

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**May 19, 1997 Hearing Room 357**

**1:00 P.M. Tapes 88 - 89**

**MEMBERS PRESENT:**

**Rep. Lane Shetterly, Chair**

**Rep. Judith Uherbelau, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Jo Ann Bowman**

**Rep. George Eighmey**

**Rep. Floyd Prozanski**

**Rep. Charles Starr**

**Rep. Larry Wells**

**MEMBER EXCUSED:**

**VISITING MEMBER:**

**Rep. John Minnis**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Dave Amesbury, Counsel**

**Gina Cross, Administrative Support**

**MEASURE/ISSUES HEARD:**

**SB 255A Work Session SB 272A Work Session**

**SB 274 Work Session SB 586 Work Session**

**HB 2040A Work Session**

**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
<b>Tape 88, A</b>		
004	Chair Shetterly	Opens the meeting at 1:08 p.m.
<b><u>SB 255A - PUBLIC HEARING</u></b>		
006	Chair Shetterly	Opens the public hearing on SB 255A.
012	Ron Bailey	<p>Attorney at Law, Portland</p> <p>&gt;Testifies in support of SB 255A.</p> <p>&gt;coordinates old law with new law</p>
032	Rita Cobb	<p>Washington County Probate Judge, ProTem</p> <p>&gt;Testifies and submits testimony in support of SB 255A <b>(EXHIBIT A)</b>.</p> <p>&gt;discusses conservatorships</p> <p>&gt;Under present law, the options are not there.</p> <p>&gt;This amendment allows the conservator to get the necessary help in carrying out their judiciary duties.</p>
074	Chair Shetterly	Asks Cobb to help the committee understand conservatorships.
077	Cobb	There could be claims for medical expenses, taxes, or caregiving expenses which an individual may occur.
087	Chair Shetterly	The purpose of section 7 is to clarify the priority of claimants when the time comes to make the final payments.
089	Cobb	This would allow for the conservator to get help in figuring out the priority.
093	Chair Shetterly	There is very little substantive law in this bill.
100	Cobb	I have two statutes that I have to apply depending when the case was instituted.
105	Chair Shetterly	Was it intended to run parallel? Was there a plan to perhaps merge the two statutes?
107	Cobb	We rewrote the entire statute. It was always anticipated that they would be reconnected.
112	Chair Shetterly	Asks that the witnesses be provided with a letter from the Department of Veteran's Affairs (DVA) <b>(EXHIBIT B)</b> . This proposes a few additional amendments.
126	Bailey	They're suggesting a change to "respondent?"

127	Chair Shetterly	If you look at the top of page 2 of DVA's letter, they want conservatorships expanded. Would that be helpful?
134	Bailey	It would likely be helpful.
135	Chair Shetterly	They propose changing "respondent" to "protected person."
138	Bailey	Section 5 pertains to notices that are given to all persons when a petition is filed.
140	Chair Shetterly	So, at that point, you don't have a protected person?
141	Bailey	Correct.
141	Chair Shetterly	It would not be appropriate.
141	Bailey	Correct.
142	Chair Shetterly	They become a protected person after a guardian has been established.
144	Cobb	Correct.
148	Rep. Uherbelau	Are you sure there isn't already a protected person?
152	Rep. Eighmey	In the notice of termination, it refers to "A" as the protected person.
156	Chair Shetterly	A notice of motion for protected persons proceeds.
166	Chair Shetterly	Referring to page 2, section 3 (1), there is a suggestion for an additional cost reference.
183	Bailey	That is also appropriate.
184	Chair Shetterly	I just wanted some comment on the issue. Are there anymore questions?
190	Bertrand Copp	Senior Advocate >There is a number confusion dealing with ORS 125 and 126. >Guardianship is about money. >wants page 7, line 32 deleted
212	Chair Shetterly	If a person dies without a conservatorship, the money gets delivered by the personal representative to the court. Why is that not satisfactory?
219	Copp	In this case the court is supervising someone.
225	Chair Shetterly	When are microfilms made of wills?
226	Copp	Microfilms are made when there is a conflict in different wills. Wills should be handed out by the court. Fees should be charged to the protected person.
264	Rep. Uherbelau	If the child is being abused, there are methods to handle this.
272	Copp	Lawyers go into court and state they have the best interests of the child in mind.
278	Rep. Prozanski	Are we in work session?
		No, we're still in public hearing. You're testimony seems to be very

