

## **HOUSE COMMITTEE ON AGENCY PERFORMANCE & OPERATIONS**

**May 4, 1999 Hearing Room E**

**8:00 a.m. Tapes 68 - 70**

**MEMBERS PRESENT: Rep. Jane Lokan, Chair**

**Rep. Kathy Lowe, Vice-Chair**

**Rep. Betsy Close**

**Rep. Dan Gardner**

**Rep. Tim Knopp**

**Rep. Jeff Kruse**

**Rep. Bob Montgomery**

**Rep. Kitty Piercy**

**STAFF PRESENT: Pat Zwick, Administrator**

**Susan M. Pettey, Administrative Support**

**MEASURE HEARD: SB 209 Public Hearing**

**SB 209 Work Session**

**HB 3182 Work Session**

**HB 3170 Work Session**

**HB 3329 Work Session**

**HB 3409 Work Session**

**SB 212 Public Hearing**

**SB 212 Work Session**

**SB 286 Public hearing**

**SB 286 Work Session**

TAPE/#	Speaker	Comments
<b>TAPE 68, A</b>		
004	Chair Lokan	Opens the meeting at 8:12 a.m. Announces that HB 2088 will be on Thursday's agenda for possible reconsideration. Opens public hearing on SB 209.
<b><u>SB 209 PUBLIC HEARING</u></b>		
023	Pat Zwick	Committee Administrator. Summarizes provisions of SB 209.
046	Chuck Hamm	Department of Consumer and Business Services (DCBS). Takes a neutral position on SB 209. Explains that SB 209 authorizes the DCBS to issue distraint warrants for collection of debts owed to the department. Comments that this change was recommended by the Secretary of State as a way to improve the agency's performance in debt collection.
078	Hamm	Explains DCBS penalties and fines collection process. Indicates that DCBS refers delinquent files to the State Revenue Department or outside collection agencies, resulting in lost time and effectiveness. Remarks that in 1998, outstanding collections of OR-OSHA violations alone exceeded \$40 million. Comments on payment negotiations.
109	Hamm	Believes HB 209 would increase agency collection efficiency. Adds that DCBS is the largest state agency that does not have distraint authority.
122	Chair Lokan	Asks if other agencies would serve distraint warrants on the same person.
127	Hamm	Doubts this could happen. Explains the interagency reporting process.
132	Rep. Lowe	Asks if authority is granted to issue a distraint warrant, how is the process different than a citation. Asks if there is an automatic judgment right.
148	Hamm	Explains there is an automatic judgment without court action. Adds that this is a powerful tool.
152	Rep. Lowe	Asks if DCBS collects for SAIF Corporation.
155	Hamm	Explains that SAIF was the claims processor, and currently the agency contracts with a private claims processing company.
181	Hamm	Explains reasons the usage of distraint warrants has been a powerful tool.

187	Rep. Lowe	Asks if collections are only against state agencies.
195	Hamm	Answers that collections are processed against anyone with employees.
199	Rep. Lowe	Asks if the IRS has this authority, and now must grant due process.
203	Hamm	Indicates that the IRS has always given due process. Explains the use of proper control under SB 209.
220	Rep. Kruse	Asks for clarification regarding outstanding OR-OSHA violations in the amount of \$40 million.
231	Hamm	Explains that the outstanding amount is an accumulation.
242	Rep. Close	Asks for a description of the penalty dispute process. Asks whether the process is inside or outside the agency.
257	Hamm	Responds, in effect, both. Provides an example of a workers' compensation issue where a noncomplying employer has been identified.
262	Rep. Close	Asks if there is an opportunity for court action because of disagreement prior to the warrant being issued.
271	Hamm	Indicates some cases in Oregon have gone to the Supreme Court. Explains that in hearing status, all collection activities are suspended. Adds that all appeal rights must expire before collection activities begin.
288	Chair Lokan	Closes public hearing on SB 209, and opens work session
<b><u>SB 209 WORK SESSION</u></b>		
<b>293</b>	<b>Rep. Kruse</b>	<b>MOTION: Moves SB 209 to the floor with a DO PASS recommendation.</b>
301	Rep. Lowe	States opposition to SB 209. Opines that due process is not followed. Indicates that the agency receives nine percent interest from the date the original debt was due. Emphasizes the absolute importance of due process.
338	Rep. Close	Discusses current practice.
352	Rep. Kruse	Clarifies that after all avenues are exhausted, and judgment has held but no voluntary payment is forthcoming, SB 209 allows the DCBS to collect the outstanding debt.

