

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

February 7, 1997 Hearing Room 357

1:00 P.M. Tapes 16 - 18

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

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 2318 - Work Session

HB 2241 - Work Session

HB 2256 - Work Session

HB 2236 - 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
Tape 16, A		
	Chair	

001	Shetterly	Calls meeting to order at 1:02 p.m.
<u>HB 2241 - OPENS WORK SESSION</u>		
020	Bill Taylor	Committee Counsel Discusses background and purpose of HB 2241 and proposed amendments (EXHIBIT A).
		Written testimony is submitted by James W. Nass (EXHIBIT B).
040	Dorothy Cofield	Member of the Real Estate and Land Use Subcommittee of the Oregon State Bar (appearing in place of Blair Batson who drafted the bill) Submits written testimony (EXHIBIT C).
072	Rep. Uherbelau	Has the Land Use Section of the Bar been contacted about the proposed change, and do any of them have objections?
075	Cofield	I don't know.
080	Chair Shetterly	Comments about concerns dealing with amendments and lines 16-17.
093	Rep. Eighmey	In my notes, I have that after "commission" on line 16, we inserted "other than those provided in subsections A through C."
102	Taylor	Cites the letter from Jim Nass and suggests an addition to the bill that may satisfy the problem.
107	Chair Shetterly	Was that the intention of the section?
110	Cofield	I think the subcommittee was trying to correct the problem in ORS and correct it for the future to prevent this type of bill from coming up again.
121	Rep. Uherbelau	I think the idea of looking to the future is a good and efficient idea. Why does the proposed change need to be broader? Why is it bothering people?
137	Chair Shetterly	I don't think that part of it is bothering anybody.
140	Cofield	Then what is bothering you?
142	Chair Shetterly	The question deals with making clear that subsection D would not be a subsection that swallows up A, B, and C.
149	Beyer	I still don't like the whole bill. I can't support it in any form.
157	Rep. Eighmey	Comments on bill and amendment procedures.
178	Rep. Wells	I think the only issue that really needs to be discussed here is whether we want to put that statute in there or not.
197	Chair Shetterly	We have one of two options: we can try to work this out now, or we can pass this back to be worked on further.
209	Rep. Wells	I would go with the -2 amendments and leave it at that.
		Comments in agreement with Rep. Beyer and expresses opposition to the

214	Rep. Starr	bill.
228	Rep. Eighmey	I would like to see us move if we have the numbers, but I will let others comment before I make a motion.
253	Rep. Uherbelau	I'm not sure if this language is the clearest language to do this, but the problem needs to be addressed.
278	Chair Shetterly	I agree with Rep. Uherbelau. Pull this back, clean it up, and we'll have one more work session on it. Closes the Work Session on HB 2241.
<u>HB 2318 - OPENS WORK SESSION</u>		
300	Taylor	Discusses background and purpose of HB 2318 and -1 amendments (EXHIBIT D) .
332	Brenda Rocklin	Oregon Department of Justice Discusses DOJ amendments to HB 2318 (EXHIBITS E AND F) . The Legislative Fiscal Office submits a fiscal analysis for HB 2318 (EXHIBIT G) .
TAPE 17, A		
		Rocklin fields questions concerning the language of the amendments and continues to go through each amendment, one at a time.
072	Rep. Uherbelau	Can I just make a suggestion? In the language of the notice of invalid encumbrance, in the last paragraph, where you're saying that you've mailed this, would you want to add so-and-so at their last known address because that's what is required above, in the statute?
078	Rocklin	I think that's a good suggestion.
081	Chair Shetterly	Comments on what the page would read with the addition.
086	Rocklin	Yes.
092	Rep. Eighmey	Makes a language suggestion.
100	Chair Shetterly	Suggests putting a blank line.
103	Rep. Prozanski	If we're talking about how the format would be, it seems we would have the blank lines, and underneath there you could put name and maybe last known address, instead of trying to put it into text.
106	Rep. Uherbelau	Suggests name, address, last known address (as in an affidavit).
120	Rocklin	Continues discussing DOJ amendments.
174	Rep. Uherbelau	The part in the brackets will actually have an ORS number?
180	Taylor	Yes they will.
	Chair	Cites page five. That suggests that this is a guide and if it doesn't fit the

