

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

March 16, 2005 Hearing Room 357

8:30 A.M. Tapes 30 - 31

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

MEMBER EXCUSED: Rep. Kelley Wirth

GUEST MEMBERS: Rep. Wayne Krieger

Rep. Greg Macpherson

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2662 – Public Hearing

HB 2725 – Public Hearing

HB 2213 – Work Session

HB 2222 – Work Session

HB 2230 – Work Session

HB 2278 – 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 30, A

003 Chair Ackerman Calls the meeting to order at 8:37 a.m. and opens a public hearing on HB 2662.

HB 2662 – PUBLIC HEARING

009 Sam Sears Counsel. Explains that HB 2662 prohibits the Employment Department from disqualifying individuals who are victims, or parents and guardians of minor children who are victims of domestic violence, sexual assault or stalking from receiving unemployment benefits if those individuals leave work or avoid other available work to protect themselves or minor children from further domestic violence, sexual assault or stalking.

017 Chair Ackerman Announces there will not be a work session on HB 2662.

021 Rep. Paul Holvey House District 8. Testifies and submits written testimony in support of HB 2662 (**EXHIBIT A**). Explains that HB 2662 is intended to correct language from HB 2767 (2001 legislative session). Cites some actual cases. Indicates there is no fiscal impact to HB 2662.

099 Rep. Macpherson Refers to the -3 amendments (**EXHIBIT B**). Asks if comments were to HB 2662 as introduced.

100 Rep. Holvey Responds that the -3 amendments clarify some issues and are based on discussions with attorneys and the Employment Division. Explains that he originally removed the reasonable alternatives process from statute as it created problems. Continues that the language was put back in HB 2662 to make sure people weren't just abusing the whole system.

124 Rep. Macpherson Comments that the purpose of HB 2662 is positive. Sees that the definition of domestic violence in the original statute was removed

and wonders if it should remain. Points out that the -3 amendments delete lines 27 through 45 of HB 2662 which includes the part that defines domestic violence.

- 138 Rep. Holvey Explains that the definition was removed is it is defined in administrative rule.
- 157 Chair Ackerman Asks for an explanation of communications with the Employment Department to be sure HB 2662 conforms with the requirements for federal matching funds.
- 161 Rep. Holvey Replies that in investigating a constituent's denial of unemployment benefits, he talked to the Employment Division about the rules around domestic violence victims being able to leave. Was advised there were "reasonable alternatives" to be used before an individual could achieve unemployment. Explains how he worked with Employment to arrive at the language in HB 2662.
- 217 Vicky Blomeley Private citizen. Testifies and submits written testimony in support of HB 2662 (**EXHIBIT C**). Explains the circumstances surrounding denial of unemployment benefits.
- 263 Tara Constantine Private citizen. Testifies and submits written testimony in support of HB 2662 (**EXHIBIT D**). Explains the circumstances surrounding denial of unemployment benefits.
- 318 Rep. Garrard Thanks witnesses for providing testimony knowing it wasn't easy.
- 326 Chair Ackerman Echoes Rep. Garrard's comments. Expresses anger with the insensitivity of Employment Department personnel and all others involved for not seeing the entitlement to benefits, even without changing the law.
- 334 Rep. Flores States that she is appalled with the subjective check list that does not treat individuals as individuals, which is a pervasive problem present in numerous areas of state policies and agency rules.
- 344 Chair Ackerman Reiterates appreciation for Ms. Blomely's and Ms. Constantine's testimony.
- 354 Sandra Hansberger Clinical Law Professor, Lewis and Clark Law School. Testifies and submits written testimony in support of HB 2662 (**EXHIBIT E**). Explains that 2001 legislation made it policy that victims of domestic

violence should be able to obtain unemployment compensation when they leave work. Quotes statistics on violations of restraining orders.

TAPE 31, A

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| 018 | Hansberger | Outlines what the -3 amendments clarify. Explains that victims of sexual assault and stalking are now provided protection. |
| 027 | Julia Olsen | Attorney, Legal Aid Services of Oregon. Testifies and submits written testimony in support of HB 2662 (EXHIBIT F). Reports that unemployment benefits may be the only source of income for some victims. Cites problems with language in current statute, which has been narrowly interpreted. |
| 052 | Olsen | Covers important “fixes” in HB 2662. Points out the importance of the victim’s perception of a reasonable available alternative. |
| 069 | Olsen | States that current statute permits the Employment Department to make the decision on the safe alternative for the victim. Cites examples when alternatives placed the victim in more risk. |
| 085 | Olsen | Concludes that the -3 amendments will provide clear direction to the Employment Department to facilitate the provision of benefits early in the process in appropriate circumstances. |
| 092 | Sybil Hebb | Oregon Law Center. Testifies and submits written testimony in support of HB 2662 (EXHIBIT G). |
| 111 | Hebb | Stresses that HB 2662 provides a positive option for employers and employees. Adds that the law will not increase costs to employers. Estimates that there will be 25 cases in the coming year under the new law. Believes employed victims will be able to maintain economic self-sufficiency. |
| 130 | Rep. Krieger | Asks how many cases there were under existing statute and the number of denials. |
| 132 | Hebb | Replies that she does not know. |
| 137 | Rep. Macpherson | |

