

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 18, 2005 Hearing Room 357

8:30 A.M. Tapes 82 - 84

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

Bill Taylor, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 3470 – Public Hearing

HB 2295 – Public Hearing and Work Session

HB 2749 – Work Session

HB 3124 – Work Session

HB 3336 – Work Session

HB 3303 – 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
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TAPE 82, A

003	Chair Ackerman	Calls the meeting to order at 8:45 a.m. and opens a public hearing on HB 3470.
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HB 3470 – PUBLIC HEARING

007	Bill Taylor	Counsel. Explains HB 3470 which allows health care provider and health care recipient to enter into a dispute resolution agreement under which the health care recipient would waive any right to bring a civil action and have a jury trial in return for a dispute resolution process; prohibits a health care provider from requiring a health care recipient to sign a dispute resolution agreement in return for health care services; and allows a discount to a health care recipient. Points out that an unknown amount would be appropriated to the Workers Compensation Board so HB 3470 will have to go to the budget committee.
017	Rep. Max Sumner	House District 18. Testifies in support of HB 3470. Believes HB 3470 has a possibility of lowering medical costs and speeding up the litigation process.
033	Chair Ackerman	Comments that HB 3470 appears to be an overlay to the medical malpractice problem. Doesn't see a funding mechanism. Asks how compensation or administrative costs are paid. Inquires if medical providers would be assessed premiums like an insurance policy or be financed by the General Fund.
042	Rep. Sumner	Agrees that insurance companies should not be further burdened with litigation processes and paying medical claims. Doesn't believe the Oregon Litigation Fairness Project has discussed financing.
050	Kevin Mannix	Oregon Litigation Fairness Project. Testifies in support of HB 3470. Provides history of development of a swift and fair process to provide a remedy for injured workers, paid for by employers. Refers to provision of care to those who receive medical injuries. Agrees that

HB 3470 needs additional work as a funding mechanism is not addressed.

096	Mannix	Refers to a <i>Report of the Professional Panel for the Analysis of Medical Professional Liability Insurance</i> provided to the Governor, Senate President and the House Speaker. Provides statistics on malpractice awards. Points out that HB 3470 is a voluntary workers compensation model. Suggests an interim task force to make recommendations to the 2007 Legislature to create a viable funded mechanism.
128	Rep. Macpherson	Asks how the process would work where there is an agreement to alternate dispute resolution.
140	Mannix	Answers, depends on how this evolves. Advises the discount will be with health insurers who agree to furnish a health insurance package with designated providers.
156	Rep. Macpherson	Inquires if the point of decision is the employer's when contracting with a provider network rather than an employee decision.
165	Mannix	Replies that the employer would have to allow the worker to make the choice. Describes methodologies. Continues that HB 3470 allows a clinic to offer a discount if the alternative dispute process is selected.
181	Taylor	Refers to the panel created last session. Asks if that is the kind of work group being suggested.
188	Mannix	Answers, yes, but the mandate should be specific to work with this idea.
193	Chair Ackerman	Refers to comments that suggested the workers compensation system evolved into a no-fault system. Asks if HB 3470 is a no-fault device.
198	Mannix	Responds it is not now. Cites examples of trade-offs. States there needs to be discussion of a standard of fault or no-fault.
231	Chair Ackerman	Asks if there is a conflict of interest by allowing the Board of Medical Examiners to schedule compensation which would be assessed back to its members.
237	Mannix	

Replies, no more of a conflict than having the State Bar discipline lawyers with final authorization from the Supreme Court. Notes that the entire disciplinary process for lawyers is run by lawyers so has no problem with medical practitioners establishing a system which tries to evaluate what medical injuries and damages have occurred.