187	Shetterly	particular circumstance, you can alter that?
190	Rocklin	That's correct.
		Comments on new page seven and what would be changed.
230	Chair Shetterly	Mr. Stern, for your purposes, would it be helpful to have the book and page reference of the lien or encumbrance that's the subject of this?
237	Charles Stern	From our stand-point, we don't see an overwhelming need. Discusses why.
256	Chair Shetterly	Courts don't prepare their own orders. Who's responsibility is it going to be to make sure the order is in proper form?
264	Rep. Uherbelau	In Jackson county they prepare orders for themselves.
267	Rep. Prozanski	I think that varies from county to county.
296	Rocklin	If it would be important to have that information, on page three of the DOJ amendments we did include language that could maybe go into the petition as well.
310	Chair Shetterly	I think that would be a good idea if on the fifth line after the comma, we could insert "filed or recorded at" as you did in the notice.
326	Rep. Bowman	Where are you reading from?
329	Chair Shetterly	Page three of the amendments in the first paragraph, the third blank.
345	Rep. Eighmey	Comments on real estate recordings.
359	Stern	It varies county to county but the purpose of it is to identify a specific document.
377	Rep. Wells	When we're putting forms into statute are we looking at just issues where there is high volume? How do we make that decision?
390	Stern	The whole intent of the bill is: we don't use them anymore.
TAPE 16, B		
013	Chair Shetterly	One of the purposes is to try to make it possible for people to be able to do smaller things for themselves without hiring a lawyer.
018	Rep. Beyer	Maybe we should just get the idea into testimony and then let Legislative Counsel do the form.
024	Taylor	What I usually do in cases like this is send the proponents down to Legislative Counsel to make sure nothing is lost in translation.
029	Chair Shetterly	Would those be engrossed?
031	Taylor	Responds.
040	Rep. Uherbelau	If the law acts the way we want it to, we won't have these forms any more. They are just going to be taking up space. We have samples,

		people could just go and pick them up.
049	Rep. Eighmey	A concern was raised by Rep. Wells and myself about the need to hire attorneys, but I recognize what Rep. Uherbelau is saying. It can be done by administrative rule directive.
061	Rep. Prozanski	Are we going to delegate this to the judicial or the courts to be the recipient of our work?
068	Rocklin	I don't know.
069	Chair Shetterly	I'd like to get through the forms and vote on the amendments.
070	Rocklin	Continues going through and discussing the DOJ amendments.
114	Rep. Eighmey	What if I, by chance, serve in person?
118	Chair Shetterly	You're okay. See lines 40 and 41.
120	Rocklin	That's correct. You would have two options: mail or personal service.
123	Chair Shetterly	Should we also have a copy of the affidavit mailed? Should we do first class and certified?
133	Rep. Wells	Could you discuss that a little bit more, how that works.
142	Rep. Prozanski	The reason for the first class is because there is a presumption that if you have mailed something first class at the last known address, and it's not returned, it is presumed that they've received it.
149	Rep. Beyer	I think that's a very good idea. Comments on personal experience.
156	Chair Shetterly	What are the thoughts on adding a copy of the affidavit?
160	Rocklin	I think that should be in there.
161	Chair Shetterly	Let's walk through that then. Look on page seven, that paragraph on page two, line 42, after "By" delete "mail" and insert "mailing a true copy of the petition, affidavit and order to the encumbrance claimant at the encumbrance claimant's last known address by first class and certified or registered mail".
174	Rocklin	Continues to go through and discuss the DOJ amendments.
199	Rep. Eighmey	I really don't think we have the power to make the court enter an order. Suggests changing "will" to "may".
208	Chair Shetterly	That's a good point. Suggests making the same change elsewhere, as well.
223	Rocklin	Discusses the final page, page nine, of the DOJ amendments.
260	Rep. Eighmey	I think we are still getting "may" and "shall" confused (in reference to the court).
286	Rep. Uherbelau	Why are we making the burden clear and convincing instead of preponderance?

