### HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 1, 2005 Hearing Room 343

9:00 A.M. Tapes 17 - 18

(Corrected 7/15/05)

MEMBERS PRESENT: Rep. Wayne Krieger, Chair

Rep. Jeff Barker, Vice-Chair

Rep. Brian Boquist, Vice-Chair

**Rep. Linda Flores** 

**Rep. Greg Macpherson** 

**STAFF PRESENT:** 

Cletus Moore, Committee Administrator

Joe O'Leary, Counsel

Sandy Thiele-Cirka, Committee Administrator

Louann Rahmig, Committee Assistant

**MEASURES/ISSUES HEARD:** 

HB 2009 – Work Session SB 489A – Work Session HB 2010 – Work Session SB 899A – Work Session

These minutes are in compliance with Senate and House Rules. <u>Only text enclosed in quotation</u> marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 17,</b>	A	
003	Chair Krieger	Calls the meeting to order at 9:08 a.m. and opens a work session on HB 2009.
<u>HB 2009 –</u>	WORK SESSION	
007	Joe O'Leary	Counsel. Explains HB 2009 which requires the Department of Human Services (DHS), when a child has already been placed in the Department's custody, to first consider the child's grandparents or other birth relatives as prospective adoptive parents before considering other non-relative adoptive parents. Refers to the -1 amendments (EXHIBIT A) that provide a right of judicial review to an agency decision to pursue adoption of a child. Informs of a Legislative Counsel opinion that there is no conflict with ORS 419B.116 and 419B.192.
034	Rep. Macpherson	Reviews the standards for placement of children taken into protection by DHS.
047	O'Leary	Discusses the circumstance of placement of a child when the child is removed from the family under ORS Chapter 419B. Refers to a Senate bill that slightly changes that relationship statute. Comments on the different issues between placement following removal from the home and placement for adoption purposes.
084	Rep. Macpherson	Believes the considerations should be the same for short-term and long-term placement.
095	Chair Krieger	Asks about judicial review.
097	O'Leary	Responds that ORS 183.484 governs review of orders other than contested cases, and jurisdiction for review is in the circuit court of Marion County or the county where the petitioner resides. Goes on that the petition must specify the reason the petitioner is dissatisfied with the agency action and the requested relief. Explains the process.
135	Rep. Barker	Cites a personal situation. Wants care provider language in HB 2009.

150	Rep. Boquist	Points out the language says "first consider" and is not first right of refusal like in contract law. Continues there would be a judicial review process.
161	Rep. Barker	Reiterates the care giver language should be included.
167	Rep. Flores	Comments that if there is an established ongoing relationship, the care giver should be considered.
190	O'Leary	Reviews the definition of care giver relationship in the intervention statute ORS 419B.116. Advises that SB 229A will make the definition the same for the placement statute.
228	Rep. Macpherson	Suggests amending HB 2009 to refer to ORS 419B.116 which would allow all the people to be considered.
239	Rep. Barker	Agrees that will also give the grandparents rights.
258	Rep. Flores	Seeks clarification on "non-relative foster parents."
261	O'Leary	Refers to the definition of "care giver relationship" which does not include a relationship between a child or ward and a person who is a non-relative foster parent of the child or ward unless the relationship has continued for a period exceeding 12 months.
275	Rep. Barker	Seeks clarification that "puts them in the mix" but does not precede the grandparents.
281	O'Leary	Answers that HB 2009 does not provide a priority among individuals but states DHS shall first consider the child's grandparents or other birth relatives.
297	Rep. Boquist	Has a problem when the adoption process may be more than 12 months later.
324	Rep. Flores	Is troubled by the exclusion of "non-relative foster parent" language.
353	Rep. Boquist	Asks if there has been a foster relationship longer than 12 months, does the person now qualify as a care giver.

