

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 16, 2005 Hearing Room 357

8:30 A.M. Tapes 80 - 81

Corrected 10/12/05

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 2146 – Public Hearing

HB 2210 – Work Session

HB 2212 – Work Session

HB 2269 – Work Session

HM 4 – 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 80, A

003 Chair Ackerman Calls the meeting to order at 8:43 a.m. Announces that HB 3303 will be set over to May 18 to allow time for submission of an amendment and that there will be invited testimony from the Oregon Department of Transportation on HB 2269. Opens a public hearing on HB 2146.

HB 2146 – PUBLIC HEARING

014 Sam Sears Counsel. Explains HB 2146 and the -4 amendments (**EXHIBIT A**) which change the procedure for Department of Human Resources (DHS) recovery of monies from third parties.

032 Roy Fredericks DHS. Testifies in support of the -4 amendments to HB 2146. Reads from a prepared statement. Explains the authority to impose a lien on the proceeds of any third-party action brought by the recipient for the cost of accident-related public assistance. Provides an example of need for HB 2146.

072 Fredericks Summarizes that HB 2146 will increase the recovery of public assistance and bring the department into compliance with federal law. Comments that some managed care plans under contract with the state have expressed a desire to amend HB 2146 to allow them to file an action against a party directly; however, the department does not support such a change.

097 Rep. Garrard Inquires about a fiscal affect.

100 Fredericks Reports that the first year it would be a minimum of \$100,000 and then \$40,000 per month thereafter, plus.

103 Chair Ackerman Announces that the public hearing is being conducted, but there is no quorum for a work session. Asks if the intent in the original HB 2146 was to include medical expenses.

111	Fredericks	Answers, yes.
112	Chair Ackerman	Inquires why general assistance is not included in either the -3 or -4 amendments.
115	Fredericks	Responds that the medical assistance definition is broad enough to include general assistance.
119	Chair Ackerman	Believes that language in the -4 amendments could be interpreted that third-party litigation rights are for medical care rather than for general assistance. Indicates an amendment may be needed to clarify.
128	Fredericks	Replies that HB 2146 was modified to reflect medical care as that mirrors language in federal statute. States that the definition of medical assistance in Oregon statute is broad and covers general assistance.
135	Chair Ackerman	Comments that HB 2146 does not say that.
139	Karl Goodwin	Department of Justice (DOJ). Believes that the definition of medical assistance in ORS chapter 416 is broad enough to include all types of assistance.
146	Chair Ackerman	Requests the specific cite.
148	Fredericks	Doesn't have it but offers to get the specific statute citation.
149	Chair Ackerman	Reiterates that the language needs to be specific to avoid the need for court interpretation of the law.
152	Rep. Macpherson	Comments that he is unsure why general assistance would come into play.
162	Chair Ackerman	Responds that the injured party might be on general assistance and there are lien rights with respect to that situation. Seeks clarification.
164	Fredericks	Answers, that's right. Cites an example of foster care being needed, which would be medical assistance.
170	Chair Ackerman	

		Asks about the recipient receiving general assistance and the department's authority to file a lien.
172	Fredericks	Replies there is, if the individual subsequently files a claim for damages against the third-party carrier.
176	Chair Ackerman	Cites an example where a portion can be collected through the lien rights.
177	Fredericks	Answers, correct.
178	Chair Ackerman	States that is separate from medical assistance.
180	Fredericks	Replies, but is related to the accident
184	Chair Ackerman	Returns to the definitional problem.
185	Rep. Macpherson	Inquires about compensation for counsel who pursues recovery from the third party. Comments that the original HB 2146 referenced the department recovering attorneys fees but there is nothing in the amendments on that issue. Asks if it is contemplated that in all cases if the state would be pursuing recovery rather than coordinating with counsel to the injured party.
203	Fredericks	Responds that HB 2146 is designed to address the assignment issue and allow the department to go to a third party to present the claim and is specific to a situation where an individual does not wish to engage private counsel to assist in filing a claim.
210	Rep. Macpherson	Seeks clarification that the department would not use this authority in a case where the injured party is represented by other counsel, but would pursue recovery through coordination.
214	Goodwin	Replies that the state would rely on its lien authority under ORS 416.540.
222	Rep. Macpherson	Clarifies that the statute authority is for a lien on the proceeds of that other recovery.
223	Goodwin	Answers, correct.