294	Rocklin	I guess we looked at it from the other angle. It seems fair that if the person were innocent, that the burden should be preponderance, but I guess what we were concerned with was the other situation.
319	Chair Shetterly	I would suggest that on page three, line 10, insert "may" before "award costs and reasonable attorney fees" to give the court discretion.
325	Rep. Eighmey	Agrees with the Chair.
330	Rocklin	I think that's a good suggestion.
335	Chair Shetterly	Insert on line 10, page three insert "may" and change "awarding" to "award".
357	Rep. Beyer	So, what have we done with this new language seven?
358	Chair Shetterly	We're taking that out.
359	Rep. Beyer	It's not going to be used at all?
360	Chair Shetterly	No. Explains why.
362	Rep. Beyer	Convince me because I felt that was an important section.
363	Rep. Eighmey	The section that was proposed to give the court the right to impose attorney's fees is now fully included in line 10 by just inserting that the court "may" award costs and reasonable attorney fees -- in all cases.
391	Rep. Beyer	But we're not putting that standard in about clear and convincing evidence.
400	Rep. Eighmey	It's built in the system. It's always been there.
TAPE 17, B		
028	Rocklin	Continues discussing DOJ amendments.
073	Chair Shetterly	In section five, line 37, I would take "filing" there to be the act of recording or bringing to the clerk. My concern is there that the person directing the filing may be someone other than the person who is actually doing the filing, and if that is the case, do we want to add language to something like, anyone knowingly filing or any who procures the filing? How about directs another to file?
091	Rocklin	Suggests adding prepares or executes, regarding the directing of files.
100	Chair Shetterly	It's the filing that's the problem. I would like to entertain a motion to pass this on to the full committee but first the conceptual amendments and -1 amendments should be engrossed.
119	Rep. Bowman	What if a clerk realizes something should not be accepted for filing? Do they just give them back the document and say, "we can't take this;" what's the process there?

121	Stern	Responds.
144	Rep. Prozanski	MOTION: Moves to ADOPT the amendments, dated 02/06/97 offered by the Department of Justice, the -1 amendments, and the conceptual amendments (as read into the record) to HB 2318.
		VOTE: 8-0
161	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
163	Rep. Prozanski	MOTION: Moves HB 2318 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0
167	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
173	Rep. Beyer	We had two other documents given to us as written testimony, are these just for information?
176	Rocklin	Yes.
<u>HB 2256 - OPENS PUBLIC HEARING</u>		
195	Taylor	Discusses HB 2256 and proposed amendments (EXHIBITS H and I).
210	Shannon Johnson	Oregon State Bar Discusses the Bar's proposed amendments to HB 2256.
287	Rep. Uherbelau	Would you have any problem with adding promissory to page three, line 11?
290	Johnson	Not at all. I think it's an excellent suggestion.
340	Chair Shetterly	Closes Public Hearing on HB 2256.
<u>HB 2256 - OPENS WORK SESSION</u>		
362	Prozanski	MOTION: Moves HB 2256 to the full committee with a DO PASS AS AMENDED (i.e. all amendments: -1, Oregon State Bar, and the conceptual amendment of adding "promissory") recommendation.
		VOTE: 8-0
364	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. EIGHMEY will lead discussion on the floor.
<u>HB 2236 -</u>		

<u>OPENS WORK SESSION</u>		
400	Taylor	Discusses purpose of bill.
TAPE 18, A		
030	Frank Brawner	Oregon Bankers' Association Discusses HB 2236.
064	Rep. Prozanski	I think we need to address "primary responsibilities."
066	Brawner	Responds.
081	Steve Bennet	Executive Director of the Board on Public Safety, Standards, and Training Discusses previous concerns of the Board in relation to HB 2236 and his position on the bill currently. Suggests tying together bills.
103	Rep. Uherbelau	I think it would be a mistake to tie them together.
114	Rep. Beyer	MOTION: Moves HB 2236 to the full committee with a DO PASS recommendation.
		VOTE: 8-0
120	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
124	Chair Shetterly	Clarifies that there was an understanding that the motion for HB 2256 included the fact that the amendments were moved into the bill before being passed.
		Adjourns the meeting at 3:00 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2241, proposed amendments, Legislative Counsel, 1 page.

B - HB 2241, written testimony, James W. Nass, 1 page.

C - HB 2241, written testimony, Blair Batson and Dorothy Cofield, 2 pages.

D - HB 2318, proposed amendments, Legislative Counsel, 1 page.

E - HB 2318, proposed amendments and written testimony, Oregon DOJ, 32 pages.

F - HB 2318, proposed amendments and written testimony, Oregon DOJ, 1 page.

G - HB 2318, fiscal analysis, Legislative Fiscal Office, 1 page.

H - HB 2256, proposed amendments, the Oregon State Bar, 2 pages.

I - HB 2256, proposed amendments, Legislative Counsel, 4 pages.