

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

February 08, 1999 Hearing Room 357

1:00 p.m. Tapes 22 - 24

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

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2228

HB 2295

HB 2379

HB 2239

SB 107-A

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 22, A

005	Chair Shetterly	Calls meeting to order at 1:07 p.m.
020	Rep. Williams	MOTION: Moves to ADOPT LC 580-1 and LC 581-1 amendments dated 01/19/99.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
025	Rep. Uherbelau	MOTION: Moves to SUSPEND the rules for the purpose of reconsideration.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
030	Rep. Uherbelau	MOTION: Moves to RECONSIDER the vote by which HB 2228 voted out of the committee.
		VOTE: 9-0
	Chair	Hearing no objection, declares the motion CARRIED.
<u>HB 2228 Public Hearing</u>		
041	Counsel Felton	States that the committee will act upon hand engrossed HB 2228 with itis amendments.
<u>HB 2228 Work Session</u>		
055	Rep. Williams	MOTION: Moves to ADOPT HB 2228-1 amendments dated 02/08/99.
		VOTE: 9-0

050	Rep. Williams	MOTION: Moves HB 2228-1 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 9-0
	Chair	Hearing no objection, declares the motion CARRIED. SHETTERLY will lead discussion on the floor.
<u>HB 2379 Work Session</u>		
079	Greg Chaimov	Legislative Counsel Testifies in support of HB 2379. Explains the amendments to the bill and their function.
094	Chair Shetterly	Discusses why the amendments meet the report requirement in the bill.
100	Rep. Williams	MOTION: Moves to ADOPT HB 2379-1 amendments dated 01/26/99.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
115	Rep. Williams	MOTION: Moves HB 2379-1 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.

		WALKER will lead discussion on the floor.
<u>SB 107-A Public Hearing</u>		
130	Counsel Felton	SB 107-A deletes redundant and unclear terms from definition of public record.
137	Greg Chaimov	Legislative Counsel Testifies in support of SB 107. Discusses the two changes that the bill imposes.
178	Rep. Wells	Why did the Senate delete the language from the original bill?
185	Chaimov	Discusses the changes to the language in the bill.
<u>SB 107-A Work Session</u>		
215	Rep. Lowe	MOTION: Moves SB 107-A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED. UHERBELAU will lead discussion on the floor.
<u>HB 2239 Public Hearing</u>		
233	Counsel Felton	HB 2239 prohibits party during judicial review of Employment Department order from applying for leave to present additional evidence.
245	Annette Talbot	Legislative Coordinator, State of Oregon Employment Department Testifies and submits testimony in support of HB 2239. Discusses the changes to the bill and the current process of presenting evidence to the Employment Department.
277	Rep. Uherbelau	Why does the employment department think it should be singled out and not meet the standards provided by the bill as it pertains to all contested case proceedings?

284	Talbot	Discusses the Employment Appeals Board which makes handling of presented evidence a different process for the OED.
300	Renaë Bryant	Chairperson, Employment Appeals Board Testifies in support of HB 2239. Discusses the position of the Employment Appeals Board on this bill.
352	Rep. Uherbelau	When someone appeals to the court of appeals, concerning the evidence, are you briefing the court?
368	Christine Chute	Assistant Attorney General, Department of Justice, Appellate Division. Testifies in support of HB 2239. Discusses the pre-briefing motion filed by one of the parties who submits the additional evidence and it's process.
380	Rep. Uherbelau	Was an issue ever raised that wanted the Court of Appeals to address airing the application of the rule?
385	Chute	Explains why the court granted some motions and not others, but they do get to raise some issues.
396	Bryant	Discusses the reason why the Employment Department asks the Department of Justice to start appearing in employment cases which results in more administrative expenses.
410	Chair Shetterly	Comments that the court is sending some cases back, not because it wasn't presented, but because it was presented improperly, and this does not seem to remedy the problem.
428	Bryant	Explains when the court may require additional evidence.
441	Chair Shetterly	Is this a problem with the statute or the court?
441	Bryant	We do not know, but rather than having the evidence keep coming back to us and not knowing why and having to rule on identical language, we thought it would save some time and money.
448	Rep. Uherbelau	Asks for clarification on the statute and what evidence is considered.
457	Bryant	Only if the EAB makes specific rulings on a party's submission of new evidence at the appeal level, can you ask for additional evidence to be presented.
459	Rep. Uherbelau	States that the statute says, "if applications made the court believe if there is additional evidence".