224	Chair Ackerman	Asks how the department would be charged for needed DOJ services.
231	Fredericks	Clarifies that HB 2146 gives DHS the authority to present a claim and plan on a positive response from the third-party insurance carrier the majority of the time. Continues that HB 2146 is not designed to establish an opportunity for direct action against a third party.
238	Chair Ackerman	States that is what HB 2146 does. Points out that the rights against the third party are being extended from lien rights to actually filing a claim. Asks at what point legal services are engaged and the cost.
242	Fredericks	Responds that the department would have to see if cost effective. Continues that if a relatively small amount, it would probably be appropriate to engage the DOJ but don't anticipate that will happen often.
250	Chair Ackerman	Asks for the DOJ fee when that occurs.
253	Fredericks	Believes the going rate is \$95 per hour for Attorney General time.
257	Chair Ackerman	Asks if an individual files a claim for pain and suffering, is the individual barred by the <i>doctrine of claim preclusion</i> from pursuing the case.
267	Gretchen Merrill	DOJ. Replies that the individual would not be barred as the claim being made is for DHS's costs, not the individual's. Believes that individuals with large claims, including pain and suffering, will most likely have counsel.
287	Chair Ackerman	Expresses concern about the rights of the recipient. Suggests that an amendment be prepared to include language to more adequately protect the public.
305	Merrill	Refers to Section 4 which does not limit rights.
316	Chair Ackerman	Believes the intent could be clarified.
329	Fredericks	

Advises that HB 2146 is a revenue generator and brings the department into compliance with federal law.

- 344 Lauren Rhoades Oregon Health Care Association. Testifies and submits written testimony as neutral on HB 2146 (**EXHIBIT B**). Reports on discussions with the DHS and DOJ regarding the intent of HB 2146. States that HB 2146 allows the state to pursue parties who actually have legal liability for the claims of medical assistance.
- 377 Sybil Hebb Oregon Law Center. Testifies as neutral on HB 2146. Raises concern about claim preclusion. Points out that Section 4 contains rights for claims against a third party for expenses not covered by DHS and wants to ensure those rights are preserved. Refers to Line 14 of the -4 amendments which requires the recipient's cooperation with DHS in the pursuit of the claim, unless there is good cause for the recipient not to cooperate. States that "good cause" needs to be defined in rulemaking to include considerations related to the best interests of the parties. Provides an example to illustrate the concern.

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- 029 Chair Ackerman Asks if the "good cause" requirement should be addressed in rulemaking or in an amendment to HB 2146.
- 033 Hebb States that their preference would be DHS consider the best interests of the parties when rulemaking. Advises that the term is currently in federal law so does not need to be defined in statute.
- 039 Chair Ackerman Indicates the need for clarifying amendments.
- 054 Clint Simpson Attorney, Eugene, Oregon. Testifies and submits written testimony in support of HB 2146 and the -4 amendments (**EXHIBIT C**). Requests further amendment to include the Oregon Health Plan (OHP) contractor groups.
- 082 Simpson Explains that when an OHP member applies to DHS for assistance, DHS either provides the care or they assign the member to an OHP contractor. Reports that approximately three-fourths of all OHP eligible members are assigned out to contractors. Advises that OHP contractors are mandated through federal law and DHS contract terms to pursue third-party recoveries.
- 094 Simpson

Believes that if there is a direct action right given to DHS under the original HB 2146 that right should also be given the OHP contractors.

- 117 Rod Dickson Douglas County Individual Practice Association. Testifies and submits written testimony in support of HB 2146 and the -4 amendments (**EXHIBIT D**). Reads from a prepared statement. Reiterates that OHP contractors are required to pursue third-party recoveries. Continues that an amendment to HB 2146 to include prepaid managed health care service organizations would allow filing a direct lawsuit and seeking attorney fees.
- 145 Donna Alexander Third Party Recovery Manager, Marion-Polk Community Health Plan. Testifies and submits written testimony in support of HB 2146 (**EXHIBIT E**). Reads from a prepared statement.
- 173 Alexander Refers to a law that prevents a person from suing for pain and suffering if they committed a crime. Continues that HB 2146 puts the requirement to pay on the entity that is responsible.
- 210 Shantell Wyers Third Party Recovery Specialist, Lane Individual Practice Association. Testifies and submits written testimony in support of HB 2146 (**EXHIBIT F**). Reads from a prepared statement. States that the potential to recover more dollars from third parties and direct it back into the OHP assures provision of more services and benefits for the members.
- 240 Chair Ackerman Asks about the efficiencies in allowing local managed health care entities to pursue third-party claims.
- 248 Simpson Replies that under current law to pursue third-party recovery they have to rely on common law subrogation rights, which means when the health plan pays medical benefits they acquire the rights to sue the third party. Believes the statutory authority will allow them to effectively pursue claims where a member does not have an attorney and provides another tool to maximize recovery.
- 289 Chair Ackerman Requests clarification of statements in **EXHIBIT B**.
- 300 Rhoades Understands that in the references in federal law the intention behind the law is to collect from legally liable parties. Continues that the original HB 2146 merely referenced parties who may be liable. Believes that the vague reference could mean potentially liable parties.

