

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

SENATE COMMITTEE ON
WATER POLICY

March 14, 1991Hearing Room B
3:15 p.m. Tapes 32 - 33

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Bob Kintigh
Sen. Eugene Timms
Sen. Dick Springer

MEMBER EXCUSED: Sen. Wayne Fawbush

STAFF PRESENT: Lisa Zavala, Committee Administrator
Bernadette Williams, Committee Assistant

MEASURES CONSIDERED:

SB 201 -- Adds obligation to seller of real property to give purchaser notice of certificate of water right if available -- Work Session
SB 325 -- Requires builder to file water availability form with Water Resources Department -- Work Session
SB 326 -- Requires Water Resources Department to review comprehensive plans to determine whether plans adequately address water availability -- Work Session
SB 327 -- Requires installation of water meters by January 1, 1996, to measure use of water supplied by municipal water service supplier -- Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words.
For complete contents of the proceedings, please refer to the tapes.

TAPE 32, SIDE A

007 CHAIR L. HILL: Calls the meeting to order at 3:18 p.m.

SENATE BILL 201 -- WORK SESSION

Witnesses:Bill Young, Water Resources Department
Bev Hayes, Director, Water Resources Department

CHAIR L. HILL: Opens the Work Session.

-He describes SB 201-5, Proposed Amendments, dated 3/13/91 (EXHIBIT A), which deal with the issue of requiring notification upon conveyance of real property.

(EXHIBIT B) -- Hand-engrossed SB 201-5.

025 BILL YOUNG, Water Resources Department: One reason for the bill was to deal with the deadline for completing this one time verification of water rights.

-If that is left unaddressed, we can not meet the statutory deadline.

-We need to revisit this issue at a later date.

-Another question is whether it is appropriate to provide any kind of waivers for public entities for reporting?

-We are concerned with the non-consumptive and non-diverting uses.

043 CHAIR L. HILL: If we can simplify the concepts and deal with them separately we stand a better chance to reach consensus.

-Is this bill suitable, since it accomplishes part of your original intent?

YOUNG: We are interested in the opportunity to update our records once they are brought to some current status.

051 BEV HAYES, Director, Water Resources Department: You adopted some amendments at the request of the Water Resources Congress that amended the current law.

CHAIR L. HILL: Those amendments are Hand-engrossed SB 201-1 (EXHIBIT C).

-These amendments replaced the existing language of section 2 with new language labeled section 5. That was preferred language of the Water Resources Congress. No one has come forward to disclaim it.

-We have the option of going back to the original language or of retaining this amendment.

074 HAYES: We agreed to those amendments. We think they're less confusing if the House realizes we are amending existing law.

MOTION: CHAIR L. HILL: Moves to delete everything in SB 201-1, with the exception of section 5.

Hearing no objection the motion is adopted.

101 MOTION: SEN. SPRINGER: Moves SB 201 as amended to the floor with a do pass recommendation.

VOTE: The motion carries 4 to 0.

EXCUSED: SEN. FAWBUSH.

SENATE BILL 325 & SENATE BILL 326 -- WORK SESSION

Witnesses: Greg Wolf, Assistant Director, Department of Land Conservation and Development
Bob Rindy, Department of Land Conservation and Development
Bill Young, Water Resources Department
Tom O'Connor, League of Oregon Cities
Marjo Nelson, Property Owner

CHAIR L. HILL: Opens the Work Session on SB 325 and SB 326.

115 GREG WOLF, Assistant Director, Department of Land Conservation and Development:
Presents testimony in support of SB 325 and SB 326 (EXHIBIT D).

-We have a new periodic review process being considered by the House Committee on Environment and Energy, which will help us focus on the important issues like water planning.

197 CHAIR L. HILL: Refers to the Fiscal Impact Statements (EXHIBITS E and F).

-LCDC under Goal 5 currently has the responsibility to see that plans include water.

WOLF: Correct.

CHAIR L. HILL: So far it hasn't been at the forefront of concern.

WOLF: That's probably correct. That hasn't been something that the counties have focused on at the periodic review stage.