365		<b>VOTE: 3-5</b>  <b>AYE: 3 - Kruse, Montgomery, Lokan</b>  <b>NAY: 5 - Close, Gardner, Knopp, Lowe, Piercy</b>
	Chair Lokan	<b>The motion FAILS.</b>
392	Chair Lokan	Closes work session on SB 209, and opens work session on HB 3182.
<b><u>HB 3182 WORK SESSION</u></b>		
402	Zwick	Summarizes provisions of SB 3182. Explains effects of HB 3182-1 amendments <b>(EXHIBIT A)</b> .
428	Rep. Ben Westlund	House District 55. Explains that HB 3182 requires the Governor to provide to the minority and majority leadership the austerity budget that he is presented by all state agencies. Adds that HB 3182 requires that the information be provided to the legislative branch as well.
459	Rep. Lowe	Asks if it is likely agencies submitting austerity reports will slant the reporting in anticipation of this.
481	Rep. Westlund	Expects agencies to honestly report an austerity budget.
<b>TAPE 69, A</b>		
054	Rep. Lowe	<b>MOTION: Moves to ADOPT HB 3182-1 amendments dated 4/27/99.</b>
		<b>VOTE: 8-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Lokan	<b>The motion CARRIES.</b>
079	Rep. Lowe	<b>MOTION: Moves HB 3182 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 8-0</b>

		<b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Lokan</b>	<p><b>The motion CARRIES.</b></p> <p><b>REP. WESTLUND will lead discussion on the floor.</b></p>
093	Chair Lokan	Closes work session on HB 3182, and opens work session on HB 3170.
<b><u>HB 3170 WORK SESSION</u></b>		
120	Zwick	Summarizes provisions of HB 3170. Explains effects of HB 3170-3 amendments <b>(EXHIBIT B)</b> .
142	Rep. Bill Witt	House District 7. Explains efforts to draft ñ3 amendments. Explains that HB 3170 makes various changes to public contracting laws relating to competitive bidding, bidder disqualification, affirmative action, bid security, and damages. Wants to ensure that public dollars are spent prudently, and to give all bidders an equal opportunity. Indicates that the City of Portland supports HB 3170-3 amendments.
219	Rep. Witt	Explains the historic public contracting process with the requirement of sealed bids indexed to inflation.
227	Rep. Montgomery	Refers to HB 3170, page 1, line 21. Asks if the \$20,000 limit applies to all public contracts. Opines that \$20,000 does not "buy much."
236	Rep. Witt	Indicates that HB 3170 applies to the City of Portland, because the voters of Portland approved the process. Comments that this bill allows alternative bidding methods that are legal and appropriate. Indicates that the request for proposal (RFP) process remains legal under the ñ3 amendments.
241	Rep. Lowe	Asks under what circumstance is an RFP process appropriate. Asks if the ñ3 amendments restore the ability of a local government to hire without regard to lowest bidder costs. Asks if quality criteria is a consideration when awarding a contract.
262	Rep. Witt	Refers to ñ3 amendments, page 2, line 7 <b>(EXHIBIT B)</b> . Discusses the internal findings of RFPs. Points out this bill allows disqualification for failure to meet specifications. Indicates that it allows the public contracting agency to make findings to reject a lower bid, in writing. Adds that this allows the disqualified bidder an opportunity to review the findings, and provide additional information. States that the ñ3 amendments allow a contract by other than the lowest bid.