322	Chair Ackerman	Asks how the determination would be made.
332	Rhoades	Responds that the concern is for residents residing in their facility who are under the financial care of the OHP.
345	Chair Ackerman	Comments that aggressive pursuit of these claims is good policy.
356	Rhoades	Agrees. Wants to be sure that parties pursued have legal liability, in compliance with federal law.
361	Chair Ackerman	Wants the legislative record clear that no decision is being made on the Oregon Health Care Association interpretation of the language.
364	Rhoades	Understands.
367	Theresa Teeter	Resident, Oregon City, Oregon. Testifies in opposition to HB 2146. Advises she was a recipient of the OHP until recently. Refers to two lawsuits she filed in federal court on this issue. Does not want to sign away rights of recovery if the state is a party to any collection.

TAPE 80, B

007	Chair Ackerman	Closes the public hearing on HB 2146. Requests the parties get together to work on the issues raised.
022	Rep. Macpherson	Suggests including exclusivity of assignment and whether it shifts any right to pursue a claim away from the injured party.
031	Chair Ackerman	Requests that DHS provide a copy of assignments now in force for committee review.
035	Chair Ackerman	Asks for the names of participants in the new work group. Requests a product in a week to 10 days.
044	Chair Ackerman	Closes the public hearing on HB 2146 and opens a work session on HB 2210.

HB 2210 – WORK SESSION

- 046 Sam Sears Counsel. Explains the -2 amendments to HB 2210 (**EXHIBIT G**) which specify a 30-day time limit that an obligor has to object to determination of a drivers license suspension.
- 056 Rep. Garrard **MOTION: Moves to ADOPT HB 2210-2 amendments dated 5/5/05.**
- VOTE: 4-0-0**
- 059 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 061 Rep. Garrard **MOTION: Moves HB 2210 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.**
- 069 Chair Ackerman **The motion CARRIES.**
- REP. GARRARD will lead discussion in the full committee.**
- 070 Chair Ackerman Closes the work session on HB 2210 and opens a work session on HB 2212.

HB 2212 – WORK SESSION

- 073 Sam Sears Counsel. Describes HB 2212 which insures the Child Support Program receives personal information from the parties in a child support proceeding. Explains that the -5 amendments (**EXHIBIT H**) require both the obligor and obligee parent provide personal information about their employers in judgments or orders establishing paternity.
- 086 Rep. Flores **MOTION: Moves to ADOPT HB 2212-5 amendments dated 5/11/05.**
- VOTE: 4-0-0**
- 088 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

090 Rep. Flores **MOTION: Moves HB 2212 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.

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

100 Chair Ackerman Closes the work session on HB 2212 and opens a work session on HB 2269, which establishes procedures for a public condemner to give notice that the condemner will take immediate possession of property subject to the condemnation and to acquire an order confirming immediate possession of that property.

HB 2269 – WORK SESSION

104 Chair Ackerman Advises that he requested the Oregon Department of Transportation (ODOT) to provide written documentation on their condemnation process and how notice is provided to property owners that they will be dispossessed of their possessory rights.

113 John Geil Commercial, Condemnation and Environmental Litigation Section, Department of Justice. Testifies and submits written testimony as neutral on HB 2269 (**EXHIBIT I**). Informs that the condemnation process belongs to the state government as a sovereign entity. Lists the agencies that use the process with ODOT as the primary user. Provides information on the present process and court proceedings available. Reports that 90 percent of cases are resolved without court action. Cites *Hurley v. Kincaid* Supreme Court decision that stated the right of possession is separate from the right to compensation.

150 Geil Continues that HB 2269 will possibly change the dynamic of what has happened previously in litigation of immediate possession. Addresses the possible effects of the -1 and -2 amendments. Discusses possible fiscal impacts.

199 Dennis Wiegall ODOT. Testifies and submits written testimony on HB 2269 (**EXHIBIT J**). Refers to information packet with flow chart, pamphlets and copies of notices (**EXHIBIT K**). Describes three methods of providing information to the public, owners and tenants on the process for taking possession.

- 288 Wiegall Describes the condemnation procedure.
- 313 Wiegall Explains negotiations with the property owner. Advises that the property owner has a minimum of 40 days before condemnation can begin.
- 339 Wiegall Concludes that the process has been successful, and in nine years, only three cases out of about 500 required court resolution. Advises that ODOT participated on the Eminent Domain Work Group to reach consensus on HB 2269.