-The Department of Water Resources has just completed their state agency coordination program and are planning a more aggressive intervention process in the local planning effort. They have recognized the value of periodic review.

-We're confident that periodic review will be used very effectively.

224 SEN. SPRINGER: How do these goals apply to special districts? What obligations are they under to comply with land use laws?

WOLF: There is specific legislation that calls for coordination agreements between counties and special districts. That is one part of the land use program that has not been carried out in any systematic way.

241 BOB RINDY, Department of Land Conservation and Development: The law requires special districts to adhere to local comprehensive plans.

-Local comprehensive plans do not often address some of the issues that would be most important to special districts.

-The special districts and the local governments haven't done a lot of working together in the planning process. We think periodic review can encourage better cooperation.

240 CHAIR L. HILL: Do you require any action by the Legislature to require that coordination has occurred during periodic review for a particular community or county plan?

WOLF: Believes the statutory framework is there.

CHAIR L. HILL: Could you say that water is one of the things that must be reviewed during the periodic review under the current statutes?

264 WOLF: It's one of the things that has to be reviewed as it relates to a change in circumstance or if new information has arisen as part of the periodic review process.

-There probably is a question about whether or not we can require those agreements to be entered into as a part of the periodic review.

-We believe we can require it. There might be some need of clarification or specificity in the statute.

278 RINDY: There is a clear requirement that special districts coordinate with counties and cities in planning.

-There is no requirement for a myriad of other water providers for that coordination.

CHAIR L. HILL: We will have to find a way to address the problem of inadequate planning for water use or issuance of building permits where there may not be adequate water to satisfy the domestic or commercial demands of that structure in a way that doesn't have a fiscal impact.

-It would be better if we used the existing statutes and procedures to do a better job.

305 SEN. SPRINGER: Doesn't know if the failure to communicate is the problem of the state or the jurisdiction that's granting the building permit.

-He doesn't know how to solve this problem at the local level.

315 WOLF: The new periodic review process will allow us to focus on those jurisdictions that have problems and not waste time on the ones that don't have water supply problems.

-This new process is more flexible and offers a fiscal advantage. This also gives the Water Resources Department more flexibility to focus their energy on those areas that have water problems.

339 SEN. SPRINGER: Some of our constituents are in trouble. They've built and now can't get water.

-He doesn't feel good about telling them we can't solve that problem.

CHAIR L. HILL: We could require individuals not within the boundaries of a water service district to obtain a water right prior to the issuance of a building permit.

-Does that sound reasonable? It would guarantee that they would have access to water.

361 WOLF: That's a good suggestion, but there is one problem in situations with limited groundwater capabilities or aquifer limitations. It can only be solved with a comprehensive view of the capability of that particular area. You would need the assistance of the Department of Water Resources in identification.

-Some of the problems in rural areas are a result of the cumulative effects of development as opposed to the permit by permit approach to the requirement.

375 SEN. KINTIGH: It's hard to believe you can build without water. The lending agencies require it to be checked before you can borrow any money. How does this happen?

WOLF: It is a cumulative effect on the aquifer--the demands on the water supply over time.

395 SEN. TIMMS: Are we talking about outside of an urban growth boundary?

WOLF: In the case of an aquifer it's generally the time that kind of problem would come up.

SEN. TIMMS: A city would insure a water supply.

403 WOLF: Describes a water supply problem that happened in Sisters.

-Small cities have problems with water rights.

RINDY: Urban growth boundaries don't guarantee that there will be water.

-Many jurisdictions require that water be available before building, but we continue to hear stories where it wasn't available.

442 SEN. TIMMS: Don't we have a procedure for homes that use well water outside of an urban growth boundary?

WOLF: The identification of some of these critical groundwater areas is not always well coordinated.

-We hope this legislation or a better enforcement of the system addresses this problem.

TAPE 33, SIDE A

015 SEN. TIMMS: It's amazing how these things keep happening with land use planning.

CHAIR L. HILL: Is your information in the GIS information system?

WOLF: No.

CHAIR L. HILL: It should be. So should the groundwater problems. That should be a goal.

021 RINDY: There were many cases where the land use planning process was able to fix water problems.

-In the late 1970's and early 1980's there wasn't communication and there was a lack of information to local governments where there were problems.

