

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**April 4, 2005 Hearing Room 357**

**8:30 A.M. Tapes 42 - 44**

**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 3158 – Public Hearing and Work Session**

**HB 3159 – Public Hearing**

**HB 3318 – Public Hearing**

**HJR 31 – Public Hearing**

**HM 4 – Public Hearing**

**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 42, A**

003              Chair Ackerman              Calls the meeting to order at 8:35 a.m. and opens a public hearing on HB 3158.

**HB 3158 – PUBLIC HEARING**

010              Rep. Mike Schaufler      House District 48. Testifies as a small business person and contractor in support of HB 3158. Explains that the cost of doing business is becoming harder to cover so lowering the statute of ultimate repose from ten years to six years will help.

030              Sam Sears                      Counsel. Describes 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. Advises that current statute of ultimate repose is ten years but other statutes of limitation will still apply to specific causes of action.

040              Rep. Schaufler              Continues by stating the main reason for this kind of insurance is to go after people who do not know what they are doing.

048              Rep. Garrard                      Asks why six years was chosen.

050              Rep. Schaufler              Doesn't know but other witnesses may be able to answer that question.

060              Chair Ackerman              Encourages witnesses to be brief so a work session can be held while a quorum is still available.

063              Jessica Adamson              Associated General Contractors. Introduces experts from the insurance industry and the legal community. Testifies that HB 3158 will help stabilize rates and bring insurers to Oregon.

078              Ron Bennett

Marsh USA Inc. Testifies and submits written testimony in support of HB 3158 (**EXHIBIT A**). Informs that the liability insurance market is currently very limited for residential contractors.

- 134 Bennett Continues reading from written testimony (**EXHIBIT A**). Indicates the change to six years should be more manageable. Believes HB 3158 is a step in the right direction, but there are many other issues. Describes the desirable relationship among the building designer, the builder and the owner.
- 188 Mark Jurva Attorney, Portland, Oregon. Testifies in support of HB 3158. Explains that cases between six and ten years are more difficult to defend. Cites the circumstances of a case from the late 1990s.
- 243 Jurva Continues that indemnity claims can be brought against the subcontractor after the statute of ultimate repose passes, if the general contractor made a payment within ten years. Cites circumstances of a retired contractor who is now facing a lawsuit, and must decide whether to continue buying insurance protection.
- 268 Jurva States that manufacturers can limit their liability but Oregon businesses can be left “holding the bag” as they can be sued years later.
- 275 Rep. Garrard Asks why six years instead of four or five.
- 279 Adamson Indicates that some states use four or five years, but six years will put Oregon in line with neighboring states Washington and Idaho. Believes that construction defects should be found in that length of time.
- 296 Rep. Flores Asks Mr. Jurva how long it was before the faulty Louisiana-Pacific (L-P) siding issues were discovered.
- 302 Jurva Responds that he has less experience with the faulty L-P siding than with the synthetic stucco. States that in the L-P cases, parties became aware of the problem through news reports or personal experience within six years of original installation. Reports on the synthetic stucco issues.
- 339 Rep. Macpherson Inquires about the statute of ultimate repose in California and Nevada.
- 344 Adamson

Replies that California has four years for patent defects and ten years for latent defects. Continues that California and Nevada have different construction insurance markets.

380 Jim Hirte Colamette Construction Company. Testifies and submits written testimony in support of HB 3158 (**EXHIBIT B**). Refers to the five-year insurance analysis included in **EXHIBIT B**. Points out that liability insurance costs began increasing five years ago; however, they were excluded from residential construction.

**TAPE 43, A**

042 Steve Malany P & C Construction Company. Testifies and submits written testimony in support of HB 3158 (**EXHIBIT C**). Reports on a job on which a law suit was filed nine years after the original work was done. Describes increase in insurance rates. Believes that after six years, it is a maintenance problem.

090 Jerod Broadfoot Oregon State Building and Construction Trades Council. Testifies in support of HB 3158. States that lowering from ten years to six years makes sense and allows contractors some certainty of the period they are going to be responsible.

110 Rep. Flores Asks Mr. Malany for clarification that the developers to whom he referred in his testimony did not have insurance.

114 Malany Replies that they had insurance during the conversion but was not sure if it was maintained.

137 Gaetana Amico Homeowner, Salem, Oregon. Testifies in opposition to HB 3158. Cites personal experience of problems discovered with two weeks left in the current ten-year time limit.

