

HOUSE COMMITTEE ON JUDICIARY

February 27, 2003 Hearing Room 357
1:00 P.M. Tapes 59 - 61

MEMBERS PRESENT: Rep. Max Williams, Chair
Rep. Robert Ackerman, Vice-Chair
Rep. Gordon Anderson, Vice-Chair
Rep. Jeff Barker
Rep. Jerry Krummel
Rep. Greg Macpherson
Rep. Lane Shetterly

MEMBER EXCUSED: Rep. Floyd Prozanski

STAFF PRESENT: Bill Joseph, Counsel
Nancy Masee, Committee Assistant

MEASURE/ISSUES HEARD: Introduction of LC 1568, 3172, 3018, 3019
HB 2150 Public Hearing
HB 2155 Public Hearing
HB 2156 Public Hearing
HB 2342 Public Hearing

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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 59, A		
004	Chair Williams	Opens meeting at 1:10 p.m. Explains four LC's to be introduced as committee measures (EXHIBITS A-D).
<u>INTRODUCTION OF MEASURES</u>		
006	Chair Williams	MOTION: Moves LC's: 1568, 3172, 3018, 3019 BE INTRODUCED as committee bills. VOTE: 6-0-3 EXCUSED: 3 - Anderson, Prozanski, Shetterly Hearing no objection, declares the motion CARRIED.
008	Chair Williams	
010	Chair Williams	Opens public hearing on HB 2150.
<u>HB 2150 PUBLIC HEARING</u>		
020	Bill Joseph	Committee Counsel. Explains HB 2150 that specifies small estate procedures.
059	Richard Mills	Department of Human Services (DHS). Gives overview of HB 2150, HB 2155, and HB 2156. Clarifies HB 2150; supports HB 2150 and submits testimony (EXHIBIT E). States that Section 3 should be deleted.
090	Chair Williams	Confirms Section 3 should be deleted.
175	Bruce Miller	Judicial Department. Agrees that Section 3 should be deleted. Supports HB 2150.
186	Geoff Bernhardt	Portland Attorney. Oregon State Bar, Elder Law Section. Submits testimony (EXHIBIT F) in opposition to HB 2150. Discusses how claims can be opened.
244	Rep. Shetterly	Asks about Section 2, is that where DHS is the affiant.

269	Bernhardt	Responds the court certifies the copy. The bill allows DHS to certify their own copies.
277	Rep. Krummel	Asks if a declaration is better than an affidavit. Asks about the two- year limitation.
290	Mills	Explains that there is a two-year limitation when a creditor can request a court hearing if their claim has not been paid. Gives example of what could happen.
343	Rep. Shetterly	Ask how many cases a year does DHS file as the affiant.
361	Mills	Mr. Ryder says it is close to 75.
410	Bernhardt	Does not object to DHS certifying their own copies. Wants to streamline the process for families.

TAPE 60, A

029	Bernhardt	Says DHS indicated they are withdrawing section three which is agreeable to them.
035	Chair Williams	Asks Mr. Joseph to check with Division of State Lands (DSL). Asks for an amendment to withdraw section three.
040	Kenneth Ryder	DHS. Gives example of request for a summary review of administration of an estate.
082	Bernhardt	Explains concerns about extending the two-year time limit for creditors' claims.
094	Rep. Macpherson	Asks about allowing filing of an affidavit that would only run two years.
108	Bernhardt	Says it would be possible with additional drafting and an alternative of two years after the person's death or a shorter but sufficient amount of time for DHS to file.
112	Ryder	Responds that two years from date of death or 6 to 9 months from date of filing small estate affidavit would be acceptable.
120	Chair Williams	Closes public hearing on HB 2150. Opens public hearing on HB 2155.

HB 2155 PUBLIC HEARING

134	Bill Joseph	Committee Counsel. Explains HB 2155 that authorizes Department of Human Services (DHS) to bring action under certain conditions to recover amount of assistance paid to a public assistance recipient.
145	Richard Mills	DHS. Submits testimony in support of HB 2155 (EXHIBIT G). Explains why this bill is needed.
224	Vice Chair Ackerman	Asks how counterclaims are defended by DHS.
230	Mills	Responds that personal injury law is not his area of expertise.
253	Karl Goodwin	Assistant Attorney General, DOJ. Answers regarding issue preclusions; this does not impair the plaintiffs' rights. Allows DHS to bring action for the amount of medical expenses provided.
285	Vice Chair Ackerman	Explains why he thinks the recipient might be precluded. Raises the issue of counterclaims.
304	Goodwin	Replies the other party would have to raise that defense against the plaintiff.
310	Vice Chair Ackerman	Asks if it is correct that when agency gives notice to the recipient and after six months if the recipient has not initiated action, the agency does that without anyone's knowledge.
322	Goodwin	Answers that the department must give notice.
315	Rep. Jenson	Asks for clarification on the previous questions. Asks if there is a countersuit, what happens.
350	Rep. Shetterly	Asks about lines 10 and 11 of the bill.

TAPE 59, B

001 Ruth Simonis Attorney and Co-chair of the Elder Law Legislative Subcommittee. Opposes HB 2155. Explains why she does not support the bill as a whole. Agrees with parts of HB 2155 and submits testimony in opposition to HB 2155 (**EXHIBIT H**).