-We think the periodic review process could repair a lot of the problems that were overlooked.

030 CHAIR L. HILL: It doesn't address the case by case building permit problem.

-There may be development going on that may be consistent with the plan, but there is no water.

-These two bills attempt to deal with the case by case building permit problem and the planning process.

-We could require that permits outside of areas of water service districts or municipalities be conditioned upon water rights. We could then assume that there was available water for that particular activity.

-BILL, do you see a problem if we condition building permits upon a water right if that building is outside a water service area?

046 BILL YOUNG, Water Resources Department: That's a change in the law that we have talked about. Uses for single family residences are currently exempt from any approval.

-A majority of wells are for single family uses.

067 CHAIR L. HILL: Is there a water availability form like the one suggested in SB 325?

YOUNG: We do a water availability analysis on surface water applications. Our groundwater people do a review and forward to the permit section their observations of groundwater applications that are large enough that they have to apply for a permit.

-I don't know if we have a specific form like the one in SB 325.

-Some of that information required by the bill is not even available to us.

079 CHAIR L. HILL: Would a banker know or have reason to know whether a water right is available?

YOUNG: A banker might want to see the evidence that a well is constructed and that it produces so many gallons a minute.

-He doesn't know how prevalent that request for that kind of information is.

095 CHAIR L. HILL: We could back off and leave this as a buyer beware situation.

-The bills don't propose requiring water rights for domestic wells. That would increase your work load and would be controversial.

-He doesn't see the possibility of a significant new program.

106 SEN. KINTIGH: If a person used a cistern would they have to have water rights?

YOUNG: Is not aware if that issue has ever come up.

-Some people in central Oregon rely on cisterns filled out of irrigation ditches. This is being phased out.

-He will check on this.

115 SEN. KINTIGH: I can remember it being done.

CHAIR L. HILL: Is not sure how we can tackle this problem at this time. The problem may grow in the future and justify some changes.

135 WOLF: We should give the periodic review process a chance to work.

CHAIR L. HILL: Let's talk about SB 326.

-What role will the department play in the periodic review process?

143 YOUNG: The agency coordination programs describe how we go about reviewing plans and what we do if we find ourselves at points of controversy with local jurisdictions. The plan was approved by our commission last summer and by the LCDC in the fall.

-The plan is in place and we have devoted time to use that as the vehicle

that gets us in to better communication with jurisdictions where there are identified problems.

157 SEN. TIMMS: We need more people on the local level in your department to coordinate the effort and take care of these problems.

CHAIR L. HILL: Section 1 of SB 326 requires the Water Resources Department to review all comprehensive plans.

-We should follow your inclination to allow the periodic review process to work.

-Section 2 requires a local planning commission to disapprove a major development if it doesn't have an adequate water supply.

-This proposes that local jurisdictions take responsibility to verify that there is adequate water for a major new development.

-Do you see an advantage in doing this?

193 WOLF: The term "major development" is not defined and that will get us into trouble. We would prefer having this defined.

-We would like to do as much as we can in the up front land use plan to avoid having to make this finding.

-This should be worked out in the comprehensive work plan process.

CHAIR L. HILL: If the plan address the water issue it is already worked out.

-Do we know that the plans that are out there address the water issue?

211 RINDY: Generally, the plans have done a good job of identifying what kinds of water facilities will be needed for growth.

-Cities usually have an adequate mechanism in place to assure there will be adequate water for a major development.

-Major developments aren't usually allowed to occur outside of urban growth boundaries.

223 SEN. SPRINGER: Aren't there exceptions for destination resort development?

WOLF: That is correct. We haven't had a destination resort built that qualified under that provision.

SEN. SPRINGER: Mr. Chair, would you consider an amendment that would deal with building permits outside of city limits or urban growth boundaries?

CHAIR L. HILL: We should consider any amendment.

SEN. SPRINGER: If counties keep granting building permits we will keep getting into problems.

-It shouldn't be a problem if they have to certify that there is water.

251 WOLF: We have less assurance about the availability of water outside of urban growth boundaries.

SEN. SPRINGER: Would like amendments and a new fiscal statement to be drafted for SB 325.