293	Rep. Piercy	Refers to a portion of HB 3170 which requires the Board to review notice, record, and evidence of appeal from disqualification. Asks how this is different from current practice, and what is the cost.
302	Rep. Witt	Explains that the court reviews the findings and determination, and may consider if a correct decision was made. Adds that no additional information can be provided by the bidder to overturn the decision made by the public agency.
312	Rep. Piercy	Asks about the fiscal impact.
316	Rep. Witt	Indicates he has no sense of the fiscal impact at this point. Explains that these types of appeals are currently allowable.
329	Rep. Piercy	Asks how many more cases can be expected under HB 3170-3.
334	Rep. Witt	Answers, fairly minimal.
339	Rep. Lowe	Asks if an agency can disqualify a bidder for past poor performance.
342	Rep. Witt	Answers yes. Explains that past performance is germane in the bidding process under the ñ3 amendments.
362	Rep. Lowe	Asks, if a bidder sues for lost profits and the bid is rejected because of past poor performance, is there a process to protect citizens from paying 10% of expected profits.
370	Rep. Witt	Answers, based on the information provided, this is a reason to reject the bid.
417	Chair Lokan	Asks if the \$20,000 limit is adequate.
425	Rep. Witt	Indicates that amount was approved in discussions with other agencies, while preserving the RFP process.
442	David Powell	City Attorney, Lake Oswego. Speaks in opposition to HB 3170. Submits and summarizes written testimony ( <b>EXHIBIT C</b> ). Indicates that this bill would amend ORS 279.005 to require sealed bids for all public contracts in excess of \$5,000.
<b>TAPE 68, B</b>		
037	Powell	Comments on the effects of ñ3 amendments. Suggests HB 3170 is confusing to sort out. Indicates anything over \$20,000 has to be competitively bid. Details exemptions to this process.

074	Powell	Opposes a blanket idea that a sealed bid is required over a certain contract amount.
084	Dugan Petty	State Purchasing Manager, Department of Administrative Services (DAS). Disagrees with Rep. Witt that putting the RFP process back in HB 3170 permits qualitative evaluation. Indicates that HB 3170 takes out existing findings of the legislature relating to qualitative evaluation, and allows for other factors in addition to cost.
105	Petty	Indicates that HB 3170 undermines the exemption process which is in place, because the bid process does not work. Expresses concern about lost profits.
128	Fran Hannah	Purchasing Agent, Multnomah County. Speaks in opposition to HB 3170. Agrees with the testimony of Mr. Petty and Mr. Powell. Submits and summarizes written testimony ( <b>EXHIBIT D</b> ).
139	Chair Lokan	Observes that progress has been made to reach consensus on HB 3170. Asks if further progress can be expected in additional discussions.
149	Petty	Indicates that a good procurement law must work like a clock. Refers to HB 2026, and says that ORS 279 needed a serious re-write. Favors a process that would increase dialogue.
164	Rep. Piercy	Asks if HB 3170 will improve accountability from public contacting agencies. Asks about litigation exposure.
172	Powell	Explains problems with accountability. Indicates there are rules in place that must be enforced.
191	Petty	Comments on the necessity of a responsive process. Believes that a 10% cap on lost profits can be very lucrative. Expresses concern that HB 3170 contains no statute of limitations. Believes there is sufficient deterrent under the current system.
223	Rep. Gardner	Asks if there is a fiscal statement issued.
234	Chair Lokan	Indicates there is a potential fiscal impact.
239	Rep. Piercy	Opines that HB 3170 needs further work.
241	Rep. Knopp	Comments that agencies and "public enemies" do not want to conform because the process is very flexible for them, but in many cases inflexible for small businesses.
261	Rep. Witt	Appreciates the opportunity to present amendments and discuss these issues

