

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**May 4, 2005 Hearing Room 357**

**8:30 A.M. Tapes 72 - 74**

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

**Rep. Linda Flores**

**Rep. Bill Garrard**

**MEMBERS EXCUSED: Rep. Kelley Wirth**

**GUEST MEMBERS:           Rep. Wayne Krieger**

**Rep. Greg Macpherson**

**Rep. Andy Olson**

**STAFF PRESENT:           Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 2210 – Public Hearing and Work Session**

**HB 2212 – Public Hearing and Work Session**

**HB 2269 – Public Hearing and Work Session**

**HB 2567 – Public Hearing and Work Session**

**HB 3468 – Public Hearing and Work Session**

**HB 2315 – 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 72, A</b>		
003	Chair Ackerman	Calls the meeting to order at 8:40 a.m. and opens a public hearing on HB 2210.
<b><u>HB 2210 – PUBLIC HEARING</u></b>		
006	Sam Sears	Counsel. Explains HB 2210 which clarifies the hearing rights for parties, in particular child support proceedings, by more clearly defining those rights; repeals obsolete statutes relating to contesting child support when a child goes off public assistance; eliminates inconsistent notice provisions; and eliminates separate definitions of “oblige” and “obligor.” Describes the -1 amendments ( <b>EXHIBIT A</b> ).
021	Ronelle Shankle	Department of Justice (DOJ). Testifies and submits written testimony in support of HB 2210 ( <b>EXHIBIT B</b> ). Explains the Attorney General oversight responsibilities of the child support program.
036	Shani Fuller	DOJ. Testifies in support of HB 2210. Refers to <b>EXHIBIT B</b> which explains the specific changes in HB 2210. Explains that the -1 amendments clarify administrative objection and appeal rights in the license suspension statute.
058	Layne Barlow	Oregon Men’s Association. Testifies in opposition to HB 2210. Describes a letter the association sent to the Division of Child Support pointing out that license suspensions were occurring after 14 days instead of 30 days as prescribed in statute. Objects to both Section 3 and the -1 amendments of HB 2210. Recommends that notices of suspension be by certified mail with a return receipt requested.
091	Barlow	States objections to the changes proposed in Sections 6 and 12 of HB 2210.
113	Rep. Garrard	Asks how notification to an individual is accomplished regarding a driver’s license suspension.

115	Barlow	Answers, by first class mail.
117	Rep. Garrard	Inquires what happens if the person is not at that address.
119	Barlow	Replies, the individual probably would not receive the notice.
123	Rep. Garrard	Cites personal experience during a legislative session.
129	Barlow	Has not asked the Division of Child Support how often notices are not received.
139	Rep. Olson	Seeks clarification that they have no problem with the language on suspension but with the 14-day notice.
142	Barlow	Responds that they have been opposed to this since first proposed in 1995. States that notices of suspension cannot be opposed.
154	Rep. Olson	Asks if they would agree to extension beyond 14 days.
157	Barlow	Answers that suspensions are federally mandated. Indicates they would agree if certified delivery could be proven to the obligor and the 30-day deadline maintained.
170	Shankle	Points out that the relating clause on HB 2210 is for consistency in child support proceedings. Reiterates that the -1 amendments are to make clear what the hearing rights are and not to change the license suspension laws. Explains that the license suspension laws are based on federal law. Advises that the 14-day notice is not the only notice provided. Explains that for obligors unwilling to pay, a 30-day notice is sent first and then the 14-day notice.
202	Rep. Garrard	Inquires how suspending someone's drivers license is a remedy.
206	Shankle	Responds that this is a tool to be used for people with the ability to pay but are unwilling to perform their obligation.
217	Rep. Olson	Asks how effective the process has been.
219	Shankle	Answers that they do have numbers but will provide them.

230	Chair Ackerman	Inquires about the time period now to appeal the determination to the administrative law judge.
233	Fuller	Responds that the 14-day time period is what we do now.
242	Chair Ackerman	Asks if the 30-day notice informs the individual of possible license suspension.
244	Fuller	Replies, correct.
246	Chair Ackerman	Asks if the agency would be hurt if it was extended from 14 to 30 days.
248	Shankle	Answers that could be looked at but not certain the change would fit with the relating clause.
253	Chair Ackerman	Discusses current requirements. Suggests moving HB 2210 to the full committee and act on the -1 amendments there or the -2 amendments if someone wants to prepare them changing the time period to 30 days.
269	Rep. Krieger	Expresses concern about the manner in which individuals receive notice.
276	Chair Ackerman	Comments this may be covered elsewhere.
282	Rep. Garrard	Advises that there currently is no certified mail notification requirement.
295	Shankle	Explains their process after which the matter is turned over to the Department of Transportation.
308	Chair Ackerman	Suggests moving HB 2210 without the -1 amendments.
316	Barlow	Advises of efforts since 1995 to make changes. Cites examples. Points out hardships caused. Offers to work on -2 amendments.
364	Chair Ackerman	Will work with counsel on the -2 amendments.

