

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

March 30, 1993 Hearing Room 3S7 1:00 p.m. Tapes 56 - 57
MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim
Edmunson Rep. Tom Mason STAFF PRESENT: Carole Souvenir, Committee
Counsel Melanie Thompson, Committee Clerk MEASURES CONSIDERED: HB
2984 - Landlord liability for utility services HB 2798 - Guardianship HB
3258 - Residential Landlord and Tenant Act

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 56, SIDE A

001 CHAIR BRIAN: Calls the meeting to order at 1:15 p.m.

HB 3258 - PUBLIC HEARING

Witnesses: Keith Oakley, Rep. Carolyn Oakley, Dist. 36 Glen
Baisinger, Judge Linn County District Court Leslea Smith, Oregon Legal
Services Mark Peterson Emily Cedarleaf, Multi-Family Housing Council

007 KEITH OAKLEY, of REPRESENTATIVE CAROLYN OAKLEY, DIST. 36:
Testifies in support of HB 3258. 011 GLEN BAISINGER, LINN COUNTY
DISTRICT COURT JUDGE: Testifies in support of HB 3258. 103 REP.
BAKER: Asks if Judge Baisinger has attempted to negotiate the statute
with the involved parties. House Committee on Judiciary Subcommittee on
Civil Law and Judicial Administration March 30, 1993 - Page 2

124 BAISINGER: Has not attempted any negotiations. Addresses
similarities to HB 3209.

143 REP. BAKER: Asks how many cases are settled out on preliminary
matters versus tried cases.

145 BAISINGER: Too difficult to determine.

Public Hearing on HB 3258 re-opens on page 3.

HB 2798 - PUBLIC HEARING Witnesses: Rep. Denny Jones, Dist. 60 Scott
McGraw, Oregon State Bar Association

168 REP. DENNY JONES, DIST. 60: Testifies in support of HB 2798.
181 REP. BAKER: Reiterates the reason for HB 2798. 186 REP. JONES:
Explains the reason for HB 2798 and its history from last session.

Public Hearing on HB 2798 re-opens on page 5.

HB 2984 - PUBLIC HEARING Witnesses: Rep. Liz VanLeeuwen, Dist. 37 Jon
Mangis, Dept. of Veterans Affairs David Nebel, Oregon Legal Services
David Gooley, Oregon Association of Clean Water Agencies Joni Low,
League of Oregon Cities Cathryn Collis, City of Portland Emily
Cedarleaf, Multi-Family Housing Council Robin White, Building Owners &
Managers of Portland Sandy Flicker, Oregon Rural Electric Co-Op
Association

206 REP. LIZ VANLEEUEWEN, DIST. 37: Testifies in support of HB 2984 and submits a hand engrossed amendment. (EXHIBITS A & B) 239 JON MANGIS, MRECTOR, DEPT. OF VETERANS AFFAIRS: Submits and reviews written testimony in support HB 2984. (EXHIBIT C) 271 DAVID NEBEL, OREGON LEGAL SERVICES: Testifies in support of HB 2984. 299 DAVID GOOLEY, CHAIR, FINANCE COMMITTEE OF THE OREGON ASSOCIATION OF CLEAN WATER AGENCIES (ACWA): Submits and reviews written testimony in opposition to HB 2984. (EXHIBIT D) 335CATHRYN COLLIS, CITY OF PORTLAND: Testifies in opposition to HB 2984. 367 JONI LOW, LEAGUE OF OREGON CITIES: Testifies in opposition to HB 2984.

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385 EMILY CEDARLEAF, MULTI-FAMILY HOUSING COUNCIL: Testifies in support of HB 2984 and submits a letter. (EXHIBIT E)

450 ROBIN WHITE, ASSOCIATION OF BUILDING OWNERS AND MANAGERS: Testifies in support of HB 2984. Suggests a clarification in the bill to include commercial as well as residential properties.

TAPE 57, SIDE A

034 SANDY FLICKER, OREGON RURAL ELECTRIC CO-OP ASSOCIATION: Does not have a position on HB 2984. Points out a possible conflict with an existing statute in regards to irrigation/power liens.

060 REP. EDMUNSON: Asks if the service for irrigation is electricity to run the pump.

061 FLICKER: Correct.

063 REP. EDMUNSON: Asks if irrigation would be for the benefit of the tenant.

065 FLICKER: Explains the electricity provided for the irrigation pump is for the land.

071 REP. EDMUNSON: Asks if utility can place a lien against the owner of the land if the tenant does not pay the electric bill. Asks how the irrigation situation is different from a residential situation.

082 FLICKER: Not sure it is different.

096 REP. BAKER: What is the statute referenced?

097 FLICKER: ORS 87.362. 103CHAIR BRIAN: Suggests placing language in the bill stating with the exception of ORS 87.362.

110 REP. EDMUNSON: Asks how long the irrigation lien law has been in effect. 111 FLICKER: Since 1975.

112 REP. EDMUNSON: Asks if owners of farmland are aware of lien law.

115 FLICKER: Yes.

PUBLIC HEARING ON HB 3258 REOPENS

136 LESLEA SMITH, OREGON LEGAL SERVICES: Submits and reviews written testimony in opposition to HB 3258. (EXHIBIT F)

161 SMITH: Explains attorneys will have an interest in bringing out bad faith of other side in case.

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163 REP. BAKER: Asks if this is under Rule 68, ORCP.

