

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**March 23, 2005 Hearing Room 357**

**8:30 A.M. Tapes 34 - 35**

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

**Rep. Linda Flores**

**Rep. Bill Garrard**

**MEMBER ABSENT: Rep. Kelley Wirth**

**GUEST MEMBERS: Rep. Wayne Krieger**

**Rep. Greg Macpherson**

**STAFF PRESENT: Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 3119 – Public Hearing and Work Session**

**HB 2978 – Public Hearing and Work Session**

**HB 2938 – Public Hearing and Work Session**

**HB 3157 – 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**

**TAPE 34, A**

003              Chair Ackerman              Calls the meeting to order at 8:37 a.m. and opens a public hearing on HB 3119.

**HB 3119 – PUBLIC HEARING**

008              Sam Sears                      Counsel. Explains HB 3119 which authorizes county clerks to keep permanent and long-term records of documents that are filed or recorded by the county clerks as computer-based data files instead of microfilm, if the county clerks provide for a regular and routine backup of data files.

012              Rep. Sal Esquivel              House District 6. Testifies in support of HB 3119. Explains that current law requires microfilming of county records. Advises that HB 3119 allows backup on disk. Informs that counties would incur considerable savings.

038              Rep. Flores                      Asks if county clerks currently use both microfilm and computer.

042              Rep. Esquivel                      Answers, yes.

048              Rep. Garrard                      Thanks Rep. Esquivel for bringing the issue forward. Advises that Klamath County has storage problems.

054              Rep. Esquivel                      Comments that this method allows for clearer documents as about 40 percent of microfilm documents are unreadable.

066              Rep. Garrard                      Asks if clerks would have to record previous information or if they would have an option once the law takes effect.

072              Rep. Esquivel

		Responds that HB 3119 does not require retroactive action. Indicates that those counties with the technology have already been doing this.
086	Rep. Macpherson	Comments that HB 3119 does not reference an ORS chapter for placement or a proposed effective date.
093	Sears	Responds that he is unsure why this was not done.
095	Rep. Macpherson	Indicates that if there is a requirement in current law to do back-up microfilming, that language should be shown as deleted.
098	Sears	States that this is voluntary and allows computer recording but does not require it.
103	Rep. Esquivel	Advises that if the current language was deleted, the counties without the computer ability would not be microfilming either. Reiterates that this method is voluntary, if the technology is available.
108	Rep. Macpherson	Comments that there may be confusion.
117	Jan Coleman	Yamhill County Clerk. Informs that this gets its basis from archival law, which is administrative rule by the Secretary of State. Clarifies that microfilming is the only recognized media at present that will last 100 years.
130	Rep. Macpherson	Asks if there is a place in statute now that requires backup by microfilm.
133	Coleman	Responds that statute only talks about retention of records and does not specify microfilming; that is in administrative rule.
137	Rep. Esquivel	States that all counties have old handwritten records.
142	Chair Ackerman	Questions whether this should be an administrative matter rather than law.
145	Rep. Esquivel	Indicates that county clerks have wanted this ability for some time and there have been discussions but nothing has ever been done.
164	Rep. Garrard	Asks if there will be a fiscal impact on the counties.

- 167 Rep. Esquivel Answers, yes, but it should be positive cash flow for the counties that can, in fact, have this ability. Reiterates that some counties are using both methods.
- 172 Rep. Flores Indicates support but is concerned about where it will be placed in statute.
- 185 Chair Ackerman States he is inclined to move HB 3119 to the full committee and request a housekeeping amendment.
- 190 Rep. Esquivel Believes HB 3119 could be tied into ORS chapter 205, and it should be a simple fix.
- 196 Chair Ackerman Closes the public hearing and opens a work session on HB 3119.

### **HB 3119 – WORK SESSION**

- 202 Rep. Garrard **MOTION: Moves HB 3119 to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

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

**ABSENT: 1 - Wirth**

- 213 Chair Ackerman **The motion CARRIES.**  
**REP. GARRARD will lead discussion in the full committee.**

- 217 Chair Ackerman Closes the work session on HB 3119 and opens a public hearing on HB 2978.

### **HB 2978 – PUBLIC HEARING**

- 231 Sam Sears Counsel. Explains that HB 2978 permits courts in dissolution judgments to order revocation of beneficiary designations made by one spouse in favor of the other spouse on certain financial assets. Advises that HB 2978 was previously presented as HB 2292. Refers to the -1 amendments (**EXHIBIT A**) which allow judges to change beneficiary designations also on judgments for separation.

- 243 Tammy Dentinger Member, Oregon State Bar's Family Law Executive Committee. Testifies and submits written testimony in support of HB 2978 **(EXHIBIT B)**. Indicates that HB 2978 has a narrower relating clause than HB 2292. Explains the changes HB 2978 will make. Advises that the -1 amendments make technical and clarifying changes.
- 277 Rep. Flores Requests clarification that in annulment, legal separation or divorce, new documents do not automatically deal with survivorship or beneficiary provisions.
- 284 Dentinger Responds that, if one chooses to not include, it does not happen automatically.
- 296 Rep. Macpherson Asks about the relationship of HB 2978 to HB 2292 and the -1 amendments.
- 299 Dentinger Indicates the change from HB 2292 to HB 2978 was a narrowing of the relating clause to more specifically define what was intended. Does not believe any amendments were prepared for HB 2292.
- 314 Rep. Macpherson Seeks clarification that the only difference in HB 2292 and HB 2978 is the relating clause.
- 316 Dentinger Answers, yes.
- 318 Chair Ackerman Closes the public hearing and opens a work session on HB 2978.

