Testimony in favor of Senate Bill 465, by Jim Tierney

As you may know from the coverage of the hurricane on the East Coast this year, FEMA absorbs nearly 2/3 of flood insurance losses paid out every year. Since the late 1980s FEMA has had a strategy to mitigate this loss that includes a requirement that local government adopt FEMA's model floodplain development ordinance as a quid pro quo allowing homeowners and businesses in that community to purchase the subsidized flood insurance.

In a nutshell, FEMA uses Flood Insurance Rate Maps produced by the Corps of Engineers to identify areas where the risk of flooding exceeds 1% in any given year. This is the 100-year floodplain you may have heard about. To avoid a taking by local government, FEMA's model ordinance does not limit development in the 100-year floodplain, but rather requires that any construction in the floodplain elevate susceptible building components above this Base Flood Elevation.

Many structures in Oregon do not comply with these ordinances. Some don't comply because they predate the Flood Insurance Rate Maps. In some cases, the community has raised the estimated flood level based on new information or there was lax local enforcement at the time the property was built.

A key component of the FEMA model flood development ordinance is that anytime any one of these noncompliant structures suffered damages in excess of 50% of the value of the structure, known as "substantial damage," the owner is required to elevate the structure to meet the flood insurance code. This requirement essentially piggybacks on a similar requirement included in most community building codes. These building codes require that any "substantial improvement," usually 50% of the value structure, triggers complete compliance to new codes.

As you are no doubt gathering, the FEMA ordinances put the onus for compliance squarely on the shoulders of local government. It is the city or county which must assure that noncompliant properties are either elevated or destroyed. Failure to do so will eventually result in the community being withdrawn from flood insurance eligibility.

In Vernonia, where I live, the 2007 flooding "substantially damaged" approximately 240 homes. I was personally deeply involved in the city's flood recovery effort including its enforcement efforts. The great majority of substantially damaged homes were brought into compliance by the homeowners with virtually no encouragement or enforcement on the part of the city. We did have nearly a dozen troublesome properties where compliance with city ordinances is still not assured.

Some properties were sold by unscrupulous owners to buyers ignorant of the elevation requirements. Other properties were foreclosed upon and resold by the bank. Buyers are frequently expected to rely on state-required defect disclosures from sellers at the time of sale. Although a useful tool, these disclosures are very little help for homeowners seeking compensation from a judgment-proof seller, or one that has moved out of state. Further, state law does not require disclosure of defects when a lender sells a property to a new purchaser. In both of these situations seemingly innocent purchasers have found themselves in circumstances where they are required to spend $50-100,000 to elevate their homes, through no apparent fault of their own. The intent of this bill is to allow cities and counties to record a notice of substantial damage with the County recorder. In this way the notice of substantial damage will show up in the title reports obtained by any responsible purchaser.