281	Chair Shetterly	broad when it comes to guardianships and conservativeships.
286	Copp	If we add this section in there, lawyers for the guardian will come to court for payment.
293	Chair Shetterly	It is my experience that court fees are required for these cases.
296	Cobb	When the money is outside the jurisdiction, there is an exception in the guardianship.
302	Chair Shetterly	That is the case where the guardian doesn't have control over it.
303	Cobb	Correct. Conservatorship must have prior court approval through petition of motion, affidavit, and notice to the parties with opportunity to object.
308	Copp	The new law does state that conservators must pay the lawyers, and guardians must come to the courts for payment.
321	Chair Shetterly	The purpose of this bill is to move everything into the new law.
323	Copp	Refers to a letter he gave the members and asks them to consider the separation of lawyer fees to stop abuse.
330	Chair Shetterly	Closes the public hearing on SB 255A.
<b><u>SB 255A - WORK SESSION</u></b>		
331	Chair Shetterly	Opens the work session on SB 255A.
332	Rep. Prozanski	I would like to move the conceptual amendments of Judge Cobb, but I am not sure which ones we want.
339	Chair Shetterly	I would prefer the ones which amend section 7.
341	Rep. Uherbelau	Are they conceptual since they haven't been to LC?
342	Chair Shetterly	Yes, they will have to be conceptual.
<b>343</b>	<b>Rep. Prozanski</b>	<b>MOTION: Moves to ADOPT the amendments offered by Judge Rita Cobb as stated in EXHIBIT A to SB 255A.</b>
351	Chair Shetterly	Is there any discussion?
357	Rep. Uherbelau	The amendments cover the dependents of protected persons for current expenses.
363	Rep. Beyer	I haven't had a chance to look at these, so I will vote no.
366	Chair Shetterly	We are in a speeded up version of what we have been doing all session. I looked at this last night, and I am very satisfied.
373	Rep. Eighmey	Since the dependents are included, I think it is a good change. Since these are conceptual, we can include the Veteran's Affairs amendments.
383	Rep. Wells	Can you explain what has been taken out and been put in?
392	Chair Shetterly	Referring to subsection 1 of the amendments, "dependents" is added.
400	Committee	Discusses the definition of "dependents."

410	Cobb	Referring to subsection 1, current care expenses and claims for administration have been added.
422	Rep. Wells	We are adding "attorney fees?"
424	Cobb	It can be attorney fees, conservator fees, accounting fees, etc.
428	Rep. Eighmey	Can we delete "education" and move it under section 2?
435	Cobb	Education is deleted.
438	Chair Shetterly	The items within each category are of equal priority?
<b>TAPE 89, A</b>		
001	Cobb	My hope is that it will be on a factual case by case basis.
003	Chair Shetterly	Have you intentionally not addressed the issue of prioritization?
004	Cobb	If there is someone with severe disabilities, it will be up to the court to determine the priority.
005	Chair Shetterly	Is there any further discussion about the amendments?
010		<b>VOTE: 6-1-1</b> <b>AYE: 6 - Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells</b> <b>NAY: 1 - Beyer</b> <b>EXCUSED: 1 - Bowman</b>
014	Chair Shetterly	<b>The motion CARRIES.</b>
015	Rep. Prozanski	<b>MOTION: Moves to ADOPT the amendments offered by the Department of Veteran's Affairs as stated in EXHIBIT B to SB 255A.</b>
022		<b>VOTE: 6-1-1</b> <b>AYE: 6 - Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells</b> <b>NAY: 1 - Beyer</b> <b>EXCUSED: 1 - Bowman</b>
025	Chair Shetterly	<b>The motion CARRIES.</b>
027	Rep. Eighmey	<b>MOTION: Moves SB 255A to the full committee with a DO PASS AS AMENDED recommendation.</b>
031		<b>VOTE: 6-1-1</b> <b>AYE: 6 - Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells</b>

