

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

February 25, 1999 Hearing Room 357

1:00 p.m. Tapes 48 - 49

**MEMBERS PRESENT:** Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

**MEMBER EXCUSED:** Rep. Bill Witt

**STAFF PRESENT:** Aaron Felton, Counsel

Nancy Richards, Administrative Support

**MEASURE/ISSUES HEARD:** SB 25

HB 2555

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 48, A		

004	Chair Shetterly	Calls meeting to order at 1:07 p.m.
<b><u>SB 25 - WORK SESSION</u></b>		
014	Rep. Uherbelau	<b>MOTION: Moves the rules be suspended for the purpose of RECONSIDERING the vote by which SB 25 moved to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 8-0 EXCUSED: 1 - Witt</b>
	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b>
017	Rep. Uherbelau	<b>MOTION: Moves to RECONSIDER the vote by which SB 25 moves to the floor with a DO PASS recommendation.</b>
	Chair Shetterly	<b>VOTE: 8-0</b> <b>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>EXCUSED: 1 - Witt</b>
	Chair	<b>The motion CARRIES.</b>
022	Counsel Tweedt	Explains the amendment to resolve conflicts of SB 25 with SB 283 and the language to be adopted.
032	Rep. Uherbelau	<b>MOTION: Moves to ADOPT SB 25-1 amendments dated 02/24/99.</b>
		<b>VOTE: 8-0 EXCUSED: 1-Witt</b>
	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b>
037	Rep. Uherbelau	<b>MOTION: Moves SB 25-1 to the floor with a DO PASS AS AMENDED recommendation.</b>

		<p><b>VOTE: 8-0</b></p> <p><b>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b></p> <p><b>EXCUSED: 1 - Witt</b></p>
	<b>Chair Shetterly</b>	<p><b>The motion CARRIES.</b></p> <p><b>REP. EDWARDS will lead discussion on the floor.</b></p>
046	Counsel Tweedt	Submits written testimony on behalf of Tim Martinez in support of SB 25 <b>(EXHIBIT A)</b> .
<b><u>HB 2555 - PUBLIC HEARING</u></b>		
056	Counsel Felton	HB 2555 reorganizes spousal support and criteria into three categories. Creates higher standard for modification of compensatory spousal support. Removes enhanced earning capacity from property awards.
095	<b>Russ Lipetzky</b>	<p><b>Private Practice Attorney</b></p> <p>Testifies and submits written testimony in support of HB 2555 <b>(EXHIBIT A)</b>. Discusses how HB 2555 addresses the authority of the court in divorce proceedings. Discusses the confusion of the statute in ORS 107.105 concerning, "enhanced earning capacity" and the confusion of this phrase for divorcing couples, family law attorneys, and the courts. Discusses and defines the three types of spousal support. Discusses the amendments to the bill regarding spousal support language.</p>
212	Chair Shetterly	Asks for more clarification of the enhanced earning capacity and when this is used in divorce proceedings.
218	Lipetzky	The current statute allows the enhanced earning capacity to be modified which is contrary to tenets of family law in Oregon. Gives an example to explain the current statute in HB 2555 and why it is important to divorce proceedings.
249	Rep. Williams	Cites page 9, section 3 and asks about the modification issue.
250	<b>Ron Gevurtz</b>	<p><b>Private Practice Attorney</b></p> <p>Testifies in support of HB 2555. Discusses and gives example to explain the history of HB 2555. Discusses the different kinds of spousal support in divorce cases. Discusses the different kinds of modification of spousal support regarding the earning capacity that effects divorce proceedings. Discusses the word, "rehabilitative", relative to HB 2555.</p>

455	Rep. Uherbelau	Discusses that the word, rehabilitative, and that it means "damaged" and that the word "transitional" is a better word.
462	Gevurtz	We would be willing to change the word, rehabilitative. Expresses his feelings of making the "enhanced earning capacity" more definitive to make the divorce settlement issue easier.
486	Lipetzky	Discusses a compensatory support, and asks why it has the higher threshold of modification.
500	Rep. Williams	Asks for an example of what constitutes "a voluntary, extraordinary, and unanticipated change".
<b>Tape 49, A</b>		
040	Gevurtz	Relates an example to explain Rep. Williams' question.
045	Rep. Uherbelau	When a mother is home with a newborn until they are five years old then she goes back to work, is this called a first or third transitional period?
063	Lipetzky	We are not intending to define a specific number of years, though 3-4 years may be considered transitional. Discusses how the amendments to HB 2555 addresses this issue. States that rehabilitative support could encompass three to five years or even longer.
095	Gevurtz	States that this situation of being home several years could be more defined with the word, transitional, than with the word, rehabilitative.
096	Rep. Uherbelau	Asks about the wording, "limited duration", and how it could be used in a more broader sense.
118	Gevurtz	Explains the wording, "limited duration" and that it puts a timeline on transitional period.
130	Lipetzky	Expresses concern that HB 2555 gives the court more authority to award support appropriately.
137	Rep. Uherbelau	States that this bill adds confusion regarding transitional period.
144	Lipetzky	Asks if the proposed amendment -1 is your concern.
146	Rep. Uherbelau	Feels that the word, transition, might not take place right away and it should be defined to reflect a more true transition of time, where the parent is home before they resume their career and they are not ready for a change.

154	Gevurtz	Discusses language that could solve the problem of defining transitional.
157	Rep. Uherbelau	Suggests moving line 9, page 3 to sub-section C on the same page, but under the heading of spousal maintenance.
162	Lipetzky	Yes, we could make that change.
163	Rep. Uherbelau	Page 2, line 4 talks about voluntary agreements. Suggests that this language needs to be put back in the bill.
173	Lipetzky	States that there is no objection to adding that language back in the bill.
181	Chair Shetterly	Clarifies that taking out the language might mean that the legislature is making a point about the court's authority.
195	Lipetzky	Our intent with HB 2555 is not to open up new areas of the law and make it more confusing.
198	Chair Shetterly	HB 2555 needs to be flexible enough so the courts can work within the parameters of the bill in giving the court authority to create a higher standard for modification of compensatory spousal support.
203	Lipetzky	Discusses other lawyers' concern that spousal maintenance would open up the issue of who is at fault in a divorce case.
220	Gevurtz	States that HB 2555 is consistent with present case laws.
230	Rep. Lowe	Expresses her support for HB 2555.
232	Rep. Williams	Asks about Family Law Section of the Oregon Bar not testifying in support of this bill.
240	<b>Tammy Detinger</b>	<b>Private Practice Attorney, Executive Committee of the Family Law Section of the Oregon State Bar</b>  Discusses the Executive Committee of the Family Law Section's neutral position because of some technical details in HB 2555. States that the committee will work with Mr. Lipetzky on these details.
270	Lipetzky	Corrects a mistake in his testimony that Oregon was the only state in the country that had an enhanced earning capacity with a provision of treating it as property. States that Iowa has a similar provision.
<b>280</b>	<b>Chair Shetterly</b>	<b>MOTION: Requests unanimous consent that the rules be</b>

		<b>SUSPENDED to allow REP. EDWARDS to BE RECORDED as voting AYE on the SB 25 as amended with a DO PASS recommendation.</b>
285	Chair Shetterly	Adjourns meeting at 1:55 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - SB 25, Written testimony, Tim Martinez, p. 2**

**B - SB 25, Proposed amendment, p. 1**

**C - HB 2555, Written testimony and proposed amendment, Russ Lipetzky, p. 2**