

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 20, 2005 Hearing Room 357

8:30 A.M. Tapes 62 - 63

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

GUEST MEMBERS: Rep. Wayne Krieger

Rep. Andy Olson

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2315 – Public Hearing

HB 3352 – Public Hearing and Work Session

HB 2207 – Public Hearing and Work Session

HB 2359 – Public Hearing and Work Session

HB 2524 – 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 62, A		
004	Chair Ackerman	Calls the meeting to order at 8:40 a.m. Announces that there will be no work session on HB 2315 and HB 3124 is removed from the agenda. Opens a public hearing on HB 2315.

HB 2315 – PUBLIC HEARING

011	Sam Sears	Counsel. Explains HB 2315 which makes several changes to the Oregon Advocacy Center (OAC). Refers to the -2 amendments (EXHIBIT A) which delete several provisions in the original HB 2315 and explains which ones those are.
024	Kathleen Wilde	OAC. Testifies and submits written testimony of Bob Joondeph in support of HB 2315 (EXHIBIT B). Explains the authorities of the OAC under federal and state laws.
070	Wilde	Describes their work with the Oregon Youth Authority and the Department of Corrections (DOC) to negotiate access agreements. Agrees with the -2 amendments.
077	Stan Czerniak	DOC. Testifies and submits written testimony of Max Williams on HB 2315 (EXHIBIT C). Discusses the issues of access to records and efforts to reach agreement on procedures. Refers to proposed language in Lines 10 and 11, Page 10 of HB 2315 that appears to include inmates with substance abuse issues in the OAC target population as persons with disabilities. Continues that about 70 percent of inmates would benefit from some level of substance abuse treatment. Indicates they are unsure of the affect of this language on DOC resources. Advises that DOC will introduce -3 amendments to delete Line 10.
111	Rep. Garrard	Asks Ms. Wilde if HB 2315 is intended to reduce down to around the 70 percent figure.
114	Wilde	Seeks clarification of the question.
116	Rep. Garrard	Indicates he will follow up later.
117	Rep. Krieger	

Inquires if Line 10, Page 10 has anything to do with the court decision about people who are addicts are not suffering from a disease.

- 121 Czerniak Doesn't think so.
- 123 Rep. Garrard Comments on the 70 percent of inmates who might benefit. Asks how narrow of the population is being addressed.
- 128 Wilde Replies that the primary concern is people with mental illness receiving treatment. Explains that drug and alcohol treatment have not been their focus.
- 136 Chair Ackerman Closes the public hearing on HB 2315. Recognizes Rep. Olson as a guest member from the Criminal Subcommittee.
- 145 Chair Ackerman Opens a public hearing on HB 3352.

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HB 3352 – PUBLIC HEARING

- 154 Sam Sears Counsel. Explains HB 3352 which provides that the surviving parent of a decedent does not inherit by intestacy if the decedent lacked capacity to make a will for at least five years before death, and the parent failed to provide support for the decedent for a period of 10 years or more before the decedent attained 18 years of age. Explains that the -3 amendments (**EXHIBIT D**) provide that if an individual dies before obtaining age 18, and parent failed to provide support any time during the life of the decedent, the parent would not inherit through intestate succession.
- 178 Rep. Tom Butler House District 60. Testifies on HB 3352. Doesn't want any unintended consequences.
- 200 Dave Heynderickx Acting Legislative Counsel. Explains the changes in Lines 4 and 12 to 17 of the -3 amendments. Suggests some further changes.
- 237 Rep. Butler Cites specific circumstances of a constituent. Believes that an additional amendment is in order to clarify.
- 265 Rep. Garrard Asks how frequent these situations arise.

- 271 Rep. Butler Understands this happens frequently. Advises that an injured child could receive an award for lifetime necessities. Continues with explanation of a constituent situation and refers to a second case.
- 297 Rep. Flores Comments that a special needs trust makes provisions for care and future care for individuals with special needs.
- 303 Chair Ackerman Informs that in doing research he came across situations with children with considerable assets, but because they are incapacitated or too young to prepare a will, are unable to pass the estate on to anyone. Continues that without HB 3352 a “deadbeat dad” or his heirs could inherit the child’s estate.
- 318 Chair Ackerman Discusses counsel’s recommendation to delete “at any time” in Lines 16 and 17 of the -3 amendments.
- 328 Heynderickx Reads how he would change the wording. Explains some possible scenarios.
- 347 Chair Ackerman Asks if the committee can amend the -3 amendments and proceed to work session.
- 351 Rep. Krieger Recommends moving HB 3352, obtain the amendment and then the full committee can act on it.
- 359 Chair Ackerman Closes the public hearing and opens a work session on HB 3352.