363	Rep. Flores	Offers there are times when foster placements are not allowed to develop.
379	O'Leary	Shares that SB 815 further amends "care giver relationship" and the 12-month provision will be reduced to six months.
397	Tim Travis	Oregon Judicial Department (OJD). Advises that SB 815 has passed the Senate committee and going to the Senate floor.
<b>TAPE 18,</b>	, <b>A</b>	
019	O'Leary	Summarizes the discussion for clarification to draft another amendment.
037	Rep. Macpherson	States it seems inconsistent to describe a certain group of potential adopters for first consideration rights and then not include all of them in the remedy being created for judicial review.
044	Rep. Barker	Supports that all grandparents should have the right of judicial review.
057	Rep. Boquist	Has a problem with the current definition of a "care giver."
069	Rep. Barker	Reiterates that all should be included and have the right of review.
079	Rep. Flores	Expresses concern about long-term relationships in foster care.
083	Rep. Macpherson	Offers it is more damaging to a child to be bounced around from place to place, to the extent we have a different standard for placement.
093	O'Leary	Refers to ORS 183.480 that provides any person adversely affected or aggrieved by an order is entitled to judicial review. Cites an example.
116	Rep Krieger	Believes that when a decision for adoption is made there is no possibility of review.
123	Travis	Offers there is no direct appeal back to the juvenile court to weigh one person against another. Adds that the current appeal process in the

Administrative Procedures Act is only to determine if the agency followed its rules.

135	Chair Krieger	Asks if this appeal is different from what is in current statute for those people.
136	Travis	Answers no, the appeal being considered for HB 2009 is the appeal that exists now.
142	Rep. Boquist	Believes that insertion of "care giver" won't change anything as they already have an appeal process.
154	Rep. Barker	Observes that if appropriate wording is not present, the court of appeals won't consider an appeal.
164	Rep. Boquist	Inquires about a right of appeal if a care giver is given preference over a foster care giver.
171	Rep. Barker	Wants to have consideration originally.
174	Rep. Boquist	Continues that the basis of the appeal would be no consideration and the agency would have to respond and to provide documentation of the consideration.
183	O'Leary	Believes Rep. Barker feels that the bill should have the care giver added to the language, giving preference to adoptive placements in addition to grandparents and relatives, and if not included the court may interpret the intent of the legislature was to exclude them. Continues that Rep. Boquist's comments are geared more toward the right of appeal and the fact it doesn't matter if they are in there or not because the right to appeal is so limited that it probably won't make a difference.
195	Rep. Boquist	Adds that the care giver has the right to appeal now. Believes the priorities need to be fixed.
205	Rep. Macpherson	Inquires if a right to judicial review already exists, why does a special right of review need to be added.
210	O'Leary	

		Agrees that the -1 amendments are probably superfluous in light of the separate statute that gives any party the right to seek judicial review.
214	Rep. Macpherson	Seems to confuse matters to add in a special right of judicial review.
225	Rep. Boquist	Observes that the public will not know a course of action unless there is a specific reference. Supports the original HB 2009 with the -1 amendments unless "long-term care" is defined.
247	Rep. Macpherson	Raises a concern about the exception that carves out certain circumstances under which a foster parent is not considered a care giver.
259	Rep. Boquist	Inquires about the bill that shortens the length of time.
260	O'Leary	Responds that bill would change the exception to the definition of "care giver relationship" and reads the language into the record.
281	Rep. Macpherson	Reads what he feels is the key language.
300	Chair Krieger	Asks if an amendment could be prepared by the afternoon meeting to include the care giver language.
302	O'Leary	Responds yes.
307	Chair Krieger	Closes the work session on HB 2009 and opens a work session on SB 489A.

## SB 489A – WORK SESSION

313 Joe O'Leary Counsel. Explains that SB 489A repeals the provision allowing appeal of Public Utility Commission (PUC) orders to the circuit court in Marion County where they are currently required to go and allows review under the Administrative Procedures Act; amends language permitting a petitioner to seek a stay of a PUC final order directly to the Court of Appeals for cause shown. Continues that SB 489A streamlines the appeal process. Reminds the committee they previously adopted the conflict amendments. (Note: See June 22, 2005, minutes adopting the -4 amendments.)

339	Rep. Boquist	<b>MOTION:</b> Moves SB 489A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-0
		AYE: In a roll call vote, all members present vote Aye.
349	Chair Krieger	The motion CARRIES.
		<b>REP. MACPHERSON will lead discussion on the floor.</b>
356	Chair Krieger	Closes the work session on SB 489A and opens a work session on HB 2010.

