

HOUSE COMMITTEE ON
BUSINESS, LABOR, AND CONSUMER AFFAIRS

February 18, 2005 Hearing Room B

9:00 A.M. Tapes 32 - 33

Corrected 09/27/05

MEMBERS PRESENT: **Rep. Alan Brown, Chair**

Rep. Sal Esquivel, Vice-Chair

Rep. Mike Schaufler, Vice-Chair

Rep. George Gilman

Rep. Paul Holvey

Rep. Derrick Kitts

Rep. Chip Shields

STAFF PRESENT: **Janet Adkins, Committee Administrator**

Katie Howard, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2216 – Work Session

HB 2219 – Work Session

HB 2363 – Public Hearing

Introduction of Committee Bill – 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 32, A		
004	Chair Brown	Calls the meeting to order at 9:04 a.m. and opens the work session on HB 2116.
<u>HB 2216 – WORK SESSION</u>		
007	Janet Adkins	Committee Administrator. Explains HB 2216 and explains the -3 amendments (EXHIBIT A). Says that the -3 amendments eliminate the need for HB 2217.
039	Don Miner	Oregon Manufactured Housing Association. Speaks in support of HB 2216 and the -3 amendments. Notes that the main concern was with the definition of park and believes that it has been taken care of in -3 amendments. Says that the timing of the delivery works.
051	Marilyn Odell	Assistant Attorney General, Department of Justice. Says that the -3 amendments do address the concerns of the committee. Clarifies when a licensed construction contractor needs to be used and when the estimate needs to be made. Speaks in support of HB 2216 with the -3 amendments.
062	Jon Brenneman	Manufactured Housing Communities of Oregon. Speaks in support of HB 2216 and the -3 amendments.
070	Rep. Kitts	MOTION: Moves to ADOPT HB 2216-3 amendments dated 02/17/05.
		VOTE: 6-0-1
		EXCUSED: 1 – Schaufler
	Chair Brown	Hearing no objection, declares the motion CARRIED.
076	Rep. Kitts	MOTION: Moves HB 2216 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 – Schaufler

(NOTE: See tape 32B at 230, page 7 of these minutes for Rep. Schaufler's vote.)

Chair Brown The motion CARRIES.

REP. KITTS will lead discussion on the floor.

085 Chair Brown Closes the work session on HB 2216 and opens the work session on HB 2219.

HB 2219 – WORK SESSION

089 Janet Adkins Committee Administrator. Explains HB 2219. States that the bill was held over to keep it with HB 2216.

125 Rep. Kitts **MOTION: Moves HB 2219 to the floor with a DO PASS recommendation.**

VOTE: 6-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 – Schaufler

(NOTE: See tape 32B at 230, page 7 of these minutes for Rep. Schaufler's vote.)

Chair Brown The motion CARRIES.

132 Rep. Kitts **MOTION: Moves HB 2219 be placed on the CONSENT CALENDAR.**

VOTE: 6-0-1

EXCUSED: 1 – Schaufler

(NOTE: See tape 32B at 230, page 7 of these minutes for Rep. Schaufler's vote.)

Chair Brown Hearing no objection, declares the motion CARRIED.

137 Chair Brown Closes the work session on HB 2219 and opens the public hearing on HB 2363.

HB 2363 – PUBLIC HEARING

140 Janet Adkins Committee Administrator. Explains HB 2363. Submits written testimony of Dee Berman, Crook County Clerk, in opposition to HB 2363 (**EXHIBIT H**).

163 Jack Monroe Oregon Land and Title Association. Introduces Cleve Abbey and Craig Chisholm. Submits written testimony in support of HB 2363 (**EXHIBIT B**).

172 Cleve Abbe Chair, Oregon Land Title Association. Expresses pride in the Oregon Statutes dealing with titling and real property law. Says that HB 2363 corrects the change that did not work when the statute was changed during the 2001 Oregon Legislature.

204 Abbe Explains that the county clerks handle the real property documents and indexes them. Says that the door for recordings needs to be held open because the public is the one that is causing the compilation of documents. Summarizes written testimony (**EXHIBIT B**). States that in statute it makes clear that the documents that are filed and should not have been do not create liability on the part of county clerks. Discusses the unintended consequence of 1999 legislation that started the screening documents by county clerks.

