

## **SENATE COMMITTEE ON JUDICIARY**

**June 01, 1999 Hearing Room C**

**1:00 pm, postponed until 3:00 pm Tapes 210 - 211**

**MEMBERS PRESENT: Sen. Bryant, Chair**

**Sen. Courtney, Vice-Chair**

**Sen. Brown**

**Sen. Burdick**

**Sen. Nelson**

**Sen. Duncan**

**Sen. Tarno**

**STAFF PRESENT: Anne Tweedt, Counsel**

**Judith Minnich, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2705A ñ Work Session**

**HB 2759A ñ Work Session**

**HB 2760A ñ Work Session**

**HB 3509A ñ Work Session**

**SB 299 ñ Public Hearing**

**HB 2758A ñ Public Hearing**

**HB 2925A ñ Public Hearing and Work Session**

**HB 2417 ñ Public Hearing**

**HB 2660 ñ Public Hearing and Work Session**

| <b>TAPE/#</b>                       | <b>Speaker</b>      | <b>Comments</b>  |
|-------------------------------------|---------------------|--|
| <b>Tape 210, A</b>                  |                     |  |
| 003                                 | Chair Bryant        | Calls hearing to order at 3:10 p.m.  |
| <b><u>SB 299 PUBLIC HEARING</u></b> |                     |  |
| 010                                 | <b>Martha Pagel</b> | <b>Director, Water Resources Department</b><br><br>Submits written testimony and testifies in support of SB 299 as amended by the ñ5 amendments ( <b>EXHIBITS A &amp; B</b> ). SB 299 allows the court to consider in an adjudication proceeding changes in use, point of diversion or appropriation, or place of use made to unadjudicated pre-1909 water right claim and pre-1955 ground water. Discusses the -5 amendments. |
| 048                                 | Chair Bryant        | As I understand, this bill was introduced due to a situation in the City of Springfield. Do you currently have rules to handle this type of situation?   |
| 061                                 | Pagel               | Yes, but we need clear statutory authority to make changes in those rules.   |
| 068                                 | Chair Bryant        | Has the City of Springfield registered their use since they were pre- 1909? Does this bill change in any way the powers of the Water Resources Department?   |
| 085                                 | Pagel               | Yes, Springfield has registered their use. This bill gives us a process and standards for making and changing rules.   |
| 100                                 | Sen. Tarno          | This is also a condemnation issue, which is why it is in this committee. Does adjudication change the date of appropriation?   |
| 111                                 | Pagel               | No, it does not change the priority date claimed in the registration form.   |
| 113                                 | Sen. Tarno          | I would like to benefit all of the regions of the state even if this legislation is aimed at a specific problem in the City of Springfield.  |
| 120                                 | Pagel               | I think this bill has general applicability to all areas of the state, even those where we are not likely to adjudicate in the near future. These users are going to have to deal with reasonable changes in their water usage.  |
| 132                                 | Chair Bryant        | Would this effect the Klamath Basin?   |
| 133                                 | Pagel               | No. It only applies at the registration stage.   |
|                                     |                     |  |

|                                     |             |   |
|-------------------------------------|-------------|---|
| 142                                 | Sen. Nelson | Please explain the pre-1909 use registration.   |
| 146                                 | Page1       | The process required that the pre-1909 use register with the state. We are trying to get to all these people to convert their registration to a certificated water right. Once they have a certificate, they have certain rules to be followed. |
| 158                                 | Sen. Nelson | Once you have that certificate, you can change the point of diversion?  |
| 161                                 | Page1       | If you have a water right subject to transfer, changes can be made.   |
| <b><u>HB 2759A WORK SESSION</u></b> |             |   |
| 195                                 | David Nebel | <b>Oregon Law Center</b><br><br>Testifies in support of HB 2759A and the A4 amendments ( <b>EXHIBITS C &amp; D</b> ). HB 2759A modifies the law relating to the appointment of fiduciaries in protective proceedings.                           |
| 223                                 | Sen. Bryant | <b>MOTION: Moves to ADOPT HB 2759A-A4 amendments dated 6/1/99.</b>  |
|                                     |             | <b>VOTE: 5-0</b><br><br><b>EXCUSED: 2 - Brown, Nelson</b>   |
|                                     |             | <b>Chair Bryant</b><br><br><b>Hearing no objection, declares the motion CARRIED.</b>  |
| 226                                 | Sen. Bryant | <b>MOTION: Moves HB 2759A to the floor with a DO PASS AS AMENDED recommendation.</b>  |
|                                     |             | <b>VOTE: 6-0</b><br><br><b>EXCUSED: 1 - Nelson</b>  |
|                                     |             | <b>Chair Bryant</b><br><br><b>Hearing no objection, declares the motion CARRIED.</b><br><br><b>SEN. BURDICK will lead discussion on the floor.</b>  |