378 Chair Ackerman Closes the public hearing and opens a work session on HB 2210.

**HB 2210 – WORK SESSION**

386 Chair Ackerman **MOTION: Moves HB 2210 to the full committee with a DO PASS recommendation.**

**VOTE: 2-1-1**

**AYE: 2 - Flores, Ackerman**

**NAY: 1 - Garrard**

**EXCUSED: 1 - Wirth**

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

402 Chair Ackerman Closes the work session on HB 2210 and opens a public hearing on HB 2212 which requires the court to ensure that a party submitting a proposed judgment provide the required personal information; incorporates an enabling provision to allow the court to adopt a Uniform Trial Court Rule that establishes how personal information must be submitted; and allows personal information to be kept confidential from public disclosure.

**TAPE 73, A**

**HB 2212 – PUBLIC HEARING**

020 Sam Sears Counsel. Explains that the -3 amendments (**EXHIBIT C**) insure that the Child Support Program receives personal information from parties in a child support proceeding and that the information is kept confidential. Describes the -4 amendments (**EXHIBIT D**) which change references from administrative law judge to hearing officer. Advises that the -4 amendments do not encompass the -3 amendments.

037 Chair Ackerman Asks if the -3 amendments “gut and stuff” HB 2212.

039 Sears Responds that the Department of Justice (DOJ) will explain. States that the -3 amendments need to be considered today.

043	Ronelle Shankle	DOJ. Testifies and submits written testimony in support of HB 2212 ( <b>exhibit e</b> ). Explains that the -4 amendments are pending as the federal government has started auditing child support programs in various states to look at the issue of using judges versus hearings officers. Continues that a meeting is pending to see if Oregon's law is out of compliance.
063	Chair Ackerman	Seeks clarification that the -3 amendments only need to be adopted.
064	Shankle	Answers, correct.
065	Shani Fuller	DOJ. Explains the -3 amendments.
096	Rep. Flores	Asks if the -4 amendments are not being considered as they pertain to private contractors.
099	Shankle	Answers, no; the delay has to do with a federal issue. Explains that the -2 amendments had to do with independent contractors.
103	Rep. Flores	Clarifies that the issue is not being considered today.
104	Shankle	Replies, correct, as we want to work further with the direct sellers.
106	Rep. Garrard	Asks why the DOJ needs the confidential information if the Child Support Program has it.
109	Fuller	Responds that the DOJ has responsibility for the child support program, which encompasses DOJ and the district attorney offices that do child support enforcement.
125	Layne Barlow	Oregon Men's Association. Testifies in opposition of HB 2212. Raises concerns with Lines 13 and 14, Page 5 of the -3 amendments. Proposes leaving the original language and explains the reason.
159	Chair Ackerman	Closes the public hearing and opens a work session on HB 2212.

**HB 2212 – WORK SESSION**

162 Rep. Flores **MOTION: Moves to ADOPT HB 2212-3 amendments dated 5/3/05.**

**VOTE: 3-0-1**

**EXCUSED: 1 - Wirth**

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

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

177 Chair Ackerman **The motion CARRIES.**

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

179 Chair Ackerman Closes the work session on HB 2212 and opens a public hearing on HB 2269.

### **HB 2269 – PUBLIC HEARING**

188 Sam Sears Counsel. Explains HB 2269 which establishes an optional procedure for allowing a public condemner to give notice that the condemner will take immediate possession of property subject to the condemnation and acquire an order confirming immediate possession of the property. Advises that the -1 amendments (**EXHIBIT F**) clarify that this is an optional procedure and the -2 amendments (**EXHIBIT G**) attempt to make the procedure mandatory.

206 Wendy Johnson Oregon Law Commission (OLC). Testifies in support of HB 2269. States HB 2269 is a product of the Eminent Domain Work Group of the OLC. Explains the process for taking immediate possession of property.

237 Johnson Explains that there is nothing in statute to give judges and lawyers guidance. Describes the City of Portland and Oregon Department of

Transportation (ODOT) processes. Points to Section 3 of HB 2269 which lays out the process which includes a hearing.