189 Mark Tyler Homeowner, Sweet Home, Oregon. Testifies in opposition to HB 3158. Indicates that most problems are due to substandard materials, not construction. Cites personal experience of construction problems by Adair Homes. Explains the term "industry acceptable" which allows substandard work. Outlines differences in final inspection reports by two different inspectors.

284 Tyler Continues that the only reason a reputable contractor would want HB 3158 is to leave their responsibility to the consumer.

- 309 Lee Street Attorney, Portland, Oregon. Testifies and submits written testimony in opposition to HB 3158 (**EXHIBIT D**). States that Dr. Amico incurred \$250,000 in repair costs. Reports that a review of 40 residential cases shows about 45 percent were filed within six years and 55 percent between six and ten years, with average repair costs of \$218,000 per homeowner.
- 368 Rep. Flores Asks Mr. Tyler if product liability is the issue, how that can be the fault of the contractor.
- 390 Tyler Responds that manufacturers market directly to large contractors and large suppliers. Doesn't understand why a contractor would use a product that a manufacturer will stand behind for a shorter period of time.

**TAPE 42, B**

- 014 Chair Ackerman Closes the public hearing and opens a work session on HB 3158.

**HB 3158 – WORK SESSION**

- 019 Rep. Garrard **MOTION: Moves HB 3158 to the full committee with a DO PASS recommendation.**
- 023 Rep. Flores Indicates she has unresolved questions but will support moving to the full committee.
- 027 Rep. Wirth States her position is the same as Rep. Flores'.
- 030 **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.**
- 035 Chair Ackerman

Closes the work session on HB 3158 and opens a public hearing on HB 3159.

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### **HB 3159 – PUBLIC HEARING**

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|-----|-----------------|---|
| 037 | Sam Sears       | Counsel. Explains HB 3159, which exempts certain licensed construction contractors from product liability civil actions brought for damages related to asbestos.  |
| 040 | Jessica Adamson | Associated General Contractors (AGC). Testifies in support of HB 3159.  |
| 063 | Guy Randles     | Associate Member, AGC. Testifies in support of HB 3159. Explains the role of a contractor is to construct the project using the materials specified by the owner or design professional. Cites circumstances of a 2003 case involving a 1949 project. |
| 074 | Randles         | States that ORS 30.907 allows two years from discovery of cause of damage to sue and “trumps” the statute of ultimate repose, which is ten years.   |
| 123 | Robert Burgess  | Cascade Acoustics. Testifies and submits written testimony in support of HB 3159 ( <b>EXHIBIT E</b> ).  |
| 166 | Burgess         | Continues reading from <b>EXHIBIT E</b> . States that contractors are being sued for product liability, causing a sharp increase in general liability insurance costs.  |
| 293 | Rep. Wirth      | Asks how liability insurance costs for construction contractors would be affected if HB 3158 and HB 3159 are passed.  |
| 198 | Adamson         | Responds that hopefully current insurers will remain here and that more will be attracted to this state, and rates will be stabilized and eventually lowered.   |
| 227 | Rep. Wirth      | Refers to Mr. Burgess’ testimony when he stated his increase in insurance rates will be addressed by HB 3158 and HB 3159. Asks for clarification that there is no guarantee there will be a reduction in liability costs.                             |

234	Adamson	Replies that rates continue to rise and the goal is to “stem the tide,” to stabilize the rates and eventually reduce them.
250	Burgess	Comments that rates are not the only issue, as every year there are fewer carriers quoting construction liability in Oregon. Informs that in 2004 there were only three in Oregon quoting general liability insurance, and most carriers won’t quote if asbestos activity appears on the record.
262	Rep. Macpherson	Understands the connection between HB 3158 and availability of liability insurance. Asks if HB 3159 deals more with whether a contractor can be held responsible for asbestos installed at someone else’s direction.
271	Adamson	Responds that products are stipulated by architects or owners who don’t carry the same insurance that is required of contractors. Continues that HB 3159 is not as broad as the statute of ultimate repose but is a component that drives the ability of a contractor to acquire insurance.
296	Chair Ackerman	Asks if the contractor is still liable if also the manufacturer.
302	Randles	Responds that they are addressing the liability that comes from the selling of the product, merely as someone who is following the specifications in installing it. Refers to a construction contractor as someone licensed under ORS chapter 701 so a typical manufacturer would not be a registered contractor.
329	Chair Ackerman	Suggests inserting “only” after “contractor” in Line 10 of HB 3159 to clarify that contractors who install asbestos products according to specifications should have no legal liability.
346	Randles	Believes that clarification would be acceptable.
350	Adamson	Agrees to proposed amendment.
354	Sears	Seeks clarification that installers who are called sellers would be subject to the statute of ultimate repose.
372	Randles	

Replies that normally they would, but reiterates that ORS 30.900 provides that asbestos products are not subject to the statute of ultimate repose.

