

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

March 04, 1999 Hearing Room 357

1:00 p.m. Tapes 54 - 55

**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 2632 SB 67**

**HB 2474 SB 49A**

**HB 2660 SB 384**

**HB 2684**

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 54, A		

004	Chair Shetterly	Calls meeting to order at 1:05 p.m.
<b><u>HB 2474 - PUBLIC HEARING</u></b>		
014	<b>John Chandler</b>	<b>Governmental Affairs, Oregon Building Industry Association (OBIA)</b>  Testifies in support of HB 2474. Discusses that the OBIA is in support of HB 2474, with some revisions. Cites possible revisions.
034	<b>Kathryn Beaumont</b>	<b>City of Portland, Oregon</b>  Testifies against HB 2474. Expresses that the City of Portland agrees with Mr. Chandler's testimony and would like to come back to testify in support of HB 2474 after the revisions are instigated.
038	<b>Art Schlack</b>	<b>Association of Oregon Counties (AOC)</b>  Testifies against HB 2474. Expresses OAC's agreement with Mr. Chandler's testimony and would like to come back to testify in support of HB 2474 after the revisions are made.
051	<b>Glen Klein</b>	<b>League of Oregon Cities</b>  Testifies against HB 2474. The League of Oregon Cities is opposed to HB 2474 in its current form.
055	<b>Randy Tucker</b>	<b>1000 Friends of Oregon</b>  Testifies and submits written testimony in behalf of Charles Swindells opposing HB 2474 ( <b>EXHIBIT B</b> ). States that the 1000 Friends of Oregon are opposed to HB 2474 as written.
065	Chair Shetterly	Closes public hearing.
<b><u>HB 2632 - PUBLIC HEARING</u></b>		
071	Counsel Felton	HB 2632 extends homestead exemption to recreational vehicle occupied as residence.
074	<b>Rep. Vicki Walker</b>	<b>State Representative, House District 41</b>  Testifies in support of HB 2632. Discusses the history of HB 2632.
098	<b>Mark Comstock</b>	<b>Debtor-Creditor Section, Oregon State Bar</b>  Testifies and submits written testimony in support of HB 2632 ( <b>EXHIBIT C</b> ). Discusses why the Debtor-Creditor Section supports HB 2632.

126	Rep. Uherbelau	Expresses her concern about allowing the homestead exemption for recreational vehicles. States that these vehicles are taking advantage of the low cost of vehicle registration and are not always a resident of Oregon.
153	Comstock	Relates the difference in federal law and state law regarding the homestead exemption to recreational vehicles.
183	Rep. Uherbelau	Asks about who can claim residency of Oregon regarding mobile vehicles.
207	<b>Joe Brewer</b>	<b>Building Codes Division, Department of Consumer and Business Services</b>  Testifies and submits written testimony against HB 2632 ( <b>EXHIBIT D</b> ). Discusses the problem of HB 2632 regarding the interaction with other Oregon statutes and state policies. Discusses SB 82, passed in 1997, and how SB 82 could be amended instead of creating a new bill.
247	<b>Emily Cedarleaf</b>	<b>Multi-Family Housing Council</b>  Testifies in neutrality to HB 2632. Discusses the amendments that are needed for HB 2632 regarding the description of a recreational vehicle.
290	Chair Shetterly	Closes public hearing.
<b><u>HB 2474 - PUBLIC HEARING</u></b>		
300	<b>Liz Frenkel</b>	<b>League of Women Voters of Oregon</b>  Testifies and submits written testimony against HB 2474 ( <b>EXHIBIT E</b> ). Expresses agreement with previous testimony on HB 2474.
307	Chair Shetterly	Closing public hearing.
<b><u>HB 2660 n PUBLIC HEARING</u></b>		
312	Counsel Felton	HB 2660 creates cause of action against person who stops payment on check without good cause.
321	<b>Rep. Kathy Lowe</b>	<b>State Representative, House District 26</b>  Testifies in support of HB 2660. Discusses how HB 2660 protects the creditor who has a check payment stopped by a person who owes them money.
356	<b>Gil Thomas</b>	<b>Small Business Owner, Oregon</b>  Testifies and submits written testimony in support of HB 2660 ( <b>EXHIBIT F</b> ). Discusses a case where a customer stopped payment of a check and why this

