

## HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 26, 1999 Hearing Room E

8:30 a.m. Tapes 41 - 42

**MEMBERS PRESENT:** Rep. Roger Beyer, Chair

Rep. Dan Gardner, Vice-Chair

Rep. Tim Knopp, Vice-Chair

Rep. Bill Morrisette

Rep. Terry Thompson

Rep. Jackie Winters

**MEMBER EXCUSED:** Rep. Jason Atkinson

**STAFF PRESENT:** Keith Putman, Administrator

Frances Thomas, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2486 Work Session

HB 2383 Public Hearing

HB 2320 Work Session

SB 136 Public Hearing and Work Session

SB 137 A Public Hearing and Work Session

SB 138 A Public Hearing and 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 41, A		

004	Chair Beyer	Calls the meeting or order at 8:30 a.m.
<b><u>HB 2486 WORK SESSION</u></b>		
008	Chair Beyer	Opens a Work Session on HB 2486.
010	Chair Beyer	States HB 2486 makes modifications to the Family Leave Act. Presents ñ1 amendment ( <b>EXHIBIT A</b> ). Asks if anyone has any objections to the amendment.
027	Rep. Gardner	States he has objections to the bill, HB 2486, not the amendment.
<b>021</b>	<b>Rep. Knopp</b>	<b>MOTION: Moves to ADOPT HB 2486-1 amendment dated 2/23/99.</b>
023	Chair Beyer	States he feels the amendment satisfies the concerns expressed in the first hearing relating to the "equivalent position," and "shift and work schedule."
028	Rep. Gardner	Expresses that HB 2486 as amended discourages people from taking family leave.
		<b>VOTE: 6-0</b>  <b>EXCUSED: 1 ñ Rep. Atkinson</b>
	<b>Chair Beyer</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>034</b>	<b>Rep. Knopp</b>	<b>MOTION: Moves HB 2486 to the floor with a DO PASS AS AMENDED recommendation.</b>
036	Rep. Gardner	States further that HB 2486 discourages employees from taking family leave especially since 80-90% of family leave is used with the birth of a child. States he will be voting no on HB 2486.
040	Chair Beyer	States Rep. Atkinson is excused today.
041	Rep. Thompson	Comments on his belief in HB 2486 to solve some employer concerns.
<b>050</b>		<b>VOTE: 4-2</b>  <b>AYE: 4 - Knopp, Winters, Thompson, Beyer</b>  <b>NAY: 2 - Gardner, Morrisette</b>

		<b>EXCUSED: 1 ñ Atkinson</b>
	<b>Chair Beyer</b>	<p><b>The motion CARRIES.</b></p> <p><b>REP. BEYER will lead discussion on the floor.</b></p>
051	Chair Beyer	Closes the Work Session on HB 2486.
<b><u>HB 2383 PUBLIC HEARING</u></b>		
054	Chair Beyer	Opens a Public Hearing on HB 2383.
056	Keith Putman	Committee Administrator. Explains the ñ2 amendment ( <b>EXHIBIT B</b> ) which excludes property exempt from taxation from properties against which adverse possession can be processed. Explains ñ3 amendment ( <b>EXHIBIT C</b> ) submitted by Rep. Shetterly which adds various kinds of instruments to the conditions on adverse possession. States these amendments do not conflict.
076	Gwen Scholl	Benton County. Testifies in support of HB 2383. States personal experiences.
095	Scholl	Suggests instituting a statute of limitations relating to adverse possession. Explains that if no intent of adverse possession has been filed at the end of the tenth year, the opportunity to adverse possess should be relinquished.
107	Rep. Morrisette	Asks what square footage of property has been adversely possessed in this instance.
109	Scholl	Responds, about a quarter of an acre.
128	Robert Art	Professors of Law at Willamette University Law School. Testifies in opposition to HB 2383 ( <b>EXHIBIT D</b> ).
159	Art	<p>States universal first impression of "adverse possession" is "legalized theft." Explains in actuality it protects the title of persons who have been in possession of land for an extended period of time. States HB 2383 would promote litigation against persons who have been possessing land openly, honestly, reasonably and in good faith for years. States adverse possession is a statutory time limit for real estate. Explains under current law a person who wants to assert adverse possession must meet the following requirement:</p> <ul style="list-style-type: none"> <li>• Actually possess the land for a full ten years</li> <li>• Possess it openly, so that anyone could see what was being done</li> <li>• Possess it continuously throughout the period, and exclusively, like an ordinary owner</li> </ul>

