

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

March 2, 2005 Hearing Room 357

8:30 A.M. Tapes 22 - 23

MEMBERS PRESENT: **Rep. Bob Ackerman, Chair**

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

GUEST MEMBER: **Rep. Wayne Krieger**

STAFF PRESENT: **Sam Sears, Counsel**

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2545 – Public Hearing

HB 2547 – Public Hearing and Work Session

HB 2548 – Public Hearing and 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
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TAPE 22, A

003	Chair Ackerman	Calls the meeting to order at 8:37 a.m. Announces that he will be presenting testimony so Rep. Wayne Krieger will preside on those occasions.
011	Sam Sears	Counsel. Explains HB 2545 which prohibits public bodies from including attorney fees and certain labor costs in charges to those requesting public records.
014	Chair Ackerman	Turns the gavel over to Rep. Krieger.
023	Chair Krieger	Opens a public hearing on HB 2545.

HB 2545 – PUBLIC HEARING

026	Rep. Robert Ackerman	House District 13. Testifies and submits testimony in support of HB 2545 (EXHIBIT A). Explains that HB 2545 makes changes to the public records law. Quotes from ORS 192.420 that provides the right to inspect public records. Indicates that language is lacking on charges for legal costs.
057	Rep. Ackerman	Advises that he has drafted an amendment which will allow the actual cost of producing voluminous documents. Believes legal costs in compiling records are part of the cost of doing business for a state agency and should be included in their budgets.
086	Rep. Flores	Asks if the prohibition of costs for compilation of voluminous files will remain in HB 2545 as amended.
096	Rep. Ackerman	Clarifies that the public agency can estimate labor costs prior to providing the information so the requestor knows the costs in advance.
105	Rep. Flores	Asks if he wants to prohibit charging for attorney time.
106	Rep. Ackerman	Answers, yes.

108	Rep. Flores	Inquires how confidential information needing to be redacted would be handled.
107	Rep. Ackerman	Responds that is the obligation of the agency.
116	Rep. Flores	Raises concern about those costs being built into an agency budget.
118	Rep. Ackerman	Replies that if an agency has historical information, they should be able to use those costs for budgeting.
130	Rep. Garrard	Comments that most agencies and local governments have an attorney on retainer so costs would not be increased for a public records search.
140	Rep. Ackerman	Agrees with that statement.
146	Chair Krieger	Asks how this would apply to small entities that are unable to absorb costs.
150	Rep. Ackerman	Responds that the definition of public agency is in HB 2545 and the proposed amendments would not exclude small agencies. Does not know what is considered "small."
159	Rep. Garrard	Inquires about the time period an entity has to respond to a public records request.
162	Rep. Ackerman	Replies that depends on whether the request is to a state agency or a non-state agency, but is usually about 30 days.
173	Rep. Flores	Asks if he is aware of any protocol in place requiring an estimate of cost be provided to a requestor.
178	Rep. Ackerman	Answers, not in his experience.
182	Rep. Flores	Believes the public often expects to pay copying costs but wonders if they are routinely advised they may be charged for attorney time.
187	Rep. Ackerman	Replies, no.
194	Chair Krieger	

Inquires if the public looks at having access to these records as exercising their statutory or constitutional right.

