

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

March 26, 2001
8:00 a.m.

Hearing Room 357
Tapes 48 - 50

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

MEMBER EXCUSED: **Rep. Lane Shetterly**

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

MEASURE/ISSUES HEARD: **HB 2731 Public Hearing**
 HB 2687 Public Hearing
 HB 2854 Public Hearing
 HB 2855 Public Hearing
 HB 2949 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 48, A		
003	Chair Walker	Calls the meeting to order at 8:15 a.m. and opens a public hearing on HB 2731.
<u>HB 2731 PUBLIC HEARING</u>		
010	Counsel Shartel	Introduces HB 2731 that modifies limitation on liability for engaging in certain farming and forest practices.
016	Tim Bernasek	Oregon Farm Bureau Federation Testifies in support of HB 2731 and submits testimony (EXHIBIT A) .
069	Rep. Ringo	Asks what would happen if a farmer is using a pesticide or herbicide and it drifts to an adjacent property. Asks if the adjacent property holder would be able to bring an action against the farmer or is the farmer immune under this statute.
075	Bernasek	Answers that it falls under the definition of what is a farming practice. Says he does not know the exact answer to his question.
084	Rep. Ringo	Asks if there was an application of pesticide and it was applied in a normal manner, but drifts to an adjacent property, would there be immunity for the farmer.
089	Bernasek	Answers that he believes that would be true.
091	Rep. Ringo	Asks if it's true that the pesticide right-to-know law was de-funded last week.
096	Bernasek	Says he does not know.
099	Paulette Pyle	Oregonians for Food & Shelter Testifies in support of HB 2731. Answers Rep. Ringo's

124	Rep. Lowe	questions. Understands that there would be consequences to the person who misuses, so would any compensation for the misuse accrue to the adjacent landowner that was damaged.
129	Bernasek	Answers that the adjacent landowner could bring a trespass case against the farmer for whatever damage had occurred.
134	Pyle	Answers question regarding de-funding of pesticide right-to-know bill.
145	Rep. Lowe	Says that she is on that committee and explains what happened to the pesticide right-to-know bill.
184	Chair Walker	Closes the public hearing on HB 2731 and opens a public hearing on HB 2687.

HB 2687 PUBLIC HEARING

195	Counsel Shartel	Introduces HB 2687 that prohibits discrimination by public bodies against person with disabilities.
207	Bob Joondeph	Oregon Advocacy Center Submits testimony and testifies in support of HB 2687 (EXHIBITS B & C) . Discusses the –1 amendments (EXHIBIT D) .
334	Rep. Lowe	Asks what state services are provided to people with disabilities.
349	Joondeph	Answers that this law would allow a person to file a complaint on their own to the Bureau of Labor and Industries (BOLI) if they think they are discriminated against.
379	Rep. Lowe	Asks if this bill will affect education for people with disabilities.
391	Joondeph	Says that already in Oregon law there is a prohibition against discrimination in education so this bill would most likely not change that.
399	Rep. Lowe	Asks about education for people with disabilities and how the law affects them.
420	Joondeph	Says that education for people with disabilities is covered by the Disabilities Education Act and state laws pertaining to special education. Discusses the federal laws.
TAPE 49, A		
007	Chair Walker	Asks about the –1 amendments, on page 1, lines 23-24, and how they can regulate or enforce the attitudes of others with impairments.
015	Joondeph	States that is already existing law.
016	Chair Walker	Says she understands, but wonders how they are going to expand that into services, programs and activities.
022	Joondeph	Answers that this section is trying to provide some protection for people who suffer discrimination because they are perceived as having disabilities rather than actually having a disability. Uses example of a person who has AIDS.
079	Chair Walker	Asks if this bill was passed and someone wished to bring a suit under this law because they were discriminated against, what set of standards would the court apply to effect a remedy.
082	Joondeph	Answers that the person would have to demonstrate that they have a disability as defined by law and that they were treated differently based upon that disability.
096	Rep. Lowe	Says she is trying to visualize how this bill would work and asks about state parks and what would have to be done for the

		disabled.
108	Joondeph	Explains that they are trying to provide the level of access in Oregon as that applied under the same standards as the American Disabilities Act.
121	Rep. Backlund	Wonders about the broadness of the words “attitude of others” in the bill and questions if that can be legislated.
130	Joondeph	Answers that the core concept of this bill is that the state law prohibit discrimination against a person with a disability or a person who is perceived to have a disability. Says that the area where you would most likely see discrimination is in employment law and gives an example.
180	Jack Roberts	Commissioner, Bureau of Labor and Industries (BOLI) Testifies on HB 2687. Says he does not expect any large fiscal impact.
340	Janine Delaunay	Oregon Disabilities Commission Testifies in support of HB 2687 and submits testimony (EXHIBITS E & F) .
TAPE 48, B		
003	Rep. Ringo	Asks for one example of how she has been discriminated against.
009	Delaunay	Answers that it is access to the same kind of communication that everyone else has in which she feels discrimination.
020	Christy Monson	League of Oregon Cities Testifies in opposition to HB 2687, but supports the –1 amendments.
048	Candace Haines	City Attorney, City of McMinnville Submits testimony and testifies in opposition to HB 2687 (EXHIBIT G) .
168	Rep. Ringo	Asks about the –1 amendments.
174	Monson	Says that the amendments exclude local government, but the local governments would still be subject to the ADA requirements of federal law.
189	Paul Snider	Association of Oregon Counties Testifies in opposition to HB 2687.
232	Chair Walker	Closes the public hearing on HB 2687 and opens a public hearing on HB 2854.
<u>HB 2854 PUBLIC HEARING</u>		
234	Counsel Shartel	Introduces HB 2854 that permits revocation of declaration for mental health treatment by incapacitated principal who signed declaration if power to do so specified in declaration.
265	Bob Joondeph	Oregon Advocacy Center Testifies in support of HB 2854 and submits testimony (EXHIBIT H) .
410	Rep. Ringo	Asks what would happen if someone is incapable of making a decision and because of the revocation provision they choose not to get treatment that they need.
424	Joondeph	Answers that this document provides consent, but it doesn’t override the civil commitment process.
438	Rep. Ringo	Feels that there will be certain circumstances in which people will not get the treatment they need because of this revocation provision.
TAPE 49, B		
002	Joondeph	Addresses Rep. Ringo’s concerns.

