

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

March 19, 2001
8:00 a.m.

Hearing Room 357
Tapes 41 - 45

MEMBERS PRESENT: **Rep. Cherryl Walker, Chair**
 Rep. Vic Backlund
 Rep. Kathy Lowe
 Rep. Charlie Ringo
 Rep. Lane Shetterly
 Rep. Max Williams

STAFF PRESENT: **Andrea Shartel, Counsel**
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2771 Public Hearing**
 HB 2700 Public Hearing
 HB 2460 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 41, A		
005	Chair Walker	Calls the meeting to order at 8:10 a.m. and opens a public hearing on HB 2771.
<u>HB 2771 PUBLIC HEARING</u>		
015	Andrea Shartel	Committee Counsel. Introduces HB 2771 that creates Protective Proceedings and Fiduciary Services Task Force.
035	Bertran Copp	Senior Advocate. States there is no advocate for senior citizens in this bill.
051	Bob Joondeph	Testifies on HB 2771 and submits testimony (EXHIBIT A) . Oregon Advocacy Center Testifies in support of HB 2771 and submits testimony (EXHIBIT B) .
061	Rep. Kathy Lowe	Asks Mr. Joondeph if he thinks that seniors should be added to this bill.
051	Joondeph	Replies that would be a good idea.
067	Chair Walker	Closes the public hearing on HB 2771 and opens a public hearing on HB 2700.
<u>HB 2700 PUBLIC HEARING</u>		
081	Rep. Tim Knopp	House District 54 Testifies in support of HB 2700, which prohibits a health care facility from retaliating against a health care provider because the provider takes certain actions relating to care, services or conditions at the care facility.

102	Sen. Rick Metsger	Senate District 14 Testifies in support of HB 2700. States this bill ensures proper nursing care and that nurses are advocates for patients.
132	Chair Walker	Notes the –3 amendments (EXHIBITS C and D).
140	Rep. Knopp	Supports the –3 amendments.
142	Chair Walker	Closes the public hearing on HB 2700 and opens a public hearing on HB 2460.

HB 2460 PUBLIC HEARING

150	Rep. Kurt Schrader	House District 23 Testifies in support of HB 2460 that allows a defendant in a civil action to make a motion to strike if a plaintiff’s claim arises out of certain conduct in furtherance of constitutional right to petition or right of free speech about public issues.
240	Sen. Ginny Burdick	Senate District 6 Testifies in support of HB 2460. Discusses the impact on individuals in certain law suits. Discusses importance of public participation in land use issues.
374	Dave Heynderickx	Legislative Counsel Testifies in support of HB 2460 and notes that this bill is closely modeled on the California statute.
388	Rep. Ringo	Asks if California has the special motion to strike and asks if it is working well.
394	Heynderickx	Answers yes and says that it seems to be working.
403	Rep. Shetterly	Comments that they are trying to balance the system with this bill.
464	Rep. Lowe	Asks Heynderickx if he knows how court history has developed around stopping the discovery process in California.
462	Heynderickx	Answers that California amended the law to address discovery.
TAPE 42, A		
029	Chair Walker	Closes the public hearing on HB 2460 and re-opens the public hearing on HB 2700.

HB 2700 PUBLIC HEARING

055	Counsel Shartel	Introduces HB 2700 and discusses the proposed –3 amendments (EXHIBIT D).
060	Jack Roberts	Commissioner, Bureau of Labor and Industries (BOLI) Testifies on HB 2700 as a neutral witness. Wants to clarify that BOLI enforcement pertains to employees’ rights.
084	Rep. Shetterly	Says that we have some whistle blower protection laws in place already for health care workers and asks how this relates to existing protections.
090	Roberts	Answers that the protections that they deal with are safety, and wage and hour laws of workers. A worker who is fired because he complained about the level of care being given would not be protected under BOLI at the present time.
103	Chair Walker	Asks for clarification between employees and contract care providers.
106	Roberts	Replies under Section 4, subsection 2.
122	Rep. Lowe	Asks about line 14, does that include non-professional workers?
150	Roberts	Answers that he does not know if they are included but thinks they should be.
185	Susan King	Oregon Nurses Association Testifies in support of HB 2700 and submits testimony