- 269 Chair Ackerman Refers to Line 10, Page 1 of HB 2269. Advises the committee will need to choose between discretionary and mandatory.
- 280 Paul Snider Association of Oregon Counties. Testifies in support of HB 2269 in its current form as it provides an expedited and inexpensive process for public bodies to use when the property needs to be taken.
- 308 Joe Willis Attorney. Testifies in support of the -2 amendments (**EXHIBIT G**). Advises that he served on the OLC work group. Prefers the procedures in HB 2269 be made mandatory. States that ODOT does not go to court and get an order of possession. Refers to the Uniform Acquisition Policies Act which requires notices.
- 368 Willis Provides an example from the City of Bend. Continues that most cities and counties do go to court to obtain orders but the law needs to be clear.

#### **TAPE 72, B**

- 005 Willis Refers to situations with tenant leases. Reiterates his support for the -2 amendments which establish a “bright line” rule for possession date.
- 032 Rep. Macpherson Asks why he opposes HB 2269 since it is optional.
- 043 Willis Responds that he predicts most cities and counties that now go through a process would probably stop doing so.
- 054 Rep. Macpherson Comments that the authority being used currently is what is being criticized.
- 058 Willis Answers that most cities and counties won’t do what ODOT does.
- 083 Rep. Macpherson Inquires what effect passing HB 2269 in the “optional” form would have on current practice.
- 086 Johnson Responds that present law does not provide for a hearing. Continues that HB 2269 provides an optional procedure that would provide for



formal notice and hearing rights. Adds that the property owner can raise objections during the evaluation phase or in the main case.

- 104 Johnson Distributes written report titled *Eminent Domain Report: Immediate Possession (EXHIBIT H)*. Refers to Page 4 that shows a balanced work group.
- 109 Chair Ackerman Asks about the current practice of giving a notice or not giving notice.
- 113 Johnson Answers that condemners do provide notice but provision of an order is different across the state.
- 122 Chair Ackerman Requests the percentages of public entities that would give prior notice or not give prior notice.
- 125 Willis Responds that every entity will obtain an order, but ODOT is the main exception.
- 137 Snider Comments on the conclusion that has been drawn that unless the committee makes the process mandatory, it won't be followed. Does not see why cities and counties would not continue to obtain orders.
- 158 Rep. Flores Remarks that it appears cities and counties are already complying with a process. Asks if made an optional procedure, what in the -1 amendments assures the errant agency to come into line.
- 173 Johnson Replies that ODOT has a practice, does provide notice, and holds a hearing. Continues that not every case requires a formal process.
- 194 Rep. Flores Asks if ODOT is a prime offender.
- 199 Willis Responds that ODOT reserves the right to take immediate possession of property without an order. Refers to the question of what happens if the process is optional. Cites *ODOT v. Hewitt Professional Services* case.
- 247 Sears Refers to the case cited and asks if there had been a mandatory process, if the issues would have been the same.
- 250 Willis Answers that he wanted to point out what can happen when there are no enforceable rights.

- 268 John Geil Department of Justice (DOJ). Offers additional information on condemnation litigation.
- 273 Dennis Wiegall ODOT. Explains the agency's condemnation process. Advises they acquire about 600 properties per year and settle about 93 percent without condemnation.
- 337 Wiegall Continues that property owners receive numerous written notices throughout the process. Advises that they follow the federal Uniform Relocation and Real Property Assistance Act which specifies the notifications that must be provided. Continues that in nine years, there have been two condemnation filings. Believes there is a good system in place. Informs that ODOT works throughout the state, and the formal court process is logistically difficult and would cause a fiscal impact.
- 375 Wiegall Clarifies that not every local agency uses a formal process. States that they are not opposed to having the process to use when needed. Advises that ODOT was on the work committee and supports HB 2269 as written.

**TAPE 73, B**

- 014 Geil DOJ. Advises that very few cases reach them as ODOT resolves most of the issues so the courts are used in rare instances.
- 029 Christy Monsoon League of Oregon Cities. Reports that the Oregon Law Commission process took about a year. Explains that there was general consensus of the work group. Asserts that cities are not about to take property from their citizens.
- 056 Chair Ackerman Closes the public hearing and opens a work session on HB 2269.

**HB 2269 – WORK SESSION**

- 063 Chair Ackerman Explains that the -1 amendments supplement the discretionary language in HB 2269. Plans to act on the -1 amendments, and if they pass, the -2 amendments establishing a mandatory process would be moot.