198	Rep. Ackerman	Seeks clarification of the question.
200	Chair Krieger	Asks if the public seeking information believes they are exercising their right to the information and expect to obtain access.
204	Rep. Ackerman	Responds, yes.
208	Chair Krieger	Inquires if the statute refers to charging of fees.
210	Rep. Ackerman	Replies that the statute says actual costs can be charged, and labor costs can be charged if the request requires tailoring or summarization but it does not mention legal fees.
217	Rep. Garrard	Refers to a Klamath County judge ruling that prohibited review of some public records based on client/attorney privilege. Asks if HB 2545 would correct that problem.
226	Rep. Ackerman	Answers that the problem was cured by the court decision, that the public agency probably indicated the records were exempt and litigation resulted.
257	Tom Gallagher	Oregon Newspaper Publishers Association. Testifies in support of HB 2545. Believes another look should be taken at the balancing factor between costs of the records and the public's right to them.
277	Gallagher	Suggests a work group to work out details on what should be paid for and what should be part of the cost of doing business. Presents some ideas for discussion (EXHIBIT B). Believes HB 2545 is good but needs more specificity.
343	Steve Delaney	Deputy Director, Public Employees' Retirement System (PERS). Testifies and submits testimony on HB 2545 (EXHIBIT C). Advises that the PERS trust fund can be used only for the exclusive benefit of its members. Refers to the agency's administrative rules that allow recovery of reasonable costs, but not legal costs. Offers suggestions for modifications to HB 2545.

010	Rep. Flores	Asks about the budget for administrative expenses vs. the benefit to members.
016	Delaney	Responds the PERS budget is \$80 million a biennium.
018	Rep. Flores	Seeks clarification that the administrative budget would be stretched if the agency were to provide the information requested.
020	Delaney	Replies it is not a matter of “stretching” but the use for which the budget is being used. Reiterates that federal legislation requires that trust fund monies be used for the benefit of members, so if a member requests information it is provided free of charge. Explains that reasonable costs are recouped for other requests.
033	Charles Sheketoff	Executive Director, Oregon Center for Public Policy. Testifies in support of HB 2545. Shares that agencies must make decisions frequently on what is sensitive and confidential. Advises that fees can be waived if the information is in the public interest to disclose it, the test being against the Freedom of Information Act.
060	Sheketoff	Cites several examples of formal requests he has made.
101	Sheketoff	Offers to participate in a work group. Understands the voluminous request problem. Explains that if a public records request is denied by an elected official, the only recourse is to file a law suit to obtain the information.
130	Sheketoff	Urges reconsideration of the exception for elected officials.
135	Rep. Wirth	Asks about the potential detrimental affect on local governments for recouping the costs of Ballot Measure 37 issues,
139	Sheketoff	Hopes that will be reviewed. States that public records laws are not to be used in place of formal discovery. Believes that having to deal with archives is a valid concern.
159	Chair Ackerman	Expresses thoughts on forming a work group with representatives from small special districts, municipal districts such as cities and counties and state agencies and Mr. Gallagher as a private requestor.

179	Jeannette Holman	Assistant Director, Department of State Lands (DSL). Testifies and submits testimony on HB 2545 (EXHIBIT D). Outlines the agency's responsibilities. Provides examples of types and numbers of requests received by the agency each month.
219	Holman	Indicates they provide advance estimates to requestors for large jobs. Anticipates an increase in number of large requests but cannot increase staff. Explains that laws on disclosure of confidential information require detailed review of records.
251	Holman	Explains that DSL is a trust fund agency, so must weigh the trust responsibility to the Common School Fund against the cost of providing the records, to decide what to charge. Presents suggestions for reducing fiscal impacts on agencies (EXHIBIT D, Page 2).
270	Rep. Garrard	Refers to invoice (EXHIBIT D, Page 3). Points out that the largest amount is for copying. Asks why the responsibility of making copies falls to the public body.
278	Holman	Replies that there have been problems with files disappearing so believes there is a need for monitoring by a staff person.
282	Rep. Garrard	Asks about charge for one copy per request.
284	Holman	Answers, there is no charge.
288	Kate Richardson	Chief of Staff, Department of Treasury. Testifies and submits testimony in opposition to HB 2545 (EXHIBIT E). Raises concerns about the fiscal impact on the agency. Describes the types of requestors, both in-state and out-of-state. Advises that Treasury has developed a policy and fee schedule, which includes requirement for prepayment on large requests. Explains that most requests come from out-of-state private businesses who resell the information and large law firms representing clients in unrelated litigation.
370	Richardson	States that Treasury is a fee-for-service agency, so there is no general fund financing. Raises concern about using Oregon taxpayer dollars and Oregon trust funds to subsidize out-of-state private businesses. Cites anticipation of an increase in public records requests if the cost recovery provisions are removed, thereby affecting other areas of the budget.
418	Richardson	

Refers to the Attorney General's *Public Records Manual* that gives guidance in how to apply waivers and when to recover legal costs.

