74th OREGON LEGISLATIVE ASSEMBLY - 2007 Regular Session **MEASURE:** **HB 2324 B**
STAFF MEASURE SUMMARY **CARRIER:** **Sen. Burdick**
Senate Committee on Judiciary

REVENUE: No revenue impact
FISCAL: Minimal fiscal impact, no statement issued

Action:		Do Pass as Amended and Be Printed Engrossed
Vote:		5 - 0 - 0
	Yeas:	Beyer, Kruse, Prozanski, Walker, Burdick
	Nays:	0
	Exc.:	0
Prepared By:		Matt Kalmanson, Counsel
Meeting Dates:		5/23, 5/24

WHAT THE MEASURE DOES: Enacts the "capable of repetition but evading review" exception to the "mootness" doctrine.

ISSUES DISCUSSED:
- The law of standing, ripeness and mootness
- *Yancy v. Shatzer*, 337 Or 345 (2004) and *Kellas v. Department of Corrections*, 341 Or 471 (2006)
- The "capable of repetition but evading review" doctrine
- The legislative power to grant citizens standing to enforce matters of public interest
- The public and governmental interest in having the Supreme Court decide certain matters that tend to become moot before full appellate review can occur
- Judicial discretion to apply the doctrine

EFFECT OF COMMITTEE AMENDMENT: Removes provision that would apply doctrine to disputes involving similar policies or practices.

BACKGROUND: HB 2324 B concerns the power of a court to hear lawsuits that challenge an act, policy or practice of a public body or public official, but have become "moot" because of an intervening event that occurred after the lawsuit began. Generally, courts only hear cases that are "justiciable." This means a plaintiff must have "standing" to bring the action – i.e., the plaintiff must have suffered an injury from the challenged action or must otherwise be qualified to seek judicial review of particular conduct – and the lawsuit must present a controversy that is "ripe" and not "moot." "Ripeness" and "mootness" refer to the timing of a lawsuit. A lawsuit is not "ripe" if it is brought too soon and is "moot" if it is brought too late. For example, if a plaintiff seeks to challenge an agency's failure to issue a permit, the action might not be ripe if the party files the action before the agency has issued a final decision on the matter. If a plaintiff challenges a governmental act precluding him or her from participating in a political event, the action would be moot if the event took place before the court decided the controversy.

The federal courts, as well as every state in the union, recognize an exception to the mootness doctrine for controversies that come up repeatedly, but cannot be reviewed by appellate courts if a strict mootness standard were to apply. Courts call this the "capable of repetition but evading review" doctrine. In *Yancy v. Shatzer*, 337 Or 345 (2004), however, the Oregon Supreme Court ruled that the judicial power granted by Article VII, sec. 1 of the Oregon Constitution does not include the power to hear cases that are capable of repetition but might evade review. Two years later, the Court decided *Kellas v. Department of Corrections*, 341 Or 471 (2006), in which it ruled that the legislature has the power to grant standing to a party to initiate litigation even if that person might not have a personal interest in the litigation. HB 2324 B is a response to the *Yancy* and *Kellas* opinions. It would provide that, if a party already had standing to initiate a lawsuit, and the action became moot while the lawsuit was pending, the party still has an interest in the litigation and the court can issue a judgment if the controversy is capable of repetition but might evade judicial review.