071	Rep. Garrard	Asks if the chair wants to move both the -1 and -2 amendments.
074	Chair Ackerman	Explains the amendments.
081	Rep. Garrard	Inquires if a motion could be made to move the -2 amendments.
084	Chair Ackerman	Responds, yes.
092	Rep. Garrard	Announces that he prefers the -2 amendments.
<b>096</b>	<b>Rep. Garrard</b>	<b>MOTION: Moves to ADOPT HB 2269-2 amendments dated 4/11/05.</b>
100	Rep. Macpherson	Appreciates the aim to move to a new process that would be followed by all local governments and state agencies. Believes it would be damaging to consensus legislation to change a law commission bill by moving a different version.
115	Rep. Flores	Notes great esteem for the Oregon Law Commission process and the work product. Raises concerns about the optional provision that may not be abused substantially, yet to a private property owner, people's rights are being impacted.
128	Chair Ackerman	Interjects that the -2 amendments contain the mandatory language.
131	Rep. Garrard	States that he could withdraw the motion on the -2 amendments if the parties want to continue discussion.
137	Rep. Macpherson	Comments that he is not sure where a compromise would be as there was consensus to develop a new optional process.
152	Rep. Macpherson	States that it may make sense to move HB 2269 to the full committee in some form to get broader participation.
157	Chair Ackerman	Responds that will happen as the options are still open, but the full committee needs direction from the subcommittee.
162	Rep. Garrard	Asks the chair if he prefers moving HB 2269 without amendments.
165	Rep. Krieger	

Interjects that HB 2269 without the -2 amendments probably will not move out of the full committee.

172

**VOTE: 3-0-1**

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

**EXCUSED: 1 - Wirth**

180

**Chair Ackerman**

**The motion CARRIES.**

182

Chair Ackerman

Asks counsel to prepare a “consistency” amendment to change “may” to “shall” in Line 10, Page 1 of HB 2269.

184

**Chair Ackerman**

**MOTION: Moves HB 2269 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**

190

**Chair Ackerman**

**The motion CARRIES.**

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

195

Chair Ackerman

Closes the work session on HB 2269 and opens a public hearing on HB 2567.

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**HB 2567 – PUBLIC HEARING**

202

Sam Sears

Counsel. Explains that the -3 amendments (**EXHIBIT I**) replace the original provisions in HB 2567 and remove a five percent cap by which a jury may reduce a damage award for nonuse of a safety belt in a motor vehicle accident lawsuit. Explains current statute.

224

Bob Russell

Oregon Trucking Associations, Inc. Advises that his written testimony on the -1 amendments is incorrect (**EXHIBIT J**). Provides

history on the five percent cap. Testifies in support of HB 2567 and the -3 amendments.

- 250 George Okulitch Oregon Trial Lawyers Association. Testifies and submits written testimony of Neil Jackson in opposition to HB 2567 (**EXHIBIT K**). Believes the -3 amendments will increase litigation costs and hinder settlement agreements.
- 269 Chair Ackerman Refers to Mr. Russell's testimony that with current computer models it is possible to present evidence regarding mitigation for failure to wear a seat belt. Asks if they would be introduced in testimony in these cases.
- 276 Russell Responds that it is his understanding, yes.
- 279 Chair Ackerman Asks how much that would add to the cost of litigation.
- 281 Russell Does not know what that cost would be but is told it would be reasonable.
- 284 Chair Ackerman Asks if HB 2567 is a result of a compromise from an earlier legislative session.
- 289 Okulitch Answers no.
- 292 Chair Ackerman Inquires if there may have been a compromise that resulted in tort reform legislation.
- 294 Okulitch Offers to follow up with Mr. Jackson on that
- 298 Chair Ackerman Asks if this type of testimony would only go to the jury through an expert.
- 302 Okulitch Replies that he is not prepared to answer that but offers to get the information.
- 306 Chair Ackerman Comments that it seems that would be the case.
- 315 Rep. Macpherson

Asks if there if there is any pattern in jurisdictions that do not have a cap, how much damage reduction is attributable to contributory negligence.

- 323 Russell Doesn't have any data.
- 328 Sam Sears Counsel. Clarifies that now under Oregon statute, evidence of nonuse of a safety belt cannot be used to determine fault so does not reduce damage in that way.
- 335 Rep. Macpherson Responds that it is not contributory negligence, but simply a damage factor up to a five percent discount on the amount of damage that the jury can award.
- 338 Sears Answers, correct.
- 339 Chair Ackerman Comments that the original HB 2567 said that and was changed from comparative negligence to mitigation.
- 346 Chair Ackerman Closes the public hearing and opens a work session on HB 2567.