# HB 2010 – WORK SESSION

360	Sandy Thiele-Cirka	Committee Administrator. Explains that HB 2010 requires the Attorney General to create a child protection unit within the Department of Justice (DOJ), which would provide oversight of the Department of Human Services (DHS) duties relating to the protection of children as well as establish the process for seeking public input on how DHS is performing its duties relating to child protection. Advises that the fiscal impact is indeterminate.
382	Rep. Macpherson	Asks if DOJ has offered testimony on this proposed change.
389	Thiele-Cirka	Advises that the Committee on Health and Human Services referred HB 2010 to this committee.
399	Rep. Macpherson	Inquires if DOJ wants this responsibility.
TAPE 17,	В	

009	Pete Shepherd	DOJ. Explains that if assigned, DOJ will discharge the duties as best as they can. Informs that the fiscal impact statement provided is indeterminate as they can't tell what responsibilities the department is to exercise. Continues that if they are to review decisions and actions of DHS case workers for compliance with law, they would probably need additional personnel. Offers that if they are to oversee and review the judgments that case workers exercise, DOJ does not currently have that expertise. Advises that DOJ previously testified that they need explicit direction on what they are to oversee but until
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		they have that information, they cannot provide an accurate fiscal impact.
030	Rep. Macpherson	Refers to a constituent e-mail which points out that agency oversight is not ordinarily requested of DOJ but is usually done by the Secretary of State Audits Division.
066	Rep. Flores	Asks for an overview of the concerns previously stated.
079	Rep. Macpherson	Expands that the DOJ as the state's lawyers, advises agencies of their legal responsibilities to facilitate their work, and it is an unusual situation to be both counsel to and overseer of the same agency.
094	Rep. Flores	Refers to issues with DHS and asks again about previous testimony.
107	Rep. Krieger	Suggests the Secretary of State is not doing their job.
111	Rep. Boquist	Believes the operative word is "investigate" vs. audit. Observes that four public hearings were held.
127	Thiele-Cirka	Refers to the written testimony from Multnomah County Sheriff Giusto presented earlier <b>(EXHIBIT B)</b> . Provides the history that several bills were scheduled as the child welfare package at one point, so there was not a detailed, specific discussion on HB 2010. Refers to Sheriff Giusto's concern about the inconsistent communication between law enforcement and DHS. Provides some examples.
186	Rep. Macpherson	Asks what DOJs position would be if an investigation identified issues on which a cause of action might arise where the agency required a defense.
200	Shepherd	Responds that DOJ has the role of the government's lawyer so perform the advisory function. Advises that part of the AGs responsibility is to help agencies conduct their affairs in compliance with law. Describes some examples of criminal and civil situations.
259	Rep. Macpherson	Believes HB 2010 creates a policy question of whether DOJ is being given adequate guidance on what they are to do so they can provide the fiscal information.

267	Rep. Boquist	Asks if there is ample guidance in Sheriff Giusto's letter (EXHIBIT B).
276	Shepherd	Answers no. Refers to the portion of <b>EXHIBIT B</b> on the lack of a consistent central case management system. Points out that DOJ has no existing expertise to advise DHS how to manage their cases. Reiterates DOJ needs a clear mission and the resources to carry it out.
314	Rep. Macpherson	Doesn't think a bill should be passed that lacks specific direction.
328	Chair Krieger	Closes the work session on HB 2010 and opens a work session on SB 899A which abolishes the Multnomah County Tax Supervising and Conservation Commission (TSCC).
<u>SB 899A - 7</u>	WORK SESSION	
344	Cletus Moore	Committee Administrator. Refers to the -8 amendments to SB 899A <b>(EXHIBIT C)</b> which allows Multnomah County to establish a Tax Supervising and Conservation Commission (TSCC); and allows counties with a population of 500,000 or more to establish a TSCC if the county obtains approval of the county governing body and taxing districts within the county. Advises there is a subsequent referral to the revenue committee.
368	Rep. Barker	MOTION: Moves to ADOPT SB 899A-8 amendments dated 6/28/05.
378	Rep. Macpherson	Asks about the -8 amendments.
381	Moore	Explains the -8 amendments correct the -7 amendments making sure that Multnomah County can continue having a TSCC and the Governor can reappoint its members. Details the changes.
402	Rep. Macpherson	Offers that the bill as it came from the Senate abolishes the Multnomah County TSCC and allows any county with a population of 500,000 or more to establish a TSCC.
<b>TAPE 18, I</b>	3	