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| 248 | Chair Ackerman | Asks if there is a conflict of interest. |
| 250 | Mannix | Answers, no, as boards and commissions are often asked to develop standards that apply to their area of expertise. |
| 257 | Chair Ackerman | Inquires about the application process. Seeks clarification that a medical provider can decline to provide services unless the applicant signs up for compensation under this proposal. |
| 264 | Mannix | Responds, if services are declined at the beginning of a professional relationship in a non-emergency situation, it should not be an ethical issue. |
| 280 | Chair Ackerman | Inquires if discovery was omitted in the claims process. |
| 283 | Mannix | Replies that there is no provision for discovery at the initiation of a claim, but there is discovery during the hearing process. |
| 294 | Chair Ackerman | Comments that there is no statute reference cited for discovery as for workers compensation. |
| 298 | Mannix | Answers correct but could include statutory mandates. |
| 301 | Chair Ackerman | Asks about the recovery of attorney fees. |
| 309 | Mannix | Answers that HB 3470 should be amended to provide. |
| 312 | Chair Ackerman | Inquires if transcription should be part of administrative expenses of the program. |
| 321 | Mannix | Agrees that if proceeding with HB 3470, the workers compensation process should be used as a model. |
| 332 | Chair Ackerman | Inquires if there would be a component for pain and suffering. |

341	Mannix	Responds that during negotiations a balance is determined.
353	Rep. Flores	Reads from HB 3470. Seeks clarification on a medical care provider who might decline to provide services.
367	Mannix	Responds that HB 3470 emphasizes the right of contract, but the contract cannot start in middle of services.

TAPE 83, A

010	Rep. Flores	Refers to Page 2, Section 2 of HB 3470. Requests clarification that a medical care provider may not decline services if an agreement has not been entered into.
011	Mannix	Answers that is correct.
015	Taylor	Provides copies of a summary of the <i>Report of the Professional Panel for the Analysis of Medical Professional Liability Insurance</i> from the interim committee (EXHIBIT A). Advises that the panel reviewed laws in other states.
031	Rep. Macpherson	Points to a possible inconsistency in Lines 25 through 29, Page 2 of HB 3470. Focuses on when a patient makes the decision. Comments that it seems it can't occur at time of enrollment but at the beginning of service. Describes a possible way to implement the plan.
058	Mannix	Replies that there needs to be more discussion on how to put this together.
094	Cory Streisinger	Director, Department of Consumer and Business Services. Testifies and submits written testimony on HB 3470 (EXHIBIT B) and a fact sheet on medical malpractice insurance (EXHIBIT C). Describes two ways HB 3470 involves the workers compensation system which is a complex and highly regulated system that has many procedural protections to insure that injured workers receive what they are entitled to receive.
155	Streisinger	Raises concern that under HB 3470 the Workers' Compensation Board and administrative law judges would be responsible for resolving disputes whenever a claim was denied which is a big change from the way they operate now.

169	Maureen Bock	Chair, Workers Compensation Board. Has no testimony to offer but is available to answer questions.
176	Jane Meyers	Oregon Dental Association. Testifies as neutral on HB 3470. Raises questions about cost and interaction with professional liability insurance policies. Points out that the workers compensation system does not provide much dental care. Reads from comments by the president of the association. Raises concern about Section 5(5) that says an administrative law judge is not bound by common law statutory rules of evidence and can conduct a hearing in a way that will achieve substantial justice, which seems like a broad concept.
207	Taylor	Cites the recommendations from the panel on the analysis of medical malpractice. Asks if further study similar to the work done by this panel is warranted.
219	Streisinger	Concurs that the areas cited could be studied. Refers to Florida and Virginia systems as similar although limited in scope. Believes a narrow focus is the only way manageable.
238	Chair Ackerman	Closes the public hearing on HB 3470 and opens a public hearing on HB 2295.

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HB2295 - PUBLIC HEARING

243	Sam Sears	Counsel. Explains that HB 2295 creates a State Court Facilities Task Force; directs the task force to study issues relating to state court facilities and to make recommendations on minimum standards for suitable and sufficient court facilities; and sunsets the task force January 2, 2008. Refers to the -1 amendments (EXHIBIT D) which change the funding source to the state lottery fund.
261	Wally Carson	Chief Justice, Oregon Supreme Court. Testifies in support of HB 2295. Provides history of transfer of county personnel and operations to the state judicial department. States that the counties were left with the obligation of supplying the facilities for the courts.
327	Carson	Cites the most recent construction in Klamath Falls and Hermiston. Refers to another bill for funding court houses.
351	Kingsley Click	

State Court Administrator. Testifies and submits written testimony in support of HB 2295 (**EXHIBIT E**). Provides history of HB 2295. Discusses funding source of the proposed task force.

388 Click Refers to the last page of **EXHIBIT E** which explains the -1 amendments. Explains what the HB 2295 sections amend.