		experience led to the creation of HB 2660.
400	Rep. Uherbelau	Will the court determine what "good cause" means regarding HB 2660?
405	Rep. Lowe	Yes.
406	Rep. Uherbelau	Asks whether HB 2660 effects someone who stops payment of a check because the purchase goods turn out to be defective.
420	Rep. Lowe	Yes, HB 2660 would protect those that have purchased defective goods and would be defined under "good cause".
438	Chair Shetterly	States that the case would prove itself if the defective goods were rescinded.
453	Rep. Lowe	Discusses the attorney fees involved with HB 2660. States in the that last session the same bill was introduced, but was in committee at sine die. States that there are no known objections to HB 2660.
<b>Tape 55, A</b>		
033	Rep. Backlund	Expresses his support of HB 2660.
037	Rep. Wells	Discusses the situation of a mechanic, who can be stuck with a stop-paid check after the car that was repaired is gone and the only way to retrieve the money owed is through small claims court.
052	Chair Shetterly	Discusses the circumstance where the repairs are done poorly and the consumer can stop the check to protect himself.
058	Comstock	Expresses concerns about "good cause" because in the courts, it can be broadly interpreted. It needs a tighter definition.
073	Chair Shetterly	Explains "good cause" in regards to stopping payment on a check.
078	Rep. Lowe	Gives an another example of "good cause" regarding a stop payment on a check.
086	Chair Shetterly	States that economic hardship does give a right to waiver of the statutory damages.
090	Chair Shetterly	Closes public hearing.
<b><u>HB 2660 - WORK SESSION</u></b>		

094	Rep. Uherbelau	<b>MOTION: Moves HB 2660 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 8-0</b> <b>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Witt, Shetterly</b> <b>EXCUSED: 1 - Williams</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. LOWE will lead discussion on the floor.</b>
<b><u>HB 2684 - PUBLIC HEARING</u></b>		
108	Counsel Felton	HB 2684 allows Chief Justice to designate judge to preside in department of Supreme Court.
118	<b>Jim Nass</b>	<b>Legal Counsel, Appellate Court</b> Testifies and submits written testimony in support of HB 2684 ( <b>EXHIBIT G</b> ). Discusses the primary purposes of HB 2684 regarding appellate judgeis court practices.
194	Rep. Edwards	Could you describe the process where a presiding judge is appointed to a Supreme Court department?
200	Nass	Explains the process of designating a judge to a department.
222	Rep. Edwards	Are there any conflicts of policy regarding HB 2684?
227	Nass	Not that I am aware of.
228	Rep. Edwards	Expresses concern about larger policy questions that would effect HB 2684.
234	Nass	Explains why the Supreme Court judges choose not to sit on panels (departments).
251	Rep. Uherbelau	Discusses how the court rules are a part of HB 2684.

265	Nass	Clarifies how HB 2684 will provide a rule for designating judges.
271	Chair Shetterly	Closes public hearing.
<b><u>HB 2684 WORK SESSION</u></b>		
278	Rep. Edwards	<b>MOTION: Moves HB 2684 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 8-0</b> <b>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Williams, Witt, Shetterly</b> <b>EXCUSED: 1 - Wells</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. SHETTERLY will lead discussion on the floor.</b>
292	Chair Shetterly	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. WILLIAMS to BE RECORDED as voting AYE on HB 2660 with a Do Pass Recommendation.</b>  <b>VOTE: 9-0</b>
<b><u>SB 67 - PUBLIC HEARING</u></b>		
300	Counsel Felton	SB 67 allows the Chief Justice of the Supreme Court to make rules for use of electronic applications in courts.
305	Bradd Swank	<b>State Court Administrator's Office</b>  Testifies and submits written testimony in support of SB 67 ( <b>EXHIBIT H &amp; I</b> ). Discusses how SB 67 results in increased efficiency by implementing new advances in electronic technologies for record keeping.
371	Rep. Walker	Does SB 67 include viewing court cases by the public media?
379	Swank	No, it does not. Discusses the media being present in the courtroom and what effect SB 67 would have on this.