009 Moore

		Answers yes that SB 899A updates the law so that any county with a population of 500,000 or more may have a TSCC.
011	Rep. Macpherson	Understands that Multnomah County is now required to have a commission. Asks if the -8 amendments will affect that.
017	Dennis Mulvihill	Washington County. Explains that the -8 amendments retain Multnomah County's TSCC; allows all other counties to create a TSCC with a vote, regardless of their population; and corrects a drafting error.
023	Rep. Macpherson	Clarifies that the -8 amendments still require Multnomah County to have a commission, and other counties can decide if they want one.
025	Moore	Adds that with the -7 amendments Multnomah County would have to abolish their commission.
026	Rep. Macpherson	Asserts that no one has explained why these commissions are necessary. Informs of the cost of Multnomah County's TSCC for a function no one has explained is necessary.
036	Mulvihill	Responds that Multnomah County's taxing jurisdictions are not of like mind about whether or not they should have a TSCC.
049	Rep. Macpherson	Has information from Multnomah County saying they do not want a TSCC. States he cannot support an amendment that says Multnomah County must have a TSCC.
088	Rep. Boquist	Asks for the reference in SB 899A requiring a TSCC for Multnomah County.
093	Rep. Macpherson	Was relying on the staff explanation so has no problem if optional for every county.
095	Moore	Explains the optional language.
098	Mulvihill	Indicates that the -8 amendments retain Multnomah County's TSCC but allows other counties, as the public sees a need, to be able to create one.
109	Rep. Boquist	

		Believes that those who already have one, can keep it, but if they don't have, must vote to create one.
121	Rep. Macpherson	Reads the operative language. Continues that Multnomah County supports the version that came from the Senate. Has not been contacted by anyone that the TSCC is needed.
158	Mulvihill	States that Washington County and the Multnomah County TSCC support the -8 amendments.
166	Rep. Macpherson	Comments they want to stay in power.
169	Rep. Boquist	Asks if they supported the -7 amendments.
172	Mulvihill	Answers yes but then found a drafting error.
190	Chair Krieger	Refers to the witness sheet from public hearing showing only one person from Multnomah County appeared.
201	Rep. Macpherson	Recollects that witness spoke in support of the bill as it came from the Senate which would abolish the commission.
215	Chair Krieger	Points out he was in support of the bill.
216	Rep. Macpherson	Agrees as it would have abolished the Multnomah County commission.
220	Rep. Boquist	Recalls the -7 amendments were supported.
224	Rep. Macpherson	Thinks the "rules" should be the same for everyone.
229	Rep. Flores	Expresses a concern about imposing another layer of government in counties.
234	Rep. Macpherson	Recommends passing out SB 899A without amendments.
237	Rep. Flores	Is unsure about the conflict the -8 amendments address.
242	Mulvihill	

Replies that the specifics tie the authority of the Multnomah County TSCC to ORS 294.710 which allows all counties except Multnomah County to create a commission with a vote.

261	Rep. Flores	Seeks clarification of the -8 amendments.
269	Rep. Macpherson	Believes that if SB 899A is not amended the drafting issue that caused the -8 amendments is moot.
272	Mulvihill	If SB 899A as it came over from the Senate is preferred, neither the -7 amendments or the -8 amendments are necessary.
285	Rep. Macpherson	Asks if SB 899A from the Senate without amendments would solve Washington County's problem.
289	Mulvihill	Answers yes.
296	Chair Krieger	Closes the work session on SB 899A and adjourns the meeting at 11:00 a.m.