		<ul style="list-style-type: none"> <li>• Assert ownership throughout the period in his own right (that is, without permission of the plaintiff)</li> </ul>
182	Art	<p>States a person can benefit only by showing all of the elements previously stated plus:</p> <ul style="list-style-type: none"> <li>• Honest belief in ownership from the outset and for the full ten years</li> <li>• Objective and reasonable basis for that belief, such as a deed</li> <li>• Proof of all of these elements by "clear and convincing evidence" a higher standard than normally applies in civil cases</li> </ul>
211	Rep. Morrisette	Asks if any other states have eliminated adverse possession.
215	Art	States it exists in all 50 states, Canada, Australia, England, all jurisdictions with an English based system.
231	Rep. Knopp	Asks why one cannot adversely possess government owned land, only individually owned land.
241	Art	<p>Suggests two possibilities:</p> <ul style="list-style-type: none"> <li>• The government represents the people who ultimately own the land and the people should not suffer because of official negligence</li> <li>• The government makes the rules</li> </ul>
261	Rep. Winters	Asks why HB 2383 might be more favorable to trial lawyers.
267	Art	Explains the current law provides a means for the current possessor of the land to end any litigation early. States HB 2383 removes the device the law has provided to terminate the litigation at an early stage.
305	Chair Beyer	Asks if the person who has paid property taxes maintains possession.
309	Art	Refers to submitted written testimony to explain <b>(EXHIBIT D)</b> .
361	Art	Continues testimony using examples of different types of adverse possession.
378	Rep. Thompson	Asks who would benefit if two people paid taxes on the same property.
394	Art	Responds with discussion of cited scenarios. Discusses the statute of limitations in examples other than real estate.
440	Rep. Morrisette	Suggests a new amendment with a stipulation to pay all back taxes on property adversely possessed.

454	Art	Responds that it would not solve the encroachment problem.
470	Rep. Morrisette	Suggests the requirement of a process to have lines redrawn on property and compensate for taxes paid on property adversely possessed. Asks if Art would support such a law.
478	Art	States he would not object to this scenario.
488	Rep. Morrisette	Continues discussion of possible solutions.
<b>TAPE 42, A</b>		
006	Putman	Comments about Indiana's law which states adverse possession cannot occur unless the person pays the property taxes on the real estate. Asks if other states have more restrictive capacity for adverse possession than Oregon.
015	Art	Comments there are a variety of standards with basic elements. Explains some various instances about adverse possession.
040	Dean Alterman	Chairman, Real Estate Sub Committee of the Real Estate and Land Use Section to the Oregon State Bar. Testifies in a neutral position on HB 2383. States concerns about any subsequent change HB 2383 would make to Oregon law.
051	Alterman	Responds to issues discussed. Explains differences between "legalized theft" of personal property and the "legalized theft" of real estate. Uses examples. States land is not as easy to describe and personal property.
090	Alterman	Suggests a proper solution for the adverse possession statutes is to increase the standard of evidence required to show possession, such as a permanent structure, something more obvious.
103	Chair Beyer	Asks if the original draft would effect any claims ten years prior or anyone who has not yet filed.
110	Alterman	States HB 2383 effects anyone who has not yet filed a claim. Explains the problem this creates. States a property claim created under existing law would disappear without any due process if HB 2383 passed.
124	Chair Beyer	Comments on title assurance of property.
134	Rep. Morrisette	Asks if this is unjust to a person continuing to pay taxes on property.
138	Alterman	Suggests different rules for farm or forest land verses residential property. States "one size fits all" does not work.