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| 425 | Rep. Garrard | Asks about the form for responses to public records requests. |
| 430 | Richardson | Seeks clarification of the question. |
| 433 | Rep. Garrard | Wants to know what format is used; i.e., e-mail. |
| 436 | Richardson | Advises that responses are done electronically as much as possible, and they always give an up-front cost estimate. |
| 447 | Holman | Indicates that electronic responses are used whenever possible, but most requests are for information in paper files. |

TAPE 22, B

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| 015 | Rep. Garrard | Asks about reactions to public records requests. |
| 023 | Richardson | Replies that Treasury is trying to post as much public information as possible on their website. Reiterates concern about out-of-state businesses working counter to our state's interests by making large requests to detract staff from Oregonians' interests. |
| 038 | Holman | Responds that most of their public records requests are routine, but large requests severely interrupt staff work. Indicates they do not charge legal fees. |
| 048 | Rep. Garrard | Inquires if charges are the same for all requestors. |
| 051 | Richardson | States that Treasury tries not to arbitrarily apply fees and uses the public interest balancing test, looking to Oregonians' public interests first. |
| 064 | Chair Ackerman | Comments that the "balancing test" is inconsistently applied by agencies and hopes the work group can standardize. Refers to a note received from Brad Swank representing the court system about requests from incarcerated individuals, so Mr. Swank will be included in the work group. |

078	Christy Monson	League of Oregon Cities Counsel. Testifies and submits testimony in opposition to HB 2545 (EXHIBIT F). Comments on the question “how small is small for a government agency?” Cites some examples.
094	Monson	Refers to a League newsletter explaining how cities should handle public records requests (EXHIBIT F, Page 3).
106	Chair Ackerman	Requests summarization of testimony and advises the League’s interests will be incorporated within the work group.
108	Monson	Summarizes types of requests cities receive that need to have legal review for redacting. Explains the necessity to maintain the integrity and confidentiality of their public records. States that fees are established through ordinance.
121	Paul Snider	Association of Oregon Counties. Testifies on HB 2545. Emphasizes that there is a financial consideration that must be borne by someone. Believes “narrowing” of requests reduces costs for everyone.
144	Rep. Wirth	Asks about the potential cost impact of HB 2545 to local government in terms of Ballot Measure 37 research that might occur.
147	Monson	Responds that it is impossible to anticipate costs. Advises that attorneys are using the public records process rather than going through discovery, and it is expected that Measure 37 will present that type of scenario.
154	Snider	Adds that the archival aspects of Measure 37 will be a challenge, as those are the kinds of records that are important to the outcomes of Measure 37 claims.
160	Chair Ackerman	Indicates he will contact the Department of Administrative Services for a representative on the work group and set up a meeting.
162	Chair Ackerman	Closes the public hearing on HB 2545 and opens a public hearing on HB 2547 which increases the value of estate for which small estate affidavit may be filed.

