

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 16, 1997 Hearing Room 357

1:00 P.M. Tapes 86 - 87

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judith Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

HB 3491 Work Session HB 2308 Work Session

HB 2947 Work Session SB 268 Work Session SB 768 Work Session

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 86, A		
003	Chair Shetterly	Opens the subcommittee on Civil Law at 1:09 p.m.

<u>HB 2308 - WORK SESSION</u>		
012	Chair Shetterly	Opens the work session on HB 2308.
015	Randall Jordan	Department of Justice >explains -3 amendments (EXHIBIT A) >only those liens under ORS 93.640 are affected >Page 2, line 9 drops the phrase "of pendency."
042	Chair Shetterly	Asks about the change the amendments make.
045	Jordan	That clarifies which notice is being talked about.
048	Chair Shetterly	A contractor has 75 days to file a construction lien. If there is foreclosure during that 75 days, the construction lien is still good.
059	Jordan	That is correct.
060	Rep. Eighmey	I am satisfied with this bill.
066	Chair Shetterly	If it meets the land title, I will be satisfied as well.
068	Rep. Bowman	MOTION: Moves to ADOPT HB 2308-3 amendments dated 5/12/97.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
071	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
072	Rep. Bowman	MOTION: Moves HB 2308 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
075	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. EIGHMEY will lead discussion on the floor.
084	Chair Shetterly	Closes the work session on HB 2308.
<u>SB 268 - WORK SESSION</u>		
	Chair	

087	Shetterly	Opens the work session on SB 268.
091	David Amesbury	Committee Counsel >The bill now remains as -3 amendments (EXHIBIT B).
104	Jim Kennedy	Oregon State Bar >explains the purpose of first 2 paragraphs >This will level the playing field concept among different professional entities.
113	Chair Shetterly	Do you mean the first two paragraphs of the -3 amendments?
114	Kennedy	Yes. >create consistent language
129	Rep. Eighmey	MOTION: Moves to ADOPT SB 268-3 amendments dated 5/12/97.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
133	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
135	Rep. Eighmey	MOTION: Moves SB 268 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
139	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
144	Chair Shetterly	Closes the work session on SB 268.
<u>SB 768 - PUBLIC HEARING</u>		
150	Chair Shetterly	Opens the public hearing on SB 768.
152	Dave Amesbury	Committee Counsel >Explains the provisions of SB 768.
165	Chair Shetterly	Reads a note from Sen. Hamby.

		>plans for security of court are public record
174	Jessica Harris	Legislative Assistant to Sen. Hamby >I will answer any questions the committee may have.
178	Chair Shetterly	Closes the public hearing on SB 768.
<u>SB 768 - WORK SESSION</u>		
179	Chair Shetterly	Opens the work session on SB 768.
179	Rep. Eighmey	MOTION: Moves SB 768 to the full committee with a DO PASS recommendation.
		VOTE: 7-0-1 EXCUSED: 1 - Prozanski
182	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
185	Chair Shetterly	Closes the work session on SB 268.
<u>HB 2947 - PUBLIC HEARING</u>		
192	Chair Shetterly	Opens the public hearing on HB 2947.
204	Larry Campbell	Litigation Reform Coalition >Submits and reads testimony in support of HB 2947 (EXHIBIT C). >simple change to tort law >"assumption of risk" doctrine >gives situations of this bill at work
254	Campbell	Continues testimony >restore personal accountability >comparative negligence versus assumption of risk
305	Rep. Eighmey	Excellent examples and preparation of comparative negligence and assumption of risk.
311	Campbell	Thank you.
	Rep.	

317	Uherbelau	Are you aware of the history as to why Oregon changed?
320	Campbell	There was a compromise a number of years ago. What kind of responsibility should we as individuals have? Should we put ourselves at risk and let someone else pay for our action?
345	Rep. Uherbelau	I am sure there was legislative history as to why we made that change.
350	Chair Shetterly	When did we make that change?
352	Committee	It was about 20 years ago.
355	Rep. Eighmey	The decision to go to comparative negligence basically is because of Mr. Campbell's examples. Why do we have assumption of risk theories? The assumption of risk is exclusive.
386	Campbell	One of the problems we have is the "deep pocket theory." If you knowingly take a risk, should someone else pay for that?
417	Rep. Uherbelau	Many times we take on a problem that really isn't in Oregon.
TAPE 87, A		
001	Rep. Eighmey	Oregon has one of the lowest jury awards of any state. The highest jury awards come from Edwardsville, Illinois.
012	Mic Alexander	Oregon Trial Lawyers Association >Submits and reads testimony in opposition to HB 2947 (EXHIBIT D). >revive legally discredited doctrine >No one should have to assume the risk of someone else's negligence.
062	Chair Shetterly	I got a fax from one of the Oregon State Bar sections.
069	Chair Shetterly	Closes the public hearing on HB 2947.
<u>HB 3491 - WORK SESSION</u>		
073	Chair Shetterly	Opens the work session on HB 3491. >-2 amendments (EXHIBIT E) >concern over the standing issue of Department of Environmental Quality (DEQ)
095	Rep. Bowman	The issue was with non-profit organizations not having standing.