HB 3352 – WORK SESSION

- 363 Rep. Garrard **MOTION: Moves to ADOPT HB 3352-3 amendments dated 4/20/05.**
- 369 Sam Sears Counsel. Advises moving HB 3352 to the full committee without amendment and have the -4 amendments adopted at that time.
- 373 Rep. Garrard Withdraws motion.
- 376 Rep. Garrard **MOTION: Moves HB 3352 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

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

EXCUSED: 1 - Wirth

389 Chair Ackerman The motion CARRIES.
REP. GARRARD will lead discussion in the full committee.

390 Chair Ackerman Closes the work session on HB 3352.

TAPE 63, A

010 Chair Ackerman Opens a public hearing on HB 2207.

HB 2207 – PUBLIC HEARING

015 Sam Sears Counsel. Describes the current agency rulemaking process. Explains that HB 2207 provides that an administrative rule is not valid unless it is adopted in substantial compliance with statutory procedural requirements that are in effect on the date that notice of intent to adopt the rule is delivered to the Secretary of State for the purpose of publication, at least 21 days before the rule is adopted.

032 Philip Schradle Special Counsel to the Attorney General. Testifies and submits written testimony in support of HB 2207 (**EXHIBIT E**). Discusses the proposed changes are to reduce confusion and states that there should be a cost savings.

064 Rep. Olson Asks how many instances occurred in the last two years when an agency had to start over with rulemaking.

068 Schradle Responds, about five to ten. Has no explicit dollar amount but there were time delays and costs.

071 Chair Ackerman Comments that some of the rulemaking can be quite complicated.

073 Schradle Answers that the more complicated the rulemaking, the longer it takes.

075 Chair Ackerman Asks if this change jeopardizes the rights of the public.

- 077 Schradle Replies, no.
- 080 Chair Ackerman Closes the public hearing and opens a work session on HB 2207.

HB 2207 – WORK SESSION

- 082 Chair Ackerman **MOTION: Moves HB 2207 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

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

EXCUSED: 1 – Flores

(Note: See Tape 63, B at 058 and page 7 of these minutes.)

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

- 089 Chair Ackerman Closes the work session on HB 2207 and opens a public hearing on HB 2359.

HB 2359 – PUBLIC HEARING

- 097 Sam Sears Counsel. Describes HB 2359 brought forward by the Oregon Law Commission to change some provisions in HB 2646 (2003). Distributes the -1 amendments (**EXHIBIT F**)
- 110 Gerald Watson Oregon Law Commission. Testifies in support of HB 2359. Submits Judgments Work Group written report (**EXHIBIT G**) and written testimony of Gary Blacklidge (**EXHIBIT H**). Describes the work group membership.
- 139 Dave Heynderickx Acting Legislative Counsel. Explains that most of HB 2359 are “tweaks” to the 2003 legislation.
- 162 Heynderickx Continues explaining the proposed changes. Refers to discussions on court of appeals decisions.

- 206 Bradd Swank Oregon Judicial Department. Provides the history of HB 2359. Continues that the 2003 legislation clarified many issues, and HB 2359 resolves issues created by ambiguities that were discovered.
- 244 Swank Refers to a copy of a memorandum sent to the courts requesting comments (**EXHIBIT I**). Advises that the memorandum is an issue by issue analysis, with additional items to be addressed.
- 267 Swank Points to specific concerns raised in **EXHIBIT G**.
- 288 Swank Raises concern about local courts by local court rule establishing circumstances when limited or supplemental judgments could be used. Defines limited judgments and supplemental judgments.
- 327 Chair Ackerman Expresses appreciation for the work that was done. Sees HB 2359 as picking up on points that were not fully developed in the 2003 legislation. Asks if there are any substantive changes in the law.
- 335 Heynderickx Responds that Section 9 of HB 2359 is a substantive provision which allows for liens to come in and out of existence. Believes that the Department of Justice has been doing that anyway but they wanted it clear in statute. Cites some examples.
- 361 Chair Ackerman Understands that liens can be released by the judgment creditor, usually done by motion and order and then reinstated in the same manner.
- 366 Heynderickx Replies that the general rule is judgment liens cannot be reinstated once released. Cites that there are special circumstances and there may be federal law in child support matters.
- 378 Heynderickx Points out that Page 11 of HB 2359 amends ORS 18.165. Continues that the work group could not reach consensus on the priority between the judgment land and the person who has taken the conveyance of the property but not recorded it. Gives an example situation.
- 417 Heynderickx Advises that the work group extensively rewrote the language on the issue.

TAPE 62, B

- 005 Rep. Olson

Indicates that HB 2359 appears to provide more flexibility as it applies to judgments.

- 009 Swank Replies that HB 2359 clarifies grey areas and provides more latitude in orders.
- 024 Chair Ackerman Believes that the scope of the 2003 bill built in a learning curve.
- 030 Chair Ackerman Reads from Line 15, Page 1 of HB 2359. Comments that sometimes there is a difference between the date the judgment is signed by the judge and the date it is entered in the court register. Asks which is applicable for appeal procedures.
- 037 Swank Answers that it is the date it is entered in the register.
- 045 Heynderickx Adds that the 2003 bill went out of its way to create a clear definition of what it meant “to enter.”
- 051 Chair Ackerman Refers to Page3, Section 7 which applies Sections 2 to 6 of HB 2359 to all judgments entered before January 1, 2004. Asks about the reason for the retroactive date.
- 055 Heynderickx Replies that Sections 2 to 6 conform the law to what the court of appeals had said it meant. Continues that the purpose of Section 7 is to make clear that these changes don’t apply just to judgments entered on or after the effective date of HB 2359 but also to the changes made in HB 2646 (2003) which were effective January 1, 2004.
- 065 Chair Ackerman Asks if further amendments are anticipated.
- 069 Swank Replies that the law commission left it open so if other issues were brought up they could be addressed on the Senate side.
- 078 Chair Ackerman Closes the public hearing and opens a work session on HB 2359.