Inquires if the -3 amendment deletions of the definition of “domestic violence” and the language under “reasonable alternatives” are appropriate.

- 149 Hebb Responds that originally specific statute cites were included in HB 2662, but concerns were raised that since they were in the criminal code or in the protection order code, they might contribute to the confusion about whether or not the Employment Department should require a protection order or law enforcement action.
- 165 Hebb Refers to the removal of the list of suggested alternatives. Explains that it contributed to confusion and was being used as a list of requirements. States that the -3 amendments more accurately capture the intent of the original legislation.
- 178 Chair Ackerman Comments on the “reasonable person standard” and that the -3 amendments set up the reasonable alternatives to be those from the individual’s perception.
- 191 Chair Ackerman Closes the public hearing on HB 2662 and opens a public hearing on HB 2725.

HB 2725 – PUBLIC HEARING

- 194 Sam Sears Counsel. Explains HB 2725 which limits the liability of construction design professionals for compensable injuries under the Workers’ Compensation statutes occurring to workers while on the construction project.
- 200 Marshall Coba American Council of Engineering Companies in Oregon (ACECO). Testifies in support of HB 2725. Suggests there may be an amendment forthcoming.
- 209 Ray Miller ACECO. Testifies and submits written testimony in support of HB 2725 (**EXHIBIT H**). Outlines the amendment to existing law being proposed.
- 247 Chair Ackerman Asks if an amendment is being suggested but not available at this time.
- 252 Coba Replies, yes.

255	Sears	Asks if the amendment will make the construction design professionals liable if they are responsible for the safety of individuals.
259	Miller	Responds, yes, and then explains.
266	Sears	Seeks clarification that the construction design professionals would be liable if they assumed the responsibility of keeping the work site safe.
270	Miller	Answers, yes.
272	Rep. Macpherson	Asks for comment on the difficulties that the engineering profession is having getting insurance for undertaking projects addressed by HB 2725.
278	Miller	Responds that most job sites have a safety engineer who is responsible for what happens on the job site. Advises that HB 2725 makes the engineer responsible.
294	Chair Ackerman	Expresses that he is uncomfortable with requests for immunity from law suits. Asks why this industry should receive immunity when others do not.
310	Miller	Replies that immunity is not being granted.
317	Chair Ackerman	States that he reads HB 2725 to say that there would be no third-party recourse.
323	Miller	Responds that they do not understand it that way.
334	Chair Ackerman	Closes the public hearing on HB 2725 and opens a work session on HB 2213.

HB 2213 – WORK SESSION

343	Sam Sears	Counsel. Explains that HB 2213: Removes the requirement that the District Attorney Division of Child Support (DADCS) provide withholding services when an obligee is due only spousal support payments; removes the requirement that DADCS provide services necessary to establish a support payment; declares state policy
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regarding spousal support obligation. Explains that the -1 amendments (**EXHIBIT I**) require the Department of Justice (DOJ) to only provide income withholding services for individuals who receive child support and individuals who receive only spousal support who are also on public assistance.

377 Rep. Garrard Refers to Oregon Law Center testimony at the public hearing when they asked if HB 2213 was in violation of federal regulations. Asks if there is still a concern.

387 Shaney Fuller DOJ Child Support Program. Responds that the concern was in the first paragraph of HB 2213 that removed the requirement to establish a support payment record and provide income withholding services. Advises that language was put back in so the concern was addressed.

403 Chair Ackerman **MOTION: Moves to ADOPT HB 2213-1 amendments dated 3/11/05.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

405 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

411 Chair Ackerman **MOTION: Moves HB 2213 to the full committee with a DO PASS AS AMENDED recommendation.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

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

421 Chair Ackerman **The motion CARRIES.**

REP. ACKERMAN will lead discussion in the full committee.

425 Chair Ackerman

Closes the work session on HB 2213 and opens a work session on HB 2222.

