

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

February 19, 2001
8:00 a.m.

Hearing Room 357
Tapes 17 - 18

MEMBERS PRESENT: **Rep. Cherryl Walker, Chair**
 Rep. Vic Backlund
 Rep. Lowe
 Rep. Ringo
 Rep. Lane Shetterly

STAFF PRESENT: **Andrea Shartel, Counsel**
 Shannon Reed, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2386 Public Hearing**
 HB 2594 Public Hearing
 HB 2339 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.

TAPE/#	Speaker	Comments
TAPE 17, A		
004	Chair Walker	Calls the meeting to order at 8:09 a.m. and opens the public hearing on HB2386 concerning garnishment laws.
<u>HB 2386 PUBLIC HEARING</u>		
009	Rep. Max Williams	House District 9 Testifies in support of HB 2386 concerning garnishment laws revisions. Explains the bill would streamline the statute from four separate forms of garnishment to one, and clarifies understanding of the rights, obligations and responsibilities of the people involved. Mentions that there are a few issues waiting to be resolved and suggests waiting to move the bill to full committee until the issues are resolved.
107	Chair Walker	Recesses the public hearing on HB 2386 and opens a public hearing on HB 2594 concerning pioneer cemeteries and conditions for use.
<u>HB 2594 PUBLIC HEARING</u>		
116	Counsel Shartel	Introduces HB 2594 which establishes access to certain pioneer cemeteries throughout Oregon, and sets conditions for their use.
142	Charlotte Benz	Heritage Cemetery Group, Inc. Submits testimony and testifies in support of HB 2594 (EXHIBIT A) . States that the purpose of requesting this legislation is to facilitate access to landlocked cemeteries and burial sites by descendants and cemetery property owners.

162	Karen Wells	Submits testimony and testifies in support of HB 2594 (EXHIBIT B). Explains that she owns a landlocked pioneer cemetery in Marion County and all descendents of the Wells family are buried there. States that she is concerned that her family will lose access to the cemetery because owners of land around it do not want them trespassing.
221	Christopher Rumbaugh	Chair, Oregon Pioneer Cemetery Commission Submits testimony and testifies in support of HB 2594 (EXHIBIT C). Points out those areas of SB 2594 that are unclear and offers assistance in defining a process for access.
263	Rep. Shetterly	Asks if he has talked to the drafter of the bill about its potential ambiguity.
266	Rumbaugh	Replies, no.
271	Rep. Lowe	Asks if he intends to propose amendments.
276	Rumbaugh	Replies that the commission does not currently have amendments.
280	Chair Walker	Asks if the commission would consider drafting amendments with other proponents of the bill that would deal with those unclear areas.
288	Rumbaugh	Replies that the commission would be pleased to do that.
296	Chair Walker	Asks Karen Wells and Charlotte Benz if they would work with Mr. Rumbaugh on amendments.
303	Wells	Replies they would be pleased to work on the amendments.
308	Rep. Backlund	Asks if the bill should pertain to tribal lands and public lands.
315	Rumbaugh	Replies that he will have to get more information on this area.
321	Chair Walker	Suggests that this bill should address access to private lands only.
341	Rep. Lowe	Comments that any agreement about access should be mutual and reciprocal.
355	Rep. Shetterly	Clarifies statute of private and public way of necessity for cemetery, and asks if SB 2594 is an expansion of current statute to include “any” pioneer cemetery.
388	Wells	Says yes, and explains that the definition of historic cemeteries is narrow and that it should include pioneer cemeteries.
397	Rep. Shetterly	Asks if ORS 97.782 is the list of pioneer cemeteries maintained by the commission, and if the commission maintains a legal description of those properties.
410	Rumbaugh	Explains that the list is new and there is a form available that includes information available.
421	Rep. Shetterly	Asks about the cost related to establishing and maintaining a way of necessity.
448	Rumbaugh	Explains that he would have to research that question.
455	Rep. Lowe	Questions the reasonableness of access for research, etc.
489	Benz	Explains way of necessity isn’t specifically defined, but allows landowners to help in determining access.
TAPE 18, A		
016	Rep. Shetterly	States that ORS 376.150 describes ways of necessity as a road established to provide motor vehicle access, and that ORS 376.180 provides for conditions that can be attached.
040	Chair Walker	Closes the public hearing on HB 2594 and opens a public

hearing on HB 2339.