258 Abbe Notes that county clerks started screening documents in conjunction with the Oregon Uniform Recording Standards (OURS). States that some of the procedures in the OURS do not follow state and federal law. Says that HB 2363 would allow the documents that title companies and the real estate professionals submit to be recorded by County Clerks.

307 Abbe Says that HB 2363 is a second attempt to meet the needs of license parties who deal with real property documents.

320 Rep. Schaufler Mentions a waiver of remonstrance and asks if a developer needs to get the waiver from the neighbors and if it can be recorded.

334 Abbe Says that the recording of the waiver is exactly what they are talking about. States that from 1999 to 2001 some counties would not record

those documents, because the title of the document did not appear in statutes.

- 343 Rep. Schaufler Asks about the questions of fixing of labels.
- 345 Abbe Says that there are formatting requirements and if you do not record them in a standard way then you have to pay more. Explains that if HB 2363 is put in place it would make it easier in the future for the electronic submission of titles. Says that the bill will strengthen the trust between the county clerks and title companies
- 391 Chair Brown Asks if the four groups of people listed in HB 2363 are the people who can bring the documents to the county clerks' offices to be recorded.
- 392 Abbe States that Chair Brown is correct.
- 397 Rep. Esquivel Asks if they worked with the County Clerks Association
- 399 Abbe Says that they have worked with the county clerks since 1999. Explains that for HB 2363 they did not have a workgroup with the county clerks.
- 422 Rep. Esquivel Asks if HB 2363 is on behalf of the title industry and if this was only submitted by the title industry.
- 425 Abbe Says that it is on the behalf of the title industry.

TAPE 33, A

- 001 Rep. Esquivel Asks if Mr. Abbe knows that the county clerks are adamantly against HB 2363.
- 004 Abbe Responds that he does not know what the position of the country clerks is on HB 2363.
- 009 Adkins Asks how the process is different in those counties that have not accepted the OURS and if they have an issue with the counties that have not accepted the OURS.

- 012 Abbe Says that they do not have a problem with the counties that have not adopted OURS. Shares that not many problems exist with the documents being recorded. Asserts that the problem exists with the odd documents that show up occasionally.
- 027 Craig Chisholm Oregon Land and Title Association. Speaks in support of HB 2363. Mentions that he is on the Real Estate and Land Use Legislative Committee for the Oregon State Bar and says that the committee is recommending it to the Executive Committee for the Real Estate and Land Use Section.
- 035 Abbe Says that Land Use Section of the Bar has asked for the inclusion of out of state attorneys and would like to see the portion of HB 2363 that mentions lawyers be restricted to only Oregon lawyers.
- 041 Chisholm Adds that his committee would recommend approval either way.
- 044 Rep. Holvey Asks if as a citizen he could currently record one of the instruments that is being talked about.
- 047 Abbe Indicates that he can only if the title is on the list of approved titles and if it is not, then a citizen would have the same problems that the title industry is having.
- 049 Rep. Holvey Asks if the bill allows a person who is not listed in HB 2363 to submit one of the “odd” documents to the county clerk’s office.
- 051 Abbe Says that if the title is on the list then a citizen would be able to record it. Explains that the bill is a safety valve to ensure that titles are recorded properly.
- 056 Chisholm Says that the bill is made for the exceptional case and it is not for the ordinary situations for the title company or the attorney.
- 058 Rep. Holvey Says that he is concerned that as a private citizen he would not be able to record some of the odd title cases that are being discussed.
- 065 Abbe Explains that the clerk would say that it is not on their list and a private citizen would have to justify it to the county clerk.
- 072 Rep. Schaufler Asks if a regular citizen encounters the problem and the people on the list will no longer encounter the problem.

