

**HOUSE JUDICIARY COMMITTEE ON CIVIL LAW**

**April 20, 1999 Hearing Room 357**

**1:00 p.m. Tapes 115 - 118**

**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: HB 2758 - Public Hearing**

**HB 3386 - Public Hearing HB 2937 - Public Hearing**

**HB 3085 - Work Session HB 3169 - Public Hearing**

**HB 3397 - Public Hearing**

**HB 2278 - Public Hearing & Work Session**

**HB 2912 - Public Hearing**

TAPE/#	Speaker	Comments
<b>TAPE 115, A</b>		
007	Chair Shetterly	Calls meeting to order at 1:07 p.m.
<b><u>HB 2758 n PUBLIC HEARING</u></b>		
025	Counsel Felton	HB 2758 modifies provisions for notice and priority of construction liens.
030	<b>Cindy Catto</b>	<p><b>Associated General Contractors of America (AGC)</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT A</b>). Explains why the legislature needs to make changes to the current lien law statute. Discusses how the current lien law works.</p>
129	<b>Larry Sitz</b>	<p><b>Emerick Construction Company</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT B</b>). States that anyone who contributes added value to property with a construction project deserves to be paid promptly.</p> <p>Explains the problem with claims when a sub-contractor goes broke. States that to standardize the process it seems logical to develop a single form of notice for lien rights and for bond claim rights.</p>
177	<b>Rick Grigsby</b>	<p><b>Grigsby Construction</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBITS C &amp; D</b>). Explains why HB 2758 is about fundamental fairness in the contracting business. Discusses the concept of the Construction Lien statute that makes sure every contractor gets paid and to ensure no contractor has to pay twice for work done or rented equipment. Explains why HB 2758 does not change the Construction Lien statute. The lien statute effects all sizes of businesses.</p>
265	<b>David Douthwaite</b>	<p><b>Drake Construction Company</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT E</b>). Explains the Drake Construction Company's payment procedure. Discusses of circumstances where Drake Construction Company paid sub-contractors twice for work done.</p>
297	Rep. Wells	Asks about the problem with the right to lien between commercial and residential properties.
304	Douthwaite	There does not seem to be any difference between commercial and residential liens.

322	<b>Jim Charpentier</b>	<p><b>Anderson Construction Company</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT F</b>). Gives two examples of paying a subcontractor twice by Anderson Construction Company and why the company supports HB 2758.</p>
386	<b>Jim Hirte</b>	<p><b>Colamette Construction Company</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT G</b>). Gives an example of the current lien laws regarding bankrupt sub-contractors.</p>
411	<b>Doug Isaacs</b>	<p><b>Crawford Roll-Lite Door Company</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT H</b>). Explains the process of providing Notice of the Right to Lien to owners of construction projects. States that it is a sound business practice to protect lien rights through notice to the property owner.</p>
440	<b>Joseph Tripi</b>	<p><b>Lawyer, Schwabe, Williamson &amp; Wyatt</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT I</b>). Discusses the importance of HB 2758 because it provides communication between the general contractor, the owner, and the subcontractor.</p>
<b>Tape 116, A</b>		
036	<b>Bill Boyd</b>	<p><b>Construction Contractors Board</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT J</b>) on behalf of Ken Kendall in neutrality of HB 2758</p> <p><b>(EXHIBIT K)</b>. Discusses the proposed amendments that amend language in HB 2758 concerning the definition of "residential" regarding the right to lien.</p>
069	Rep. Wells	Is there confusion in sending a lien notice on a project when it is not known whether it is residential or commercial property?
075	Boyd	Yes. Explains information in the lien notice that indicates whether it is residential or commercial property.
095	<b>Ray Phelps</b>	<p><b>Oregon Equipment Rental Association</b></p> <p>Testifies and submits written testimony in opposition to HB 2758 (<b>EXHIBIT L</b>). Discusses the problems with property liens that would be created if HB 2758 passes.</p>

