

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**April 25, 2005 Hearing Room 357**

**8:30 A.M. Tapes 64 - 65**

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

**Rep. Linda Flores**

**Rep. Bill Garrard**

**Rep. Kelley Wirth**

**GUEST MEMBERS:           Rep. Wayne Krieger**

**Rep. Greg Macpherson**

**STAFF PRESENT:           Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 2221A – Public Hearing and Work Session**

**HB 3158 – Public Hearing and Work Session**

**HB 3317 – Public Hearing**

**HB 2373 – Work Session**

**HB 2730 – Work Session**

**HB 2831 – Work Session**

**HM 3 – 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 64, A**

003              Chair Ackerman              Calls the meeting to order at 8:40 a.m. Announces that Rep. Krieger will participate as part of the subcommittee until a quorum is reached. Opens a public hearing on HB 2221A.

**HB 2221A – PUBLIC HEARING**

012              Chair Ackerman              Closes the public hearing and opens a work session on HB 2221A.

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

                    Karen Nibler                      League of Women Voters of Oregon. Submits written testimony in support of HB 2221 (**EXHIBIT F**).

**HB 2221A – WORK SESSION**

014              Sam Sears                      Counsel. Explains that HB 2221A establishes the Child Abuse Multidisciplinary Intervention (CAMI) Program in the Department of Justice; and modifies requirements of programs funded by the CAMI Program. Refers to the -3 amendments (**EXHIBIT A**) and explains what they do.

**028              Chair Ackerman              MOTION: Moves to ADOPT HB 2221A-3 amendments dated 4/22/05.**

029              Chair Ackerman              Discusses his participation in the work group. Explains the -3 amendments provide some greater civilian oversight on the protocols used by the agency and to provide greater protection for confidentiality of records.

**VOTE: 3-0-2**

**EXCUSED: 2 - Flores, Wirth**

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

**040 Chair Ackerman MOTION: Moves HB 2221A to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 3-0-2**

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

**EXCUSED: 2 - Flores, Wirth**

**(Note: See Tape 65, B at 042 and 043, page 8 of these minutes.)**

**050 Chair Ackerman The motion CARRIES.**

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

**053 Chair Ackerman Closes the work session on HB 2221A and opens a public hearing on HB 3158.**

### **HB 3158 – PUBLIC HEARING**

**054 Sam Sears Counsel. Explains HB 3158 which requires that certain causes of action related to improvement to real property be commenced within six years after substantial completion or abandonment of construction, alteration, or repair and changes the statute of ultimate repose from 10 years to six years. Refers to the -1 amendments (**EXHIBIT B**) that exclude single-family residential dwellings from that statute of ultimate repose.**

**067 Chair Ackerman Requests witnesses to limit their testimony to the -1 amendments.**

**069 Jessica Adamson Associated General Contractors. Advises that their organization requested the -1 amendments to allay concerns about the single-family homeowner. Continues that this category was removed from HB 3158 and will retain the 10-year statute of ultimate repose. States that all others will have a six-year statute of ultimate repose.**

**088 Howard Carsman**

Attorney, Portland, Oregon. Testifies in support of HB 3158. Explains the differences between single-family residential situations and other classifications of buildings.

- |     |              |  |
|-----|--------------|--|
| 125 | Carsman      | Concludes that problems with a structure only get worse with time.   |
| 144 | Larry Sitz   | Emerick Construction. Testifies in support of HB 3158. Explains the history of HB 3158. States that mixed-use development cannot be insured because of the condominium aspect of the work. Continues that HB 3158 will allow small to midsize contractors to do this work.   |
| 180 | Sitz         | Refers to designs from California being used which now have been revised so the buildings don't leak anymore. Details differences between residential and commercial construction plans.   |
| 234 | Sitz         | Concludes that many changes in residential construction are not documented. States that they are being held responsible for work done that should have been normal maintenance.  |
| 259 | Rep. Garrard | Asks how often a single-family residence is resold.  |
| 263 | Carsman      | Replies that it is common to see a home sold at least once in 10 years, and two owners are not unusual.  |
| 270 | Rep. Garrard | Comments that it seems six years should be plenty of time to find a leak.  |
| 275 | Carsman      | Answers that to the extent the leaks are caused by poor design or poor construction, they will be discovered before the building is finished. States that the longer leaks go unattended, the worse the damage and the more expensive to fix. Believes it is prudent to shorten the timeframe to extend responsibility to all parties to act promptly. Continues that owners of single-family residences may be least equipped to determine problems in their own home as they are not as knowledgeable or have the resources to deal with the problems. |
| 321 | Paul Snider  | Association of Oregon Counties. Testifies in opposition to HB 3158 and the -1 amendments. Cites the problems with the Lincoln County jail construction.  |
| 350 | Lee Street   | Oregon Trial Lawyers Association. Testifies and submits written testimony in opposition to HB 3158 and the -1 amendments   |

**(EXHIBIT C).** Reports that many problems are not being discovered until six to 10 years after construction. Cites examples.