## EXHIBIT SUMMARY

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- A. HB 2009, -1 amendments, staff, 1 p
- B. HB 2010, written testimony by Bernie Giusto, staff, 3 pp
- C. SB 899, A8 amendments, staff, 1 p

#### HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 1, 2005 Hearing Room 343

1:00 P.M. Tapes 19 – 20

(Corrected 7/15/05)

MEMBERS PRESENT: Rep. Wayne Krieger, Chair

Rep. Jeff Barker, Vice-Chair

Rep. Brian Boquist, Vice-Chair

**Rep. Linda Flores** 

**Rep. Greg Macpherson** 

STAFF PRESENT:	Janet Adkins, Committee Administrator
	Patrick Brennan, Committee Administrator
	<b>Cletus Moore, Committee Administrator</b>
	Joe O'Leary, Counsel
	Sandy Thiele-Cirka, Committee Administrator
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Louann Rahmig, Committee Assistant

**MEASURES/ISSUES HEARD:** 

HB 2009 – Work Session HB 2010 – Work Session SB 899A – Work Session SB 1032A – Work Session SB 311B – Work Session These minutes are in compliance with Senate and House Rules. <u>Only text enclosed in quotation</u> <u>marks reports a speaker's exact words.</u> For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 19,	Α	
003	Chair Krieger	Calls the meeting to order at 1:05 p.m. and opens a work session on HB 2009.
<u>HB 2009 -</u>	- WORK SESSION	
008	Joe O'Leary	Counsel. Explains that HB 2009 requires the Department of Human Services (DHS) to first consider the child's grandparents or other birth relatives as prospective adoptive parents before considering other prospective adoptive parents. Adds that this is applicable to children who are in the legal custody of DHS. Refers to the -1 amendments (EXHIBIT A) which impose a right of judicial review pursuant to the provision of the Administrative Procedures Act that applies to cases other than contested cases, and the proposed -2 amendments (EXHIBIT B) that add a person with a caregiver relationship as defined in ORS 419B.116(1), in addition to grandparents and other birth relatives, to the list of people who DHS would be required to first consider for purposes of adoption before considering other non-relative and non-caregiver relationship prospective adoptive parents.
024	Rep. Boquist	MOTION: Moves to ADOPT HB 2009-1 amendments dated 6/29/05.
026	Rep. Macpherson	Objects to the -1 amendments.
034	Rep. Flores	Reads a portion of OAR 413-120-0060 which contains provisions for agency review of placements.
043	Rep. Boquist	Expresses need to include a reference to direct grandparents to the appropriate statutes to find out how the process works.
048		VOTE: 5-0-0

050	Chair Krieger	Hearing no objection, declares the motion CARRIED.
055	Rep. Boquist	MOTION: Moves HB 2009 to the floor with a DO PASS AS AMENDED recommendation.
057	Rep. Boquist	Acknowledges Rep. Barker's concerns raised in the morning discussion.
059		VOTE: 3-2-0
		AYE: 3 - Boquist, Flores, Krieger
		NAY: 2 - Barker, Macpherson
065	Chair Krieger	The motion CARRIES.
		<b>REP. BOQUIST will lead discussion on the floor.</b>
067	Chair Krieger	Closes the work session on HB 2009 and opens a work session on HB 2010 which directs the Attorney General to create a Children's Protection Unit within the Department of Justice (DOJ) to provide oversight of the manner in which the Department of Human Services (DHS) performs its duties relating to the protection of children
<u>HB 2010 –</u>	WORK SESSION	
075	Bruce Anderson	House Speaker Karen Minnis' Office. Explains the background of HB 2010. Iterates the need for independent oversight of issues for the protection of children. Continues that it is appropriate for this unit to be at the DOJ because they deal with the law day in and day out. Points out that the independently elected agency official (Attorney General) can provide guidance and be accountable to the voters as well. Refers to the letter from the Multnomah County Sheriff's Office (EXHIBIT C) distributed earlier. Does not believe that letter specifically addresses HB 2010 but rather responds to a request from Rep. Dalto on issues related to the Child Welfare Division and law enforcement agencies. Points to HB 2010 which: provides oversight over the DHS; provides for the conduct of investigations; and seeks public input in the manner in which DHS performs its duties relating to the protection of children.