129	<b>Jerry Vansqui</b>	<p><b>Associated Floor Covering Contractors</b></p> <p>Testifies and in opposition to HB 2758. Discusses the responsibility of the general contractor for what goes on at the job site. Questions whether the accuracy of the lien notice will be legal and correct. States that over 1% of the population of Oregon is a contractor. HB 2758 will require architects, engineers, and other professional design people to give lien notices.</p>
211	<b>Pat Jones</b>	<p><b>National Association of Credit Management (NACM)</b></p> <p>Testifies and submits written testimony in opposition to HB 2758 (<b>EXHIBIT M</b>). Discusses the process of credit checking on subcontractors. States that the subcontractors very seldom file a lien on the property.</p>
255	<b>Tom Akins</b>	<p><b>Ivy Highlift, Eugene, Oregon</b></p> <p>Testifies in opposition to HB 2758. Discusses why companies cannot rely on lien rights for payment security. Expresses his opposition of the legislature tampering with the lien laws.</p>
282	<b>John Gervais</b>	<p><b>Construction Contractors Board, Sheet Metal Contractors Association, National Association of Credit Management, Construction Industry Committee</b></p> <p>Testifies in opposition to HB 2758. Discusses the few problems with property liens even though there are many contractors in the State of Oregon.</p>
315	<b>Shawn Miller</b>	<p><b>Associated Builders &amp; Contractors (ABC), Independent Electrical Contractors of Oregon (IECO)</b></p> <p>Testifies in opposition to HB 2758. Discusses why ABC and IECO oppose HB 2758 regarding who files the bonds to protect the property owner.</p>
377	<b>Tim Martinez</b>	<p><b>Oregon Bankers Association</b></p> <p>Testifies in support of HB 2758. Expresses the willingness to work with the opposition on amending HB 2758.</p>
399	<b>Gina Anne Johnnie</b>	<p><b>Oregon Bankers Association</b></p> <p>Testifies and submits written testimony in support of HB 2758 (<b>EXHIBIT N</b>). Discusses the proposed amendments to HB 2758 and how they will work to the benefit of property owners, financial institutions and potential construction lien claimants. States that the construction lien should never be a substitution for good credit practices.</p>
469	Martinez	States that the Oregon League of Financial Institutions is in support of HB 2758.
473	Rep. Uherbelau	Asks about banks foreclosing which would override all property liens.

489	Johnnie	Explains why banks do not like to use the practice of foreclosure.
<b>Tape 115, B</b>		
040	Chair Shetterly	Discusses the history of HB 2758.
060	Chair Shetterly	Closes public hearing.
<b><u>HB 3386 n PUBLIC HEARING</u></b>		
069	Counsel Felton	HB 3386 eliminates Statute of Ultimate Repose for civil action against manufacturer of extendable equipment for injury or other damage arising out of contact with power lines. Presents the -1 amendments to HB 3386 ( <b>EXHIBIT O</b> ).
084	<b>Brad Higbee</b>	<b>Justice for Rob McRae Committee</b>  Testifies and submits written testimony in support of HB 3386 ( <b>EXHIBIT P</b> ). Discusses a story about Mr. Rob McRae concerning an accident caused by the lack of safety features on a manufactured product. Gives an overview of HB 3386 that will give the opportunity for workers and businesses to prove their case in a court of law.
155	<b>Rob McRae</b>	<b>Citizen, State of Oregon</b>  Testifies in support of HB 3386. Gives his personal account of an accident caused by defective equipment and how the accident could have been prevented.
168	Rep. Uherbelau	How old are you?
170	McRae	I am 42 years old.
177	Chair Shetterly	Is workeris compensation the only money you received due to your accident?
179	McRae	I am receiving disability from my employer and some social security benefits.
184	Rep. Uherbelau	Have you been released by your medical provider to go back to work?
185	McRae	No. I wonit be returning to my original job and will have to be retrained for some other type of work.
195	Rep. Walker	Is the high incidence of death and accident on cranes due to the nature of the work or the lack of safety devices on the equipment?

202	McRae	The accident was caused by the lack of safety devices on the crane which was uninsulated cable.
215	Chair Shetterly	Was the technology of insulating the cables available at the time of your accident?
218	McRae	Absolutely.
224	Higbee	Explains that the 71% of those that are injured or killed on cranes are due to not providing grounding for electricity.
231	McRae	Electricity follows through the least resistance and that happened to be me.
235	Rep. Wells	Why doesn't the Oregon Safety & Health Association require all cranes to have insulated cables?
240	McRae	I do not know why there is not someone to enforce this safety issue.
244	Higbee	Discusses why the manufacturer should have the responsibility for providing safe products.
276	Rep. Wells	Couldn't an insulated cable be added to the equipment that is already being used on job sites?
289	Higbee	States that whatever the circumstances were in this accident, they didn't help Mr. McRae.
294	Rep. Lowe	Could justice for Mr. McRae prevail if all the statutes regarding Statute of Ultimate Repose pass?
304	Higbee	The statutes would give some support for Mr. McRae's circumstance.
323	Rep. Walker	Has there been any other crane accidents like Mr. McRae's in the State of Oregon?
329	McRae	Relates one incident that was similar.
334	Higbee	I am not aware of any accidents similar to Mr. McRae's. The statutes regarding Ultimate Repose will help other victims of defective products.
359	Rep. Williams	Discusses a case in his district concerning Statute of Ultimate Repose.
379	<b>Katherine Royer</b>	<b>Citizen, State of Oregon</b>

