74th OREGON LEGISLATIVE ASSEMBLY - 2007 Regular Session **MEASURE: HB 2324 A**
STAFF MEASURE SUMMARY **CARRIER: Rep. Macpherson**
House Committee on Judiciary

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

Action:		Do Pass as Amended and Be Printed Engrossed
Vote:		9 - 0 - 0
	Yeas:	Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
	Nays:	0
	Exc.:	0
Prepared By:		Matt Kalmanson, Counsel
Meeting Dates:		4/19

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

ISSUES DISCUSSED:

- The judicial power, and 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 power 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

EFFECT OF COMMITTEE AMENDMENT: Amendments replace the bill.

BACKGROUND: HB 2324 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 commenced. Very generally, a court may only consider 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" but not "moot." "Ripeness" and "mootness" refer to the timing of a lawsuit; a lawsuit is "unripe" if brought too soon and "moot" if brought too late. For example, if a plaintiff seeks to challenge an agency's failure to issue a permit, the action might be "unripe" if the party files the action on January 1, if the agency has another three months to decide whether to issue the permit. If a plaintiff challenges a governmental act precluding her from participating in a political event, the action would be "moot" if the event took place before the party could seek review.

The federal courts, as well as every state in the union, recognize an exception to the mootness doctrine for controversies that might come up repeatedly, but would never be reviewed by appellate courts if a strict mootness standard were to apply, such as the political event example above. 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, making Oregon the only state not to recognize the doctrine. 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 is a response to the *Yancy* and *Kellas* opinions. It would provide that, if a party already had standing to initiate a lawsuit (i.e., the bill would not give individuals new rights to *initiate* litigation), and the action became moot while the lawsuit was pending, the party still has an interest in the litigation and the court could issue a judgment if the controversy was capable of repetition but might evade judicial review if not decided.