026 Vice Chair Ackerman Asks about the department filing liens for recovery purposes.

032 Simonis Replies the concern might gain more reimbursement by pursuing these claims.

038 Vice Chair Ackerman Closes public hearing on HB 2155. Opens public hearing on HB 2156.

HB 2156 PUBLIC HEARING

040 Richard Mills DHS. Explains the necessity of HB 2156 which relates to public assistance; creating new provisions, and amending ORS 205.246, and submits testimony in support of the bill (**EXHIBIT I**).

087 Mills Continues giving examples of public assistance recipients' eligibility.

100 Kenneth Ryder Estate Administrator, DHS. Discusses the -1 amendment, Exhibit I. Explains concern for the change in the bill from "transfer" to "sale."

135 Rep. Shetterly Comments that most of these transactions would not go through a title company.

149 Mills Comments it would not be enforceable.

163 Susan Ford Burns Attorney, Oregon State Bar, Elder Law Section. Submits testimony in opposition to HB 2156 (**EXHIBIT J**). Explains areas of concern. Says this bill will create a "hit list" for distressed property investors and loan companies.

210 Chair Williams Points out that elder abuse issues are going to be dealt with through further legislation.

220 Burns Points out problems that could occur with HB 2156. Discusses weakening bargaining power and creating the "hit list."

240 Geof Bernhardt Attorney for elders. Adds that he is aware of DHS problems in administering estates; concern is with the "cloud" on the property. Submits testimony in opposition to HB 2156 (**EXHIBIT K**).

295 Rep. Krummel Asks position of DHS and title insurance. Asks about spending down by public assistance recipients and reinstatement of recipients.

303 Burns Explains that historically the title company requests a written release from DHS. There are then time extensions and increased costs.

330 Mills Comments there is nothing for DHS to release; this bill requires notifying DHS.

366 Rep. Krummel Asks if a public assistance recipient can be forced to sell their property.

392 Mills Answers DHS cannot force a client to sell their property. Explains excluded resources, which means their home. Explains accountable resources, and how eligibility could be affected.

TAPE 60, B

020 Rep. Krummel Reiterates in cases where the recipient cannot return to his home, and the family sells the property, the bill requests notice to DHS, is that right?

022 Mills Responds, that is correct. Comments in response to a "hit list." Points out that senior tax deferral lists are available to anyone at

045 Bernhardt the county courthouse.
Mentions protections of DHS in reporting value of assets by persons on public assistance.

047 Mills Responds about a client who is in over-resource.

092 Chair Williams Closes public hearing on HB 2156. Opens public hearing on HB 2342.

HB 2342 PUBLIC HEARING

103 Richard Mills Department of Human Services (DHS). Explains HB 2342 that allows claim to be made against estate of decedent at any time after personal representative is appointed, and submits testimony in support of HB 2342 (**EXHIBIT L**). Discusses possible amendments to HB 2342.

154 Bruce Miller Office of the State Court Administrator. Explains concerns with HB 2342.

177 Geoff Bernhardt Attorney, Elder Law Section of Oregon State Bar. Explains how valid claims are sought in creditor claim period. Evidence, other than one's word, of decedent's wishes of disposal of property is needed. Opposes HB 2342 and submits testimony (**EXHIBIT M**).

239 Rep. Shetterly Discusses what documentary evidence and testimony are sufficient. Suggests wording in the statute to include both kinds of evidence.

280 Mills Asks to discuss the proposal with DOJ counsel.

290 Vice Chair Anderson Asks what documents are used to support services.

312 Mills Answers the records consist of microfiche lined items showing date and service payment, with a code number.

323 Chair Williams Asks Mr. Mills if the document is easily decipherable.

322 Mills Replies that the microfiche is not readily decipherable to the average person. DHS creates an assistant summary to help clarify the records.

329 Mills Gives examples when a deceased's estate is opened more than two years after death. Having a two-year limit has cost the department money already. DHS often finds out after the fact that there are assets.

391 Bernhardt States DHS knows when a recipient dies.

436 Mills Replies that DHS does not always know that a recipient has died.

TAPE 61, A

007 Bernhardt Objects stretching out an additional two years beyond the present two years.

012 Mills Explains the bill removes the two-year limitation. It doesn't say creditors have two more years.

020 Chair Williams Closes public hearing on HB 2342. Adjourns meeting at 3:00 p.m.

EXHIBIT SUMMARY

- A – LC 1568, staff, 42 pp**
- B – LC 3172, staff, 9 pp**
- C – LC 3018, staff, 3 pp**
- D – LC 3019, staff, 2 pp**
- E – HB 2150, written testimony, R. Mills, 3 pp**
- F – HB 2150, written testimony, G. Bernhardt, 1 p**

G – HB 2155, written testimony, R. Mills, 3 pp
H – HB 2155, written testimony, R. Simonis, 1 p
I– HB 2156, written testimony, R. Mills, 3 pp
J – HB 2156, written testimony, S. Burns, 1 p
K – HB 2156, written testimony, G. Bernhardt, 1 p
L - HB 2342, written testimony, R. Mills, 3 pp
M – HB 2342, written testimony, G. Bernhardt, 2 pp