CHAIR L. HILL: Summarizes sections 2 to 6, SB 326.

-Would like input on the roles of the Economic Development Commission, the cities, and the counties.

285 WOLF: We have a lot to gain with the comprehensive planning process.
-Would like to see how far we can get with the comprehensive, macro planning end.

-From our perspective the building permit stage is on the local government end. It's not appropriate for state agencies to get involved in regulation.

-We hope that by the time we get to the implementation stage the local government would make that finding as part of the approval of a development.

306 CHAIR L. HILL: We have the greatest concerns for those areas with critical water problems.

-Is the Department of Land Conservation and Development engaged in discussions with those jurisdictions to ensure that they are including the limitations of water in the implementations of their comprehensive plans?

-Short of periodic review, what are you doing to ensure that those planning entities are thoughtfully including water in their decisions?

333 RINDY: We are not dealing with those issues.

-Periodic review is our opportunity to interact with local jurisdictions. We have no authority to require jurisdictions amend their comprehensive plans or change their ordinances.

352 WOLF: Under periodic review we have two opportunities to change plans:

-1. We amended an administrative rule regarding public facility planning that requires cities over 2,500 to do detailed public facility plans that address key facilities.

Water is one of those.

-2. If there has been a significant change of circumstances--

373 CHAIR L. HILL: Would you consider a critical groundwater area being declared by Water Resources a change in circumstances?

WOLF: Yes. That's at the time of periodic review. We don't add a separate review process when the Water Resources Department makes that kind of declaration.

381 RINDY: Many jurisdictions fall out of there. There is either no change or they are not in an urban growth boundary.

CHAIR L. HILL: Currently, in areas of critical groundwater there is building going on and the people are having to dig deeper and deeper wells.

WOLF: That scenario is possible from the land use planning perspective.

404 CHAIR L. HILL: BILL, in a critical groundwater area do you have any additional authority for residential or business wells?

YOUNG: Since the last session it would be possible for the commission to limit the ability to develop water in those critical areas. He thinks that could extend to the development of domestic wells. Our practice is to allow those limited uses of water and to focus on the large production wells.

-He doesn't suspect there is any area we've limited development.

-In the Cooper-Bull Mountain area in Washington County there is a limitation on lot size where a well could be dug. This is regulated at the local level.

CHAIR L. HILL: Is the idea to limit the size of the lawn and garden--to limit utilization?

449 YOUNG: Part of the rationale was to ensure a certain amount of spacing. In certain areas of Washington County a person may not get a building permit on a lot smaller than 10 acres.

TAPE 32, SIDE B

014 YOUNG: The critical groundwater there has been in place since 1972 or 1973.

CHAIR L. HILL: How many critical groundwater areas have we adopted and how many are in the process of being adopted?

YOUNG: Explains.

044 TOM O'CONNOR, League of Oregon Cities: The Land Conservation and

Development

Department has covered the situation well.

-It is in our interests to insure that there is an adequate water supply to serve the areas we have planned for in our comprehensive plans.

-That's not only a requirement of the process, it is in our own best interests.

CHAIR L. HILL: How many cities have looked at water availability and have looked at water as a limited resource?

O'CONNOR: Cities with public facilities plans have looked at their water supply situation as they know it. They have that pretty well in place.

-Even cities that don't have public facility plans are looking at their future water supply.

-What we don't have is the sharing of information and coordination of what that supply looks like in a macro sense.

-What the cities and Water Resources Department may not know is the cumulative effect in the basins and how all the uses interrelate and how that relates to the water supply.

-We should have the plans. There are many plans out there.

-He describes the kinds of plans they have.

-As part of basin plans Water Resources can and has the ability to declare certain areas out of bounds, to take a series of steps like they are doing in the Willamette Basin.

-In addition Water Resources has gone through this state-wide policy process and adopted the policy that they will be requiring water management/conservation plans of water providers.

-In addition they have stated that when a city comes in for an extension of its permit--where they're banking water for future growth--Water Resources has conditioned the extension of that permit on the development of a plan.