**HB 2760A WORK SESSION**

|     |               |   |
|-----|---------------|---|
| 235 | David Nebel   | <b>Oregon Law Center</b><br><br>Testifies in support of HB 2760A with the A5 amendments ( <b>EXHIBITS E &amp; F</b> ). HB 2760A pertains to notification of certain filings in protective proceedings. Discusses the provisions of the A5 amendments. |
| 275 | Sen. Courtney | <b>MOTION: Moves to ADOPT HB 2760A-A5 amendments dated 6/1/99.</b>  |
|     |               | <b>VOTE: 5-0</b><br><br><b>EXCUSED: 2 - Brown, Nelson</b>   |
|     |               | <b>Chair Bryant</b><br><br><b>Hearing no objection, declares the motion CARRIED.</b>  |
| 277 | Sen. Courtney | <b>MOTION: Moves HB 2760A to the floor with a DO PASS AS AMENDED recommendation.</b>  |
|     |               | <b>VOTE: 6-0</b><br><br><b>EXCUSED: 1 - Nelson</b>  |
|     |               | <b>Chair Bryant</b><br><br><b>Hearing no objection, declares the motion CARRIED.</b><br><br><b>SEN. BROWN will lead discussion on the floor.</b>  |

**HB 2660 PUBLIC HEARING**

|     |                 |   |
|-----|-----------------|---|
| 286 | Rep. Kathy Lowe | <b>State Representative, House District 26</b><br><br>Testifies in support of HB 2660. Discusses the history of HB 2660 and the reasons for the legislation. HB 2660 closes a loophole in the bad check laws by making it unlawful to stop payment on a check without good cause. |
| 323 | Gill Thomas     | <b>Building Contractor</b><br><br>Submits testimony and testifies in support of HB 2660 ( <b>EXHIBIT G</b> ).   |

**HB 2660 WORK SESSION**

|     |               |  |
|-----|---------------|--|
| 399 | Sen. Courtney | <b>MOTION: Moves HB 2660 to the floor with a DO PASS recommendation.</b>   |
| 404 | Sen. Burdick  | Who would determine what good cause means in a case like this?   |
| 407 | Chair Bryant  | Case law will define good cause.   |
| 427 |               | <b>VOTE: 6-0</b><br><b>EXCUSED: 1 ñ Brown</b>  |
|     | Chair Bryant  | <b>Hearing no objection, declares the motion CARRIED.</b><br><br><b>SEN. DUNCAN will lead discussion on the floor.</b> |

**Tape 210, A****HB 2925 PUBLIC HEARING**

|     |               |  |
|-----|---------------|--|
| 003 | Charles Stern | <b>Oregon Association of County Clerks</b><br><br>Discusses the reasons for HB 2925A which creates an affidavit of authority and an affidavit of revocation of authority to perform marriages. |
| 021 | Chair Bryant  | Didn't we discuss this last session?   |
| 023 | Stern         | Yes, I believe we didn't have time to complete the legislation.  |
| 028 | Sen. Tarno    | What do you do if you find out that a minister is lying to you about their authority?  |
| 030 | Stern         | We don't do any enforcement now and this won't change it. We would create as much standardization as possible.   |

**HB 2925 WORK SESSION**

|     |              |  |
|-----|--------------|--|
| 044 | Sen. Nelson: | <b>MOTION: Moves HB 2925 be sent to the floor with a DO PASS recommendation.</b> |
|-----|--------------|--|