		<b>NAY: 1 - Beyer</b>
		<b>EXCUSED: 1 - Bowman</b>
<b>032</b>	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b> <b>REP. EIGHMEY will lead discussion on the floor.</b>
033	Rep. Prozanski	There is a check and balance on the conservatorship. The problem must be somewhere else. The courts have the authority to make sure payments are made.
039	Chair Shetterly	The courts watch out for problems.
045	Rep. Eighmey	The courts stay on top of things.
047	Rep. Uherbelau	All fees have to be approved by the court.
053	Chair Shetterly	Closes the work session on SB 255A.
<b><u>SB 272A - PUBLIC HEARING</u></b>		
055	Chair Shetterly	Opens the public hearing on SB 272A.
061	Karen Hightower	State Court Administrator >Submits and reads testimony in support of SB 272A ( <b>EXHIBIT C</b> ). >uniform judicial enforcement procedure established >simplified renewal procedure
099	Chair Shetterly	We are going to treat orders and warrants the same as judgments. What is the difference between an order and a warrant?
106	Randall Jordan	Department of Justice >Submits testimony and testifies in support of SB 272A ( <b>EXHIBIT D</b> ). >An order is a determination that there is an amount due. >A warrant is an enforcement of an obligation due the state.
120	Rep. Uherbelau	This bill only affects agencies.
122	Jordan	This bill doesn't change existing law. The civil people affected are the claimants for the Contractors Construction Board.
146	Rep. Uherbelau	The one exception is in section 7?
147	Jordan	Yes.
148	Chair Shetterly	If I get an order from the board which is then filed with the clerks' office, it has the same effect as a judgment?

152	Jordan	That is correct.
157	Chair Shetterly	Referring to page 2, line 18, section 2, shouldn't the wording be "garnishment?"
161	Hightower	We had taken that language from ORS 183.090.
165	Jordan	The only time we come before the court is when there is an allegation against the garnishee.
171	Chair Shetterly	I am sensitive to that.
175	Chair Shetterly	Closes the public hearing on SB 272A.
<b><u>SB 272A - WORK SESSION</u></b>		
176	Chair Shetterly	Opens the work session on SB 272A.
177	Rep. Uherbelau	<b>MOTION: Moves SB 272A to the full committee with a DO PASS recommendation.</b>
179	Chair Shetterly	Is there any discussion?
181		<b>VOTE: 8-0</b>
182	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED. REP. UHERBELAU will lead discussion on the floor.</b>
187	Chair Shetterly	Closes the work session on SB 272A.
<b><u>SB 274A - PUBLIC HEARING</u></b>		
189	Chair Shetterly	Opens the public hearing on SB 274A.
193	Jim Nass	Office of the State Court Administrator, submits testimony in support of SB 274A ( <b>EXHIBIT E</b> ).
198	Chair Shetterly	Can you tell us what a "mandamus" is?
199	Nass	It is an order for a public official to perform a legal duty.
217	Chair Shetterly	Original jurisdiction is where the motion is filed?
218	Nass	Yes. Mandamus is being used by taking an interlocutory appeal from some ruling in a lower court.
235	Chair Shetterly	Just a ruling in the course of the action?
236	Nass	Yes. The judge ends up being named as the defendant in the mandamus action. This leads to practical and ethical problems which can be resolved by changing the mandamus proceeding.
275	Rep. Bowman	Can you tell us what "interlocutory review" is?
278	Nass	Gives an example. It is a ruling made along the way.
296	Rep. Eighmey	Gives an example of divorce.
		Continues testimony.