**TAPE 65, A**

- 010 Street Continues that leak problems usually cannot be seen due to the siding. Refers to the Oregon statute of limitations which requires that a claim be brought within six years of a time when a plaintiff knew or reasonably should have known of the problem. Does not agree with the distinction between single- and multiple-family dwellings and does not believe it is a continuity of ownership issue.
- 056 Street Believes that if HB 3158 is passed that the effective date should not be retroactive but apply only to construction started after enactment.
- 062 Rep. Garrard Asks how often a new single-family residence is resold.
- 065 Street Replies that about 60 percent of his clients in the six- to ten-year period are first-time homeowners.
- 074 Rep. Macpherson Refers to the chart in **EXHIBIT C** that lists the states with statutes of repose periods. Asks for clarification on how to read the statistics.
- 082 Street Responds that if problems are discovered in the seventh, eighth, ninth or tenth year, additional time would be allowed to process the claim. States that many jurisdictions have no repose period.
- 101 Chair Ackerman Closes the public hearing and opens a work session on HB 3158.

**HB 3158 – WORK SESSION**

105 Chair Ackerman **MOTION: Moves to ADOPT HB 3158-1 amendments dated 4/22/05.**

**VOTE: 3-0-1**

**EXCUSED: 1 - Wirth**

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

112 Rep. Garrard

**MOTION: Moves HB 3158 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**

**(Note: See Tape 65, B at 048, page 9 of these minutes.**

**116 Chair Ackerman The motion CARRIES.**

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

123 Chair Ackerman Closes the work session on HB 3158 and opens a public hearing on HB 3317.

**HB 3317 – PUBLIC HEARING**

129 Sam Sears Counsel. Explains HB 3317 which requires that local governments pay the attorney fees and costs of the Attorney General (AG) for judicial proceedings related to unlawful actions by local governments; and requires that the AG pay the attorney fees and costs of a local government related to a judicial proceeding challenging the legality of an action of the local government if the court determines that those actions were legal. Continues that HB 3317 provides for a system of loser pays the winner's legal fees in disputes between state and local governments.

142 Paul Snider Association of Oregon Counties. Testifies that county counsels recommended opposition to HB 3317 but wants to identify the purpose and intent. States that it appears the primary goal of HB 3317 is to avoid litigation between local governments and the state. Discusses difficulties carrying out voters' initiatives. Cites examples of potential problems in HB 3317.

180 Rep. Macpherson Requests an example of a circumstance in which the AG would be required to participate in judicial proceedings related to an action by a local government that is contrary to law.

187 Snider Answers he is not sure when the AG would be required to appear.

193	Snider	Adds that the League of Oregon Cities also has concerns about how HB 3317 would operate.
198	Chair Ackerman	Comments that state agencies that might be affected by HB 3317 are conspicuously absent. Believes it is important that agencies provide their positions.
215	Rep. Jeff Kropf	House District 17. Testifies that HB 3317 was partly a result of Multnomah County's decision to grant same-sex marriage licenses in 2004. Refers to the public's reaction to government "pushing the envelope" resulting in bad policy. Continues that he introduced this concept which says any government that engages in bad policy that has a good chance of being overturned, should think twice because if they lose they will have to pay opposing government's costs. States that HB 3317 relates to law suits between governments only. Reports on discussions about this issue with the AG's office.
254	Rep. Kropf	Continues that HB 3317 creates a deterrent for bad policy making and should save the costs of frivolous law suits. States that the fiscal impact is indeterminate, and he doesn't know how HB 3317 relates to Measure 37 claims. Comments that the Multnomah County circumstances cost the AG about \$60,000 in court fees.
283	Rep. Kropf	Refers to the Public Employees Retirement System (PERS) decision. Reiterates that the concept is, if a local government or the state engages in a direction that causes another government to initiate or join in a legal action in which they prevail, they should be reimbursed.
321	Rep. Kropf	Concludes that some of the concerns raised are legitimate. Indicates a willingness to discuss amendments.
331	Chair Ackerman	Comments that he doesn't see why the AG's office should be required to bear legal costs when its role is to defend on behalf of the offending agency. Cites an example.
344	Rep. Kropf	Advises that the language was left up to Legislative Counsel. Agrees that the AG should not have to pay and it should be the offending agency. Indicates he is amenable to making that change.
355	Chair Ackerman	States that he is unsure if "contrary to law" is civil law or criminal law. Suggests different terms.