076	Abbe	Affirms that if one of the people listed in HB 2363 will encounter the problem.
079	Rep. Schaufler	Reiterates question and talks about a specific example.
083	Abbe	States that Rep. Schaufler is correct. Says that they believe that people should be able to submit the same documents as those professionals listed in HB 2363 but OURS prevents this from occurring.
090	Rep. Schaufler	Asks if currently no one can submit all real property documents.
091	Abbe	Says that this is the case in counties that have adopted OURS.
092	Rep. Schaufler	Asks for a real life situation or example.
094	Abbe	Mentions the improvement deed situation and explains what happened.
105	James Morales	Benton County Clerk and Oregon Association of County Clerks. Submits and summarizes written testimony in opposition to HB 2363 (EXHIBIT C) . Details how HB 2363 conflicts with current Oregon statutes.
142	Morales	Notes that the bill does not indicate how county clerks will verify that the persons who are exempt in the bill are whom they say they are. Believes that HB 2363 is redundant in terms of attaching titles to documents. Highlights that the fees are waived for some groups. Says that HB 2363 could create problems for citizens in court, because the incorrect records could be filed.
185	Jan Coleman	County Clerk, Yamhill County. Submits informational packet including written testimony in opposition to HB 2363 and letter from the Department of Justice (EXHIBIT D) . Reads ORS 87.920. Says that OURS is not the absolute standards that the county uses. Emphasizes that OURS are guidelines and that they use other statutory references as well.
220	Coleman	Explains the process that occurs when county clerks cannot find statutory reference for the documents being submitted. Mentions common law recordings and how they affect titles and references the DOJ letter (EXHIBIT D, Page 2-11) .

- 252 Rep. Schaufler Asks for a definition of the source of title.
- 255 Coleman Says that it is what title companies work from. Explains that title companies use all the pieces of information that are recorded for specific pieces of property to gather information. Discusses how the title companies give assurances to buyers and owners that the property is in fact their property
- 273 Rep. Schaufler Asks if the title company comes to the county clerk's office and records the assurance with the office.
- 277 Coleman Says that the county clerks record whatever documents are brought to the office. Adds that the extra page without charge gives them an unfunded mandate, because the page does go on the record.
- 283 Phil Miles Chief Deputy Clerk, Marion County. Submits written testimony in opposition to HB 2363 (**EXHIBIT E**). Talks about the history of OURS. Says that OURS are guidelines for the county clerks. Notes that they do not reject documents just because it is not in OURS. Explains that the guidelines are applied differently in each county.
- 335 Miles States that HB 2363 reflects the ideological difference between those that believe county clerks should act as "limited gatekeepers" and those that want the county clerks to record everything. Mentions instances of fraud in the arena of real property documents and titles.
- 358 Rep. Schaufler Asks if any of the criminals committing fraud are exempted in HB 2363.
- 363 Miles Says that some lawyers were trying to commit fraud.
- 369 Rep. Schaufler Asks whether HB 2363 is restricting the process of filing real property documents or leaving it open.
- 394 Miles Says it is restricting the group who can record virtually any document they want to with their county clerk. Mentions that this group has a monetary interest to see these documents be recorded. Mentions the documents that people try to record that do not have a legal basis (**EXHIBIT E, Page 1**).

001	Miles	Talks about affidavits.
012	Rep. Shields	Asks what recourse people have when their documents are rejected by the county clerk's office.
019	Miles	Says that it goes to the manager for review and then it can go to the county counsel. Discloses that the problems that occur generally do not have anything to do with title documents. Comments that problems usually are solved through the clarification of the submission process. Talks about inconsistencies in documents that are trying to be filed. Says that incorrect documents in the record can cost the consumer thousands of dollars in the future when questions about the title arises.
036	Rep. Shields	Asks what happens when the disagreement continues and asks how long it takes to be resolved.
041	Miles	Says that usually problems are taken care of during the initial visit and occasionally they have to refuse documents unless it is put into another form.
046	Morales	Says that when there is a document where they cannot find a statute that details why the document needs to be recorded, the county clerks office sends it to county counsel. Conveys that most parties pursue the issue and the party submits information detailing where the statute calls for the document to be recorded. Asserts that HB 2363 creates problems because it allows documents to be recorded that are not in line with Oregon Statutes.
064	Rep. Schaufler	Asks if county clerks can still require the cover sheet if HB 2363 passes.
072	Morales	Says that the statute already allows for the cover sheet and it is already covered in statute.
075	Rep. Schaufler	Reiterates question.
076	Morales	Says that HB 2363 goes beyond the current statute and requires that documents have to be recorded whether there is statutory requirement or not.
083	Rep. Schaufler	Asks about a citizen's right to get clear title.