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**HB 2978 – WORK SESSION**

- 322 Rep. Flores **MOTION: Moves to ADOPT HB 2978-1 amendments dated 3/22/05.**
- VOTE: 3-0-1**
- ABSENT: 1 - Wirth**
- 324 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

326 Rep. Flores **MOTION: Moves HB 2978 to the full committee with a DO PASS**

**AS AMENDED recommendation.**

**VOTE: 3-0-1**

**ABSENT: 1 - Wirth**

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

336 Chair Ackerman **The motion CARRIES.**

**REP. FLORES will lead discussion in the full committee.**

340 Chair Ackerman Closes the work session on HB 2978 and opens a public hearing on HB 2938.

### **HB 2938 – PUBLIC HEARING**

344 Sam Sears Counsel. Explains HB 2938 which makes technical, conforming, and form and style changes to statutes requiring instruments to be filed with or presented for recordation to county clerks, and clarifies whether specified instruments are to be filed with or presented for recordation to county clerks.

363 Jan Coleman Yamhill County Clerk. Testifies on behalf of the Oregon Association of County Clerks. Advises that periodically county clerks review statutes for housekeeping needs.

### **TAPE 35, A**

004 Coleman Points out that “presented for recording” doesn’t mean the recording happened.

015 Chair Ackerman Asks if the language “presented for recording” may be misinterpreted to mean “recording.”

017 Coleman Responds, yes. Indicates that the statute needs to say the document got recorded.

024 Chair Ackerman Inquires if a definition of the phrase would be sufficient.

027 Coleman Replies, yes.

032 Rep. Flores Points out that there are several references to “presented for recording.”

034 Coleman Offers to clean up HB 2938 for an amendment.

036 Chair Ackerman Asks Ms. Coleman to work with counsel on a proposed amendment.

047 Chair Ackerman Closes the public hearing and opens a work session on HB 2938.

**HB 2938 – WORK SESSION**

052 Rep. Flores Inquires if there will be work immediately on clarifying language.

053 Chair Ackerman Responds, yes.

**056 Rep. Flores MOTION: Moves HB 2938 to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

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

**ABSENT: 1 - Wirth**

**062 Chair Ackerman The motion CARRIES.**  
**REP. FLORES will lead discussion in the full committee.**

063 Chair Ackerman Closes the work session on HB 2938 and opens a public hearing on HB 3157.

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**HB 3157 – PUBLIC HEARING**

070	Chair Ackerman	Designates Rep. Flores as acting chair.
083	Sam Sears	Counsel. Explains that HB 3157 provides that the duty of county courts or boards of county commissioners to inspect local correctional facilities is discretionary for facilities not operated by the county.
088	Rep. Ackerman	House District 13. Testifies in support of HB 3157. Explains that under current law county commissioners are mandated to inspect correctional institutions that they own and operate, and facilities that they do not own or operate. Refers to the -1 amendments ( <b>EXHIBIT C</b> ) which make the distinction between local correctional facilities owned and operated by the county and local facilities not owned by the county.
113	Rep. Garrard	Comments that he has a problem with HB 3157. Realizes that HB 3157 makes it more voluntary but not sure it is a good idea.
123	Rep. Ackerman	Responds that if a city has a correctional facility, it should be the city council's responsibility to inspect rather than the county.
128	Rep. Garrard	Seeks clarification that HB 3157 is for only facilities not operated by the county.
132	Rep. Ackerman	Replies, correct.
135	Rep. Terry Beyer	House District 12. Testifies that HB 3157 is similar to a bill introduced in the 2003 legislative session. Reiterates that HB 3157 is intended for facilities not run by a county.
148	Rep. Macpherson	Wonders if prior language could be interpreted so broadly as to include state facilities. Seeks clarification of intent.
154	Rep. Ackerman	Answers that counties will have discretionary authority for inspection but not be mandated to do it.
158	Rep. Macpherson	Comments that current language is being construed to apply only to municipal facilities and not a state correction facility.
165	Rep. Ackerman	Agrees.
169	Acting Chair Flores	Closes the public hearing on HB 3157.



171 Chair Ackerman Opens the work session on HB 3157.

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**HB 3157 – WORK SESSION**

173 Chair Ackerman **MOTION: Moves to ADOPT HB 3157-1 amendments dated 3/23/05.**

178 Rep. Garrard Indicates he will give a “courtesy vote” to move HB 3157 to the full committee, but reserves his opinion for the full committee debate.

**VOTE: 3-0-1**

**ABSENT: 1 - Wirth**

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

189 Chair Ackerman **MOTION: Moves HB 3157 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.**

**ABSENT: 1 - Wirth**

195 Chair Ackerman **The motion CARRIES.**

**REP. ACKERMAN will lead discussion in the full committee.**

197 Chair Ackerman Closes the work session on HB 3157 and adjourns the meeting at 9:15 a.m.

**EXHIBIT SUMMARY**

- A. **HB 2978, -1 amendments, staff, 1 p**
- B. **HB 2978, written testimony, Tammy Dentinger, 1 p**
- C. **HB 3157, -1 amendments, staff, 1 p**