TAPE 82, B

034 Dale Koch Judge, Circuit Court Multnomah County. Refers to the Oregon State Bar Bulletin reprint *The Courthouse Blues* (**EXHIBIT F**) on the ages of court houses. Reports that Multnomah County doesn't have enough court rooms for their judges.

062 Koch Continues that the county processes about 200,000 cases per year and has about 3,000 citizens per day conducting business. Reports that there are no secure hallways in the court house so citizens and prisoners share the space. Discusses court rooms that are too small.

098 Koch Describes the structural deficiency in the Multnomah County court house. Refers to studies that conclude the building is in danger of structural collapse in a seismic event.

128 Doug Bray Trial Court Administrator, Multnomah County. Testifies and submits written testimony in support of HB 2295 (**EXHIBIT G**). Discusses the court facility's physical integrity and safety needs. Comments that court facilities need to be sized appropriately to serve the needs of the community.

170 Bray Continues that the Legislative Assembly needs to help find a solution. Expresses support for the -1 amendments.

182 Mari Miller Trial Court Administrator, Clackamas County. Testifies and submits written testimony in support of HB 2295 (**EXHIBIT H**). Refers to unsuccessful efforts to get a bond measure passed. Discusses repairs and upgrades needed.

230 Miller Advises that the court house does not meet the fire code. Comments on insecure hallways and lack of jury facilities.

264 Miller Continues that it is difficult to promote access to justice when facilities are hazardous and in poor repair. Reminds that the facilities

are state-owned and totally inadequate. Urges a solution by moving HB 2295 forward.

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| 289 | Rep. Garrard | Advises that in 1993 when the Klamath County court house was demolished due to an earthquake, county government was required to relocate into 16 different locations around the city which doubled and tripled the cost to the taxpayers. |
| 319 | Chair Ackerman | Asks what has been done until now in terms of a task force. |
| 321 | Click | Responds that there has not been a formal task force other than an interim judiciary work group. |
| 345 | Susan Grabe | Oregon State Bar. Testifies in support of HB 2295 and the -1 amendments. Expresses concerns by the bar in terms of insuring access to the courts and safe, suitable and sufficient facilities available to the citizens of the state. |
| 349 | Paul Snider | Association of Oregon Counties. Testifies in opposition to HB 2295. Refers to Attorney General reports that indicated the state should contribute a larger share of the funding for district attorneys. States that the 2001 report lists items that created a \$373 million revenue reduction to the counties. Continues that some relief was provided by Congress which will expire in 2006. |

TAPE 83, B

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| 028 | Snider | Refers to the Eastern Oregon Coalition which was created to foster economic development in rural areas. Raises concern about the specific addition of court facility financing coming from lottery funds in the -1 amendments. Advises that buildings are often occupied by others and not just the courts. |
| 067 | Snider | Discusses facilities financed by the state and the counties. Wants to continue working with the judicial department. |
| 082 | Rep. Macpherson | Inquires whether the policy decision 25 years ago that facilities for court houses would be a local responsibility and operating funds a state responsibility should be re-evaluated. |
| 092 | Snider | Responds, in some counties offices have moved to other facilities; however, in rural counties that is less the case. Agrees that the |

premise with respect to the court-takeover bill the Chief Justice described should be revisited.

- 120 Chair Ackerman Comments on the -1 amendments that delete pages 4 and 5 of HB 2295 setting forth a funding mechanism from the unitary assessment fees. Asks if language is broad enough to pay for the expenses of a task force.
- 136 Click Responds that capital financing often includes preplanning. Refers to Section 6 of HB 2295 language regarding grants and other contributions. Believes there was a subsequent referral to Ways and Means.
- 150 Chair Ackerman Requests counsel review to see if services or financial assistance for construction or renovation of state court house facilities is sufficient language to cover payment of the task force.
- 160 Chair Ackerman Closes the public hearing and opens a work session on HB 2295.

HB 2295 – WORK SESSION

- 163 Rep. Wirth **MOTION: Moves to ADOPT HB 2295-1 amendments dated 5/16//05.**
- VOTE: 4-0-0**
- 168 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 170 Rep. Wirth **MOTION: Moves HB 2295 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.**
- 178 Chair Ackerman **The motion CARRIES.**
- REP. WIRTH will lead discussion in the full committee.**
- 180 Chair Ackerman Closes the work session on HB 2295 and opens a work session on HB 2749.