310	Nass	>Section 3 of the bill deals with the admittance to the bar.
329	Chair Shetterly	It has nothing to do with mandamus. It just fits into the relating clause.
330	Nass	Correct.
331	Rep. Uherbelau	The court wasn't interested in going back to the original writ of mandamus?
338	Chair Shetterly	Referring to page 1, line 20, is service governed by the rules of civil procedure?
343	Nass	Service needs to be relevant to either civil or criminal procedures.
345	Chair Shetterly	Referring to page 2, line 18, when would you have a case where the court would direct something other than the rules?
352	Nass	The rules provide for a certain period of time given for us to get a record and then another period to file a brief.
359	Chair Shetterly	So, there are election cases in which you don't have much time to file?
360	Nass	There may be parties which go to court and tell the judge they don't want it anymore.
364	Chair Shetterly	Closes the public hearing on SB 274A.
<b><u>SB 274A - WORK SESSION</u></b>		
366	Chair Shetterly	Opens the work session on SB 274A.
367	<b>Rep. Bowman</b>	<b>MOTION: Moves SB 274A to the full committee with a DO PASS recommendation.</b>
368	Chair Shetterly	Is there any discussion?
371		<b>VOTE: 8-0</b>
372	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.</b>
384	Chair Shetterly	Closes the work session on SB 274A.
<b><u>SB 586 - PUBLIC HEARING</u></b>		
387	Chair Shetterly	Opens the public hearing on SB 586.
391	Henry Breithaupt	Attorney at Law >Submits and reads testimony in support of HB 586A ( <b>EXHIBIT F</b> ). >amend "short-form" merger law



		>This bill will allow a short-form merger when a 90% or greater subsidiary merges with a parent.
427	Rep. Uherbelau	Where does this bill come from?
435	Breithaupt	I am the underlying sponsor.
440	Rep. Uherbelau	When and why would a parent merge into a subsidiary?
444	Breithaupt	In some cases, the direction of the merger makes a difference for federal tax purposes.
<b>Tape 88, B</b>		
006	Chair Shetterly	Closes the public hearing on SB 586.
<b><u>SB 586 - WORK SESSION</u></b>		
007	Chair Shetterly	Opens the work session on SB 586.
007	Rep. Uherbelau	<b>MOTION: Moves SB 586 to the full committee with a DO PASS recommendation.</b>
010		<b>VOTE: 8-0</b>
011	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.</b>
012	Chair Shetterly	Closes the work session on SB 586.
013	Rep. Shetterly	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. BOWMAN to record a vote on SB 255A.</b>
015		<b>VOTE: 8-0</b>
	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>SB 255A - WORK SESSION</u></b>		
016	Chair Shetterly	Reopens the work session on SB 255A.
017	Chair Shetterly	Rep. Bowman how do you vote?
017		<b>AYE: Bowman</b>
		<b>VOTE: 7-1</b>  <b>AYE: 7 - Bowman, Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells</b>  <b>NAY: 1 - Beyer</b>
	Chair Shetterly	<b>The motion CARRIES.</b>