		Testifies and submits written testimony in support of HB 3386 ( <b>EXHIBIT Q</b> ). Relates her own personal circumstance concerning her husband's blood transfusion which resulted in AIDS.
<b>Tape 116, B</b>		
035	Royer	Discusses other blood transfusion cases which resulted in AIDS.
104	Rep. Uherbelau	Comments about who should brunt the cost of the injury. Expresses her support of HB 3386 and the importance of the intent to protect the innocent injured person.
129	Chair Shetterly	Closes public hearing.
<b><u>HB 3085 ñ WORK SESSION</u></b>		
138	Counsel Felton	HB 3085 authorizes local governments to operate photo radar systems. Explains the -1 amendments which would provide that only cities may establish a photo radar program, the -2 amendments which would delete the phrase "or otherwise delivered", the -3 amendments which would require the warning sign to be posted 400 yards before the photo radar in use, and the -5 amendments that would require the sign be posted no closer than 100 yards. and no farther than 400 yards ( <b>EXHIBITS R-U</b> ).
158	Rep. Williams	Explains the difference between the ñ3 amendment and the ñ5 amendments.
163	<b>Kevin Campbell</b>	<b>Oregon Association for the Chiefs of Police</b> Explains the 100-400 yard decision for placement of the sign to warn drivers of photo radar use.
173	Rep. Edwards	Is it radial or linear feet when referring to the 400 yard placement of the sign?
175	Campbell	The 400-yard placement is on the road before you reach the photo radar equipment.
184	Rep. Edwards	Is the sign to be temporary?
185	Campbell	It will be temporary. States that the 100-400 yards gives ample warning for vehicles.
210	Rep. Uherbelau	Is 100 yards sufficient notice to warn vehicles use of the photo radar equipment?
235	Rep. Williams	Discusses why 400 yards would be too far away from the photo radar equipment.

250	Rep. Wells	What about warning signs to show presence of police cars that are using radar equipment?
255	Campbell	Explains why drivers still speed even though they are warned. States that a warning sign is a deterrent for speeding vehicles.
301	Rep. Edwards	Couldn't there be more than one speed limit sign within the 400-yard limit?
317	Campbell	The warning sign would just say, "Photo Radar Equipment Ahead" and would not pertain to the speed limit.
<b>329</b>	<b>Rep. Williams</b>	<b>MOTION: Moves to ADOPT HB 3085-1 amendments dated 04/06/99.</b>
333	Rep. Wells	Why are we changing the language that would not allow counties to participate in the program?
337	Partridge	The requests for the photo radar equipment were from the cities and not all local governments.
<b>350</b>	<b>Vice-Chair Williams</b>	<b>VOTE: 8-0</b> <b>EXCUSED: 1 - Witt</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>
<b>359</b>	<b>Vice-Chair. Williams</b>	<b>MOTION: Moves to ADOPT HB 3085-2 amendments dated 04/06/99.</b>
		<b>VOTE: 8-0</b> <b>EXCUSED: 1 - Witt</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>
<b>370</b>	<b>Rep. Edwards</b>	<b>MOTION: Moves to ADOPT HB 3085-5 amendments dated 04/20/99.</b>
		<b>VOTE: 6-2</b> <b>AYE: 6 - Backlund, Edwards, Lowe, Walker, Williams, Shetterly</b> <b>NAY: 2 - Uherbelau, Wells</b>



		<b>EXCUSED: 1 - Witt</b>
	<b>Vice-Chair Williams</b>	<b>The motion CARRIES.</b>
<b>388</b>	<b>Rep. Edwards</b>	<b>MOTION: Moves HB 3085 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-1</b> <b>AYE: 7 - Backlund, Edwards, Lowe, Uherbelau, Wells, Williams, Shetterly</b> <b>NAY: 1 - Walker</b> <b>EXCUSED: 1 - Witt</b> <b>CARRIER: Rep. Patridge</b>
	<b>Vice-Chair Williams</b>	<b>The motion CARRIES.</b>
490	Vice Chair Williams	Closes public hearing.
<b>Tape 117, A</b>		
<b><u>HB 3397 - PUBLIC HEARING</u></b>		
036	Counsel Felton	HB 3397 exempts from public disclosure record of employee addresses submitted to special district to obtain assistance in promoting alternative to single occupant motor vehicle transportation.
043	Chair Shetterly	Closes public hearing.
<b><u>HB 2278 - PUBLIC HEARING</u></b>		
046	Counsel Felton	HB 2278 requires prison siting authority, when refusing to adopt proposed condition, to state why refusal to adopt condition is in public interest.
053	Chair Shetterly	Explains HB 2278 concerning the procedure on review of a prison siting decision.
055	Rep. Uherbelau	Asks why "substantial evidence" is being taken out of the language in HB 2278.

