

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

January 29, 1997 Hearing Room 357

1:00 P.M. Tapes 8 -10

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:

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing HB 2304

HB 2305

HB 2318

Work Session HB 2264

HB 2314

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 8, A		
001	Chair Shetterly	Meeting called to order at 1:06 p.m.
<u>HB 2304 - PUBLIC HEARING</u>		
018	Dave Hicks	Assistant Attorney General of the Civil Enforcement Division of the Oregon Department of Justice Submits written testimony in favor of HB 2304 [EXHIBIT A] .
		Suggests rewording and striking some of the language.
073	Chair Shetterly	Asks if the rules of civil procedure have their own application rules.
082	Rep. Uherbelau	Comments on her experience with bankruptcy law and the that she has never seen this problem. Asks what the problem is.
089	Hicks	Responds that the problem is the fact that it is a county-by-county situation.
092	Rep. Prozanski	Asks if the Oregon State Bar Committee on Bankruptcy has reviewed this or been given an opportunity to give an opinion.
098	Hicks	Responds and comments that he has not heard from the committee.
102	Chair Shetterly	Asks about the council on court procedures.
104	Hicks	Responds that he assumes they are okay with it though they haven't taken a position to his knowledge, but they have seen the bill.
111	Chair Shetterly	Asks about the first sentence on line 11, which appears only to address voluntary, and whether involuntary should be included.
		Responds that Chair Shetterly is correct and that the language should

116	Hicks	be written more broadly.
120	Chair Shetterly	Asks if the bill belongs more in trial court rules.
123	Hicks	Responds.
137	Rep. Beyer	Asks, "Aren't we looking at a statute here?"
145	Chair Shetterly	Responds that "now" they are looking at a statute and goes on to explain.
154	Rep. Prozanski	Comments that the bill could go either place and suggests more guidance.
159	Rep. Bowman	Asks if the action prevents them from having that piece put in the bankruptcy filing?
171	Hicks	Responds that the bill provides a mechanism for reviving the case if the federal bankruptcy law permits it.
180	Rep. Bowman	Asks if the bill would change how people who feel they need to file for bankruptcy would be able to utilize the process.
183	Hicks	Responds that it would not diminish their rights in any way.
185	Rep. Beyer	Asks if this means the state is prosecuting someone or if this is just in a state court.
187	Hicks	Responds that it is "just in a state court."
189	Rep. Beyer	Asks if this has been brought before the legislature in past sessions.
190	Hicks	Responds that it has not to the best of his knowledge.
203	Randall Jordan	Department of Justice in support of HB 2304 and comments on his experience with bankruptcy cases.

227	Rep. Beyer	Comments that this could be taken care of as a rule-making procedure.
233	Mark Comstock	State Bar Debtor-Creditor in support of HB 2304.
		<u>HB 2304 - PUBLIC HEARING CLOSED</u>
		<u>HB 2305 - PUBLIC HEARING OPENED</u>
275	Dave Hicks	Assistant Attorney General of the Civil Enforcement Division of the Oregon Department of Justice Submits testimony in favor of HB 2305 [EXHIBIT B] and proposed amendments to HB 23305 [EXHIBIT C] .
363	Rep. Uherbelau	Comments that she has many questions, mostly legal and technical. Comments that she believes it totally ignores the 180 day right of redemption period and the rights of a renter occupying a place under a lease. Would like to see a group debtor-creditor section go back and look at some of the problems that need to be addressed.
389	Chair Shetterly	Comments that he agrees with Rep. Uherbelau.
393	Rep. Beyer	Asks if this issue been brought before the legislature in the past.
400	Hicks	Responds that he does not believe so.
		TAPE 9, A
008	Mark Comstock	State Bar Debtor-Creditor comments that he also has some concerns about the bill.
023	Chair Shetterly	Asks if the bill is meant to exclude from this non-judicial foreclosures, trust deeds, and land sale contracts, non-judicial remedies.

251	Jordan	Responds.
280	Chair Shetterly	Comments on nonconsensual encumbrances not covered by the bill.
289	Rep. Beyer	Asks what the common law document is?
292	Rocklin	Responds.
311	Chair Shetterly	Clarifies that there is no such thing as a common law court, at least under constitution or statute.
319	Rep. Eighmey	Comments that there is a distinction between common law from England and common law individuals in the United States.
355	Rep. Beyer	Asks if there is any way to know whether the documents are actual or not.
363	Rep. Wells	Asks why non-consensual liens are allowed.
380	Jason Carlile	Linn County DA Responds.
385	Rep. Eighmey	Asks about right-of-way liens.
396	Jordan	Responds.
TAPE 8, B		
018	Rep. Wells	Comments that most people that are property owners know the law.
024	Chair Shetterly	Comments that clerks will file the documents without going through them and determining their legal efficiency. Analyzing their legal value is not in a clerk's job description.
026	Rep. Uherbelau	Comments that the clerk's job description does not include determining legal efficiency but this would give them some guidelines.

032	Rep. Wells	Asks if a lien is truly false why a court procedure is necessary.
037	Jason Carlile	Responds and comments on personal experiences.
058	Rep. Beyer	Asks if the documents are false and don't mean anything, why do people have to go to court to fix them.
065	Jordan	Comments that there is no where that says a clerk has the authority, and they want to make it black and white.
070	Rep. Uherbelau	Comments that the clerk who files the document doesn't have the authority to determine whether something is legal or not.
079	Rocklin	Comments on previous discussion. Refers to proposed amendments and comments that the language should be broader.
139	Rep. Prozanski	Inquires about how consistent and common the language is.
151	Rocklin	Comments that they were looking to encompass something broader than lien.
156	Jordan	Comments that definitions change through time.
163	Rep. Prozanski	Comments that he would like to be as inclusive and as broad as possible in order to prevent being limited.
166	Rep. Wells	Asks why the bill is limited to government people and state employees.