<b>HB 2040A - WORK SESSION</b>		
025	Chair Shetterly	Opens the work session on HB 2040A.
025	Rep. Uherbelau	We are skipping SB 528?
026	Chair Shetterly	Yes. Rep. Eighmey do you want to tell us why?
026	Rep. Eighmey	There were some amendments which would dramatically change it. I have been working with Associated Oregon Industries to correct those.
030	Bill Taylor	Committee Counsel, explains the provisions of HB 2040A.
037	Chair Shetterly	This was the bill we had on Friday. We reached an impasse.
039	Committee	Discusses why the bill is back in the committee.
<b>050</b>	<b>Rep. Beyer</b>	<b>MOTION: Moves HB 2040A to the full committee with a DO PASS recommendation.</b>
052	Chair Shetterly	Is there discussion?
<b>054</b>	<b>Rep. Prozanski</b>	<b>MOTION: Moves to AMEND Rep. Beyer's motion by adding conceptual amendments by AMENDING the by deleting page 1, line 22 through page 2, line 4, delete "either" on page 1, line 20, delete page 2, lines 10-18, delete sections 3, 4, and 6, and change the date to January 1, 1998.</b>
055	Rep. Prozanski	Consumers are losing, and contractors should be held to a higher standard.  >delete page 1, line 22 through page 2, line 4  >reads conceptals to insert in those lines  >delete "either" on page 1, line 20  >This would make certain that the contractors are in line with the law or at least have made an attempt to be within the law.
104	Chair Shetterly	This would toughen up current law.
105	Rep. Prozanski	Correct.
105	Chair Shetterly	The only persons this would protect are those who have filed and are still in the administrative process.
106	Rep. Prozanski	It would also protect those who have received their registration.  >delete page 2, lines 10-18  >delete sections 3, 4, and 6  >January 1, 1998

124	Rep. Bowman	What amendments would Rep. Prozanski propose for lines 35-36 on page 2?
130	Chair Shetterly, Rep. Bowman, Rep. Prozanski	Discusses the reason for the amendments.
135	Rep. Prozanski	I don't think that applies here.
136	Rep. Bowman	I will support this bill with those amendments.
139	Chair Shetterly	This bill narrows the opportunity for an unregistered contractor to get the needed remedy. There is justification for the safety valve in the bill.
162	Rep. Wells	I have a problem with understanding why contractors don't know to register.
165	Chair Shetterly	That is the contractor's problem. They have to prove to the court that they didn't know.
167	Chair Shetterly, Rep. Prozanski, Rep. Bowman	Discusses registration and licensing.
174		<b>VOTE: 5-4</b>  <b>AYE: 5 - Bowman, Eighmey, Prozanski, Uherbelau, Wells</b>  <b>NAY: 4 - Beyer, Shetterly, Starr, Minnis</b>
181	Chair Shetterly	<b>The motion CARRIES.</b>
183	Rep. Prozanski	<b>MOTION: Moves HB 2040A to the full committee with a DO PASS AS AMENDED recommendation.</b>
188	Rep. Beyer	My motion failed to remove sections 3, 4, and 6.
190	Chair Shetterly	Rep. Prozanski's motion did that.
194	Chair Shetterly	Any further discussion?
204	Rep. Beyer	Can someone read what this actually says now?
206	Chair Shetterly	Reads Rep. Prozanski's conceptual amendments.
228	Bill Taylor	Are we deleting lines 1-4 on page 2?
229	Chair Shetterly	Yes. Any further discussion?
234	Rep. Bowman	I am concerned about letting a contractor's registration lapse for a year.
237	Chair Shetterly	If they do any work in that period, they can't get paid for it.
240	Rep. Bowman	We are saying that registration can lapse for a year, but, when you do register, it goes back to the original date for your registration.
245	Rep. Eighmey	This is existing law. Lapsed registration can be reinstated now.
		<b>VOTE: 4-4</b>

256		<b>AYE: 4 - Bowman, Eighmey, Prozanski, Uherbelau</b> <b>NAY: 4 - Beyer, Shetterly, Starr, Wells</b>
272	<b>Chair Shetterly</b>	<b>The motion FAILS.</b>
277	Chair Shetterly	Closes the work session on HB 2040A.
279	Chair Shetterly	Closes the meeting at 2:25 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - SB 255A, written testimony, Rita Cobb, 2 pp.**

**B - SB 255A, written testimony, Rep. Lane Shetterly, 2 pp.**

**C - SB 272A, written testimony, Karen Hightower, 2 pp.**

**D - SB 272A, written testimony, Randall Jordan, 2 pp.**

**E - SB 274A, written testimony, Jim Nass, 7 pp.**

**F - SB 586, written testimony, Henry Breithaupt, 7 pp.**