163	Justin Burns	Law student, Willamette University. States he is not yet convinced that adverse possession is anything other than "legalized theft." States he is speaking on behalf of Cunningham Sheep Company, Pendleton, Oregon and L & L Farms of Echo, Oregon concerning a timber trespass claim. Explains details of this case. Testifies in support of HB 2383. Feels HB 2383 will compel property owners to survey a parcel before buying or before cutting timber.
220	Chair Beyer	Asks if HB 2383 would change existing claims of common law held for ten years.
227	Burns	States the non codified section of 105.620 provides that the section relating to adverse possession is not affected to claims vesting after 1990. Believes that the amendment to HB 2383 states that a person may not acquire free simple title to real property under this section. Urges a change in the law which makes this retroactive to those common law claims as well as implementing a statute of ultimate repose that all common law claims prior to the enactment of this statute must be claimed prior to the date the committee determines.
246	Bruce Chapin	Marion County. Testifies in support of HB 2383. Shares his experience of adverse possession. States current law discourages neighborly contact and cooperation. Speaks about "permissive use" of common property lines.
284	Chapin	States that current law allows loss of rights of a properly recorded creditor to a trespasser. Explains that property purchased from a creditor (though foreclosure process) complete with title clearance and now the neighbor has the property tied up in litigation because of the adverse possession law.
307	Rep. Winters	Asks if he is paying taxes on property in question.
309	Chapin	Answers yes.
316	Rep. Morrisette	Continues discussion of Chapinis personal situation with adverse possession.
362	Mickey Killingsworth	Madras. Testifies in opposition to HB 2383. States currently she is in an expensive litigation ( <b>EXHIBIT E</b> ). Explains re-surveying of property by the country that changes property lines.
445	Killingsworth	States seven "talking points:" <ul style="list-style-type: none"> <li>• Is current law not working</li> <li>• When an error is found, how will it be resolved</li> <li>• No solution offered by proposed change in HB 2383 when an error is found</li> <li>• Who pays for correcting the fence line on all sides of a property when one side of the fence line is in error</li> <li>• From whom does one seek correction/damages ñ realtor, landowner or the survey company - when property is purchased in good faith</li> <li>• Who pays the expenses incurred when a building or an irrigation delivery system is involved, the person knowingly in error or the owner paying the taxes and claiming the land</li> </ul>

		<ul style="list-style-type: none"> <li>• The emotion evolved in adverse possession</li> </ul> <p>Suggests a possible solution by the formation of a mediation program through Department of Agriculture</p>
<b>TAPE 41, B</b>		
007	Nancy Richards	Madras. Testifies in opposition to HB 2383. Illustrates property line changes when a new survey is done. States current law protects a landowner who has convincingly evidenced property ownership <b>(EXHIBIT F)</b> .
050	Rep. Morrisette	Asks for suggestions for alternatives to changing the law.
055	Killingsworth	States Department of Agriculture has been funded previously for a mediation system relating to state forest or crop land. Agrees that if a person adversely possesses property, one should be prepared to pay the taxes.
090	Rep. Morrisette	Comments on a provision to state whom ever is paying taxes on a piece of property, even with boundary changes, should own the land.
109	Carrie Rasmussen	Resident/Property owner, Portland and law student, University of Oregon. Describes personal situation. Testifies in support of HB 2383. States that the law should protect those who are paying taxes on property rather than those who are trying to take the land. States adverse possession does not promote the neighborly concept.
185	Rasmussen	States the loss of a six-foot by one hundred-foot strip of land described in this instance would affect any future building possibilities.
220	Chair Beyer	Recognizes written testimony submitted from Stoller Farms <b>(EXHIBIT G)</b> .
225	Chair Beyer	Closes the Public Hearing on HB 2383.
<b><u>HB 2320 WORK SESSION</u></b>		
235	Chair Beyer	Opens a Work Session on HB 2320.
240	Chair Beyer	Explains background of some testimony previously given on HB 2320. Explains there are amendments forthcoming.
248	Robert Newberger	Oregon Trial Lawyers Association. Testifies in opposition of HB 2320. States any information surrounding health and safety detriments or improvements in a work place should be available to access by employees and other employers. Feels HB 2320 would be in conflict with Oregon's Right To Know statute.

