricultural land" for "is or may be used on a farm of a similar nature." - Delete section 6(2)(b).

CHAIR CEASE: How do you deal with the situation of persons claiming to raise trees for production who are not doing so? Are they entitled to the protections of this act? 180 TROSI: Within an EFU zone, there is no income test for qualifying for farm use assessment. 190 CHARLIE WILLIAMSON: Introduces Peter Sorenson. 199 PETER SORENSON: Offers testimony on SB 116. - Reviews the specifics of several cases in which he represented parties incurring environmental damage by other parties. 248 - Reports that he has represented clients against the determinations of the Oregon Department of Agriculture and is concerned that they are being portrayed as fully complying with statute. - I believe this bill negatively impacts the rights of rural citizens to recover for trespasses caused by drift. 280 - Protests the provision of section 5 which requires the losing party to pay all court costs. - The legal term "negligence" is not included in the draft of this bill.

350 SEN. BUNN: Mentions personal experience with the effects of differing turkey farming practices. - Is the court to determine which actions are negligent and which are acceptable?

355 SORENSON: In the case where a farmer does something in a non-negligent manner, the farmer will have the right to present facts to support that, with a jury able to make a determination. - The problem of conflicting land use and the creating of nuisance has existed in the urban environment for many years.

410 SEN. SHOEMAKER: States the difference between "reasonable and prudent" and "negligence."

SORENSON: Recommends inclusion of a provision in the bill that when a trespass results from negligent operation of a farming operation, it would be excluded from this bill.

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SEN. SHOEMAKER: "Nuisance" and "trespass" operate independently of "negligence."

460 SORENSON References the Oregon Bill of Rights, article 1, section 10, which provides that every man shall have remedy by due course of law for injury done to him in his person, property or reputation.

TAPE 93 SIDE B

023 WILLIAMSON: With respect to pesticide and herbicide spray, it would be advisable for the bill to specifically state it does not apply to those or other artificial chemicals. - Explains why the "English rule" has not been adopted in the United States.

059 LYNN LUNDQUIST: Offers testimony on SB 116, and presents overview of proposed amendments to the bill. - Cautions against using wording that is too specific. - Gives overview of a situation in John Day

involving noise nuisance.

112 CHAIR CEASE: Comment on protection of the right to do business and community support for that concept.

LUNDQUIST: Communities involved in agriculture feel there is a need for some sort of protection. - A warning to land purchasers would be helpful.

150 SEN. COHEN: Is it possible to distinguish between hazardous and inane practices ?

LUNDQUIST: The drift law is already addressed.

166 PAUL KIRSCH: Offers testimony in support of SB 116 and the "-3" amendments. - People do not have tolerance for farm practices due to the distinct separation between rural and urban living. - His insurance agent has explained to him that if he is violating the law, the insurance will not cover damages. 222 LIZ FRENKEL: (introduces EXHIBIT D) Offers testimony in opposition to the SB 116 amendments. - We totally agree with section 2. - Notes in a specific case the "hold harmless" clause was determined not to hold up in court, and a petitioner requesting approval to build a home in an

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EFU zone was denied. - This type of legislation leads farmers to believe they are above the law. - Protests the deletion of sections 3 and 7.

295 SEN. BUNN: What about existing homes in the farming districts and tenant to mover ?

FRENKEL: In the case previously mentioned, a previous tenant testified in favor of the blueberry farmer, but later had to move because of problems with spraying. - It should be the court's determination as to whether a farming activity is harmful or inappropriate.

323 SEN. KINTIGH: It has been stated this law does not apply to illegal operations. - Neither does it take away the right of someone who is harmed or incurs damages.

FRENKEL: The problem is who is making the decision as to what is damage.

SEN. SHOEMAKER: I believe the courts would make that determination. - Reviews how the bill is intended to work with relation to nuisance, trespass and negligence. - Defines nuisance as something that is bothering someone else. - In response to a hypothetical situation offered by Ms. Frenkel, states "reasonable and prudent" are determining factors.

FRENKEL: I remain extremely uncomfortable with the amount of court costs i evolved .

410 CHAIR CEASE: Mentions a letter from Jan Runcie in opposition to SB 116 should be included in the record. - Closes the public hearing on SB 116. - Opens the discussion on earthquake preparedness.