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- 025 Rep. Garrard Asks how notification to a party is made.
- 027 Wiegall Responds, a written notice.
- 032 Rep. Garrard Inquires if notification is by regular mail or certified mail.
- 035 Wiegall Answers, regular mail.
- 038 Rep. Garrard States that ODOT doesn't know if notification is received.
- 041 Wiegall Replies that notices are not sent certified mail. Continues that during condemnation the property owner and the attorney are involved in conversation so they know when possession will take place.
- 052 Chair Ackerman Announces the end of invited testimony.
- 057 Sam Sears Counsel. Explains that the -1 amendments (**EXHIBIT L**) clarify that the procedure in HB 2269 is optional and the -2 amendments establish a mandatory process (**EXHIBIT M**). Continues that the -3 amendments (**EXHIBIT N**) clarify issues that the court may consider upon defendant's objection. Advises that this subcommittee previously adopted the -2 amendments to make the process mandatory.
- 072 Chair Ackerman Explains that the subcommittee can forward HB 2269 to the full committee with the -2 amendments previously adopted or rescind the -2 amendments and adopt the -1 amendments.

081 Rep. Wirth **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote to move HB 2269 with the -2 amendments to the full committee.**

VOTE: 4-0-0

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

084 Rep. Wirth **MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. FLORES, REP. GARRARD AND REP. ACKERMAN to CHANGE vote from AYE to NAY on the motion to move HB 2269 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.

086 Chair Ackerman **The motion CARRIES.**

087 Rep. Wirth **MOTION: Moves to ADOPT HB 2269-1 amendments dated 4/6/05.**

VOTE: 4-0-0

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

092 Chair Ackerman **The motion CARRIES.**

099 Rep. Wirth Asks if the subcommittee is considering the -3 amendments.

103 Sears Explains the technical changes in the -3 amendments which do not affect the -1 or -2 amendments.

116 Rep. Wirth Inquires if the -3 amendments were a consensus of the work group.

119 Sears Answers, yes.

121 Rep. Wirth **MOTION: Moves to ADOPT HB 2269-3 amendments dated 5/11/05.**

VOTE: 4-0-0

- 124 Chair Hearing no objection, declares the motion **CARRIED**.
- 126 Rep. Wirth **MOTION: Moves HB 2269 to the full committee with a DO PASS AS AMENDED recommendation.**
- 129 Rep. Garrard States that ODOT needs to review their notification process as their regular mail is not forwarded.

143 **VOTE: 4-0-0**

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

- 145 Chair Ackerman **The motion CARRIES.**

REP. WIRTH will lead discussion in the full committee.

- 147 Chair Ackerman Closes the work session on HB 2269 and opens a work session on HM 4.

HM 4 – WORK SESSION

- 160 Sam Sears Counsel. Describes HM 4 which requests that Oregon's United States Senators work to ensure the expeditious Senate action on Supreme Court nominations. Refers to the -2 amendments (**EXHIBIT O**) which remove some language.

- 170 Rep. Flores **MOTION: Moves to ADOPT HM 4-2 amendments dated 5/9/05.**

VOTE: 4-0-0

- 174 Chair Hearing no objection, declares the motion **CARRIED**.

- 175 Rep. Flores **MOTION: Moves HM 4 to the full committee with a BE ADOPTED AS AMENDED recommendation.**

VOTE: 3-2-0

AYE: 3 - Flores, Garrard, Krieger

NAY: 2 - Wirth, Ackerman

- 184 Chair Ackerman The motion CARRIES.**
REP. FLORES will lead discussion in the full committee.
- 187 Chair Ackerman Closes the work session on HM 4 and adjourns the meeting at 10:20 a.m.

EXHIBIT SUMMARY

- A. **HB 2146, -4 amendments, staff, 2 pp**
- B. **HB 2146, written testimony, Lauren Rhoades, 1 p**
- C. **HB 2146, written testimony, Clinton Simpson, 4 pp**
- D. **HB 2146, written testimony, Rod Dickson, 1 p**
- E. **HB 2146, written testimony, Donna Alexander, 2 pp**
- F. **HB 2146, written testimony, Shantell Wyers, 1 p**
- G. **HB 2210, -2 amendments, staff, 2 pp**
- H. **HB 2212, -5 amendments, staff, 16 pp**
- I. **HB 2269, written testimony, John Geil, 1 p**
- J. **HB 2269, written testimony, Dennis Wiegand, 3 pp**
- K. **HB 2269, informational packet, Dennis Wiegand, 12 pp**
- L. **HB 2269, -1 amendments, staff, 1 p**
- M. **HB 2269, -2 amendments, staff, 1 p**
- N. **HB 2269, -3 amendments, staff, 1 p**
- O. **HM 4, -2 amendments, staff, 1 p**