		further. Comments that the Oregon School Board Association and the City of Portland are comfortable with HB 3170-3. Explains reasons the testimony just given totally mischaracterizes HB 3170.
303	Rep. Witt	Acknowledges this is a complicated process and may merit a more thorough review.
317	Chair Lokan	Indicates Rep. Witt has made a good study of this issue. Closes work session on HB 3170, and opens work session on HB 3329.
<b><u>HB 3329 WORK SESSION</u></b>		
342	Zwick	Explains the effects of HB 3329-1 ( <b>EXHIBIT E</b> ) and ñ3 amendments ( <b>EXHIBIT F</b> ).
385	Chair Lokan	Asks why the emergency clause in the ñ1 amendments was taken out of the ñ3 amendments.
390	Zwick	Explains that Legislative Counsel's advice is that the emergency clause would allow implementation of HB 3329 in a timely fashion. Adds that if it is the committee's choice that HB 3329 become effective 90 days after sine die, the amendment without the emergency clause should be adopted. Explains that the ñ2 amendments ( <b>EXHIBIT G</b> ) are identical to the ñ3 amendments, the nonemergency clause. Indicates that the ñ4 amendments ( <b>EXHIBIT H</b> ) address concerns regarding additional moneys dedicated to scholarships rather than need-grants.
424	Joseph Kaiser	Appears on behalf of Rep. Leonard. Describes the ñ2 and ñ4 amendments as technical. Explains the effects of ñ4 amendments.
447	Rep. Gardner	<b>MOTION: Moves to ADOPT HB 3329-2 amendments dated 4/30/99.</b>
<b>TAPE 69, B</b>		
043	Rep. Kruse	Indicates opposition to HB 3329. Explains he will vote no on all amendments, because this is a solution looking for a problem. Opines that the general fund allocation formula is fine the way it is.
049	Chair Lokan	Disagrees with Rep. Kruse.
056	Rep. Montgomery	Comments that it appears money will be taken from Oregon State University and given to everyone else.
059	Rep. Lowe	Indicates there is a fairness question here. Opines that HB 3329 should be



		referred to Ways & Means.
072	Rep. Kruse	Indicates that Ways & Means has some real issues to deal with.
078	Chair Lokan	Closes work session on HB 3329, and opens work session on HB 3409-2.
<b><u>HB 3409 WORK SESSION</u></b>		
093	Zwick	Summarizes provisions of HB 3409. Explains effects of HB 3409-2 amendments <b>(EXHIBIT I)</b> .
116	Rep. Jeff Kropf	House District 37. Comments on discussions regarding ñ2 amendments Wants to take the concept one step further by amending HB 3409 requiring the state budget to be published on the front page of Sunday newspapers statewide.
150	Rep. Gardner	Asks how many and which newspapers the budget would be published in.
154	Rep. Kropf	Answers that he will provide members with that information.
169	Rep. Jerry Krummel	House District 27. Agrees with the ñ2 amendment if it does not create a fiscal impact that forces HB 3409 into Ways & Means.
174	Chair Lokan	Asks if the Governor is required to have the budget together by the Sunday preceding the second Monday in January.
178	Rep. Montgomery	Answers that the Governor must have the budget completed by November 10 <sup>th</sup> .
189	Rep. Lowe	Opines that HB 3409 has the potential for a significant fiscal impact.
193	Rep. Gardner	Wants a breakdown of costs
199	Rep. Knopp	Indicates his support of HB 3409-2.
<b>204</b>	<b>Rep. Kruse</b>	<b>MOTION: Moves to ADOPT HB 3409-2 amendments dated 4/28/99.</b>
208	Chair Lokan	Indicates that she wants an exact fiscal.
219	Rep. Kropf	Explains that Legislative Fiscal Office (LFO) is in the process of preparing a fiscal impact statement at this time.

