

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
10:00 am Tapes - 17

MEMBERS PRESENT:

Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown

MEMBER EXCUSED:

Rep. Del Parks, Chair
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Holly Robinson, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

HB 2325 - Public Hearing

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

(HB 2325 Creates magistrate division Oregon Tax Court. [EXHIBITS A, B, C])

008 REP. JOHNSTON: Calls the meeting to order at 9:38 am.

PUBLIC HEARING ON HB 2325

Witnesses: Gil Riddel, Association of Oregon Counties
David Carmichael, Attorney
Scott Phinney, Attorney

020 GIL RIDDELL, ASSOCIATION OF OREGON COUNTIES: I stand by the testimony I submitted. (EXHIBIT D)

027 DAVID CARMICHAEL, PRACTICING ATTORNEY: Testifies in support of HB 2325 with one exception. Discusses exception and problem with bill.

085 REP. JOHNSTON: Asks where he practices.

086 CARMICHAEL: I practice in Eugene and have handled these types of appeals for 13 years.

088 REP. JOHNSTON: Do you do tax court work, generally?

089 CARMICHAEL: I do some tax court work.

091 REP. JOHNSTON: Who is representing the other side of these cases you were discussing?

092 CARMICHAEL: The Attorney General.

093 REP. JOHNSTON: By this bill, would the county counsel be representing the other side?

094 CARMICHAEL: I haven't had time to read this draft, but in the previous draft, I did not understand that to be the case.

097 REP. JOHNSTON: Would it change your mind at all if we asked Lane county to defend each of the 13 actions you have pending?

102 CARMICHAEL: The Lane county assessor would be the responding party. It would not make a big change, in my view. Explains that most of these cases do not go to trial.

115 REP. JOHNSTON: Would this bill bypass that step? If you had a question about a Lane county assessors decision, you would now take it to the magisterial division?

120 CARMICHAEL: We would take it first to the Board of Equalization and if we are unsuccessful there, then we would appeal to the magistrate level of the tax court.

126 REP. JOHNSTON: The county would be the defending counsel?

129 CARMICHAEL: If the issue is the county counsel being involved in the magistrate level, I'm not concerned with that, explains. Discusses hearing notices. Discusses other counties and their processes.

140 REP. JOHNSTON: I'm concerned that we do not want any unfunded mandates. Is this in effect an unfunded mandate?

144 CARMICHAEL: I don't think that it is because the appraisers who work for the Lane county assessors office, all speak about how glad they are they do not have county counsel assisting them. At the informal level of Department of Revenue appeals, it is better not to have county counsel involved.

153 REP. JOHNSTON: Right now, the county makes the decision. If they do not agree, they take it to the Board of Equalization. If they prevail it ends, if they don't prevail they can take it to the Department of Revenue

or drop it? Gives examples and asks if the Department of Revenue (DOR) then represents them?

160 CARMICHAEL: No, the department has someone serve as a moderator who listens to the evidence that is put on by the tax payer and listen to the evidence by the county appraiser. They then make the decision.

166 REP. JOHNSTON: This is without counsel that they then make the decision?

169 CARMICHAEL: Yes, they then make a recommendation to the director.

173 REP. JOHNSTON: One way this bill would change this is that if it went to the magisterial division, the county would be expected to provide legal representation for their assessor?

176 CARMICHAEL: The statute does say that. Right now, the county is not representing themselves, with the exception of Marion county.

180 REP. JOHNSTON: For 35 counties, this would be a new responsibility?

181 CARMICHAEL: This would be new for 26 counties. I am not aware of how the far eastern counties work.

183 REP. JOHNSTON: What about the prevailing parties provisions?

184 CARMICHAEL: I am neutral on that. This bill is not drafted as a prevailing party but as reciprocal. Explains position and discusses other peoples feelings on prevailing provisions.

208 REP. JOHNSTON: Would it make you more comfortable with that provision if the bar level on fees was raised? Some jurisdictions have built in something to raise the measure of success, so that it is not a mere technical prevailing. The second option is to let the trier of fact make the determination as to whether there was a prevailing party. Do you think that is an unnecessary complication?

224 CARMICHAEL: I would suggest you not put much weight on my testimony, because I haven't thought that much on this. Gives his opinion, and examples of cases. I like putting it in the hands of hearing officers because they know the process. Discusses other options where fees would be appropriate. Continues with testimony. Discusses hearing officers and their testimony. Concerned with quality of choosing the hearing officers process. Discusses modifications of bill.

348 SCOTT PHINNEY, PRACTICING ATTORNEY: Testifies and submits written testimony in support of HB 2325. (EXHIBIT E) Discusses Section 14 of bill.

373 REP. JOHNSTON: Who would do the representation now in that kind of case at the tax court?

376 PHINNEY: Formally, the Attorney General. But in a number of cases the county intervenes anyway, explains.

388 REP. JOHNSTON: But, if this bill were to pass, the Department Of Justice (DOJ) would not intervene now?

391 PHINNEY: Except on department appraised accounts, which would be the
industrials type cases. Continues and discusses written testimony.

TAPE 17, SIDE A

052 REP. JOHNSTON: Are you suggesting that the current staff couldn't also
provide hearings to other branches of state government and likewise hearing
officers in other branches couldn't learn enough to be effective and
provide hearing services to this branch?

057 PHINNEY: Yes, they could, it depends on the people. Explains that the
most difficult part of the hearing officers training is the legal part.
Continues with testimony, discusses modification process. Cites concerns
about attorney and filing fees.

129 REP. BROWN: Rep. Naito is concerned that providing a \$50 fee would
limit the number of people who would file. The amount of money that people
argue about, is it typically a large or small amount?

135 PHINNEY: Cites examples of differences between small and large amounts
of money and fees. Fifty dollars can be a significant portion of a typical
residential appeal. Discusses charging a filing fee for industrial
accounts that skip the Board of Equalization.

148 REP. BROWN: Are you talking about making a distinction between
residential and business or industrial?

150 PHINNEY: The distinction has already been made in the bill, explains.
There shouldn't be any distinctions, it is very hard to distinguish between
industrial and private.

163 REP. JOHNSTON: What do we do with the filing fees?

164 PHINNEY: This bill says that it goes through the court fees program,
which is administered by the State Court Administrator. I don't know if
they go into a general fund or are used to fund the judicial department.
Continues with testimony and concerns about attorney fees. Discusses
hardship statute.

239 REP. JOHNSTON: Adjourns the hearing at 10:21 am.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on HB 2325 - Oregon State Assoc. of County Assessors - 1 page
- B. Testimony on HB 2325 - Ray Erland - 2 pages
- C. Testimony on HB 2325 - Christopher Robinson - 3 pages
- D. Testimony on HB 2325 - Gil Riddell - 11 pages
- E. Testimony on HB 2325 - Scott Phinney - 6 pages