167 SMITH: Issue is among both parties.

190 CHAIR BRIAN: Asks if there are other areas of the law where one can obtain attorney fees after prevailing.

196 REP. EDMUNSON: Confirms a statute is in existence dealing with appeals. Not aware of anything in civil actions.

206 REP. BAKER: States there is a penalty for frivolous pleadings.

210 CHAIR BRIAN: Clarifies question. If one prevails in a case based on merits, but is denied attorney fees because the party against whom the judgment was entered was not acting in bad faith, is that an additional standard?

223 REP. EDMUNSON: Occurs most commonly at the appellate level, with the exception of civil cases. 235 SMITH: Agrees. 239 CHAIR BRIAN: Discusses prevailing parties and awardance of attorney's fees.

243 SMITH: Concurs with Chair Brian. Discusses example.

259 REP. BAKER: Questions the language "may be awarded", in the statute. Asks if courts automatically award attorney's fees.

264 SMITH: Yes, based on case law.

268 REP. BAKER: Discusses the language "may be awarded" is discretionary with the judge.

270 SMITH: There is some discretion.

275 REP. BAKER: Asks to clarify language to read the attorney's fees will be awarded at the discretion of the trial judge.

278 SMITH: Not sure how case law would fit in if the language were changed.

287 REP. MASON: Discusses the phrasing of shall and the discretion judges use.

293 SMITH: Agrees with Rep. Mason. Discusses incentives in cases.

300 REP. MASON: Incentives never equal.

304 SMITH: Neither side wants to pay for the other's fees. If attorney's fees are gone, no disincentive to litigate.

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325 MARK PETERSON, CLINICAL FACULTY, NORTHWESTERN SCHOOL OF LAW: Gives lengthy testimony in opposition to HB 3258. 470 REP. MASON: Asks if all the incentive to settle is on the part of the landlord. Suggests equalizing out the process, to discuss the merits of the case. 485 PETERSON: Discusses Rep. Mason's comment.

TAPE 56, SIDE B

036 REP. BAKER: Suggests that usually tenants do not have private attorneys, however landlords do and the landlords absorb the costs.

039 PETERSON: If attorney fees are eliminated there is no disincentive for a tenant to ask for a jury trial. 050 REP. BAKER: Discusses that mediation disposes of a lot of cases before they get to trials. 060 REP. MASON: Asks if a tenant goes to trial on defective notice and there is no attorneys fees provision, what do you want? 062 PETERSON: Possession.

063 REP. MASON: For how long, 30 days?

074 PETERSON: In his experience, a majority of cases occur in a short amount of time.

103 EMILY CEDARLEAF, MULTI-FAMILY HOUSING COUNCIL: Testifies in support of HB 3258.

PUBLIC HEARING ON HB 2798 REOPENS

SCOTT MCGRAW, OREGON STATE BAR: Testifies in support of HB 2798.

HB 2798 - WORK SESSION

MOTION: REP. EDMUNSON: Moves HB 2798 to the full committee with a DO PASS recommendation.

VOTE: 4-0 Motion passes AYE: Baker, Edmundson, Mason, Brian NO: None HB 2984 - WORK SESSION

186 CHAIR BRIAN: Asks if there is interest in the bill and addresses the -1 amendments.

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189 REP. EDMUNSON: Asks the difference between the -1 amendments and Rep. Liz VanLeeuwen's hand-engrossed version.

195 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains that Rep. VanLecuwen's office prepared the hand-engrossed version of the -1 amendments. 254 CHAIR BRIAN: Addresses the irrigation issue raised during the public hearing. Suggests revising the language to say with the exception of ORS 87.362, as well as clarifying that commercial properties would be included as well as residential. 261REP. EDMUNSON: There is no reason to presume the bill is limited to any category of real estate. Addresses the irrigation concern. 283 REP. BAKER: States the irrigation issue is restricted to electrical cooperatives and utilities which are a public service, especially in rural areas. 294CHAIR BRIAN: Suggests the exception is just for irrigation purposes. 302CHAIR BRIAN: Asks counsel to prepare -2 amendments with the exception of irrigation to and amend -1 line 10, to read "who has vacated the property" instead of "who has vacated the unit". 341 CHAIR BRIAN: Adjourns meeting at 2:35 p.m.

SUBMITTED BY: REVIEWED BY:

Melanie ThompsonAnne May Committee ClerkCommittee Coordinatord

EXHIBITS LOG:

A - Amendments to HB 2984, hand-engrossed - Rep. Liz VanLeeuwen - 1 Page
B - -1 Amendments to HB 2984 - 1 Page C - Amendments to HB 2984 - Jon Mangis - 1 Page
D - Testimony on HB 2984 - David Gooley - 1 Page E - Letter of example on HB 2984 - Emily Cedarleaf - 1 Page
F - Testimony on HB 3258 - Leslea Smith - 3 Pages

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