		(EXHIBIT E). Relates the importance of HB 2700 to protect nurses and to improve care of patients. Describes the conditions existing today in the health care industry. Explains how problems in health care are reported to facility managers and responses from administration.
395	Rep. Ringo	Asks how to evaluate what the care provider reports as unsafe conditions.
TAPE 41, B		
003	King	Answers that nurses are obligated to identify problems within the system and work towards a solution.
010	Pat O'Day	Registered Nurse Testifies in support of HB 2700. Describes how reporting bad conditions can be retaliated by management.
058	Rep. Shetterly	Explains existing law that applies to that situation. Asks if the nurse's rights were pursued for protection.
068	O'Day	Answers that she did not know about the law.
085	Rep. Shetterly	Discusses overlapping of existing law and –3 amendments.
130	King	Responds regarding two-day suspensions.
150	Alan Yoder	Attorney, Oregon Nurses Association Testifies in support of HB 2700. Explains that HB 2700 is a broader law. Describes current law and issues addressed by HB 2700. HB 2700 focuses on employees in acute care and dialysis centers where most members work. HB 2700 gives them broader protections with different reporting systems and a broader definition of retaliatory action.
160	Rep. Shetterly	Asks how this bill protects patients.
168	King	Agrees that there are concerns for patients but the association's concerns for their members lie mainly in the areas of acute care and dialysis.
170	Yoder	Explains in terms of damages the concern with current law that recognizes actual damages and not beyond that.
220	Rep. Shetterly	Asks for clarification of –3 amendments.
235	Yoder	Comments that the intent was to address the length of the retaliatory conduct. The reality is that someone who blows the whistle may get a poor evaluation and other negative treatment over time.
240	Rep. Ringo	Asks if the penalty was to offset the removal of punitive damages.
245	Yoder	Replies the –3 amendments took out the punitive damages.
295	Rep. Lowe	Asks what protections an employer might have if a marginal employee complained in order to keep in good standing.
308	King	Replies that employers need to constantly monitor and evaluate and intervene with employees who have questionable performance. However, even marginal employees can report unsafe conditions.
400	Amy Klare	SAFE Hospital Coalition Testifies in support of HB 2700 and submits testimony (EXHIBIT F).
TAPE 42, B		
003	Klare	Continues testimony on HB 2700. Employees have no provision for recouping attorney fees in present law. Oregon law does not require health care workers to report unsafe conditions.
055	Lynn-Marie Crider	Oregon AFL-CIO

		Testifies in support of HB 2700. Discusses –3 amendments. Says she is comfortable with the original HB 2700. Discusses other possible approaches.
090	Rep. Shetterly	Comments that sometimes remedies add to confusion.
095	Rep. Lowe	Thanks the bill sponsors and states she is profoundly interested in the issues.
109	Chair Walker	Closes the public hearing on HB 2700 and re-opens the hearing on HB 2771.

HB 2771 PUBLIC HEARING

160 **Rep. Al King**

House District 44

Testifies in support of HB 2771 and submits testimony **(EXHIBIT G)**. Points out that the proposed task force is important and their task would be to recommend the best ways to protect guardianships and custodianships.

165 **Ted Stevens**

Lane County Senior and Disabled Services

Testifies in support of HB 2771 and submits testimony **(EXHIBIT H)**. Describes cases that the county investigates in regard to exploitation and abuse of individuals who have been under the protection of court appointed guardianships.

219 **Mary Sherriffs**

Community Volunteer, Lane County

Testifies in support of HB 2771 and submits testimony **(EXHIBIT I)**.

265 **Charles Wright**

Community Volunteer, Lane County.

Testifies in support of HB 2771 and submits testimony **(EXHIBIT J)**. States the needs of senior citizens who have adult children who are disabled. Discusses legal guardianships for adult children who are not

able to take care of themselves due to illness or disability. Thinks state government should step in.

318 **Kathy Jenness**

Lane County Disability Services Advocacy Council.

Testifies in support of HB 2771 and submits testimony **(EXHIBIT K)**.

345 **Pax Hart**

Senior Services Advisory Council, Lane County

Testifies in support of HB 2771. Describes abuses of senior citizens by guardians. Explains the need for protection of individuals under guardianship. A task force could address how individuals could be protected.