HB 2749 – WORK SESSION

- 185 Sam Sears Counsel. Explains HB 2749 which defines certain nonprofit corporations as public bodies for purposes of application of the Oregon Tort Claims Act. Refers to the -2 amendments (**EXHIBIT I**) which define the charities that qualify as public bodies.
- 210 Chair Ackerman Asks about a memorandum sent out by Counsel on the Constitutionality of HB 2749.
- 211 Sears Responds that there would likely be a Constitutional problem as it would remove the remedy that was available at the time the Constitution was adopted. Continues that the Oregon Tort Claims Act limits the liability that public bodies have, so if nonprofits come under the Act, liability will be limited.
- 225 Rep. Flores **MOTION: Moves to ADOPT HB 2749-2 amendments dated 5/10/05.**
- VOTE: 4-0-0**
- 228 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 230 Rep. Flores **MOTION: Moves HB 2749 to the full committee with a DO PASS AS AMENDED recommendation.**
- 235 Rep. Krieger Asks Mr. Mannix about the Constitutionality question.
- 244 Kevin Mannix Project Manager, Oregon Litigation Fairness Project. Replies that the question arises out of the Supreme Court *Smothers* decision that whatever access rights were available in 1859 need to be maintained. Discusses the Doctrine of Charitable Immunity, which the Oregon Supreme Court adopted and kept in place until 1963 when it was set aside.
- 298 Mannix Cites the decision that set aside the Doctrine of Charitable Immunity as *Hungerford v. Portland Sanitarian and Benevolent Association* which was done as a matter of policy, not a Constitutional interpretation, as the legislature had never addressed the policy issue.
- 316 Chair Ackerman Explains the reasons he plans to vote in opposition of HB 2749. Indicates he doesn't think the Legislature can bestow sovereign

immunity upon private organizations. Raises a concern whether granting public agency status to these organizations would require they comply with the public records and open meetings laws.

- 338 Rep. Macpherson Comments that Section 4 of the -2 amendments have a potential for a public agency handling the cost of defense of the nonprofit, an issue that was raised in the original hearing.
- 359 Chair Ackerman Responds that these nonprofits would take advantage of the caps provided by the Tort Claims Act but would have to bear their own defense costs.
- 364 Rep. Macpherson Shares the Chair's other concerns.
- 366 VOTE: 3-2-0**
- AYE: 3 - Flores, Garrard, Krieger**
- NAY: 2 - Wirth, Ackerman**
- 376 Chair Ackerman The motion CARRIES.**
- REP. FLORES will lead discussion in the full committee.**
- 378 Chair Ackerman Closes the work session on HB 2749 and opens a work session on HB 3124.

HB 3124 – WORK SESSION

- 388 Sam Sears Counsel. Explains that HB 3124 and the -1 amendments (**EXHIBIT J**) extend the sunset on the additional 30 percent surcharge for certain court fees for 18 months; exempt municipal, county and justice courts from collecting these fees and distributing them to the Judicial Department Operating Account; increase all respondent fees up to 85 percent of plaintiff fees; increase from \$4 to \$7 the amount the clerk may charge for a writ of execution or garnishment; increase the amount that a court may award for certain prevailing party fees; and modify provisions relating to justice courts in Deschutes County.
- 412 Chair Ackerman MOTION: Moves to ADOPT HB 3124-1 amendments dated 4/21/05.**

VOTE: 4-0-0

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

419 Rep. Flores MOTION: Moves HB 3124 to the full committee with a DO PASS AS AMENDED recommendation.

423 Rep. Flores Indicates she will cast a courtesy vote to move HB 3124 to the full committee.

426 VOTE: 4-0-0

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

433 Chair Ackerman The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

435 Chair Ackerman Closes the work session on HB 3124 and opens a work session on HB 3336.

TAPE 84, A

HB 3336 – WORK SESSION

010 Sam Sears Counsel. Explains HB 3336 provides that upon an offer of expert scientific evidence at trial, a court must first determine whether the theory or technique supporting the offered evidence is based on scientifically valid principles and is pertinent; specifies the factors that a court must use to determine whether the theory or technique is based on scientifically valid principles; allows the court to seek the assistance of its own expert for the purpose of evaluating certain evidence; and provides that a witness may not testify about scientific, technical or other specialized knowledge if the compensation of the witness is contingent on the outcome of the proceeding. Refers to the -2 amendments (**EXHIBIT K**) which clarify that the provisions apply to evidence offered at any stage of a proceeding, not just at trial and exempt criminal proceedings from the provisions of HB 3336.