**HB 2567 – WORK SESSION**

- 355 Rep. Garrard **MOTION: Moves to ADOPT HB 2567-3 amendments dated 4/28/05.**
- 355 Rep. Garrard **VOTE: 2-1-1**  
**AYE: 2 - Flores, Garrard**  
**NAY: 1 - Ackerman**  
**EXCUSED: 1 - Wirth**
- 370 Chair Ackerman **The motion CARRIES.**
- 372 Rep. Garrard **MOTION: Moves HB 2567 to the full committee with a DO PASS AS AMENDED recommendation.**
- 372 Rep. Garrard **VOTE: 2-1-1**  
**AYE: 2 - Flores, Garrard**

**NAY: 1 - Ackerman**

**EXCUSED: 1 - Wirth**

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

390 Chair Ackerman Closes the work session on HB 2567 and opens a public hearing on HB 3468.

**HB 3468 – PUBLIC HEARING**

392 Sam Sears Counsel. Explains that HB 3468 excludes from unlawful trade practices acts by a publisher of a telephone directory in publication or dissemination of advertisement if the publisher did not have knowledge of the false, misleading, or deceptive character of an advertisement.

416 Brant Wolf Oregon Telecommunications Association. Testifies in support of HB 3468. Describes a case where a telephone directory publisher was sued.

**TAPE 74, A**

020 Chair Ackerman Asks if the litigation mentioned was brought under the Unlawful Trade Practices Act.

022 Wolf Believes it was. States that the case surrounded a licensed dermatologist who began practicing plastic surgery and advertised in the telephone directory as a licensed dermatologist but failed to remove “licensed” from the ad for plastic surgery.

038 Chair Ackerman Inquires if there are any remedies available through the Public Utilities Commissioner regarding mistakes in the telephone directory.

042 Wolf Responds that the Department of Justice deals with issues where fraud is intended.

0041 Chair Ackerman Closes the public hearing and opens a work session on HB 3468.

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**HB 3468 – WORK SESSION**

**053**      **Rep. Flores**      **MOTION: Moves HB 3468 to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

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

**EXCUSED: 1 – Wirth**

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

**062**      **Chair Ackerman**      **Closes the work session on HB 3468 and opens a work session on HB 2315.**

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**HB 2315 – WORK SESSION**

**063**      **Sam Sears**      **Counsel. Discusses the first hearing on HB 2315. Recommends moving HB 2315 unamended to the full committee at which time the -6 amendments would be adopted. Describes HB 2315 which expands the scope of individuals who are designated for protection and advocacy by the Oregon Advocacy Center (OAC); clarifies that the OAC may obtain records for covered individuals who are legal guardians of political subdivisions of the state; and replaces references to the OAC in statute with one consistent description. Explains the -4 amendments (**EXHIBIT L**) exempt from protection and advocacy inmates in facilities operated by the Department of Corrections and youth offenders in youth correctional facilities whose only disability is drug or alcohol addiction; deletes provisions that permit the OAC access to facilities and residents without being accompanied by the staff of those facilities; and deletes provisions requiring facilities to provide written explanation if they deny access to the OAC. Advises that the change needed in the -4 amendments will exempt offenders in youth correctional facilities who are not youth offenders.**

**117**      **Rep. Flores**      **Asks about individuals who were convicted as youth offenders and have now reached majority.**



- 127 Karen Andall Oregon Youth Authority (OYA). Explains that OYA operates youth correctional facilities that serve not only youth offenders committed by juvenile court but also some offenders who are adults and their crimes were committed prior to age 18.
- 152 Rep. Flores **MOTION: Moves HB 2315 to the full committee with a DO PASS recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- EXCUSED: 1 – Wirth**
- 161 Chair Ackerman **The motion CARRIES.**
- REP. FLORES will lead discussion in the full committee.**
- 164 Chair Ackerman Closes the work session on HB 2315 and adjourns the meeting at 10:41 a.m.

### **EXHIBIT SUMMARY**

- A. HB 2210, -1 amendments, staff, 2 pp
- B. HB 2210, written testimony, Ronelle Shankle, 2 pp
- C. HB 2212, -3 amendments, staff, 16 pp
- D. HB 2212, -4 amendments, staff, 29 pp
- E. HB 2212, written testimony, Ronelle Shankle, 3 pp
- F. HB 2269, -1 amendments, staff, 1 p
- G. HB 2269, -2 amendments, staff, 1 p
- H. HB 2269, written report, 9 pp
- I. HB 2567, -3 amendments, staff, 1 p
- J. HB 2567, written testimony, Bob Russell, 1 p
- K. HB 2567, written testimony of Neil Jackson, George Okulitch, 1 p
- L. HB 2315, -4 amendments, staff, 1 p