440	Rep. Walker	Expresses concern regarding electronic filing of documents by attorneys because of the possibility of computer failure.
457	Swank	The Judicial Department does not have any specific electronic applications in mind, and cannot predict what applications will be used in the courtroom.
484	Rep. Lowe	States that the electronic filing would be a good public safety measure. Clarifies that there is nothing in SB 67 that would authorize this kind of filing.
<b>Tape 54, B</b>		
034	Swank	Discusses what and how electronic applications are used for record keeping now.
041	Rep. Lowe	Asks if there is anything in SB 67 that would authorize the Supreme Court to make a change in the process of record keeping.
044	Swank	Not that I know of.
047	Rep. Uherbelau	Asks about line 28 on page 1, and if the language, "to all other laws and rules", clarifies that there are other court rules.
057	Swank	Discusses the Uniform Trial Court Committees involvement in court rules.
085	Rep. Uherbelau	States that laws would also cover rules. Do you foresee being able to access trial transcripts and pleadings through the internet?
096	Swank	Yes, we have been working on visual imaging, but it needs more advanced technology. Discusses the future of electronic records and what the Oregon Judicial Information Network (OJIN) offers now. Explains the OJIN process.
143	Rep. Uherbelau	Gives an example of a court case where an attorney could get the basics from the internet and how helpful this information was.
154	Rep. Williams	Relates an experience of using the web in obtaining information from a court case. Why did this bill get negative votes in the Senate?
162	Swank	There were three Senate members who had concerns about public media in the courtroom.
177	Rep. Walker	Expresses her concern about transcripts being available over the internet and the revenue impact on court reporters.
184	Chair Shetterly	Asks if photocopying of transcripts are allowed.

185	Rep. Walker	All photocopying has to go through the court reporter.
187	Rep. Uherbelau	States that it is the court clerks who do the transcripts at a court trial.
190	Rep. Walker	All copies of transcripts are paid for through the court reporter.
192	Swank	Explains the process of obtaining copies of transcripts in relation to public record law.
220	Rep. Edwards	States that SB 67 would be included as a pro-environmental bill because it would reduce paper usage.
228	Rep. Witt	Doesn't section 1, line 9-11, of SB 67 already give the Chief Justice court authority?
234	Swank	Discusses the authority of the Chief Justice regarding court rule making.
245	Rep. Witt	Doesn't section 2, paragraph 1, of SB 67 give the Chief Justice authority over the State Court Administrator?
255	Swank	States that line 31 specifically lists those kinds of court documents that would be effected by the Chief Justice's rules.
266	Rep. Witt	States that on line 29, it specifies, "not limited to", which refers to the court documents. States that the specific lists are just examples of the authority that would be granted by SB 67 to the Chief Justice.
269	Chair Shetterly	States that line 31 has a list of specific court documents and are not intended to mean anything else.
282	Rep. Witt	The Chief Justice would be in control of the list of a few court documents and that there are other documents.
290	Chair Shetterly	Discusses the word, "allow" on line 30, page 1 of SB 67.
300	Rep. Witt	Requests clarification on the word, "allow".
306	Rep. Uherbelau	Are the concerns regarding SB 67 that it would allow the Chief Justice to have more authority over court rules than this bill intends.
313	Rep. Witt	Explains his interpretation of lines 28-31, page 1 of SB 67 regarding many electronic applications that could be used in the courts.



325	Rep. Uherbelau	Discusses the authority of Chief Justice to make rules on conducting court business.
349	Swank	States that SB 67 cannot be specific regarding future electronic applications because we do not know what the future will develop. SB 67 will just grant the authority to the Chief Justice to use future applications that will benefit the courts.
365	Rep. Witt	Section 1, (a) through (e) is not a limited list given to the Chief Justice. SB 67 would give authority to the Chief Justice to employ a variety of potential electronic applications in the future.
375	Swank	SB 67 gives a broad authority of Chief Justice to give electronic applications in the courts. The list of court documents is just a sampling of what is known at this time.
392	Rep. Witt	Asks not what is the statutory authority that is granted by SB 67, but how the Chief Justice is going to apply it according to his own judgment?
410	Swank	SB 67 speaks to the Chief Justice having authority over the five electronic applications known at this time.
433	Rep. Witt	Expresses his confusion of the broad language applying to authority given the Chief Justice.
455	Swank	States that the five applications stated in SB 67 are what we are concerned about now, and the court will address any other applications that develop in the future.
<b>Tape 55, B</b>		
035	Chair Shetterly	Discusses the type of applications and the purpose of the applications regarding the intent of SB 67.
050	Rep. Lowe	Discusses the independent ruling in courts by judges and the influence of the Chief Justice regarding consistency of court rules.
080	Rep. Uherbelau	States that the legislature should not pass laws where you have to look at legislative history to be able to decipher the law.
104	Rep. Witt	Asks if the purposes in SB 67 is to give broad sense of authority to the Chief Justice.
115	Rep. Williams	Relates how the Oregon Supreme Court moves cautiously and slowly dealing with court issues.