328	Rep. Thompson	States that HB 2320 creates a situation where an employer will participate and seek volunteer evaluations.
345	Newberger	Agrees that the employer should not be penalized for voluntary safety improvements. States HB 2320 does not provide protection for improvements not made in a possible potentially dangerous situation.
380	Rep. Thompson	Asks why this information should become public if the inspection was ordered and paid for by the employer.
387	Newberger	Explains with examples of violations of safety codes. States HB 2320 removes employer's accountability to improve a situation of potential danger and protects the employer from any repercussions.
427	Rep. Thompson	Continues discussion of voluntary audit assessments by an employer and the employer's right to protection.
<b>TAPE 42, B</b>		
012	David Sparks	<p>Deputy Administrator, Oregon Occupational Safety and Health Department (OR-OSHA). Testifies in support of HB 2320. Clarifies the purpose of HB 2320 is to encourage Oregon employers to use safety and health consultants to improve the work place. States HB 2320 contains two parts:</p> <ul style="list-style-type: none"> <li>• Section 1, a - defines a safety and health consultation</li> <li>• Section 1, b - defines a safety and health consultation report</li> <li>• Section 2 ñ if a consultation is conducted and it results in a consultation report, this report is not required to be provided to OR-OSHA during a subsequent inspection</li> </ul>
048	Sparks	Clarifies differences of consultation reports versus conversations/discussions amongst or between employees and employer, conversations/discussions between employees and employers at multi employer work sites, conversations/discussions between an employer's safety and health professional staff and management, or communications of a similar nature. States these should become, if necessary, part of an inspection record. States the limited exclusion is not intended to keep information, other than a consultation report, out of the inspection record.
062	Chair Beyer	Asks about intent to exclude occupation illness.
067	Sparks	States this exclusion was not intentional. Views occupational injury, illness, or disease as inclusive and feels access to information relative this kind of situation is necessary for OR-OSHA.
072	Rep. Gardner	Asks if information in a consultation report would remain privileged if an accident occurred later involving a certain issue mention in the consultation report.



078	Sparks	Responds no, not if it were part of an OR-OSHA investigation process.
087	Chair Beyer	Asks if "illness and/or disease" should be included with "occupational accident." Directs Putman to take these issues to Legislative Counsel to draft amendments.
107	Chair Beyer	Closes the Work Session on HB 2320.
<b><u>SB 136 PUBLIC HEARING</u></b>		
108	Chair Beyer	Opens a Public Hearing on SB 136.
116	Putman	Explains SB 136 requires endowment care cemeteries to increase deposit on niche and crypt sales which provides financial resources for long-term care and maintenance of these cemeteries. States SB 136 requires a deposit of 5% of the gross sales price of each niche or crypt to be paid to the endowment care fund.
127	Ty Cochrane	President of the Cemetery Association of Oregon. Testifies in support of SB 136. Explains Subsection (6) of Section 1 of the bill addresses the amount of the filing fee which the endowment care cemetery pays to the Secretary of State at the time of filing its annual report ( <b>EXHIBIT H</b> ).
145	Rep. Thompson	Asks why there was opposition in the Senate hearings to SB 136 and no opposition to the companion SB 137.
150	Putman	Explains the possibility exists the questions were in the form of hazing. States the questions were taken seriously, serious answers were provided and given to the members. States the bill went to the floor and passed 21 to 5.
168	Rep. Morrisette	Asks if there is a difference between owning and using a cemetery lot.
173	Cochrane	Explains the cemetery lot, crypt, or niche is not actually owned. States a "right" of internment/inceptor is purchased.
188	Chair Beyer	Closes the Public Hearing on SB 136.
<b><u>SB 136 WORK SESSION</u></b>		
189	Chair Beyer	Opens a Work Session on SB 136.
190	Rep. Thompson	<b>MOTION: Moves SB 136 to the floor with a DO PASS recommendation.</b>
191	Rep. Knopp	States he will be providing a courtesy vote to move SB 136 out of committee.