|                                     |                |  |
|-------------------------------------|----------------|--|
|                                     |                | <b>VOTE: 5-0</b><br><br><b>EXCUSED: 2 - Brown, Courtney</b>  |
|                                     | Chair Bryant   | <b>Hearing no objection, declares the motion CARRIED.</b><br><br><b>SEN. NELSON will lead discussion on the floor.</b>   |
| <b><u>HB 2705A WORK SESSION</u></b> |                |  |
| 054                                 | Counsel Tweedt | HB 2705A requires persons between 18 and 21 years old who are convicted of alcohol violations or infractions for the second time to undergo diagnostic assessment and treatment. It also prohibits giving away free alcoholic beverages, except as otherwise authorized by law, unless the person holds an OLCC license. Indicates the ñA6 amendments are necessary conflict amendments, -A7 amendments address the concerns that were expressed regarding wine growers and the ñA4 amendments address the noise issues discussed in Multnomah County. |
| 069                                 | Sen. Bryant    | <b>MOTION: Moves to ADOPT HB 2705A-A6 amendments dated 5/25/99.</b>  |
|                                     |                | <b>VOTE: 5-0</b><br><br><b>EXCUSED: 2 - Brown, Courtney</b>  |
|                                     | Chair Bryant   | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 074                                 | Sen. Bryant    | <b>MOTION: Moves to ADOPT HB 2705A-A4 amendments dated 5/14/99.</b>  |
|                                     |                | <b>VOTE: 4-1</b><br><br><b>AYE: 4 - Duncan, Nelson, Tarno, Bryant</b><br><br><b>NAY: 1 - Burdick</b><br><br><b>EXCUSED: 2 - Brown, Courtney</b>  |
|                                     | Chair Bryant   | <b>The motion CARRIES.</b>   |

|                                       |               |  |
|---------------------------------------|---------------|--|
|                                       |               |  |
| 088                                   | Sen. Bryant   | <b>MOTION: Moves to ADOPT HB 2705A-A7 amendments dated 5/28/99.</b>  |
|                                       |               | <b>VOTE: 5-0</b><br><br><b>EXCUSED: 2 - Brown, Courtney</b>  |
|                                       | Chair Bryant  | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 091                                   | Sen. Bryant   | <b>MOTION: Moves HB 2705A to the floor with a DO PASS AS AMENDED recommendation.</b>   |
|                                       |               | <b>VOTE: 5-1</b><br><br><b>AYE: 5 - Courtney, Duncan, Nelson, Tarno, Bryant</b><br><br><b>NAY: 1 - Burdick</b><br><br><b>EXCUSED: 1 - Brown</b>  |
|                                       | Chair Bryant  | <b>The motion CARRIES.</b><br><br><b>SEN. NELSON will lead discussion on the floor.</b>  |
| <b><u>HB 2417A PUBLIC HEARING</u></b> |               |  |
| 130                                   | Brian Boe     | <b>National Association of Independent Insurers</b><br><br>Submits written testimony and testifies in support of HB 2417A which would bar recovery of non-economic damages in civil action for injury or death arising out of the operation of a motor vehicle if the plaintiff was driving uninsured or under the influence of intoxicants ( <b>EXHIBIT K</b> ). Addresses the amendments adopted by the House. They add a thirty-day grace period for lapse of insurance. If the defendant was also intoxicated or was cited for reckless driving, or was committing a felony or intentional tort, then the prohibition would not apply. |
| 209                                   | Sen. Courtney | If you don't have insurance does that mean an automatic suspension of your license?  |
|                                       |               |  |

|                    |                       |  |
|--------------------|-----------------------|--|
| 211                | Boe                   | If you are cited, license suspension would be for one year.  |
| 232                | Chair Bryant          | Discusses the ñA2 and ñA3 amendments that were provided by Rep. Max Williams ( <b>EXHIBIT L</b> ). These seem simple, but Legislative Counsel indicates that the additional cost of notice will mean that Transportation needs more money ( <b>EXHIBIT M</b> ).  |
| 252                | Boe                   | Agrees that there would be a fiscal impact to provide notice of this legislation.  |
| 262                | Sen. Tarno            | A notice could be added to a regular insurance notice if they should choose.   |
| 271                | Boe                   | Any renewal of driveris license or registration requires proof of insurance and notice could be given in that manner.  |
| 277                | Chair Bryant          | Indicates that he has received a letter from Chip Lazenby which asks for additional amendments to lengthen the regarding inadvertent lapse of coverage ( <b>EXHIBIT N</b> ).   |
| 289                | Boe                   | Since the insurance company also gives a thirty-day window, a 45 to 60 day window seems more appropriate than 180 days.  |
| 299                | Sen. Burdick          | The only people who would be effected by this bill are those who are not at fault? Does this happen often?   |
| 305                | Boe                   | Yes, that is essentially correct. Discusses why HB 2417A is needed. The chronically uninsured driver is the target of this bill.   |
| 364                | <b>Mick Alexander</b> | <b>Legislative Chair, Oregon Trial Lawyers Association</b><br><br>Submits written testimony and testifies in opposition to HB 2417A ( <b>EXHIBIT O</b> ). Indicates that whether or not the party who is not at fault is insured, it does not mean they should not recover damages for an accident where they are not at fault. This bill has nothing to do with driving without insurance. Indicates he believes HB 2417A is very poor public policy. |
| <b>Tape 210, B</b> |                       |  |
| 051                | Chair Bryant          | Economic damages would include medical expenses, lost wages, and what else?  |
| 059                | Alexander             | Loss of services and property damage would qualify. It seems very wrong that we take care of the wage earner, but by eliminating non-economic damages, not the student or homemaker.   |
| 062                | Sen. Courtney         | If the accident is caused by an uninsured or drinking driver, can you prosecute criminally and civilly?  |