-He hopes these tools and plans become meshed as best as they can.

122 CHAIR L. HILL: If plans are reviewed and improvements in the plans need to be made, can improvements be made short of having a completed basin plan, because not all basins will be complete in the near future?

O'CONNOR: If a city is going through the periodic review process, the Water Resources

Department would have the data on the grosser water availability picture and how that local comprehensive plan fits into that. Supposedly they would have the technical assistance where the city stands in terms of first in time, instream water rights--

139 CHAIR L. HILL: They need to be verified for that?

O'CONNOR: That's part of the process.

-The whole idea of periodic review is that we submit a plan. They are there to review it.

CHAIR L. HILL: In order to have effective planning within the land use process, the cities need technical assistance and information. The basin plans, updated water rights, knowledge of groundwater conditions would all be very helpful.

-We are a long ways from completing these things in most of the state.

-The under-funding of the Water Resources Department has been a problem. The department's way behind in a lot of its work.

-How can we fund periodic review? How can local jurisdictions meet their obligations to plan for water use when this information is not available?

168 O'CONNOR: There is information out there. My understanding is that the Water Resources Department has good data for us to base the plan on.

-Periodic review is the place to do that.

CHAIR L. HILL: Lack of a basin plan or completion of verification of water rights wouldn't stop a city from including plans for water in its jurisdictions?

188 O'CONNOR: You can put together the best plan with the available information.

CHAIR L. HILL: Is there any indication that cities would defer doing that until verification, basin plans, etc. have been accomplished?

O'CONNOR: We know the money is not out there.

-Before Measure 5 the League of Oregon Cities supported development of water management and conservation plans.

-We will do the best we can.

213 CHAIR L. HILL: Maybe the shortage of resources makes the planning even more important.

224 O'CONNOR: There is no consensus where we should spend our public dollars.

240 MARJO NELSON, Property Owner: Supported having some type of water availability at the county level.

-She presents testimony (EXHIBIT G).

-Banks are requiring builders to show there is a flow of 10 gallons. The banks don't ask other pertinent questions.

-To us water availability means does the aquifer produce enough water to sustain the building going on?

-In my community the wells are impacting each other.

268 CHAIR L. HILL: According to previous testimony the local plan is supposed to address water issues. They'll be reviewing the plans to see how well the water issues are addressed.

NELSON: Supports that. That will help.

-Secondary lands will put more pressure on rural areas for water availability.

-Domestic wells are still being drilled.

285 CHAIR L. HILL: It's unregulated.

NELSON: Domestic wells are a large factor in areas where there is not much water.

291 CHAIR L. HILL: It's my understanding a local jurisdiction could restrict the drilling of wells.

NELSON: Polk County requires water associations that supply drinking water to submit a two-year plan to show how they will meet the needs.

-The counties could be doing this. They need to do more research to see where their problem areas are.

CHAIR L. HILL: They're supposed to be under the land use laws.

-If we wait until periodic review they may say how their dealing with it, but it doesn't mean they're dealing with it now.

-The fiscal impact probably will kill these bills.

320 NELSON: The constituency does not understand water. They have to become aware before they can become involved in the process.

-By the time we get everyone involved in water it may be too late.

331 CHAIR L. HILL: How will you solve the problem in your area?

NELSON: The county helped. We went to the Water Resources Department, but almost had to go through a contested hearing on the case. The department has conditioned that well and the basin plan will overlay that. We are holding our breath in terms of the domestic wells.

CHAIR L. HILL: The county has not banned any domestic wells?

NELSON: No.

CHAIR L. HILL: Have you asked the county to take action?

NELSON: They are closely monitoring what's going on and may reach that point.

349 SEN. TIMMS: What is your minimum lot size?

NELSON: We are on five acres. Normal lots run about five acres.

SEN. TIMMS: Where the five acres plotted before LCDC?

NELSON: The minimum is 80 acres in my EFU zone. Some in my area are five, because that's the way they originally were. There is no EFU zone in the hills.

372 CHAIR L. HILL: Closes the Work Session.

SENATE BILL 327 -- WORK SESSION

Witnesses: Bill Young, Water Resources Department
Doug Parrow, Conservation Program Manager, Water Resources Department

CHAIR L. HILL: Opens the Work Session.