238	Zwick	Discusses the potential fiscal impact.
245	Rep. Montgomery	Comments that this is a warm, fuzzy thing to do, but is unnecessary.
256	Rep. Kropf	Indicates that the newspaper publication can be condensed to one-half page.
266	Rep. Kruse	Questions the fiscal impact.
269	Rep. Knopp	Comments that five pages of publication are unnecessary for a budget summary. Supports HB 3409-2.
285	Rep. Kropf	Stresses the importance of providing this information to the citizens of Oregon.
296	Rep. Montgomery	Suggests the cost of publication be paid from the Legislative budget.
315		<b>VOTE: 5-3</b>  <b>AYE: 5 - Close, Knopp, Kruse, Montgomery, Lokan</b>  <b>NAY: 3 - Gardner, Lowe, Piercy</b>
	<b>Chair Lokan</b>	<b>The motion CARRIES.</b>
339	Rep. Kruse	<b>MOTION: Moves HB 3409 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-3</b>  <b>AYE: 5 - Close, Knopp, Kruse, Montgomery, Lokan</b>  <b>NAY: 3 - Gardner, Lowe, Piercy</b>
	<b>Chair Lokan</b>	<b>The motion CARRIES.</b>  <b>REP. KRUMMEL will lead discussion on the floor.</b>
349	Chair Lokan	Closes work session on HB 3409, and opens the public hearing on SB 212.

**SB 212 PUBLIC HEARING**

373	Zwick	Explains provisions of SB 212.
395	David Sparks	Deputy Administrator, Oregon Occupational Safety and Health Division (OR-OHSA), Department of Consumer and Business Services (DCBS) Speaks in support of SB 212. Submits and summarizes written testimony <b>(EXHIBIT J)</b> . Comments that SB 212 repeals the requirement of DCBS to conduct public hearings and submit a report to the legislature concerning employee exposure to hazardous substances in the workplace as set forth in statute. Explains the reasons current statutes are obsolete. Adds that SB 212 has no fiscal impact.
439	Chair Lokan	Closes public hearing on SB 212, and opens work session.

**SB 212 WORK SESSION**

448	Rep. Gardner	<b>MOTION: Moves SB 212 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 2 - Close, Kruse</b>
		<b>The motion CARRIES.</b>  <b>REP. GARDNER will lead discussion on the floor.</b>

**TAPE 70, A**

463	Chair Lokan	Closes work session on SB 212, and opens public hearing on SB 286.
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**SB 286 PUBLIC HEARING**

054	David Tatman	Chief of Enforcement, Division of Finance and Corporate Securities. Speaks in support of SB 286. Submits and summarizes written testimony <b>(EXHIBIT K)</b> . Addresses proposed changes to the Oregon Securities Law. Explains the purpose of SB 286 as twofold: <ul style="list-style-type: none"><li>• To clarify the director's authority to stop attempted violations of Oregon's securities laws; and</li></ul>
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		<ul style="list-style-type: none"> <li>To increase the financial penalties that can be imposed for violations of the Oregon Securities Law</li> </ul>
093	Tatman	Addresses monetary penalties imposed by the director in administrative and court actions.
139	Chair Lokan	Closes the public hearing on SB 286, and opens work session.
<b><u>SB 286 WORK SESSION</u></b>		
148	Rep. Kruse	<b>MOTION: Moves SB 286 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Close</b>
		<b>Chair Lokan</b>  <b>The motion CARRIES.</b>  <b>REP. KRUSE will lead discussion on the floor.</b>
166	Chair Lokan	Closes the work session on SB 286. Adjourns the meeting at 10:38 a.m.

Submitted By, Reviewed By,

Susan M. Pettey, Pat Zwick,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 3182, -1 amendments, Staff, 1 p.**

**B ñ HB 3170, -3 amendments, Staff, 3 pp.**

**C ñ HB 3170, written testimony, David Powell, 4 pp.**

**D ñ HB 3170, written testimony, Franna Hathaway, 2 pp.**

**E ñ HB 3329, -1 amendments, Staff, 1 p.**

**F ñ HB 3329, -3 amendments, Staff, 1 p.**

**G ñ HB 3329, -2 amendments, Staff, 1 p.**

**H ñ HB 3329, -4 amendments, Staff, 1 p.**

**I ñ HB 3409, -2 amendments, Staff, 1 p.**

**J ñ SB 212, written testimony, David Sparks, 1 p.**

**K ñ SB 286, written testimony, David Tatman, 8 pp.**