OVERVIEW AND DISCUSSION OF EARTHQUAKE PREPAREDNESS - EXHIBITS E through L

WITNESSES: John Bolieau, DOGAMI Mathew Mabey, DOGAMI Myra Lee, Oregon Emergency Management Bill Leach, Legislative Administration Committee Raymond Miller, Miller-Gardner Structural Engineering Sue Wilson, Legislative Administration Committee

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Gary Wicks, Building Codes Agency Walt Friday, Building Codes Agency Roger McGarrigle, Seismic Safety Policy Advisory Commission Ray Weldon, University of Oregon, National Earthquake Prediction and Evaluation Council

TAPE 94 SIDE B

014 JOHN BOLIEAU: (introduces EXHIBITS E and F) Offers testimony on earthquake preparedness with respect to what has happened, what is being done and what should be done in the future. 029 DR. MATHEW MABEY: Offers testimony on earthquake preparedness. - Reviews specifics of the March 25 earthquake and related aftershocks. - Notes the topographical pattern of damage and the reasons behind that pattern. - References map of the northwestern portion of Oregon which delineates existing faults. 097 - Notes the probable length of the portion of the fault involved. - A greater crustal earthquake at an approximate magnitude of 6 to 6.5 should be expected in western Oregon. - Reviews history of earthquake impacts on Oregon. - An incremental increase of one point on the Richter Scale indicates an increase in the amount of energy released of 32 to 35 times. 122 - Compares the March 25 earthquake shaking to a subduction zone earthquake occurring off the Oregon coast. - A subduction zone earthquake would last 5 to 10 times as long. - We can expect numerous earthquakes as large as the March 25 quake, with some even greater.

151 BOLIEAU: The recent quake is the best thing that could happen to Oregon in terms of a wake-up call. - Reviews the earthquake damage in terms of repair costs. - Notes techniques for assessing ground response in the event of an earthquake. - References the new Earthquake Mapping Act. - The technique developed by DOGAMI has attracted federal funding for research. - Mentions studies conducted in British Columbia which laud the work done here.

212 MAYBE: Reviews new techniques for categorizing earthquake ground response. - These include map construction that addresses three hazards resulting from

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earthquakes: soils, liquefaction, landslide potential. - Maps are used to determine what facilities can be allowed in the more hazardous areas

and to plan upgrading of the pre-existing infrastructure. - We are working with Metro to develop model ordinances and determine how to use the information.

259 BOLIEAU: Proper institution of mitigation of earthquake risk cannot take place quickly. - References SJM12, and recommends its passage. - Requests that Measure 5 be addressed so that long term funding not be undermined every biennium. - The Governor's mandated budget has not affected earthquake technology, thus far. - Recommends the "gold man" be removed from the top of the building. - Mentions impact should the statute fall.

330 MYRA LEE: Offers testimony on summary report of the earthquake response and reviews reported property damage from the recent quake. - Congress is reviewing earthquake insurance and reinsurance to be available at a lower premium.

400 SEN. BUNN: What thought has been given to notification of safe bridges following an earthquake?

LEE: We have a communication center at the Oregon Emergency Management Agency. - As we receive Information, we make it available; however, we are unable to be pro-active. - Routing planning is the responsibility of local government and we would provide such information as they supply it to us. - Provides a summary of activities at their office in response to the earthquake. - We provide information by telephone and radio.

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033 LEE: Lists the agencies represented at their office following the earthquake. - Mental health assistance is available and can be coordinated by request. - Our capabilities would have been severely taxed had the earthquake been in a different location, or been of a greater magnitude. - Relationships between agencies and jurisdictions have been sufficiently developed to ensure communication of information and understanding of the process.

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095 - Assistance in damage assessment was requested from the federal Emergency Management Agency.

105 SEN. BUNN: What kind of government help is available to the groups sustaining the greatest losses, such as the Catholic Church in Mt. Angel and the Molalla High School?

LEE: Available funding would be through the federal Disaster Assistance Act. - Oregon has yet to determine how to match those funds. 140 - Notes Oregon's participation in the National Earthquake Hazard Reduction Program. - Reviews the provisions included in proposed SB 157 for organization of their agency. - Notes provision for state to enter into an emergency disaster assistance compact with other states. 232 - Consideration should be given to establishment of a Disaster Contingency Fund or to improve the process for obtaining state funding. - When the Governor declares an emergency, that commits the state to the payment of the 25 percent assistance figure.

273 BILL LEACH: (introduces EXHIBIT L) Offers testimony on damage sustained to the capitol building in the recent earthquake. - Delineates cosmetic damage. - Notes three areas evoking concern over structural damage.

