

HOUSE COMMITTEE ON JUDICIARY

March 2, 2001
8:00 a.m.

Hearing Room 357
Tapes 17 - 19

MEMBERS PRESENT: Rep. Max Williams, Chair
 Rep. Jo Ann Bowman, Vice-Chair
 Rep. Robert Ackerman
 Rep. Vic Backlund
 Rep. Kathy Lowe
 Rep. Charlie Ringo
 Rep. Lane Shetterly
 Rep. Cheryl Walker
 Rep. Vicki Walker
 Rep. Carl Wilson

MEMBER EXCUSED: Rep. Wayne Krieger, Vice-Chair

STAFF PRESENT: Bill Taylor, Counsel
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: HCR 1 Public Hearing and Work Session
 HB 2246 Public Hearing
 HB 2344 Work Session
 HB 2385 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 17, A		
004	Chair Williams	Calls the meeting to order at 8:05 a.m. Opens a public hearing on HCR 1.
<u>HCR 1 PUBLIC HEARING</u>		
020	Counsel Taylor	Introduces HCR 1 in memoriam of City of Tigard Mayor James R. (Jim) Nicoli.
025	Bob Olsen	Tigard Chamber of Commerce Testifies in support of HCR 1.
035	Chair Williams	Comments that it is his pleasure to sponsor this resolution and that Jim Nicoli was a terrific human being.
046	Chair Williams	Opens a work session on HCR 1.
048	Chair Williams	MOTION: Moves HCR 1 be sent to the floor with a BE ADOPTED recommendation. VOTE: 10-0-1 EXCUSED: 1 - Krieger
048	Chair Williams	Hearing no objection, declares the motion CARRIED. WILLIAMS AND HANSEN will lead discussion on the floor.
062	Chair Williams	Closes the work session on HCR 1 and opens a public hearing on

HB 2246.

HB 2246 PUBLIC HEARING

067	Counsel Taylor	Introduces HB 2246 relating to judicial review of government action (EXHIBITS A & B).
085	Attorney General Hardy Myers	Oregon Law Commission Testifies in support of HB 2246. States that “the goal of judicial review is to leave policy judgments to governmental policymakers rather than judges, while ensuring that officials stay within their legal authority, follow prescribed procedures and have a factual basis for their decisions when that is legally required.”
329	Wallace P. Carson, Jr.	Chief Justice, Oregon Supreme Court Testifies in support of HB 2246.
393	Phillip Schradle	Testifies in support of HB 2246.
TAPE 18, A 022	Rep. Wilson	Reads a quote from a city manager that says “the proposed judicial review bill literally rewrites entire sections of settled case law and thus it will change an entire block of judicial history and result in voluminous litigation to weed out what the litigants perceive as the real perimeters and meaning of the proposed legislation.”
033	Schradle	Comments that local governments have never had a uniform system of judicial review that has existed. Says that the goal behind using these terms is that they will have a coherent system of terms that will apply.
061	Myers	Adds that a lot of the decided case law arising from judicial review of local government action has been devoted to trying to analyze what kind of government action it is in order to determine whether the appropriate process has been chosen to challenge the act and this has generated a lot of expense.
110	Rep. Shetterly	Thanks to the Attorney General and judicial review work group for their effort on this proposed legislation.
133	Rep. Ringo	Asks how local government actions currently work.
142	Schradle	Says that it depends and that typically a local government action will get challenged in a circuit court proceeding of some kind.
162	Chair Williams	Asks about the history of this bill.
172	Myers	Says that his best recollection was the opposition to local governments was the primary reason that the bill died in 1985.
176	Chair Williams	Wonders if local governments had been left in the bill, if the governor would have signed it.
202	Scott Parker	Association of Oregon Counties (AOC) Testifies in opposition to HB 2246, saying he participated in the work group.
230	Dan Olsen	AOC Testifies in opposition to the bill but thinks that the work group did a great job. Wonders why an entirely new system has to be created when in his experience he has not had people get thrown out of court for trying to sue us. Feels that this bill is going to invite people to sue. Says that he thinks the bill is not needed and should be rejected.
TAPE 17, B 028	Rep. Ringo	Asks a question regarding Section 17 on page 13 of the bill.