400 Rep. Shetterly

Comments about supervisory aspect of guardianships and fiscal impact involved in cases with these issues.

TAPE 43, A

035 Chair Walker

Closes the public hearing on HB 2771 and re-opens the public hearing on HB 2700.

HB 2700 PUBLIC HEARING

036 Chair Walker

Comments there is ongoing discussion with parties on this bill. Says the bill will be heard at a later date. Closes public hearing on HB 2700. Re-opens public hearing on HB 2771.

HB 2771 PUBLIC HEARING

050 **Ted Stevens**

Attorney, Senior and Disabled Services for Lane County.

Relates that he has spoken with Roger Auerbach, Administrator

of Senior and Disabled Services who indicated support of the bill and no additional staff would be hired for these issues.

085 **Meredith Cote**

Office of the Long-Term Care Ombudsman

Testifies in support of HB 2771 and submits testimony **(EXHIBIT L)**. Describes ombudsman responsibilities as investigating and resolving complaints of residents of assisted living facilities, nursing homes, foster homes, and residential care facilities.

095 Chair Walker

Closes the public hearing on HB 2771 and opens a public hearing on HB 2460

HB 2460 PUBLIC HEARING

137 **Charlotte Mills**

Yachats Five

Testifies in support of HB 2460 and submits testimony **(EXHIBITS M & N)**. Discusses rights of citizens to speak out. Asks about her law suit and what the developers said that was wrong.

175 Rep. Ringo

Says that they were sued for libel and slander by the city attorney.

180 Mills

183 Rep. Ringo

Asks if there was any statement by any of the parties that was factually incorrect.

186 Mills

Replies the court determined there were fees for title insurance. There were no false statements by the Yachats Five to her recollection.

199 Mills

Describes Strategic Lawsuits Against Public Participation (SLAPP) filed against the Yachats Five as individuals. Recommends three ways to strengthen HB 2460.

380 **Norma McMillin**

Yachats Five, Former Lincoln County Commissioner

Testifies in support of HB 2460.

TAPE 44, A

009 Staff

Submits written testimony from Evan Manvel of 1000 Friends of Oregon **(EXHIBIT O)**.

010 McMillin

Continues testimony on HB 2460.

050 Rep. Lowe

Says for the record that her husband was Mrs. McMillin's attorney.

056 **Dick Turner**

Retired Forester, Waldport

Testifies in support of HB 2460.

092 **Dick Schouten**

Washington County Board of Commissioners

Testifies on HB 2460. States he has concerns about the bill. Freedom of speech and right to petition are at stake.

210 **John Leeper**

Washington County Board of Commissioners

Testifies on HB 2460 and submits testimony **(EXHIBIT CC)**. Recognizes that there needs to be balance in anti-SLAPP legislation between freedom of speech and protection of all persons against slanderous statements. Says HB 2460 is very limited as written. States that SB 497 better addresses the subject as written.

266 Rep. Ringo

Explains that the special motion to strike is to wipe out frivolous cases.

280 Leeper

Says that SB 497 awards costs and damages.

282 Schouten

Mentions that California uses the probability phrase.

285 Rep. Shetterly Says that Dave Heynderickx has the case reports from California.

330 Chair Walker Mentions a letter sent to her from Porter Lombard, Jackson County Citizens League. Closes the public hearing on HB 2460 and puts the committee at recess at 10:50 a.m. Says that she will re-open the hearing at 3:30 p.m.

HB 2460 PUBLIC HEARING

333 Chair Walker Re-opens the public hearing on HB 2460 at 3:30 p.m.

340 **Mark Morrell** **Oregon State Bar Procedure and Practice Committee (EXHIBIT P).**

Testifies in opposition to HB 2460. Says the committee has recommendations. Discusses the special motion to strike. (1) Explains how this motion might cause a problem. (2) States the judges need to know what the standard is and what to look for. (3) Suggests the goal should be to avoid law suits. The burden of proof first rests with the company. Explains the views of both parties and how burden of proof would be handled. Suggests other remedial options that would not be used to defeat legitimate claims of discrimination.

TAPE 43, B

002 Morrell Continues testimony on HB 2460. Explains how to keep additional costs down. Explains how California's motions to strike are different from Oregon's.