380 Sears Asks if the courts are defining contractors as sellers even though they only install.

**TAPE 43, B**

003 Randles Responds, that is right. Goes on that the courts suggest that sellers of asbestos products are exempt from both the statute of ultimate repose and from product liability.

007 Chair Ackerman Suggests wording for an amendment. Offers to work with counsel to prepare.

019 Ed Glad Pacific Northwest Regional Council of Carpenters. Testifies about the affect asbestos has on the consumer. Cites personal experiences with exposure to asbestos on demolition projects.

065 Glad Indicates that if a change in strategy occurs in how contractors operate within the market place, and their relationship with the insurance companies and the vulnerable workers, caution needs to be exercised.

073 Glad Explains their training of installers so they know what is proper and safe.

091 Chair Ackerman Closes the public hearing on HB 3159.

101 Chair Ackerman Opens a public hearing on HB 3318, which increases the amount employers may pay for medical service in nondisabling claims from \$500 to \$1,500.

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**HB 3318 – PUBLIC HEARING**

106 John Shilts

Administrator, Workers Compensation Division. Testifies in support of HB 3318. Explains that current law allows employers to pay for medical services in nondisabling workers compensation claims up to \$500 per claim. Continues that the \$500 limit was established in 1987 so those minor injuries would not adversely affect the employers experience rate.

136 Chair Ackerman Closes the public hearing on HB 3318. Announces that no work sessions will be held on HJR 31 or HM 4 due to lack of a quorum.

147 Chair Ackerman Opens a public hearing on HJR 31, which proposes a constitutional amendment to allow the House of Representatives to impeach certain elected officials, specifies grounds for impeachment, and requires a trial by the Senate.

### **HJR 31 – PUBLIC HEARING**

176 Lisa Bennett Legislative Assistant for Rep. Jeff Kropf, House District 17. Testifies on Rep. Kropf’s behalf in support of HJR 31. Distributes the -1 amendments to HJR 31 (**EXHIBIT F**). Informs that Oregon is the only state that does not have impeachment powers. Explains the process outlined in HJR 31 will not replace the recall process but supplement it.

223 Rep. Wirth Asks about the other states’ processes.

225 Bennett Responds that they differ slightly but all are called impeachment powers. Offers to provide a copy of a table from the *Book of the States* that describes each state’s process.

234 Sam Sears Asks if this process would be that much different from the process we have for removing officials from office.

239 Bennett Answers that it is a different process as a citizen can go directly to a legislator.

279 Erin Thurber Resident, Brooks, Oregon. Testifies in support of HJR 31. Explains the pamphlet that discusses the principles behind HJR 31 (**EXHIBIT G**).

334 Thurber Continues reading from prepared statement. Believes that public officials should be accountable to the legislature as recall has not been an effective tool.

384 Thurber Cites statistics on recall efforts in Oregon shown in **EXHIBIT G**. Explains that HJR 31 does not replace recall laws but streamlines the process.

**TAPE 44, A**

006 Thurber Refers to Article III, Section 1 of the Oregon Constitution. Believes that HJR 31 will receive voter support.

016 Bertran Copp Resident, Monmouth, Oregon. Testifies and submits written testimony in support of HJR 31 (**EXHIBIT H**). States that several organizations are trying to stop fraudulent guardianships.

050 Copp Refers to **EXHIBIT H** which contains history of legislation to end elder abuse in Oregon.

057 Rep. Wirth Seeks clarification of the intent of HJR 31. Asks if the resident making the complaint and the House committee will define whether a complaint fits the definition of an impeachable offense.

071 Thurber Answers, yes.

072 Rep. Wirth Inquires if the House committee would have an equal number from both parties.

077 Thurber Replies that would be left up to the committee. Has no objection to an amendment addressing that issue. Advises he tried to make HJR 31 as apolitical as possible.