292 CHAIR CEASE: Do you agree with DOGAMI officials that the "gold man" needs to come off the dome?

LEACH: We have determined that may not be the best option but may cause more damage than leaving him in place. - Reviews the time frame and cost estimates for re-anchoring of the pedestal. - The rotunda will be closed indefinitely.

348 RAY MILLER: Offers testimony on the structural assessment of the building.

LEACH: There are two variables involved in determining the structural integrity of a building in an earthquake: intensity and duration. - Our computer models reveal we sustain considerable structural damage in the dome, pioneer, and supporting central core within several seconds of an earthquake of about this magnitude. 389 - We will anchor the "gold man," but what we anchor him to will not withstand structural movement.

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- Reviews the construction costs for making the needed structural changes (\$27.8 million). - Replacement value of the entire building would be about \$100 million.

425 MILLER: Delineates what changes would be encompassed in the repair estimate.

LEACH: Currently, the rotunda has some steel reinforcement; however, that reinforcement is supported by brick.

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022 SUE WILSON: (introduces EXHIBIT G) Offers testimony on staff responses.

032 MILLER: The damage to the rotunda would have been limited to loose plaster had the structural work been done prior to the earthquake.

056 GARY WICICS: (introduces EXHIBIT H) Offers testimony on building codes related to earthquakes. - The Building Codes Agency in conjunction with the Seismic Safety Policy Council and board members advising the agency has changed the seismic zones in western Oregon. - The goal at the agency is the safety of the occupants of a building, resulting in the development of codes for structures that would allow the occupants time to exit or survive an earthquake. - Notes the cost increases and types of changes required for construction of new buildings to the revised standard. 130 - Reviews the necessary steps in making changes

to the building code. - Notes the effective dates of the change to seismic zone 3.

WALT FRIDAY: Notes when the decision was first considered to change the seismic zone in western Oregon. - Reviews related history.

WICKS: These code changes have been in process for the past two years.
- Code changes are a difficult and time-consuming process. - Notes the advantage of Oregon's having a statewide building code.
229 - References SB 96 (1991) which established the Seismic Safety Policy Committee. - The agency is presently developing rules relative to essential facilities based upon site information. - Notes the importance of building construction based on site information.

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- References SB 309 (1991) which delegated BCA the authority to investigate earthquake damage to buildings and require specific changes.
- Unreinforced masonry buildings are those most likely to have significant problems in an earthquake. - Upgrading of existing buildings is not presently required by law, and would be a contentious and expensive proposition as demonstrated in California. - Notes report containing recommendations on inventorying buildings which can be obtained from Roger McGarrigle.

332 ROGER MCGARRIGLE: Offers testimony on new information ensuing from the recent earthquake. - Relatively new buildings have been built to withstand earthquakes greater than the one just experienced. 370 - Notes what he learned in his inspection of Molalla High School and recommends all schools be inspected on a prioritized basis. - Lists approximate costs associated with minor preventive repairs to schools.

TAPE 95 SIDE B

020 RAY WELDON: Offers testimony and suggests the committee write the national panel requesting an evaluation of earthquake hazard in Oregon. - References public service insert on earthquakes provided by San Francisco Bay Area newspapers. - Notes maps outlining earthquake hazard probability exist. - A regional study needs to be made of Oregon.

068 CHAIR CEASE: Closes the informational meeting on earthquake preparedness. - Adjourns the meeting at 1 1:00 a.m.

Transcribed by: Peter Green Assistant
Reviewed by: Pamella Andersen
Administrator

EXHIBIT LOG:

A Information Packet- Committee Staff - 17 pages B Oregon Tilth's Certified Organic Program's Policy on Drift - Doug Roberts - 7 pages

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C Testimony on SB 116 - Larry Trosi - 2 pages D Testimony on SB
116 - Liz Frenkel - 2 pages E Oregon Emergency Management Summary
Report - Earthquake Affects and Response- John Bolieau - 7 pages
F DOGAMI Earthquake Hazards Briefing - Donald Hull - 54 pages
G Oregon State Capito/ Structural Upgrade Costs - Sue Wilson - 1 page
H Seismic Zone Map of Oregon - Gary Wicks - 1 page I Metro's
Regional Emergency Management Program - Michael Gates - 59 pages
J Testimony on Earthquake Response - Tom Lulay - 6 pages KSeismic
Evaluation of the State Capitol: Results and Recommendations - Bill
Leach- 210 pages

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