HB 2359 – WORK SESSION

- 081 Rep. Flores **MOTION: Moves to ADOPT HB 2359-1 amendments dated 4/11/05.**

VOTE: 4-0-0

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

085 Rep. Wirth MOTION: Moves HB 2359 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 4-0-0

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

093 Chair Ackerman The motion CARRIES.

REP. FLORES will lead discussion in the full committee.

095 Chair Ackerman Closes the work session on HB 2359 and opens a public hearing on HB 2524.

HB 2524 – PUBLIC HEARING

102 Shawn Miller Oregon Rental Housing Association. Testifies in support of HB 2524 and the -2 amendments (**EXHIBIT J**). Acknowledges decades of significant contributions by Sharon Fleming-Barrett of the Landlord-Tenant Coalition who recently passed away.

119 Sam Sears Counsel. Explains that HB 2524, brought by the Landlord-Tenant Coalition, are compromises on several issues. Refers to the -2 amendments (**EXHIBIT J**).

132 John Vanlandingham Lane County Law and Advocacy Center. Testifies in support of HB 2524. Explains his role in the Coalition and the history of the Residential Landlord-Tenant Act. Informs that the -2 amendments have seven substantive issues, but no significant changes to the landlord-tenant act are being proposed.

160 Rep. Flores Requests highlights of the seven issues in the -2 amendments.

162 Vanlandingham Describes the main points in the -2 amendments.

222 Rep. Flores Asks for clarification on a challenge of the validity of an “f.e.d.” being entered.

- 225 Vanlandingham Responds with explanation of work being done on judgments. Continues with summarization of the substantive issues in the -2 amendments.
- 254 Vanlandingham Explains stipulated agreements. Adds that archaic language has been removed from a form.
- 303 Bradd Swank Oregon Judicial Department. Points to the provision on Lines 1 to 4, Page 71 of the -2 amendments on ex parte review. Raises a concern about areas with few judges and their availability. Continues that this requirement could be a cost issue to some courts.
- 338 Swank Mentions the changes due to the judgment bill. Advises that “final judgment” has been eliminated and “general judgment” is now used.
- 361 Vanlandingham Reports that they have worked closely with the court administrator in Multnomah County over the years to be sure that changes have minimal impact on the cost to the court system. Advises that the ex parte process is optional.

TAPE 63, B

- 007 Chair Ackerman Points out that the language on the ex parte process is prefaced by “may” rather than “shall.”
- 009 Vanlandingham Replies that any county may choose to do this to reduce the number of hearings that the counties want to do.
- 011 Chair Ackerman Inquires if most courts have ex parte proceedings every day at a scheduled time.
- 013 Vanlandingham Answers, yes.
- 016 Chair Ackerman Closes the public hearing and opens a work session on HB 2524.

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HB 2524 – WORK SESSION

- 021 Rep. Garrard **MOTION: Moves to ADOPT HB 2524-2 amendments dated 4/1/05.**

VOTE: 4-0-0

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

025 Rep. Garrard MOTION: Moves HB 2524 to the full committee with a DO PASS AS AMENDED recommendation.

VOTE: 4-0-0

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

031 Chair Ackerman The motion CARRIES.

REP. GARRARD will lead discussion in the full committee.

034 Chair Ackerman Closes the work session on HB 2524 and opens a work session on HB 2207 for the purpose of allowing Rep. Flores to vote.

HB 2207 – WORK SESSION

051 Chair Ackerman MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. FLORES to BE RECORDED as voting AYE on the MOTION: Moves HB 2207 to the full committee with a DO PASS recommendation.

VOTE: 4-0-0

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

058 Rep. Flores Votes AYE on HB 2207.

VOTE: 4-0-0

(Note: See Tape 63, A at 082, page 4 of these minutes.)

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

060 Chair Ackerman Closes the work session on HB 2207 and adjourns the meeting at 10:05 a.m.

EXHIBIT SUMMARY

- A. **HB 2315, -2 amendments, staff, 1 p**
- B. **HB 2315, written testimony of Bob Joondeph, Kathleen Wilde, 2 pp**
- C. **HB 2315, written testimony of Max Williams, Stan Czerniak, 2 pp**
- D. **HB 3352, -3 amendments, staff, 1 p**
- E. **HB 2207, written testimony, Philip Schradle, 2 pp**
- F. **HB 2359, -1 amendments, staff, 16 pp**
- G. **HB 2359, written report, Gerald Watson, 12 pp**
- H. **HB 2359, written testimony of Gary Blacklidge, Gerald Watson, 1 p**
- I. **HB 2359, written testimony, Bradd Swank, 10 pp**
- J. **HB 2524, -2 amendments, staff, 77 pp**