|                                      |                        |  |
|--------------------------------------|------------------------|--|
| 070                                  | Alexander              | Yes. Clarifies the provisions of the bill.   |
| 078                                  | Sen. Courtney          | Discusses civil and criminal proceedings against drunk drivers.  |
| 109                                  | Chair Bryant           | The fact of drinking can always be introduced into evidence is that correct?   |
| 110                                  | Alexander              | Yes, this is a problem handled very well by our courts. They can take everything into account. This bill would take away that discretion.  |
| 136                                  | Chair Bryant           | How many times in your twenty years of practice have you represented someone in a personal injury lawsuit who has not had insurance?   |
| 139                                  | Alexander              | The figure of 10% to 14% of people who are uninsured is probably accurate, but I think my practice is less than that.  |
| 153                                  | Sen. Courtney          | If you have a drunk driving conviction on your record, or you're driving without insurance, what happens to your future insurance?   |
| 158                                  | Alexander              | It will probably be expensive if you can get it.   |
| <b><u>HB 2758 PUBLIC HEARING</u></b> |                        |  |
| 180                                  | <b>Phil Donovan</b>    | <b>Oregon Equipment Rental Association</b><br><br>Submits written testimony and testifies in support of HB 2758A ( <b>EXHIBIT P</b> ). Indicates the work group was able to agree on those issues currently contained in the bill. Indicates the ñA4 amendments are not acceptable ( <b>EXHIBIT Q</b> ). |
| 207                                  | <b>Shawn Miller</b>    | <b>Associated Builders and Contractors, Independent Electrical Contractors</b><br><br>Testifies in support of HB 2758A. Indicates that he has not had time to estimate the impact of the ñA4 amendments but notes that the proposed amendments are not a product of the work group.                      |
| 229                                  | <b>Tim Martinez</b>    | <b>Oregon Bankers Association</b><br><br>Testifies in support of HB 2758A. Indicates that changes to the lien law should be an interim work group project and indicates opposition to the ñA4 amendments.  |
| 253                                  | <b>Diana Madarieta</b> | <b>Architectural Council of Oregon</b><br><br>Testifies in support of the ñA4 amendments. These amendments would clean up the lien law for architects only and we do not intend to change the lien law for anyone else.  |

**HB 3509A WORK SESSION**

|                    |                       |  |
|--------------------|-----------------------|--|
| 344                | <b>Susan Browning</b> | <b>Department of Revenue</b><br><br>Submits written testimony and testifies in opposition to HB 3509A ( <b>EXHIBIT S</b> ). Indicates that they could function under the previously submitted amendments. Discusses the differing missions between debt collectors and the Department of Revenue's work on collecting taxes. Discusses the debt currently owed to the Department of Revenue. |
| <b>Tape 211, B</b> |                       |  |
| 062                | Chair Bryant          | Discusses the provisions of HB 3509A. With a 35% receivables exemption from coverage under this bill, could you work with it?  |
| 072                | Browning              | We believe that hardship cases and certain other cases should not be turned over to a collection agency.   |
| 084                | Chair Bryant          | What percentage of your receivables do you collect if you have not received a payment for a year?  |
| 088                | Browning              | We collect 97% of the debt. It does become more difficult as the debts get older.  |
| 106                | Chair Bryant          | Asks if the ñA8 amendments are satisfactory to them ( <b>EXHIBIT T</b> ).  |
| 111                | Sen. Tarno            | How do you determine whether someone can pay or not?   |
| 113                | Browning              | Discusses the process of following up on unpaid debt in the Department of Revenue.   |
| 126                | Sen. Tarno            | How often do you send agents out to someone's home?  |
| 128                | Browning              | We try to do most of it through billing letters. Then we make phone calls. Finally, if garnishment doesn't work, we will make a visit.   |
| 142                | Sen. Tarno            | Is there a formula you use to exempt people from payment of overdue taxes due to hardship?   |
| 146                | Browning              | We look at the person's long term ability to pay. It really depends on the circumstances of each case.   |
| 173                | <b>Matt Markee</b>    | <b>Oregon Collector's Association</b><br><br>Testifies in support of the ñA8 amendments. Indicates that the ñA8 amendments   |