022	John McCulley	Oregon Psychiatric Association Testifies in opposition to HB 2854 and submits testimony (EXHIBIT I) .
050	Bruce Miller	State Court Administrator's Office Testifies on HB 2854.
075	Chair Walker	Closes the public hearing on HB 2854 and opens a public hearing on HB 2855.
<u>HB 2855 PUBLIC HEARING</u>		
085	Ted Lorensen	Forest Practices Program Director, Department of Forestry Submits testimony and testifies in support of HB 2855 relating to road closures (EXHIBIT J) .
146	Rep. Lowe	Comments that criminal trespass is not working very well so inquires if his proposal of a violation with a stiff fine will be more effective than a threat of incarceration.
156	Lorensen	Answers that in terms of criminal trespass one needs a district attorney who is willing to pursue the case. Believes that this bill will make trespassing more preventative up front.
175	Rep. Lowe	Feels this should have a positive impact on the budget.
178	Lorensen	States that if they can get out there and provide better prevention and enforcement it should reduce costs in the long term.
184	Chair Walker	Asks if a private property owner wants to close a road now, what is stopping them from doing that.
186	Lorensen	Answers that nothing is stopping them now, but what is difficult is to enforce it because they have would have to charge the violator with criminal trespass or for damages.
231	Ray Wilkeson	Oregon Forest Industries Council Testifies in support of HB 2855.
253	Rep. Ringo	Asks if the work group considered specifying damages for a civil action that would have some clout.
257	Wilkeson	Answers that there already is that remedy and what they are really concerned about is damages to public resources: water quality and salmon.
285	Jean Wilkinson	Associate Director of Government Affairs, Oregon Farm Bureau Testifies in support of HB 2855.
377	Rep. Lowe	Asks if there is opposition and wonders if there is a down side of this bill.
389	Wilkinson	Answers that she is not aware of any opposition.
TAPE 50, A		
024	Glen Stonebrink	Oregon Cattleman's Association Testifies on HB 2855 and expresses some concerns.
056	Chair Walker	Closes the public hearing on HB 2855 and opens a public hearing on HB 2949.
<u>HB 2949 PUBLIC HEARING</u>		
068	Greg Chaimov	Legislative Counsel Testifies on HB 2949 that defines "may not" and "shall not" as equivalent expressions of absolute prohibition for the purposes of statutes.
088	Chair Walker	Asks if there has been a particular problem with this.
096	Chaimov	Answers that "may not" is stronger than "shall not".
109	Rep. Lowe	States that she has concerns.

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Chaimov
Chair Walker

Says that this bill is protection for those that prefer "shall not".
Closes the public hearing on HB 2949 and adjourns the meeting
at 10:15 a.m.

Submitted By,

Reviewed By,

Ann Martin,
Committee Assistant

Andrea Shartel,
Counsel

EXHIBIT SUMMARY

- A – HB 2731, written testimony submitted by Tim Bernasek, Oregon Farm Bureau Federation, dated 3/26/01, 3 pgs.**
- B – HB 2687, written testimony submitted by Bob Joondeph, Oregon Advocacy Center, 2 pgs.**
- C – HB 2687, written testimony submitted by Bob Joondeph, Oregon Advocacy Center, dated 3/26/01, 1 p.**
- D – HB 2687, -1 amendments, submitted by staff, dated 3/22/01, 3 pgs.**
- E – HB 2687, written testimony submitted by Janine DeLaunay, Oregon Disabilities Commission, dated 3/26/01, 2 pgs.**
- F – HB 2687, written testimony of Kenneth Crowley, Oregon Disabilities Commission, submitted by Janine DeLaunay, 3 pgs.**
- G – HB 2687, written testimony of Madelyn Wessel, City Attorney, Portland, submitted by Candace Haines, dated 3/18/01, 4 pgs.**
- H – HB 2854, written testimony of Bob Joondeph, Oregon Advocacy Center, 2 pgs.**
- I – HB 2854, written testimony of John McCulley, dated 3/26/01, 1 p.**
- J – HB 2855, written testimony of Ted Lorensen, Department of Forestry, dated 3/26/01, 5 pgs.**