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174	Chair Ackerman	Turns the gavel over to Rep. Krieger.
177	Rep. Robert Ackerman	House District 13. Testifies and submits testimony in support of HB 2547 (EXHIBIT G). Explains the expedited probate process for small estates and that the proposed increase in the estate value reflects the inflation rates of real property.
218	Ryan Gibb	Attorney, Elder Law Section, Oregon State Bar. Testifies and submits testimony in support of HB 2547 (EXHIBIT H). Advises that there are a number of estates that will benefit from the proposed changes.
249	Rep. Flores	Seeks clarification that there is no proposed increase in the filing fee.
255	Chair Ackerman	Replies, that is correct.
256	Rep. Flores	Comments that in full probate the filing fee is based on the value of the estate.
260	Chair Ackerman	States that there is no anticipation of increasing the small estate filing fee. Asks Mr. Gibb if the small estate filing fee is set by statute or by the court.
263	Gibb	Answers that there is a statutory fee that is less than what is charged by most courts. Cites the small and large estate filing fees.
274	Chair Ackerman	Reiterates that the filing fee is not proposed to be changed in HB 2547.
275	Rep. Flores	Asks if part of the filing fee is a state-mandated cost.
278	Chair Ackerman	Replies, that is right. Offers that if it becomes an issue, it can be dealt with in the Senate.
279	Gibb	Advises that the burden on the courts will be reduced.
282	Chair Ackerman	Informs of backlog of formal estate probate cases and that the process for small estates is more expedient.
290	Chair Ackerman	Closes the public hearing and opens a work session on HB 2547.

HB 2547 – WORK SESSION

294 Chair Ackerman **MOTION: Moves HB 2547 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

307 Chair Ackerman **The motion CARRIES.**

CHAIR ACKERMAN will lead discussion in the full committee.

308 Chair Ackerman Closes the work session on HB 2547 and opens a public hearing on HB 2548 which mandates arbitration in circuit court proceedings in which \$50,000 or less is involved.

HB 2548 – PUBLIC HEARING

311 Chair Ackerman Turns the gavel over to Rep. Krieger.

314 Rep. Robert Ackerman House District 13. Testifies and submits testimony in support of HB 2548 (**EXHIBIT I**). Explains that HB 2548 raises the mandatory arbitration limits in certain court cases. Points out that arbitration is required in domestic relations cases where the only issue is division of property. Discusses general success rate of arbitration cases.

360 Rep. Ackerman Continues with explanation of arbitration procedures indicating that it is an efficient way to litigate claims. Cites examples of costs to obtain medical records, depositions and witnesses in motor vehicle injury court cases.

TAPE 23, B

013 Rep. Ackerman States that there will be a saving in judicial resources as formal proceedings take approximately three times longer in circuit court. Cites example of personal success in an arbitration case.

043 Chair Ackerman Closes the public hearing and opens a work session on HB 2548.

HB 2548 – WORK SESSION

- 045 Chair Ackerman **MOTION: Moves HB 2548 to the full committee with a DO PASS recommendation.**
- 048 Rep. Flores Comments on the cited example of arbitration success.
- 052 Chair Ackerman Agrees that some domestic relations cases can be long when establishing property values and division of property issues arise.
- 055 **VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 061 Chair Ackerman **The motion CARRIES.**
- CHAIR ACKERMAN will lead discussion in the full committee.**

The following prepared testimony is submitted for the record without public testimony:

- Mark Landauer City of Portland. Submits written testimony in opposition to HB 2545 **(EXHIBIT J).**
- 064 Chair Ackerman Closes the work session on HB 2548 and adjourns the meeting at 10:05 a.m.

EXHIBIT SUMMARY

- A. HB 2545, written testimony, Rep. Robert Ackerman, 3 pp
- B. HB 2545, written testimony, Tom Gallagher, 1 p
- C. HB 2545, written testimony, Steve Delaney, 2 pp
- D. HB 2545, written testimony, Jeannette Holman, 3 pp
- E. HB 2545, written testimony, Kate Richardson, 2 pp
- F. HB 2545, written testimony, Christy Monson, 3 pp
- G. HB 2547, written testimony, Rep. Robert Ackerman, 3 pp
- H. HB 2547, written testimony, Ryan Gibb, 1 p
- I. HB 2548, written testimony, Rep. Robert Ackerman, 3 pp

The following prepared testimony is submitted for the record without public testimony:

J. HB 2545, written testimony, Mark Landauer, 1 p