- 378 Rep. Kropf Responds that HB 3317 is intended toward civil law rather than criminal.
- 403 Rep. Macpherson Doesn't see the relationship between the PERS challenges and HB 3317. Wants to focus on the precondition that the AG is required to commence or participate in judicial proceedings relating to the action.

**TAPE 64, B**

- 006 Rep. Kropf Responds that the AG could make a claim that a local government action was unlawful and when they prevail, be able to recover attorneys fees from that local government. States that there needs to be continued discussion.
- 042 Kevin Neely Executive Assistant to the AG. Reports that the Department of Justice (DOJ) worked some with the carrier's staff to try to identify a fiscal impact. Discusses the challenges in drafting HB 3317.
- 064 Neely Refers to the Multnomah County case in which individual plaintiffs sued the state and the county was an intervener. Refers to the City of Eugene PERS challenge against the state which is now before the Supreme Court. Advises that the legal fees in that case are very high as it has been in litigation about three and one-half years. Believes it is likely Measure 37 will provide real challenges to determine how to implement the measure.
- 104 Rep. Macpherson Asks for verification of the \$60,000 DOJ expenditure for litigation over same-sex marriages.
- 111 Neely Advises that he provided that figure but by now the number has probably gone up. Reports that was complex litigation and in the course of working that case, a ballot initiative passed requiring three times as much briefing as they would normally have had.
- 120 Rep. Macpherson Requests what caused the DOJ cost, as individuals challenged the marriage statute in the county.
- 126 Neely Explains that the lawsuit was initiated by same-sex couples because the registrar refused to accept the marriage certificates, so the state was the defendant in that case.



- 134 Rep. Macpherson Comments that even if HB 3317 had been in effect, there was no right to recover from Multnomah County as the AG was not required to participate.
- 139 Neely Agrees with Rep. Macpherson. Advises that because of the diversity of cases, it is difficult to craft “loser pays” legislation.
- 158 Chair Ackerman Asks for the AG position on HB 3317.
- 160 Neely Responds that the AG believes that HB 3317 as written needs more work and that the AG is neutral.
- 176 John Powell Oregon State Sheriffs’ Association. Expresses concerns with HB 3317. Believes there will be other legislation on deadly force which may or may not require AG participation. Requests opportunity to participate on a work group.
- 189 Chair Ackerman Closes the public hearing on HB 3317. Announces there will be no work session.
- 196 Chair Ackerman Opens a work session on HB 2373.

**HB 2373 – WORK SESSION**

- 197 Sam Sears Counsel. Explains 2373 which prohibits civil actions against manufacturers and sellers of firearms and ammunition for damages caused by the unlawful use of firearm products. Cites the exceptions that include situations when the seller knew or should have known the purchaser was likely to use the firearm to cause physical injury, product liability, breach of contract, and violation of sale and marketing statutes.
- 202 Rep. Garrard MOTION: Moves HB 2373 to the full committee with a DO PASS recommendation.**
- 206 Rep. Wirth States her opposition to HB 2373.
- 210 Chair Ackerman Opposes HB 2373 as he believes it is unconstitutional and no amendments have been presented to resolve the issues. Intends to vote no.

224 Rep. Krieger Reports on difficulty getting appropriate language drafted by Legislative Counsel so the sponsors decided to remain with the original HB 2373.

235 Chair Ackerman Comments that HB 2373 bars certain claims, including negligence claims and nuisance claims which have been the focal point of litigation in this area. Continues that withdrawing those claims from the court system violates Article I, Section 20 of the Oregon Constitution.

**VOTE: 3-2-0**

**AYE: 3 - Flores, Garrard, Krieger**

**NAY: 2 - Wirth, Ackerman**

255 Chair Ackerman **The motion CARRIES.**

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

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

Diana Madarieta Brady Campaign. Submits written testimony in opposition to HB 2373 (**EXHIBIT G**).

256 Chair Ackerman Closes the work session on HB 2373 and opens a work session on HB 2730.

**HB 2730 – WORK SESSION**

259 Sam Sears Counsel. Explains 2730 which provides civil immunity for radio or television broadcasters who participate in the Amber Plan. Refers to consensus -3 amendments (**EXHIBIT D**) which clarify that cable companies that participate in the Amber Plan are included and provide that civil immunity does not apply for intentional misconduct or gross negligence.

269 Rep. Garrard **MOTION: Moves to ADOPT HB 2730-3 amendments dated 4/21/05.**

**VOTE: 5-0-0**

- 271 Chair Ackerman Hearing no objection, declares the motion **CARRIED**.
- 282 Rep. Garrard **MOTION: Moves HB 2730 to the full committee with a DO PASS AS AMENDED recommendation.**
- 297 Rep. Wirth States her opposition to HB 2730 because of the blanket immunity problem.
- 299 Chair Ackerman Advises that there are Article I, Section 20 Oregon Constitution problems with HB 2730 and will be voting no as well.
- 302 **VOTE: 3-2-0**  
**AYE: 3 - Flores, Garrard, Krieger**  
**NAY: 2 - Wirth, Ackerman**
- 309 Chair Ackerman **The motion CARRIES.**  
**REP. GARRARD will lead discussion in the full committee.**
- 310 Chair Ackerman Closes the work session on HB 2730 and opens a work session on HB 2831.