060	Chair Shetterly	Explains why "substantial evidence" is taken out of HB 2278 concerning "not" adopting a review.
095	Chair Shetterly	Closes public hearing.
<b><u>HB 2278 - WORK SESSION</u></b>		
097	Rep. Williams	<b>MOTION: Moves HB 2278 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 8-0</b> <b>AYE: 8 - Backlund, Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>EXCUSED: 1 - Witt</b>
	Chair Shetterly	<b>The motion CARRIES.</b>  <b>REP. WILLIAMS will lead discussion on the floor.</b>
105	Chair Shetterly	Closes work session.
<b><u>HB 2912 n PUBLIC HEARING</u></b>		
109	Chair Shetterly	HB 2912 declares that Attorney General has sole and exclusive authority to enforce specific prohibition of Oregon Constitution relating to claims against state by state officers and members of Legislative Assembly.
111	Rep. Williams	Explains the history of HB 2912 which relates to the constitution that creates problems for lawyers who have partners with claims against the State of Oregon.
160	Rep. Uherbelau	Explains the survey of attorneys in the legislative body who were not aware of the problem of the constitution not allowing partners in law firms to have claims against the State of Oregon.
165	Rep. Williams	Explains why the problem of claims against the state became an issue in the last few years.
185	Chair Shetterly	Closes public hearing.

**HB 2937 n PUBLIC HEARING**

187	Chair Shetterly	HB 2937 increases funding for Asset Forfeiture Oversight Advisory Committee from property forfeited as proceeds of drug-related activities.
200	<b>George Stevenson</b>	<b>City of Salem</b> Testifies and submits written testimony in opposition to HB 2937 and support for HB 3169 ( <b>EXHIBIT V</b> ). Explains why the City of Salem is opposed to HB 2937 and HB 3169. Discusses the time involved with processing forfeitures. Explains why the City of Salem does not want to help fund the Asset Forfeiture Oversight Committee (AFOC).
249	Rep. Uherbelau	Discusses why there should be funding for the Asset Forfeiture Oversight Committee.
272	Stevenson	The City of Salem has not missed a payment for funding the Asset Forfeiture Oversight Committee. Explains why the AFOC has not been active in the last five years.
293	Rep. Uherbelau	States that the AFOC is going to be more active and there is a real need for this committee.
307	Rep. Wells	Explains the history of the AFOC and why we need to keep funding this committee concerning civil forfeiture.
349	Stevenson	States that 99% of the civil forfeiture cases end up in court. Expresses his opposition for HB 2937 because there has been adequate oversight on civil forfeiture.
370	Chair Shetterly	Discusses another statute that reduces the "burden of proof" cases which will ease the City of Salemis workload.
382	Stevenson	Explains "reasonable doubt" in relationship to civil forfeiture.
398	Rep. Walker	Discusses the abuses in the civil forfeiture system. Expresses her support of HB 2937.
414	Chair Shetterly	Closes public hearing.

**HB 3169 n PUBLIC HEARING**

419	Chair Shetterly	Acknowledge the support of the City of Salem for HB 3169.

425	Chair Shetterly	Closes public hearing.
		Adjourns meeting at 3:20 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

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**EXHIBIT SUMMARY**

- A - HB 2758, Written testimony, Cindy Catto, p. 3**
- B - HB 2758, Written testimony, Larry Sitz, p. 2**
- C - HB 2758, Written testimony, Rick Grigsby, p. 2**
- D - HB 2758, Written testimony, Rick Grigsby, p. 11**
- E - HB 2758, Written testimony, David Douthwaite, p. 1**
- F - HB 2758, Written testimony, James Charpentier, p. 2**
- G - HB 2758, Written testimony, Jim Hirtz, p. 2**
- H - HB 2758, Written testimony, Doug Isaacs, p. 1**
- I - HB 2758, Written testimony, Joe Tripi, p. 2**
- J - HB 2758, Written testimony, Ken Kendell, p. 11**
- K - HB 2758, Written testimony, Bill Boyd, p. 11**

**L - HB 2758, Written testimony, Ray Phelps, p. 7**

**M - HB 2758, Written testimony, Patrick Jones, p. 1**

**N - HB 2758, Written testimony, Gina Johnnie, p. 4**

**O - HB 3386, Proposed amendments, Counsel, p. 4**

**P - HB 3386, Written testimony, Rob McRae, p. 3**

**Q - HB 3085, Written testimony, Katharine, Royer, p. 66**

**R - HB 3085, Proposed -1 amendments, Counsel, p. 1**

**S - HB 3085, Proposed -2 amendments, Counsel, p. 1**

**T - HB 3085, Proposed -3 amendments, Counsel, p. 1**

**U - HB 3085, Proposed -5 amendments, Counsel, p. 1**

**V - HB 2937 & HB 3169, Written testimony, George Stevenson, p. 1**

**W - HB 2937, Written testimony, Phillip Lemman, p. 1**