462	Bryant	Relates that failure to present the evidence in the proceeding before the agency or if there are good and substantial reasons for failing to present it originally can you then present additional evidence.
465	Rep. Uherbelau	States that the courts have to prove failure of submitting evidence in their motion.
469	Chair Shetterly	Does this amendment remedy the problem if it sends the evidence back for consideration that has already been submitted, but that the EAB did not consider or take into account?
482	Bryant	Discusses the authority of the court to allow the evidence and the process of the motions.
Tape 23, A		
005	Jim Nass	Legal Counsel for Appellate Courts Discusses the process of submitting evidence to the Appellate Court and the difference of the EAB and other agencies in this process.
031	Rep. Uherbelau	Expresses her concern that all departments are treated the same in regards to the submission of evidence and this bill.
044	Rep. Witt	If a party who was appealing had reasonable cause not to bring the evidence or did not know the information, could this be brought to a lower court?
052	Nass	Addresses the question of what the evidence should be before it is fully briefed at the hearing level.
065	Rep. Witt	Asks about employer and employee not having the proper information when presenting evidence at the Appellate court level.
075	Nass	Discusses the fact that most parties are not represented by counsel at the hearing level and are seeking review.
086	Rep. Witt	How many cases per year would be sent back for consideration of submitting new evidence if this bill passed?
090	Nass	About one or two per year.
104	Rep. Lowe	Does the Department of Employment hear a lot of administrative hearings?
122	Talbot	Discusses the DOE workload and addresses the issue of what the DOE saw as a

		duplicate level of analysis on whether additional evidence comes into the record.
135	Rep. Lowe	Does the Support Enforcement Division get an appeal to no vote to the circuit court?
140	Talbot	This bill would not affect those kind of cases, it is unemployment only. Discusses the two levels of the Employment Appeals Board Reviews at an administrative hearing.
148	Rep. Uherbelau	States whether the statute is needed at all.
158	Talbot	Comments that at their agency, they we have both administrative hearings and appeal hearings at the Appellate level which makes their hearing process different.
164	Sylvia Caley	Legislative Advocate, Oregon Law Center Testifies against HB 2239. Discusses how this hearing process effects the low-income people.
190	Bryant	Feels that where cases have already had an Appellate review on evidence that the court would be limited to ruling on the correction of the agency's action rather than on the submission of new evidence. The EAB would be happy to work with Mr. Nass and our Legal Counsel to come up with a solution.
200	Chair Shetterly	Closes public hearing.
<u>HB 2228 Work Session</u>		
220	Rep. Uherbelau	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. EDWARDS and REP. WITT to BE RECORDED as voting AYE on the HB 2228-1.
230	Rep. Uherbelau	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. WITT AND REP. EDWARDS to BE RECORDED as voting AYE on the HB 2379.
243	Chair Shetterly	Adjourns for recess at 1:56 p.m..
244	Chair Shetterly	Reopens meeting after recess at 2:05 p.m..
<u>HB 2295 Public Hearing</u>		

252	Joel Parker	HB 2295 modifies statutory deed forms used to convey real property to include land use disclosure statement.
281	Chair Shetterly	Explains the amendment.
300	Dean Alterman	Real Estate Legislative Sub-Committee Section, Oregon State Bar Testifies in support of HB 2295 (EXHIBIT C). Discusses the purpose of the bill and the cross-reference.
350	Rep. Uherbelau	Do we have statutory forms for earnest monies?
356	Alterman	There are no statutory forms, only the deeds as they get recorded in the recording office.
359	Rep. Wells	What is a covenant and how does it differs in the disclosure. How enforceable are these covenants?
373	Alterman	Discusses what a covenant is and the land use disclosure.
395	Rep. Wells	How enforceable is a covenant?
398	Alterman	Discusses the purpose of the covenant and how enforceable it is.
410	Rep. Wells	How would you enforce a covenant?
412	Alterman	Explains the court process of enforcing a covenant.
427	Chair Shetterly	Relates the different statutory covenants in the existing law.
444	Rep. Wells	Refers to a situation of a house that blocked the view of another house. How is this enforceable?
466	Alterman	Yes, there has been cases where they did have to remove the house.
Tape 22, B		
033	Chair Shetterly	Closes the public hearing.
<u>HB 2295 Work Session</u>		

054	Chair Shetterly	MOTION: Moves to CONCEPTUALLY AMEND HB 2295 on page 2, in line 14, after ""93.040" ," insert ""(1)"".
	Chair Shetterly	MOTION: Moves to CONCEPTUALLY AMEND HB 2295 on page 2, in line 17, after ""93.040" ," insert ""(1)"".
	Chair Shetterly	MOTION: Moves to CONCEPTUALLY AMEND HB 2295 on in line 38, after ""93.040" ," insert ""(1)"".
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
067	Rep. Williams	MOTION: Moves HB 2295-1 to the floor with a DO PASS AS CONCEPTUALLY AMENDED recommendation.
		VOTE: 9-0
	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. WILLIAMS will lead discussion on the floor.
080	Chair Shetterly	Closes meeting at 2:30 p.m..

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2239, Written testimony, Ann Talbot, p. 3

B - HB 2295, Written testimony, Dean Alterman, p. 1