093 **Jeff Johnson** **Oregon State Bar Procedure and Practice Committee**

Testifies in opposition to HB 2460. Explains flaws in HB 2460. (1) HB 2460 will have constitutional challenges; allows for punitive damages (2) possible procedural actions by judge may be unconstitutional (3) motion to strike does not fit in Oregon's case; rules are different from California's.

155 Rep. Ringo Asks about motion to strike.

160 Johnson Answers the motion to strike in Oregon the court is required to make an initial determination. Case law bases it on allegations in pleadings.

180 Rep. Ringo Reiterates motion to strike is not appropriate because it requires analysis of the underlying facts.

190 Johnson Replies not only analysis but evidence. Suggests Rule 47, summary judgment motion, is the proper vehicle. Explains Rule 47 of the Rules of Procedure.

195 Rep. Ringo Asks if Rule 47 is the appropriate way to dismiss SLAPP suits.

198 Johnson Answers absolutely.

200 Rep. Ringo Asks currently what percent of summary judgment motions are granted. Probably less than 10 percent?

202 Johnson Answers the point is well taken. If the trial judge does not grant summary judgments, the judge would most likely not grant motion to strike. HB 2460 does not give a standard against which to judge whether the case should stay or not stay.

210 Rep. Ringo Discusses reasons why Rule 47 could not solve some circumstances. Thinks the special motion to strike will do that.

212 Johnson Discusses other possibilities. (1) Consider looking at the motive behind the company bringing the "quiet you down citizen" case. Shifting the burden of proof to the company for them to show evidence. (2) Use the abusive process tort. Add enhanced penalties. (3) A loser pays fees by statute. (4) Procedures and

Practices Committee look at issue of Rule 17, Oregon Rules of Civil Procedure, under the Federal Rule 11. Suggests studying these issues during the interim.

230 Rep. Ringo Asks in what area he sees frivolous law suits.

232 Johnson Answers in the area of certain torts involving intentional criminal conduct. Gives examples.

235 Rep. Ringo Replies that frivolous cases cannot be outlawed. SLAPP suits are particular kinds of cases. Suggests it is wrong to assume the whole system needs fixing.

250 Johnson Discusses employment litigation. The concern is that big corporate interests are intimidating citizens. The immediate concern is to solve the problem, a process that will work in actual application is needed and HB 2460 is flawed. It will not get the results wanted.

375 **John Shafer** **Dallas, Oregon.**
Testifies in support of HB 2460.

450 **Mitch Rohse** **Oregon Chapter of American Planning Association**
Testifies in support of HB 2460 (**EXHIBIT Q**). Explains this bill is the association's priority for this session. Discusses concerns with the issue of SLAPPs. Planning is a process for citizen involvement.

TAPE 44, B

010 Rohse Continues testimony on HB 2460. Describes mechanisms for citizens to use in land use planning. Says one SLAPP in a community can silence the community for years. Believes HB 2460 will work.

065 **Joe Landry** **Oregon Chapter of American Planning Association**
Testifies in support of HB 2460 and submits testimony (**EXHIBIT R**). Describes political process that allows people to speak freely. Discusses protection of speech. Wants the tools used to abuse the judicial process removed through HB 2460.

125 **Larry De Bates** **Chair, Citizen Involvement Advisory Committee (CIAC), Canby**
Testifies in support of HB 2460 and submits testimony (**EXHIBIT S**). Says HB 2460 creates a process for enforcing protections.

158 Rep. Ringo Asks if he knows how many SLAPP suits happen in Oregon.

170 De Bates Refers to written testimony. Says he doesn't know the number.

210 **Catherine Arnold** **Beaverton Committee for Citizen Involvement (CCI) Member**
Testifies in support of HB 2460 and submits testimony (**EXHIBIT T**). Discusses the need for this bill.

220 Chair Walker Submits letter from Brian and Sharon Beinlich (**EXHIBIT U**).

317 **Kathleen VanVelsor** **Department of Land Conservation and Development (DLCD)**
Testifies in support of HB 2460 and submits testimony (**EXHIBITS V & W**). Discusses concerns on the issue of citizen involvement. Describes effects of SLAPPs on communities and how DLCD views these issues.