-We have amendments (EXHIBIT H) that are a move in the right direction. They address some of the concerns that were raised in the original bill.

-The amendments attempt to focus on areas that have water problems and require metering.

-This has a fiscal impact (EXHIBIT I). There are ways to eliminate the impact.

-He summarizes the amendments.

-BILL, what do you think of the terms, "critical" or "non-critical" water areas?

434 BILL YOUNG, Water Resources Department: Isn't sure we have a perfect answer.

-We would not focus our attention on the notion of a "critical area," but on a "critical supply."

-We'd be happy to work on appropriate language.

-He is confident the commission, through rulemaking, could characterize those fragile

circumstances.

-The water service supplier language seems to suggest that this would be limited to cities.

-Do we intend to include water suppliers inside or outside of municipalities?

TAPE 33, SIDE B

019 CHAIR L. HILL: This language was an attempt to address MR. VANNATTA's concerns that we not require individual meters on every unit in campgrounds, apartments, etc.

-We're talking about service delivery areas in excess of small systems.

YOUNG: The Health Division has a number of different categories which might be helpful in constructing a definition.

027 CHAIR L. HILL: We'll check with them.

-We're after a means to achieve conservation and efficiency and eliminate waste.

YOUNG: At the previous hearing you posed two questions that are still appropriate.

-1. Whether we had any observations on inverted rate structures to prompt water conservation?

-We would like communities and water suppliers to look at rate structures. We would not approach that with an absolute conclusion, but they are worth a look.

-Water has long been an undervalued resource.

-At the local level there may be reasons why that kind of inverted rate would be difficult to put into place.

-2. Would our water development loan program reach the communities that needed some help with putting in a metering system?

-Yes. It could be and is designed to be self-funding. We can reach communities of less than 30,000. Our current budget carries \$15 million for bonding capacity.

071 CHAIR L. HILL: Does the program require metering as a requirement of a loan?

YOUNG: Yes. The Economic Development Department requires metering as they've given loans.

CHAIR L. HILL: Is that requirement in rule?

YOUNG: Believes it is.

087 CHAIR L. HILL: Are there any cases in which an un-metered city was not required to meter?

YOUNG: Would have to check.

091 CHAIR L. HILL: Discussed with SEN. FAWBUSH the possibility of conditioning loans upon installation of meters as part of their rehabilitation project.

105 DOUG PARROW, Conservation Program Manager, Water Resources Department:
The Economic Development Department has provisions for metering for their program. He is not sure if they are guidelines or rules.

-He does not know what our department has in their rules.

CHAIR L. HILL: Please check. If it was in rule it would get at this problem without a separate statute.

-The Health Department budget has \$1.2 billion in sewerage bonds to assist communities in their out of date, over capacity treatment plants.

-We should see if there is a condition to require metering to control the volume of waste water.

YOUNG: That's probably a DEQ bonding capability. He doesn't know what requirements they have.

CHAIR L. HILL: That might be a different way to get at this.

-If we adopt a version of this bill we would want to eliminate the fiscal impact.

-The -1 amendments would do that.

-We could also eliminate metering in an area that is not rebuilding their sewerage treatment plant or their delivery system and do not have supply problems.

-He closes the Work Session.

-He adjourns at 5:00 p.m.

Submitted by, Reviewed by,

Edward C. Klein, Lisa Zavala,
Committee Assistant Committee Administrator

EXHIBIT LOG:

A - Amendments to SB 201 - Sen. L. Hill - 1 page

B - Hand-Engrossed SB 201-5 - Staff - 2 pages
C - Hand-Engrossed SB 201-1 - Staff - 3 pages
D-Testimony on SB 325 and SB 326 - Greg Wolf
E-Fiscal Analysis of SB 325 - Staff - 2 pages
F-Fiscal Analysis of SB 326 - Staff - 2 pages
G-Testimony on SB 320 - Marjo Nelson - 6 pages
H-Amendments to SB 327 - Staff - 3 pages
I-Fiscal Analysis of SB 327 - Staff - 1 page