

HB 2129 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Patricia Pascone, LPRO Analyst

Meeting Dates: 4/20

WHAT THE MEASURE DOES:

Creates an exception to the prohibition on obtaining or using an unlawfully recorded communication, when the communication is a matter of public concern and the person did not participate in initially obtaining it.

REVENUE: No revenue impact

FISCAL: No fiscal impact

HOUSE VOTE: Ayes, 54; Nays, 4

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon prohibits persons from recording certain conversations without consent, and from using illegally recorded conversations. Violations are punishable as a Class A misdemeanor. The statute currently provides no exception for use by persons who did not participate in the initial act of illegally recording a conversation about a matter of public concern.

The Supreme Court of the United States decided in 2001 that a similar federal law could not be enforced against a radio commentator who broadcast a phone call intercepted and recorded by someone else without consent of the participants. *Bartnicki v. Vopper*, 532 U.S. 514 (2001). The intercepted phone call was a conversation between a union president and a union negotiator, discussing contract negotiations between teachers and a public school. The Court held that prohibiting the radio commentator's use of the recording was a violation of his free speech rights because the recording concerned a matter of public importance and the radio commentator had played no part in the initial illegal interception.

House Bill 2129 would exempt from prosecution a person who receives or uses an illegally recorded communication about a matter of public importance, if the person did not participate in initially obtaining the recording.