021 Rep. Garrard MOTION: Moves to ADOPT HB 3336-2 amendments dated 5/17/05.

VOTE: 4-0-0

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

**032 Rep. Flores MOTION: Moves HB 3336 to the full committee with a DO
PASS AS AMENDED recommendation.**

VOTE: 2-2-0

AYE: 2 - Flores, Garrard

NAY: 2 - Wirth, Ackerman

035 Chair Ackerman The motion FAILS.

**037 Chair Ackerman MOTION: Requests unanimous consent that the rules be
SUSPENDED to allow REP. ACKERMAN to CHANGE vote
from NAY to AYE on the MOTION: Moves HB 3336 to the full
committee with a DO PASS AS AMENDED recommendation.**

VOTE: 4-0-0

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

**039 Chair Ackerman MOTION: Moves HB 3336 to the full committee with a DO
PASS AS AMENDED recommendation.**

VOTE: 3-1-0

AYE: 3 - Flores, Garrard, Ackerman

NAY: 1 – Wirth

**041 Chair Ackerman The motion CARRIES.

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

**045 Chair Ackerman Closes the work session on HB 3336 and opens a work session on HB
3303.**

HB 3303 – WORK SESSION

- 047 Sam Sears Counsel. Reminds the subcommittee of the April 6 testimony on the -1 amendments to HB 3303 which set out various requirements relating to contracts between state agencies and counties. Refers to the -4 amendments (**EXHIBIT L**) which incorporate the -1 amendments and exempt Public Employees Retirement System (PERS) contracts and contracts related to federally funded transportation projects.
- 064 Chair Ackerman Asks about the -2 amendments exempting PERS.
- 066 Sears Replies that exemption is in the -4 amendments.
- 073 Chair Ackerman **MOTION: Moves to ADOPT HB 3303-4 amendments dated 5/17/05.**
- VOTE: 4-0-0**
- 076 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**
- 077 Chair Ackerman **MOTION: Moves HB 3303 to the full committee with a DO PASS AS AMENDED recommendation.**
- 084 Chair Ackerman Comments on work done to reach standardization of certain terms in agreements between the state and counties.
- 089 **VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 092 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**

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

Ginger Martin Oregon Department of Corrections. Submits written testimony by Max Williams, Director, in opposition to HB 3303 (**EXHIBIT M**).

Clyde Saiki

Department of Human Services. Submits written testimony in opposition to HB 3303 **(EXHIBIT N)**.

William Fink Department of Administrative Services. Submits written testimony in opposition to HB 3303 **(EXHIBIT O)**.

John Jackley Oregon Department of Transportation. Submits written testimony on HB 3303 **(EXHIBIT P)**.

094 Chair Ackerman Closes the work session on HB 3303 and adjourns the meeting at 10:40 a.m.

EXHIBIT SUMMARY

- A. **HB 3470, report summary, staff, 3 pp**
- B. **HB 3470, written testimony, Cory Streisinger, 3 pp**
- C. **HB 3470, fact sheet, Cory Streisinger, 5 pp**
- D. **HB 2295, -1 amendments, staff, 5 pp**
- E. **HB 2295, written testimony, Kingsley Click, 2 pp**
- F. **HB 2295, bulletin reprint, Kingsley Click, 7 pp**
- G. **HB 2295, written testimony, Doug Bray, 3 pp**
- H. **HB 2295, written testimony, Mari Miller, 1 p**
- I. **HB 2749, -2 amendments, staff, 4 pp**
- J. **HB 3124, -1 amendments, staff, 98 pp**
- K. **HB 3336, -2 amendments, staff, 1 p**
- L. **HB 3303, -4 amendments, staff, 3 pp**
- M. **HB 3303, written testimony by Max Williams, Ginger Martin, 2 pp**
- N. **HB 3303, written testimony, Clyde Saiki, 2 pp**
- O. **HB 3303, written testimony, William Fink, 2 pp**
- P. **HB 3303, written testimony, John Jackley, 2 pp**