045	Parker	Says the standard of review in that section is whether a city government unlawfully departed from a prior or established practice.
055	Rep. Bowman	Asks if they have any proposed changes for this legislation.
057	Parker	Answers that they made a number of proposals to the work group.
061	Rep. Bowman	Suggests that they should make some changes to this bill.
071	Rep. Shetterly	Asks Parker about administrative acts applying the law.
087	Parker	Says the more direct question is whether they did something unlawfully.
095	Olsen	Discusses the term enactment on page 2, line 17.
109	Harold Haugen	County Commissioner, Josephine County, AOC Testifies on HB 2246 and says that the one thing that he hasn't heard is the impact on the local governments. Says that his concern is the broadening of actions and definitions.
277	Haugen	Points out that there is a significant substantive change for local governments in this legislation. Comments that in their decision-making process at the county level, their citizenry is sitting in front of them while this does not happen in state agencies. Says that he sees some micromanaging that may occur with this legislation.
348	Chair Williams	Recesses the meeting at 9:23 a.m.
355	Chair Williams	Reopens the meeting at 10:03 a.m.
375	Joe Willis	Attorney, Portland Testifies in opposition to HB 2246.
TAPE 18, B		
004	Willis	Continues testimony in opposition to HB 2246.
161	Rep. Ringo	Asks about Section 9, Exhaustion of Remedies.
165	Willis	Answers that he was concerned about leaving out the doctrine of futility.
178	Rep. Ringo	Questions Mr. Willis's statement that the Oregon Law Commission consisted mainly of government lawyers and representatives and was not representative of the citizenry.
185	Willis	Says that those who participated were government lawyers and are not going to have the same outlook that he has. Thinks that the panel wasn't balanced.
203	Chair Williams	Closes the public hearing on HB 2246 and opens a work session on HB 2344.
HB 2344 WORK SESSION		
209	Counsel Taylor	Introduces HB 2344 expanding list of crimes that can be included in racketeering activity (EXHIBIT C). Discusses -2 amendment that was adopted in subcommittee (EXHIBIT D).
227	Rep. Shetterly	MOTION: Moves HB 2344 to the floor with a DO PASS AS AMENDED recommendation.
230	Rep. Ringo	Addresses his concerns with the bill. Says that he feels that a better way to approach the problem is with law enforcement. Remarks that he wants to do everything he can to deter this conduct so he will vote aye on the bill.
280	Rep. Shetterly	Offers a brief overview on bill. VOTE: 9-0-2
368	Chair Williams	EXCUSED: 2 – Bowman, Krieger Hearing no objection, declares the motion CARRIED.

REP. SHETTERLY will lead discussion on the floor.

369 Chair Williams

Closes the work session on HB 2344 and opens a work session on HB 2385.

HB 2385 WORK SESSION

370 Counsel Taylor

Introduces HB 2385 creating crime of interference with agricultural research. Discusses the -3 and -4 amendments **(EXHIBITS E AND F)**.

**TAPE 19, A
008**

Chair Williams

MOTION: Moves to ADOPT HB 2385-4 amendments dated 02/27/01.

VOTE: 9-0-2

EXCUSED: 2 – Bowman, Krieger

008

Chair Williams

Hearing no objection, declares the motion CARRIED.

030
052

Rep. Ringo
Rep. Shetterly

Mentions his concerns with the bill, but will vote aye.

MOTION: Moves HB 2385 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 10-0-1

EXCUSED: 1 - Krieger

052

Chair Williams

**Hearing no objection, declares the motion CARRIED.
SHETTERLY will lead discussion on the floor.**

062

Chair Williams

Closes the work session on HB 2385 and re-opens the public hearing on HB 2246.

HB 2246 PUBLIC HEARING

80

Janice Krem

Administrative Law Section, Oregon State Bar

Testifies in opposition to HB 2246 and submits testimony **(EXHIBIT G)**.

156

Lorey Freeman

Administrative Law Section, Oregon State Bar

Testifies in opposition to HB 2246.

244

Chair Williams

MOTION: Moves to SUSPEND the rules for the purpose of allowing Rep. Bowman to vote on HB 2344 and HB 2385. Votes "aye" on both bills.

255

Christie Munson

League of Oregon Cities

Testifies in opposition to HB 2246.

300

Pete Kasting

Deputy City Attorney, City of Portland, League of Oregon Cities

Testifies in opposition to HB 2246.

440
442

Rep. Ackerman
Munson

Asks Ms. Munson if she has a companion bill.

Answers that they have a legislative counsel draft that would offer transfer language.

446

Rep. Ackerman

Asks if the fundamental dispute is a choice of whether a litigant files a claim for clarity relief or a writ of review.

450

Kasting

Answers the other possibility is a writ of mandamus and if you add the state agencies into it, there could be a challenge under the state Administrative Procedures Act.

458

Rep. Ackerman

Asks if the proposed bill has a transfer feature so that if the litigant made the wrong choice, they would have an opportunity to re-file.

466

Kasting

Says he is not familiar with the transfer proposal, but that is the

478

Chair Williams

idea.

Closes the public hearing on HB 2246. Adjourns the meeting at 11:02 a.m.

Submitted By,

Reviewed By,

Ann Martin
Committee Assistant

Bill Taylor,
Counsel

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EXHIBIT SUMMARY

A – HB 2246, Judicial Review Procedures Act, prepared by the Oregon Law Commission, submitted by staff, dated 2/22/01, 24 pgs.

B – HB 2246, -1 amendments, submitted by staff, dated 1/31/01, 1 p.

C – HB 2344, an article: “Fighting the Wrong Fight”, submitted by staff, 2 pgs.

D – HB 2344, -1 amendments, submitted by staff, dated 2/13/01, 1 p.

E – HB 2385, -3 amendments, submitted by staff, dated 2/27/01, 8 pgs.

F - HB 2385, -4 amendments, submitted by staff, dated 2/27/01, 7 pgs.

G – HB 2246, written testimony submitted by Janice Krem, dated 3/2/01, 2 pgs.