**HB 2831 – WORK SESSION**

- 324 Sam Sears Counsel. Explains HB 2831 which allows municipal courts to assign judgments in criminal actions to the Department of Revenue (DOR). Explains the -1 amendments (**EXHIBIT E**) clarify that the judgments must be payable to the State of Oregon in order for municipal courts to assign those judgments to the DOR. Advises that the fiscal analysis may mean a subsequent referral to Ways and Means.
- 344 Chair Ackerman Asks Rep. Krieger about the procedure.
- 348 Rep. Krieger Advises to pass to the full committee and they will request referral if necessary.
- 352 Rep. Garrard **MOTION: Moves to ADOPT HB 2831-1 amendments dated 4/11/05.**

**VOTE: 4-0-0**

- 353 Chair Ackerman Hearing no objection, declares the motion **CARRIED**.
- 359 Rep. Garrard **MOTION: Moves HB 2831 to the full committee with a DO PASS AS AMENDED recommendation with subsequent referral to Ways and Means.**
- 369 Sears Advises of his discussion with the DOR and they indicated there would be an upfront cost but it would eventually be recovered.

**TAPE 65, B**

- 005 **VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 010 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 011 Chair Ackerman Closes the work session on HB 2831 and opens a work session on HM 3.

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**HM 3 – WORK SESSION**

- 013 Sam Sears Counsel. Explains HM 3 requests that Congress enact legislation to protect firearms and ammunition manufacturers, distributors, dealers, and importers from abusive and ill-conceived tort actions.
- 017 Rep. Flores **MOTION: Moves HM 3 to the full committee with a BE ADOPTED recommendation.**
- 022 Chair Ackerman Reports that HM 3 has a constitutional problem so will vote no. Continues that “federalization” of the issue is the wrong way to go.
- 027 Rep. Wirth States her opposition to HM 3 for the same reasons.

028                                    **VOTE: 3-2-0**  
**AYE:                    3 - Flores, Garrard, Krieger**  
**NAY:                    2 - Wirth, Ackerman**

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

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

        Diana Madarieta    **Brady Campaign. Submits written testimony in opposition to HM 3 (EXHIBIT H).**

036            Chair Ackerman    **Closes the work session on HM 3.**

037            Chair Ackerman    **Announces that Rep. Wirth requests an opportunity to vote on HB 2221A and HB 3158 and Rep. Flores requests an opportunity to vote on HB 2221A. Opens a work session on HB 2221A.**

**HB 2221A – WORK SESSION**

039            Chair Ackerman    **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow Rep. FLORES and Rep. WIRTH to BE RECORDED as voting AYE on the MOTION: Moves HB 2221A to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 5-0-0**

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

042            Rep. Flores         **Votes AYE on HB 2221A.**

043            Rep. Wirth         **Votes AYE on HB 2221A.**

**VOTE: 5-0-0**

**(Note: See Tape 64, A at 040, page 2 of these minutes.)**

- 044 Chair Ackerman Hearing no objection, declares the motion CARRIED.
- 045 Chair Ackerman Closes the work session on HB 2221A and opens a work session on HB 3158.

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**HB 3158 – WORK SESSION**

- 046 Chair Ackerman **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow Rep. Wirth to BE RECORDED as voting AYE on the MOTION: Moves HB 3158 to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 4-0-0**

- 047 Chair Ackerman Hearing no objection, declares the motion CARRIED.

- 048 Rep. Wirth Votes AYE on HB 3158.

**VOTE: 4-0-0**

**(Note: See Tape 64, A at 112, page 3 of these minutes.)**

- 049 Chair Ackerman Hearing no objection, declares the motion CARRIED.

- 050 Chair Ackerman Closes the work session on HB 3158 and adjourns the meeting at 10:03 a.m.

**EXHIBIT SUMMARY**

- A. HB 2221A, -3 amendments, staff, 1 p
- B. HB 3158, -1 amendments, staff, 2 pp
- C. HB 3158, written testimony, Lee Street, 31 pp
- D. HB 2730, -3 amendments, staff, 1 p
- E. HB 2831, -1 amendments, staff, 1 p
- F. HB 2221, written testimony, Karen Nibler, 1 p

- G. **HB 2373, written testimony, Diana Madarieta, 18 pp**
- H. **HM 3, written testimony, Diana Madarieta, 18 pp**