HB 2339 PUBLIC HEARING

064	Counsel Shartel	Introduces HB 2339 allowing presiding judge of circuit court to establish mandatory mediation program for specified categories of cases, and explains the –3 amendments (EXHIBIT D).
095	Kevin Crawford	Oregon Associations of Defense Counsel Testifies in support of –3 amendments and asks for more time to review the words “shall” and “may” as they relate to this bill.
124	Judge Paul Lipscomb	Presiding Circuit Court Judge, Marion County Testifies that more time is needed for final review of policy questions. Explains that the compromise language suggested would treat medication the same as arbitration.
151	Rep. Lowe	Expresses concern about caseload backlog and removing requirement of settlement conference from judge’s option.
194	Rep. Ringo	Explains that he favors mediation, but not being compelled to mediate.
221	Judge Lipscomb	Responds that the ability of the petitioner to apply for mediation is very beneficial, and that in Marion County it is mandatory for all small claims and f.e.d. cases, but favors some local community control.
269	Crawford	States that he is in favor of alternative dispute resolution, but believes parties should decide—not the judge.
298	Rep. Ringo	Asks who would pay for the mediator.
299	Crawford	States that according to statutes, it is borne by the parties.
302	Judge Lipscomb	Says that if mediation is mandatory, then most often volunteer resources are found.
352	Rep. Lowe	Expresses concern about persons without settlement authority. Asserts that it allows for faster settlements if mandatory mediation comes from judge.
395	Rep. Ringo	Insists that a client has to trust his/her lawyer to perform in the client’s best interest, and that this statute would not fix the problem. Asks if this statute would allow for the mandatory arbitration system to continue, as well as mediation.
407	Judge Lipscomb	States, yes.
416	Crawford	Responds that it has been his experience that mandatory mediation slows settlement negotiations.
465	Judge Lipscomb	States that he would like to see this bill moved forward.
484	Chair Walker	Closes the public hearing on HB 2339 and states that there will be no work sessions until the amendments are prepared. Continues the public hearing on HB 2386.

TAPE 17, B

HB 2386 PUBLIC HEARING RECONVENED

037	Counsel Shartel	Introduces HB 2386 referring to garnishment laws.
059	Kenneth Sherman	Oregon Bankers Association Submits testimony and testifies in support of HB 2386 (EXHIBIT E). Explains that the goals of the work group responsible for this bill are to simplify the law and garnishment process, to eliminate inconsistent provisions and fine-tune the process to make it work more smoothly.
212	David Heynderickx	Legislative Counsel

314 325	Rep. Ringo Sherman	Submits an overview of HB 2386 (EXHIBIT F) and explains that while there has been a comprehensive rewrite of garnishment procedures, HB 2386 does not substantively change existing law, but simplifies and clarifies the garnishment process. Gives examples of confusion in existing law. Inquires what issues might have been involved in opposition. Explains that there was discussion about the types of property, the period of time the writ of garnishment was valid, and the type of form used.
350 355 358	Rep. Ringo Sherman Heynderickx	Asks if any groups opposed the modifications in the bill. Replies that he is not aware of any. Explains that the biggest outstanding concern is probably from state agencies due to the number of garnishments and agency collections they deal with.
396	Bradd Swank	State Court Administrators Office States that he is in support of HB 2386, and says that it is time after 20 years to clarify the garnishment law. Cites an example of the confusion that can occur in present law.
TAPE 18, B 004	Steve Little	Oregon Department of Revenue Submits testimony and testifies as neutral on HB 2386 (EXHIBIT G). States his interest in having the state's garnishment provisions be as workable and understandable as possible, and explains that he and Mr. Randall Jordan, Assistant Attorney General of the Civil Recovery Section, are still involved in review of HB 2386. Suggests that Mr. Jordan's attached memo outlines the issues they believe will assist in eliminating inconsistencies in the bill.
041 048	Rep. Ringo Randall Jordan	Asks how a debtor is notified. Department of Justice Responds that there is a procedural issue with the timing of serving a garnishment that has not been resolved.
088	Chair Walker	Closes the public hearing on HB 2386 and adjourns the meeting at 9:45 a.m.

Transcribed By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

- A – HB 2594, written testimony submitted by Charlotte Benz, dated 2/01, 1 p**
- B – HB 2594, written testimony submitted by Karen Wells, dated 2/19/01, 5 pp**
- C – HB 2594, written testimony submitted by Christopher Rumbaugh, dated 2/19/01, 4 pp**
- D – HB 2339, -3 amendment submitted by Kevin Crawford, dated 2/19/01, 2 pp**
- E – HB 2386, written testimony submitted by Kenneth Sherman, Jr., dated 2/19/01, 2 pp**
- F – HB 2386, written overview submitted by David Heynderickx, dated 10/5/00, 13 pp**
- G – HB 2386, written testimony submitted by Steve Little, dated 2/19/01, 2 pp**

H – HB 2594, written testimony submitted by Maxine Daly, 1 p