172 Rocklin Responds and explains.

190 Chair Shetterly Asks about the expanding of certain sections.

193 Rocklin Responds that Chair Shetterly is correct.

Asks if Rocklin discussed the possibilities of including in the

200	Rep. Eighmey	statute a form so that an individual could do it on their own instead of having to hire an attorney.
214	Rep. Uherbelau	Comments that the burden is heavier on an individual.
234	Rep. Bowman	Asks for a valid claim of encumbrance.
238	Jordan	Responds.
240	Rep. Bowman	Asks if someone wanted to file a lawsuit against her, would they have another avenue to utilize in addition to or rather than taking her to court.
252	Rep. Eighmey	Responds to Rep. Bowman's question and explains the procedure.
269	Bill Taylor	Asks about language within the proposed amendment and whether the reference to a "branch of government" would include the judicial department.
273	Rocklin	Responds that is correct. Comments that she has talked to the State Court Administrator's Office and that they are in support, in concept, of the bill.
281	Taylor	Questions section 2 and who else would it mean?
285	Rocklin	Responds that it would refer to County Clerk's and the Secretary of State's offices.
288	Taylor	Asks if that would place a duty upon them of "reasonable care" so if they did not live to that standard they would be potentially liable.
293	Rocklin	Responds.
300	Chair Shetterly	Asks about a discrepancy between sections 2 and 3.
314	Rocklin	Responds that Chair Shetterly is correct.
	Chair	Asks if the definition of property, within the bill, should be

317	Shetterly	expanded.
325	Rep. Eighmey	Asks why not the person as well.
331	Rep. Beyer	Asks why an emergency clause isn't attached.
341	Rocklin	Clarifies section 4 and why it is different than section 2. Comments that section 5 establishes civil penalties.
364	Rep. Wells	Asks who files or issues the civil penalty.
371	Rocklin	Responds.
380	Rep. Uherbelau	Expresses confusion regarding sections 5 and 6.
394	Rocklin	Suggests that the language be worked on.
400	Chair Shetterly	Questions line 6 on page 3 of the bill. Asks if there are circumstances where the claimant may not be the person who filed.

TAPE 9, B

011	Rep. Prozanski	Comments on Chair Shetterly's language concerns and suggests that the language be made as clear as possible.
021	Chair Shetterly	Question on subsection 7, line 14, page 3. Asks if this piece is needed.
027	Rocklin	Responds that it is not needed but was put in for clarification purposes.
038	Taylor	Comments that if the provision were taken out it may cause some problems.
043	Charles Stern	Yamhill County Clerk Submits written testimony in favor of HB 2318 [EXHIBIT F] . Suggests defining of "filer" should be included in the document.

Comments that it seems as if Stern is making the determination

122	Rep. Wells	for whether it's valid or invalid. Asks if one needs to go through a court procedure for validity to be determined.
134	Stern	Comments that that is addressed in a couple of places in the bill (section 2, line one and subsection 3, line 9 are cited).
164	Rep. Wells	Comments that it seems like an across-the-board notification still needs to be made.
172	Stern	Responds that most nonconsensuals would also be authorized under statute and discusses notice process.
198	Rep. Prozanski	Asks for Stern's opinion on when the filing has actually been perfected or when it will be.
212	Stern	Responds.
225	Rep. Bowman	Asks if Stern has done any cost assessment to see how much fiscal impact this will have.
238	Stern	Responds and comments that it should have very little fiscal impact.
256	Rep. Bowman	Inquires about how prevalent this is in a county like Multnomah county.
268	Stern	Responds.
280	Rocklin	Comments that the bill should not affect cost because the clerks look at the documents anyway. The bill is more procedural.
310	Rep. Uherbelau	Questions whether the clerks are being asked to practice law in determining what is valid and invalid.
319	Stern	Responds.
332	Chair Shetterly	Questions discrepancy between page 2, line 3: "no person" and subsection 5: "no officer or county." Suggests changing of language to be more consistent.

**HB 2314 - WORK
SESSION OPENED**

- 368 Bill Taylor Explains the bill. Comments that the bill comes from the Department of Justice and that there are no known amendments.
- 372 Chair Shetterly Asks whether "Salem" should be used on line 27.
- 414 Rep. Prozanski **Motion** to submit HB 2314 to full committee with a **DO PASS** recommendation.

Vote: 8-0, Carrier: Rep. Beyer

**HB 2264 - WORK
SESSION OPENED**

TAPE 10, A

- 034 Bill Taylor Explains the bill. Comments that it was brought to the subcommittee by the Court Administrator's Office. Explains and discusses the proposed amendments.
- 066 Bill Taylor **Motion** to adopt amendments to HB 2264.
- 071 Rep. Bowman **Motion** to pass HB 2264 to full committee with a **DO PASS AS AMENDED** recommendation.

Vote: 8-0, Carrier: Bowman

**MEETING
ADJOURNED AT
3:06 p.m.**

Submitted By, Reviewed By,

Lisa Fritz, Bill Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2304, written testimony, Dave Hicks, 1 p.

B - HB 2305, written testimony, Dave Hicks, 2 pp.

C - HB 2305, proposed amendments, Dave Hicks, 1 p.

D - HB 2318, written testimony, Brenda JP Rocklin, 35 pp.

E - HB 2318, proposed amendments, Brenda JP Rocklin, 1p.

F - HB 2318, written testimony, Charles Stern, 6 pp.