TAPE 30, B

HB 2222 – WORK SESSION

- 002 Sam Sears Counsel. Explains that HB 2222 provides DOJ a lien on its recipients' judgments or settlement amounts for all assistance provided by DOJ. Describes the -1 amendments (**EXHIBIT J**) which change the procedure for perfecting a lien and insures that all parties will receive notice of a lien; sets out where the DOJ may enforce the lien for those actions; and provides attorney liens have a priority over liens created by HB 2222.
- 009 Chair Ackerman **MOTION: Moves to ADOPT HB 2222-1 amendments dated 3/8/05.**
- VOTE: 3-0-1**
- EXCUSED: 1 - Wirth**
- 010 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 014 Chair Ackerman **MOTION: Moves HB 2222 to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- EXCUSED: 1 - Wirth**
- AYE: In a roll call vote, all members present vote Aye.**
- 020 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 021 Chair Ackerman Closes the work session on HB 2222 and opens a work session on HB 2230.

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HB 2230 – WORK SESSION

023	Sam Sears	Counsel. Explains that HB 2230 defines economic damages for purposes of restitution and establishes a payment priority when multiple awards of restitution are imposed in a criminal or juvenile proceeding. Explains that the -1 amendments (EXHIBIT K) add the “Criminal Injuries Compensation Account” and “insurance carriers” under the definition of “victim.”
038	Rep. Flores	Asks if these are victims or priority payees.
040	Sears	Responds that HB 2230 defines them as victims and that there is a different section that deals with priority.
044	Chair Ackerman	Explains that the main scope is to tie in the definition of restitution with economic damages, which has a statutory definition that is in common with tort cases.
047	Rep. Macpherson	Comments that most of the restitution bills have been done in the criminal subcommittee. Explains the concept of restitution is to identify and quantify the economic loss that has been caused by the criminal conduct.
058	Rep. Flores	Understands but is disconcerted that the corporate holders are in the same category as the victim.
069	Rep. Garrard	Asks if there is a fiscal impact.
070	Sears	Advises that no fiscal impact statement has been received.
073	Chair Ackerman	Indicates that does not preclude from forwarding to the full committee.
077	Rep. Garrard	MOTION: Moves to ADOPT HB 2230-1 amendments dated 3/7/05.

VOTE: 3-0-1

EXCUSED: 1 - Wirth

080 Chair Ackerman Hearing no objection, declares the motion CARRIED.

082 Rep. Garrard MOTION: Moves HB 2230 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 3-0-1

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

EXCUSED: 1 - Wirth

**090 Chair Ackerman The motion CARRIES.
REP. MACPHERSON will lead discussion in the full committee.**

094 Chair Ackerman Closes the work session on HB 2230 and opens a work session on HB 2278.

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HB 2278 – WORK SESSION

096 Sam Sears Counsel. Explains that HB 2278 provides for new judgeships. Refers to the -3 amendments (EXHIBIT L) that provide for four new judgeships and make minor changes for the Umatilla County area.

102 Rep. Flores MOTION: Moves to ADOPT HB 2278-3 amendments dated 3/15/05.

VOTE: 3-0-1

EXCUSED: 1 -Wirth

107 Chair Ackerman Hearing no objection, declares the motion CARRIED.

- 109 Rep. Flores **MOTION: Moves HB 2278 to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- EXCUSED: 1 - Wirth**
- 116 Chair Ackerman **The motion CARRIES.**
- REP. FLORES will lead discussion in the full committee.**
- 120 Chair Ackerman Closes the work session on HB 2278 and adjourns the meeting at 9:40 a.m.

EXHIBIT SUMMARY

- A. **HB 2662, written testimony, Rep. Paul Holvey, 2 pp**
- B. **HB 2662, -3 amendments, staff, 1 p**
- C. **HB 2662, written testimony, Vicky Blomeley, 1 p**
- D. **HB 2662, written testimony, Tara Constantine, 2 pp**
- E. **HB 2662, written testimony, Sandra Hansberger, 2 pp**
- F. **HB 2662, written testimony, Julia Olsen, 2 pp**
- G. **HB 2662, written testimony, Sybil Hebb, 2 pp**
- H. **HB 2725, written testimony, Ray Miller, 1 p**
 - I. **HB 2213, -1 amendments, staff, 1 p**
 - J. **HB 2222, -1 amendments, staff, 2 pp**
 - K. **HB 2230, -1 amendments, staff, 1 p**
 - L. **HB 2278, -3 amendments, staff, 1 p**