

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 9, 2005 Hearing Room 357

8:30 A.M. Tapes 75 - 77

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

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 3085 – Work Session

SB 233A – Public Hearing and Work Session

SB 218A – Public Hearing and Work Session

SB 219 – 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.

TAPE/# Speaker Comments

TAPE 75, A

004 Chair Ackerman Calls the meeting to order at 8:40 a.m. and opens a work session on HB 3085. **Note: Rep. Krieger participated as a subcommittee member for quorum purposes.**

HB 3085 – WORK SESSION

011 Sam Sears Counsel. Explains that HB 3085 which requires state agencies to pay the attorney fees, costs, and disbursements in civil cases where they lose and are unable to show that the challenged agency action was substantially justified, has been amended. Describes the -4 amendments (**EXHIBIT A**) which clarify some definitions and provide procedural requirements necessary to obtain attorney fees.

032 Chair Ackerman Provides history on HB 3085 which needs to be moved to the full committee for more discussion. Advises that HB 3085 arose from a court of appeals decision, which the Supreme Court recently reversed. Notes that the -4 amendments are very broad in terms of application to civil judicial proceedings.

057 Rep. Garrard MOTION: Moves to ADOPT HB 3085 -4 amendments dated 5/6/05.

061 Rep. Macpherson Asks if the -2 and -3 amendments have been incorporated into the -4 amendments.

063 Chair Ackerman Answers yes.

VOTE: 3-0-2

EXCUSED: 2 - Flores, Wirth

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

- 065 Chair Ackerman **MOTION: Moves HB 3085 to the full committee with a DO PASS AS AMENDED recommendation.**
- 067 Rep. Garrard Refers to testimony at the public hearing about a \$9 million impact on state agencies. Asks how the -4 amendments affect that figure and if a fiscal is needed.
- 072 Chair Ackerman Responds that existing law applies only to administrative agency proceedings and HB 3085 takes in all civil judicial proceedings except criminal, torts and child support collections. Suggests inviting testimony at the full committee on the fiscal impact.
- 084 **VOTE: 3-0-2**
- AYE: In a roll call vote, all members present vote Aye.**
- EXCUSED: 2 - Flores, Wirth**
- 092 Chair Ackerman **The motion CARRIES.**
- REP. ACKERMAN will lead discussion in the full committee.**
- 097 Chair Ackerman Closes the work session on HB 3085 and opens a public hearing on SB 233A.

SB 233A – PUBLIC HEARING

- 099 Sam Sears Counsel. Explains SB 233A which requires the Oregon Youth Authority to use its case planning for youths within its jurisdiction to ensure public safety and reduction of juvenile delinquency and amends the juvenile code to reflect public safety accountability and reformation principals.
- 122 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies in support of SB 233A and submits written report of Timothy Travis (**EXHIBIT B**). Describes the changes SB 233A make.
- 155 Rep. Garrard Asks for a summary of SB 233A.
- 157 Johnson Responds that the two main areas of SB 233A are to clarify the Oregon Youth Authority responsibilities and describe reporting requirements. Provides examples.

173 Chair Ackerman Closes the public hearing and opens a work session on SB233A.

SB 233A – WORK SESSION

174 Chair Ackerman **MOTION: Moves SB 233A to the full committee with a DO PASS recommendation.**

VOTE: 3-0-2

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

EXCUSED: 2 - Flores, Wirth

182 Chair Ackerman **The motion CARRIES.**

REP. ACKERMAN will lead discussion in the full committee.

184 Chair Ackerman Closes the work session on SB 233A and opens a public hearing on SB 218A.

SB 218A – PUBLIC HEARING

189 Sam Sears Counsel. Describes SB 218A which allows a public servant or a public servant's employer to seek an injunction or restraining order against a person engaging in certain conduct.

198 Kevin Neely Department of Justice (DOJ). Testifies in support of SB 218A. Explains that SB 218A provides a streamlined ability for public bodies to secure injunctions when employees have been threatened with violence. Describes current law, which is lengthy and time-consuming.

239 Rep. Olson Asks why a person would not pursue a restraining order.

244 Neely Replies that is one possibility. Continues that SB 218A provides the opportunity for an employer to do that.

259 Rep. Garrard Asks what would prevent a public servant's employer from getting an injunction or restraining order without SB 218A.

263 Neely Responds that the DOJ doesn't believe they have that authority in current law.

273	Rep. Macpherson	Refers to the definition of “public servant” which includes not only the public officer or employee but also a person serving as an advisor, consultant or assistant, so it appears to be broader than just a public employee.
296	Neely	Concurs. Continues that they looked closely at that and expanded the definition to include volunteers, especially if working on sensitive issues.
313	Chair Ackerman	Comments that SB 218A is partially based on the domestic abuse model but seems not to have anything about the process.
325	Neely	Replies that this process is the same as obtaining a Family Abuse Prevention Act (FAPA) restraining order.
339	Rep. Garrard	Asks for the vote in the Senate Judiciary Committee.
342	Sears	Believes it was unanimous.
345	Neely	Answers, unanimous.
354	Chair Ackerman	Closes the public hearing and opens a work session on SB 218A.

SB 218A – WORK SESSION

360	Chair Ackerman	MOTION: Moves SB 218A to the full committee with a DO PASS recommendation.
362	Rep. Macpherson	Comments that SB 218A doesn’t appear to change existing law for the public servant but extends it to the agencies which is desirable.
371		<p>VOTE: 3-1-1</p> <p>AYE: 3 – Krieger, Wirth, Ackerman</p> <p>NAY: 1 - Garrard</p> <p>EXCUSED: 1 - Flores</p>
377	Chair Ackerman	The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

382 Chair Ackerman Closes the work session on SB 218A and opens a public hearing on SB 219.

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SB 219 – PUBLIC HEARING

386 Sam Sears Counsel. Describes SB 219 which expands the authority of the Attorney General (AG) to exempt interstate and certain other intergovernmental agreements by state agencies from legal review.

409 Kevin Neely Department of Justice. Testifies in support of SB 219. Explains that SB 219 helps streamline government and will save agencies money. Describes current law. Provides examples of agreements that will be exempt from AG review under SB 219.

Note: Problems with Tape 76, A experienced so not used.

TAPE 77, A

005 Chair Ackerman Asks if these agreements are exempted now by some word from the AG or if it is done through the rulemaking process.

008 Neely Responds that exemptions are done by rulemaking.

013 Chair Ackerman Closes the public hearing and opens a work session on SB 219.

SB 219 – WORK SESSION

015 Rep. Garrard **MOTION: Moves SB 219 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

020 Chair Ackerman **The motion CARRIES.**

REP. GARRARD will lead discussion on the floor.

023 Chair Ackerman Closes the work session on SB 219 and adjourns the meeting at 9:10 a.m.

EXHIBIT SUMMARY

- A. **HB 3085, -4 amendments, staff, 10 pp**
- B. **SB 233A, written report of Timothy Travis, Wendy Johnson, 8 pp**