159 Rep. Barker Comments that required investigations need to be done.

166	Anderson	Emphasizes that discretion is needed on which complaints to investigate.
180	Rep. Macpherson	Believes internal affairs units are complaint driven, and it appears that is what is intended.
200	Anderson	Refers to language in HB 2010 about providing oversight. Doesn't think this is purely complaint driven.
225	Rep. Macpherson	Reads broad language that could apply to wide-ranging scope. Adds that DOJ could not provide a fiscal impact because they could not determine what was expected of them.
245	Anderson	Thinks the focus should be on child protection rather than audits of administrative functions.
266	Rep. Boquist	Asks if this is an independent inspector general function.
272	Anderson	Answers it is similar although more focused on the protection of children.
277	Rep. Boquist	Restates it appears to be an independent inspector general focus on protecting children to be sure the right laws are being complied with.
279	Rep. Boquist	<b>MOTION:</b> Moves HB 2010 to the floor with a DO PASS recommendation.
287	Rep. Macpherson	Hears what is intended by HB 2010 but there is not enough in the bill to tell DOJ what is needed so a fiscal impact can be determined.
298	Rep. Barker	Believes oversight is a better description than internal affairs and probably will need to adjust in the future.
301		VOTE: 4-1-0
		AYE: 4 - Barker, Boquist, Flores, Krieger
		NAY: 1 - Macpherson
310	Chair Krieger	The motion CARRIES.

**REP. FLORES & REP. BOQUIST will lead discussion on the floor.** 

324 Chair Krieger Closes the work session on HB 2010 and opens a work session on SB 899A which requires taxing districts to provide a copy of their budget to a tax supervising and conservation commission if the county in which the taxing district is located has no county clerk.

#### SB 899A – WORK SESSION

332	Gina Mattioda	Director, Multnomah County Public Affairs Office. Testifies in support of SB 899A. Does not see the need for the -8 amendments.
335	Rep. Barker	Seeks clarification that Multnomah County wants to keep their Tax Supervising and Conservation Commission (TSCC).
337	Mattioda	Supports the A-engrossed bill but does not support the -8 amendments.
342	Rep. Macpherson	Asks if there has been any input from any agency, district or government jurisdiction that is under the oversight of the TSCC that they want to retain Multnomah County's TSCC.
351	Mattioda	Answers the only entity that has testified in support is the TSCC themselves. Adds that none of the 35 special districts, which include regional governments to water districts, have expressed any written or verbal opposition to SB 899A.
367	Chair Krieger	Closes the work session on SB 899A.
386	Chair Krieger	Opens a public hearing and work session on SB 1032A.

#### SB 1032A – PUBLIC HEARING & WORK SESSION

388 Patrick Brennan Committee Administrator. Explains SB 1032A which requires a metropolitan service district to establish a process to expand the urban growth boundary to accommodate the need for land for a public school that cannot be accommodated within existing urban growth boundary.

004	Rep. Boquist	MOTION: Moves SB 1032A to the floor with a DO PASS recommendation.
		VOTE: 5-0-0
		AYE: In a roll call vote, all members present vote Aye.
010	Chair Krieger	The motion CARRIES.
		REP. BARKER will lead discussion on the floor.
013	Chair Krieger	Announces the bills that will be carried forward to next week.
032	Chair Krieger	Announces the committee is at ease at 1:40 p.m.
033	Chair Krieger	Reconvenes at 2:00 p.m. and opens a work session on SB 311B.
<u>SB 311B – </u>	WORK SESSION	
038	Janet Adkins	Committee Administrator. Explains SB 311B which requires the Department of Consumer and Business Services to regulate medical exams for workers' compensation claims and to maintain a list of providers authorized to perform independent medical exams
059	Chair Krieger	Asks if there is any opposition to SB 311B.
061	Rep. Boquist	MOTION: Moves SB 311B to the floor with a DO PASS recommendation and BE REFERRED to the committee on Senate Budget.
		VOTE: 5-0-0
		AYE: In a roll call vote, all members present vote Aye.
068	Chair Krieger	The motion CARRIES.
072	Chair Krieger	Closes the work session on SB 311B and adjourns the meeting at 2:05 p.m.

## **EXHIBIT SUMMARY**

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- A. HB 2009, -1 amendments, staff, 1 p
- B. HB 2009, -2 amendments, staff, 1 p
  C. HB 2010, written testimony by Bernie Giusto, staff, 3 pp