		Explains has not had an opportunity to speak with cemetery owners in his district about the 100% fee increase and he would like to do so before voting on the floor.
196		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 ñ Atkinson</b>
	Chair Beyer	<b>The motion CARRIES.</b>  <b>REP. THOMPSON will lead discussion on the floor.</b>
<b><u>SB 137A PUBLIC HEARING</u></b>		
207	Chair Beyer	Opens a Public Hearing on SB 137A
210	Putman	Explains that SB 137A authorizes recovery of attorney fees, costs and disbursements for the prevailing party in legal actions involving cemetery endowment fund and adds the State Mortuary and Cemetery Board to entities receiving notification of violations of cemetery care fund.
226	Ty Cochrane	President, Cemetery Association of Oregon. Testifies in support of SB137A. Explains the Cemetery Association of Oregon wants the Secretary of State's office to have authority to notify the cemetery and mortuary board when there is a violation of the endowment care fund, because of its licensing authority over cemeteries <b>(EXHIBIT I)</b> .
245	Chair Beyer	Closes the Public Hearing on SB 137A.
<b><u>SB 137A WORK SESSION</u></b>		
246	Chair Beyer	Opens a Work Session on SB 137A.
247	Rep. Thompson	<b>MOTION: Moves SB 137A to the floor with a DO PASS recommendation.</b>
257		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 ñ Atkinson</b>

	Chair Beyer	<p><b>The motion CARRIES.</b></p> <p><b>REP. MORRISETTE will lead discussion on the floor.</b></p>
259	Chair Beyer	Closes the Work Session on SB 137A.
<b><u>SB 138A PUBLIC HEARING</u></b>		
260	Chair Beyer	Opens a Public Hearing on SB 138A.
265	Putman	Explains in the cemetery industry some crypts and niches are sold before they actually exist. States SB 138A requires a deposit to the cemetery endowment care fund equal to 35% of the sales price and permits bonds or irrevocable letters of credit for the deposit.
277	Cochrane	President, Cemetery Association of Oregon. Testifies in support of SB 138A ( <b>EXHIBIT J</b> ). States SB 138A provides protection for the consumer.
308	Chair Beyer	Closes the Public Hearing on SB 138A.
<b><u>SB 138A WORK SESSION</u></b>		
309	Chair Beyer	Opens a Work Session on SB 138A.
310	Rep. Gardner	<b>MOTION: Moves SB 138A to the floor with a DO PASS recommendation.</b>
316		<p><b>VOTE: 6-0</b></p> <p><b>AYE: In a roll call vote, all members present vote Aye.</b></p> <p><b>EXCUSED: 1 ñ Atkinson</b></p>
	Chair Beyer	<p><b>The motion CARRIES.</b></p> <p><b>REP. GARDNER will lead discussion on the floor.</b></p>

322	Chair Beyer	Closes the Work Session on SB 138A.
325	Chair Beyer	Adjourns the meeting at 10:35 a.m.

Submitted By, Reviewed By,

FRANCES THOMAS, KEITH PUTMAN,

Administrative Support Administrator

### **EXHIBIT SUMMARY**

**A ñ HB 2486, ñ1 Amendment dated 2/23/99, Staff, 1 p**

**B ñ HB 2383, ñ2 Amendment dated 2/12/99, Staff, 1 p**

**C ñ HB 2383, ñ3 Amendment dated 2/19/99,Staff, 1 p**

**D ñ HB 2383, Written testimony, Robert Art, 3 pp**

**E ñ HB 2383, Written testimony, Mickey Killingsworth, 2 pp**

**F ñ HB 2383, Written testimony, Nancy Richards, 1 p**

**G ñ HB 2383, Written testimony, Elmer Stoller Farms, 1 p**

**H ñ SB 136, Written testimony, Ty Cochrane, 1 p**

**I ñ SB 137A, Written testimony, Ty Cochrane, 1 p**

**J ñ SB 138A, Written testimony, Ty Cochrane, 2 pp**