TAPE 45, A

006 024 045	Van Velsor Chair Walker Merilyn Reeves	Continues testimony. Submits letter from League of Women Voters (EXHIBIT X). Friends of Yamhill County Testifies in support of HB 2460 and submits testimony (EXHIBIT Y). Explains how the organization hears from citizens. Emphasizes the need for legislation addressing anti-SLAPP. Describes previous attempts to get anti-SLAPP suit legislation.
098	Harlan Levy	Attorney for the Oregon Association of Realtors (OAR) Testifies in opposition to HB 2460 and submits testimony (EXHIBIT Z). OAR supports legislation to limit SLAPP suits. HB 2460 is not fair to all parties. Explains unfairness of the bill. Makes suggestions to modify the bill.
198	Richard Reid	City Watch, Salem. Gives examples involving the city’s experience on these issues. Supports HB 2460 that provides protection of free speech without granting or guaranteeing immunity. Responds to suggestions by the Practices and Procedures Committee. Says the passing of HB 2460 is urgent.
326	Jeffrey Lamb	Oregon Communities For A Voice In Annexations Testifies in support of HB 2460 (EXHIBIT AA). Addresses the realtors objections to HB 2460. Asks the legislature to deal with the issue of SLAPPs by passing HB 2460. Says he does not think an interim study is necessary.
350	Chair Walker	Enters written testimony into the record (EXHIBIT BB & EE). Adjourns the meeting at 6:30 p.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

Transcribed by,

Nancy Masee
Committee Assistant
For Public Affairs

EXHIBIT SUMMARY

- A – HB 2771, written testimony, submitted by Bertran Copp, 1 p**
- B – HB 2771, written testimony, submitted by Bob Joondeph, 1 p**
- C – HB 2700, -3 amendments, submitted by staff, 4 pp**
- D – HB 2700, written testimony, submitted by staff, 1 p**
- E – HB 2700, written testimony, submitted by the Oregon Nurses Association, 1 p**
- F – HB 2700, written testimony, submitted by Amy Klare, 6 pp**
- G – HB 2771, written testimony, submitted by Rep. Al King, 1 p**
- H – HB 2771, written testimony, submitted by Ted Stevens, 3 pp**
- I – HB 2771, written testimony, submitted by Mary Sherriffs, 5 pp**
- J – HB 2771, written testimony, submitted by Charles Wright, 2 pp**
- K – HB 2771, written testimony, submitted by Kathryn Jenness, 1 p**
- L – HB 2771, written testimony, submitted by Meredith Cote, 7 pp**
- M – HB 2460, written testimony of Peggy Lynch, submitted by Charlotte Mills, 1 p**
- N – HB 2460, written testimony, submitted by Charlotte Mills, 3 pp**
- O – HB 2460, written testimony, submitted by staff for 1000 Friends of Oregon, 2 pp**
- P – HB 2460, written testimony, submitted by Mark Morrell, 3 pp**
- Q – HB 2460, written testimony, submitted by Mitch Rohse, 1 p**
- R – HB 2460, written testimony, submitted by Joe Landry, 2 pp**
- S – HB 2460, written testimony, submitted by Larry DeBates, 2 p**
- T – HB 2460, written testimony, Catherine Arnold, 3 pp**
- U – HB 2460, written testimony, Brian and Sharon Beinlich, submitted by staff, 1 p**
- V – HB 2460, written testimony Richard Benner, submitted by Kathleen VanVelsor, 3 pp**
- W – HB 2460, book titled “A Legislative History of the Oregon Experience in Limiting SLAPPs, submitted by Kathleen VanVelsor, DLCD, 180 pp**
- X - HB 2460, written testimony from the League of Women Voters, submitted by staff, 1p**
- Y – HB 2460, written testimony, submitted by Marilyn Reeves, 1 p**
- Z – HB 2460, written testimony, submitted by Harlan Levy, 3 pp**
- AA – HB 2460, written testimony, submitted by Jeffrey Lamb, 1 p**
- BB – HB 2460, written testimony of James Monroe, submitted by staff, 1 p**
- CC – HB 2460, written testimony, submitted by John Leeper, 1 p**
- DD – HB 2460, written testimony, submitted by staff, 17 pp**
- EE – HB 2460, written testimony of Jon Chandler, submitted by staff, 1 pp**