086	Morales	Says that, when the title agreement is issued, the title to the property is clear.
093	Rep. Schaufler	States that his understanding of the title agreement is that you can only get back the amount of money that was paid for the title not the amount of money you paid for the property.
095	Morales	Believes that it depends on the amount of the policy.
097	Rep. Esquivel	Says the policy is issued for the amount of money that was paid for the property. Explains that when he ran a title company, they research what liens, easement, and other actions were levied against the property. Says the title companies guarantee that the title is free of encumbrances.
108	Rep. Schaufler	Asks if some consumers can only get back the price of the search not the price of the money of the house.
111	Rep. Esquivel	Believes that they should be able to get back the price of the house but concedes that if a house was bought a long time ago it may be the case that they only get back the amount of the search.
125	Tim Martinez	Oregon Bankers Association. Submits suggested amendment to HB 2363 (EXHIBIT D). Speaks in support of HB 2363 and suggested amendment. Says that they have worked closely with the Land Title Association and County Clerks Association. States that banks become frustrated when all the papers do not seem to be in order and there is a deadline for closure. Wants documents that are rejected to be valid. Says style issues cause the most problems with the county clerks' offices.
165	Chair Brown	States that the proposed amendment is only to add financial institutions to the list of those who HB 2363 would apply to.
166	Martinez	Affirms that the statement is correct.
167	Bill Cross	Building Owners and Managers Association. States that commercial real estate brokers would like to be involved in the process.
189	Rep. Esquivel	Submits and reads the emails of Kathleen Beckett, Jackson County Clerk and Georgette Brown, Josephine County Clerk in opposition to HB 2363 (EXHIBITS F and G).

- 217 Chair Brown Closes the public hearing on HB 2363 and asks Rep. Esquivel to form a workgroup on HB 2363.
- 223 Rep. Esquivel States that he will form a workgroup.
- 224 Chair Brown Opens the work session on HB 2216 and HB 2219 for the purpose of allowing Rep. Schaufler to vote.

HB 2216 AND HB 2219 – WORK SESSION

- 226 Rep. Shields **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. SCHAUFLE to BE RECORDED as voting AYE on the motion to move HB 2216 to the floor with a DO PASS AS AMENDED recommendation and move HB 2219 to the floor with a DO PASS recommendation and be placed on the CONSENT CALENDAR.**

VOTE: 7-0-0

- 230 Chair Brown **Hearing no objection, declares the motion CARRIED.**

- 232 **VOTE: 7-0-0**

(NOTE: See tape 32A at 076 page 2 of these minutes for the original vote on HB 2216)

- Chair Brown **Hearing no objection, declares the motion CARRIED.**

REP. KITTS will lead discussion on the floor.

- 234 **VOTE: 7-0-0**

(NOTE: See tape 32A at 125 page 2 of these minutes for the original vote on HB 2219)

- Chair Brown **Hearing no objection, declares the motion CARRIED.**

- 240 Chair Brown Closes the work session on HB 2216 and HB 2219. Opens the work session on the Introduction of Committee Bills.

INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION

245 Janet Adkins Committee Administrator. Submits LC 1779 (**EXHIBIT I**).

253 Rep. Shields **MOTION: Moves LC 1779 BE INTRODUCED as a committee bill.**

VOTE: 6-0-1

EXCUSED: 1 – Kitts

Chair Brown Hearing no objection, declares the motion CARRIED.

260 Chair Brown Closes the work session on the introduction of committee measures and adjourns the meeting at 10:20 a.m.

EXHIBIT SUMMARY

- A. HB 2216, -3 amendments, staff, 14 pp
- B. HB 2363, written testimony, John Munro, 1 p
- C. HB 2363, written testimony, James Morales, 2 pp
- D. HB 2363, informational packet, Jan Coleman, 11 pp
- E. HB 2363, written testimony, Philip Miles, 2 pp
- F. HB 2363, email of Kathleen Beckett, Rep. Sal Esquivel, 1 p
- G. HB 2363, email of Georgette Brown, Rep. Sal Esquivel, 1 p
- H. HB 2363, written testimony of Dee Berman, staff, 2 pp
- I. HB 2363, suggested amendments, Tim Martinez, 1 p
- J. Introductions, LC 1779, staff, 4 pp