



SB 912 – HISTORICALLY FILLED LANDS

Before the Senate Judiciary Committee

Testimony of Martha O. Pagel

Thank you for the opportunity to provide this testimony in support of SB 912, relating to “historically filled lands” along Oregon’s waterways.

I have been involved with this complex land ownership issue in various roles for more than 30 years: First, as legal counsel for the Department of State Lands (“DSL”) when I was an Assistant Attorney General with the Oregon Department of Justice in the early 1980s, later as Director of DSL in the late 1980s to early 90s, and for the past 15 years, as an attorney in private practice representing numerous waterfront landowners in efforts to resolve ownership disputes with DSL. In 2013, I appeared before this committee to offer testimony on the issue – and to urge the formation of an interim work group. SB 912 is a direct result of that interim process.

I am proud to have served as a member of the Filled Lands Advisory Group (“FLAG”) which developed the concepts reflected in SB 912, and I urge your support for the measure. A detailed report describes the nature of the FLAG process and the complex issues we attempted to address, along with consensus recommendations of the diverse group. SB 912 implements part of the package of recommendations included in the FLAG report. Other recommendations would be implemented through DSL rulemaking, as outlined in the report.

What the Bill Does

- Provides a definition of “historically filled lands.”
- Repeals confusing and outdated statutes relating to “formerly submerged and submersible lands.”
- Establishes a new statutory framework for developing a comprehensive inventory of historically filled lands, with requirements for public notice and an opportunity to participate in the inventory process.

The proposed legislation is not a silver bullet, and it will not bring an end to all legal disputes relating to the ownership of historically filled lands. But the bill offers a significant step forward. The inventory process required under the bill will, for the first time, provide both the

state and private landowners a clear list of affected properties. This half the battle. Once the inventory is developed, DSL will move forward with timely and deliberate efforts to resolve ownership disputes. Under the rulemaking recommendations contained in the FLAG report, landowners will have the option to participate in a simplified process for clearing title to disputed lands valued at \$100,000 or less. For higher value properties, landowners will at least have notice of the DSL claims, and can pursue negotiations with DSL to quiet title. In call cases, landowners will retain the option to challenge DSL's ownership assertions and findings through litigation.

Conclusion

The FLAG process provided a forum for informed, thoughtful and collaborative evaluation of the complex legal and fairness questions associated with ownership of historically filled lands. The effort resulted in a set of specific recommendations for legislation and rulemaking to help clarify the issues, identify the universe of affected lands throughout the state, and offer a simplified and less costly process for clearing title in many cases. I urge your support for the measure to create the foundation for further agency rulemaking to implement the FLAG recommendations.

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