084 Copp Comments on existing Oregon procedures that allow law suits.

091 Rep. Macpherson States that the impeachment process appears to be directed only to executive officers and judiciary and not to the legislative branch. Asks if the legislative branch acts on members of other branches of government, or is the legislative branch included in other procedures.

100 Thurber Responds that in some states the legislative branch is included in the impeachment process. States that they were excluded as they are elected every two years and are accountable to the people.

- 108 Rep. Macpherson Indicates that it seems troublesome to create a procedure to pursue other branches without including the legislative branch.
- 114 Thurber Answers that HJR 31 could be amended to include the legislative branch.
- 118 Copp Believes that existing procedures within the legislature take care of the issue.
- 124 Chair Ackerman Refers to ORS 30.510(2) that authorizes commencement of an action by the district attorney when a public official has committed an act which allows for the forfeiture of office.
- 132 Copp Responds that he was denied representation by the district attorney.
- 137 Chair Ackerman Closes the public hearing on HJR 31 and opens a public hearing on HM 4, which requests that Oregon's United States Senators work to ensure expeditious Senate action on Supreme Court nominations.

#### **HM 4 – PUBLIC HEARING**

- 152 Jason Williams Taxpayers Association of Oregon. Testifies in support of HM 4. States that supreme court appointments should be fair and expeditious.
- 177 Rep. Macpherson Refers to a recital in HM 4 about activist judges on some federal courts. Asks whether current U. S. Supreme Court can be characterized as an activist court.
- 183 Williams Responds that the reference is to federal judges. States that judges are making rulings not based on constitutionality of the law.
- 190 Rep. Macpherson Comments about the struggle this session with a couple of U. S. Supreme Court decisions. Asks if it would be appropriate to appoint Justice Scalia as Chief Justice given activist "bent" on those decisions.
- 201 Williams Replies that he is not prepared to comment on Justice Scalia's decisions.

206	Chair Ackerman	Asks if he would be comfortable removing “activist judges” in Line 13 of HM 4 which seems to have a polarizing effect. Comments that language in Line 17 regarding appointing federal judges who will strictly interpret the constitution is also polarizing. Asks if he would consider removing “strictly interpret” and inserting “fairly.”
228	Williams	Responds that the language in HM 4 is the same as language being introduced in all 50 states, so prefers not changing it so it remains uniform.
237	Rep. Macpherson	Asks if the aim is to obtain uniformity across the country, why it is a House memorial instead of a joint memorial.
242	Williams	Answers that he didn’t have an idea of the Senate’s priorities.

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

	Linda Leffel	Resident, Bend, Oregon. Submits written testimony in opposition to HB 3158 ( <b>EXHIBIT I</b> ).
	Steve Malany	P&C Construction Company. Submits written testimony in support of HB 3159 ( <b>EXHIBIT J</b> ).
252	Chair Ackerman	Closes the public hearing on HM 4 and adjourns the meeting at 10:43 a.m.

**EXHIBIT SUMMARY**

- A. **HB 3158, written testimony, Ron Bennett, 3 pp**
- B. **HB 3158, written testimony, Jim Hirte, 4 pp**
- C. **HB 3158, written testimony, Steve Malany, 2 pp**
- D. **HB 3158, written testimony, Lee Street, 32 pp**
- E. **HB 3159, written testimony, Robert Burgess, 33 pp**
- F. **HJR 31, -1 amendments, Lisa Bennett, 2 pp**
- G. **HJR 31, printed pamphlet, Erin Thurber, 12 pp**
- H. **HJR 31, written testimony, Bertran Copp, 2 pp**

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

- I. HB 3158, written testimony, Linda Leffel, 2 pp**
- J. HB 3159, written testimony, Steve Malany, 2 pp**

**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.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 34, A</b>		
003	Chair Ackerman	Calls the meeting to order at 8:37 a.m. and opens a public hearing on HB 3119.
<b><u>HB 3119 – PUBLIC HEARING</u></b>		
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.
<b>056</b>	<b>Rep. Flores</b>	<b>MOTION: Moves HB 2938 to the full committee with a DO PASS recommendation.</b>
		<b>VOTE: 3-0-1</b>
		<b>AYE: In a roll call vote, all members present vote Aye.</b>
		<b>ABSENT: 1 - Wirth</b>
<b>062</b>	<b>Chair Ackerman</b>	<b>The motion CARRIES.</b>
		<b>REP. FLORES will lead discussion in the full committee.</b>
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