123	Chair Shetterly	Suggests suspending the rules to conceptually amending SB 67 by deleting the language following the word, "courts," on line 29 on page 1 through the word "technologies", page 1.
133	Rep. Uherbelau	States that this deletion of language will limit the authority of the Chief Justice.
137	Rep. Williams	Suggests that we could change line 29 on page 1 to read, "electronic applications in the courts, including, but not limited to:", then deleting all the words up to (e).
141	Chair Shetterly	Closes public hearing.
<b><u>SB 67 - WORK SESSION</u></b>		
154	Rep. Witt	Suggests striking the words between the commas, on line 29 & 30, page 1.
171	Chair Shetterly	Closes work session.
<b>180</b>	<b>Chair Shetterly</b>	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. WELLS to BE RECORDED as voting AYE on HB 2684 with a Do Pass Recommendation. Vote: 9-0</b>
<b><u>SB 49A n WORK SESSION</u></b>		
184	Counsel Taylor	SB 49A modifies rule of evidence regarding impeachment of witness for bias or interest.
<b>198</b>	<b>Rep. Uherbelau</b>	<b>MOTION: Moves to ADOPT SB 49A-4 amendments dated 02/28/99.</b>
		<b>VOTE: 9-0</b>
	<b>Chair Shetterly</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
200	Rep. Witt	Asks why Rep. Uherbelau is proposing a motion to adopt A-4 amendments.
216	Rep. Uherbelau	Explains that at the last hearing on HB 49A, Practice & Procedure Committee proposed this amendment.
219	Counsel Taylor	Explains why the Practice & Procedure Committee proposed the amendment.

235	Rep. Uherbelau	<b>MOTION: Moves SB 49A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 9-0</b> <b>AYE: 9 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Witt, Shetterly</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. WILLIAMS will lead discussion on the floor.</b>
<b><u>SB 384 - WORK SESSION</u></b>		
268	Counsel Tweedt	SB 384 allows a state agency to withdraw certain orders for purpose of reconsideration after filing of petition for judicial review.
290	Rep. Witt	Expresses concern that the state agencies may be withdrawing the court orders, but the petitioner may have legal fees. When are the agencies required to pay these legal fees?
299	Chair Shetterly	States that this issue was discussed among committee members and they were satisfied with SB 384 regarding the issue of who was to pay legal fees.
323	Rep. Edwards	<b>MOTION: Moves SB 384 to the floor with a DO PASS recommendation.</b>
327	Rep. Witt	Expresses his opposition to SB 384.
338	Chair Shetterly	Discusses why he is supporting for SB 384.
352	Rep. Williams	Discusses the benefit of not allowing state agencies to withdraw their court orders.
365	Rep. Witt	States that if the state agency withdraws its court order, the citizen should still have an opportunity to get legal fees paid.
381	Rep. Williams	States that passage of SB 384 will allow the legal fees to be paid for the citizen.
390	Rep. Uherbelau	Expresses her opposition to SB 384.

415		<b>VOTE: 6-3</b> <b>AYE: 6 - Edwards, Lowe, Walker, Wells, Williams, Shetterly</b> <b>NAY: 3 - Backlund, Uherbelau, Witt</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. SHETTERLY will lead discussion on the floor.</b>
437	Chair Shetterly	Adjourns meeting at 2:52 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

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**EXHIBIT SUMMARY**

- A - HB 2474, Written testimony, Richard Benner, p. 1**
- B - HB 2474, Written testimony, Charles Swindells, p. 1**
- C - HB 2632, Written testimony, Mark Comstock, p. 1**
- D - HB 2632, Written testimony, Joe Brewer, p. 9**
- E - HB 2474, Written testimony, Liz Frenkel, p. 1**
- F - HB 2660, Written testimony, Gill Thomas, p. 1**

**G - HB 2684, Written testimony, Jim Nass, p. 5**

**H - SB 67, Written testimony, Bradd Swank, p. 1**

**I - SB 67, Written testimony, Bradd Swank, p. 10**