|     |               |   |
|-----|---------------|---|
|     |               | eliminate the Justice Department from the provisions of the bill. Indicates that the hardship accounts were never meant to be passed on to private collection agencies.   |
| 218 | Chair Bryant  | Indicates he believes the A8 amendments accomplish a lot of what the Department of Administrative Services wanted. With the amount of money that is owed, this is a good first step.                            |
| 230 | Sen. Courtney | <b>MOTION: Moves to ADOPT HB 3509A-A8 amendments dated 6/1/99.</b>  |
|     |               | <b>VOTE: 7-0</b>  |
|     |               | <b>Chair Bryant</b>   |
|     |               | <b>Hearing no objection, declares the motion CARRIED.</b>   |
| 233 | Sen. Courtney | <b>MOTION: Moves SB 3509A to the floor with a DO PASS AS AMENDED recommendation.</b>  |
|     |               | <b>VOTE: 7-0</b>  |
|     |               | <b>Chair Bryant</b>   |
|     |               | <b>Hearing no objection, declares the motion CARRIED.</b>   |
|     |               | <b>SEN. BRYANT will lead discussion on the floor.</b>   |
| 243 | Sen. Brown    | <b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. BROWN to BE RECORDED as voting AYE on the motions to move HB 2759A as amended and HB 2760A as amended to the floor DO PASS.</b> |
|     |               | <b>VOTE: 7-0</b>  |
|     |               | <b>Chair Bryant</b>   |
|     |               | <b>Hearing no objection, declares the motion CARRIED.</b>   |
|     |               |   |

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

Administrative Support Counsel

### **EXHIBIT SUMMARY**

**A ñ SB 299, written testimony from Martha Pagel, 2 pp**

**B ñ SB 299, -5 amendments dated 5/26/99, 4 pp**

**C ñ HB 2759A, -A4 amendments dated 6/1/99, 2 pp**

**D ñ HB 2759A, written testimony from Alzheimerís Association, 1 pp**

**E ñ HB 2760A, -A5 amendments dated 6/1/99, 8 pp**

**F ñ HB 2760A, written testimony from Alzheimerís Association, 1 pp**

**G ñ HB 2660, written testimony from Gill Thomas, 2 pp**

**H ñ HB 2705A, -A4 amendments dated 5/14/99, 1 pp**

**I ñ HB 2705A, -A6 amendments dated 5/25/99, 2 pp**

**J ñ HB 2705A, -A7 amendments dated 5/18/99, 1 pp**

**K ñ HB 2417A, written testimony from Brian Boe, 6 pp**

**L ñ HB 2417A, written testimony submitted by Rep. Max Williams, 3 pp**

**M ñ HB 2417A, written testimony submitted by Rep. Max Williams, 1 pp**

**N ñ HB 2417A, written testimony from Henry Lazenby, 2pp**

**O ñ HB 2417A, written testimony from Mick Alexander, 4 pp**

**P ñ HB 2758A, written testimony submitted by Phil Donovan, 1 pp**

**Q ñ HB 2758A, -A4 amendments dated 5/26/99, 9 pp**

**R ñ HB 2758A, written testimony from Associated General Contractors (AGC), 1 pp**

**S ñ HB 3509A, written testimony from Susan Browning, 2 pp**

**T ñ HB 3509A, -A8 amendments dated 61/99, 2 pp**

**U ñ HB 3509A, supplemental information submitted by Jana Tindall, 1 pp**