098	Chair Shetterly	Under the Administrative Procedures Act (APA) generally they do have standing.
098	Rep. Bowman	Based on the court ruling, the amendments presented by DEQ don't deal with the problem itself.
103	Rep. Uherbelau	We got off track. DEQ came in with language from the Environmental Protection Agency (EPA). DEQ thought this would be okay, but they just brought this language before us.
111	Chair Shetterly	Reads portion of Jeff Curtis' letter from previous hearing.
115	Rep. Uherbelau	His issue is broad. It was any representation.
117	Chair Shetterly	The bill came out of an issue of DEQ.
119	Lydia Taylor	Deputy Director, Department of Environmental Quality >DEQ needs standing for representation.
133	Chair Shetterly	Do you have the -2 amendments?
133	L. Taylor	I just now have seen them.
134	Chair Shetterly	Those are based on the testimony you brought last week.
135	L. Taylor	They address the issues we brought forward.
137	Rep. Uherbelau	It isn't your position that this only deals with DEQ?
140	L. Taylor	Yes. This bill would satisfy our needs without the amendments.
143	Rep. Eighmey	The -2 amendments have a provision that standing is not permitted for DEQ. Referring to section 7, what if members are called as witnesses in a judicial review?
161	Taylor	The wording is precisely what is found in federal law.
166	Chair Shetterly	Do we have anyone from the Department of Justice?
169	L. Taylor	Our legislative staff worked with Legislative Counsel on this.
174	Bill Taylor	Committee Counsel >Without this language, EPA will take over responsibilities in Oregon, correct?
179	L. Taylor	A petition has been filed with the EPA which asks that DEQ's delegation authority be rescinded because we have no representational standing.
188	B. Taylor	Can you explain "delegation authority?"
189	L. Taylor	In Oregon, we operate all the permitting, compliance, and inspections. It can be done by the federal government.

201	Rep. Bowman	If we don't accept the -2 amendments, DEQ would still have representational standing.
205	L. Taylor	Yes.
210	Jeffrey Curtis	WaterWatch >Submits proposed amendments to HB 3491(EXHIBIT F). >The Supreme Court decision applies to representational standing of all agencies.
221	Rep. Uherbelau	More than the -2 amendments?
222	Curtis	I have seen the -2 amendments, which we are opposed to. The Department of Justice (DOJ) amendments are basically technical.
240	Chair Shetterly	There are other amendments which we have not seen.
240	Curtis	We have had some conversations with the DOJ about their concerns. I think they were trying to limit it to make sure that their standing was germane to the purposes of the organization.
258	Chair Shetterly	Do you know who in the Department of Justice you were working with?
260	Curtis	We have talked with Steve Sanders.
267	Linda Williams	Legal and Safety Employer Research (LASER) >Submits testimony on HB 3491 (EXHIBIT G). >supports original version of the bill
314	Williams	Continues testimony >jeopardizes DEQ funding >bring confusing area of the law into a systematic framework >single united voice better for groups
360	Williams	Continues testimony >group participation beneficial
410	Williams	Continues testimony >impact on the law besides on DEQ
TAPE 86, B		
001	Williams	Continues testimony >efficient and economic interest

		>groups may represent an unpopular idea >can join an association with protection from a united voice
050	Williams	Continues testimony >adjunctive relief
065	Rep. Eighmey	You're point has been well taken. I would recommend that we move on.
072	Vice-Chair Uherbelau	This is a work session. Chair Shetterly is talking with the DOJ about the amendments.
077	Rep. Eighmey	The original bill does everything and is lesser amount of words.
084	Vice-Chair Uherbelau	DOJ has a couple of concerns.
093	Vice-Chair Uherbelau	Recesses the committee at 2:03 p.m.
094	Chair Shetterly	Reconvenes the committee at 2:05 p.m.
098	Steve Sanders	Assistant Attorney General >We have concerns that Oregon will maintain authority on the EPA Clean Air and Water Act. >groups are entitled to have the authority to appeal >attempt to recapture the historic way >WaterWatch's amendments are appropriate to limit basis of suit
148	Chair Shetterly	The difference between the -2 amendments and the WaterWatch amendments, is that the -2 amendments are specific to DEQ.
156	Sanders	DEQ has the most immediate problem.
160	Rep. Prozanski	You are suggesting a fix for everyone at this point rather than having to come back and try again later.
164	Sanders	Yes. It would reflect the legislature's intent that a group's opportunity to participate is broad.
171	Rep. Uherbelau	Referring to DEQ's testimony, they said that it doesn't matter if there are amendments or not. Have you taken a look at the -2 amendments? Are they satisfactory to you?
179	L. Taylor	Yes.
184	Rep. Eighmey	I still don't see why these are necessary. He goes through the bill and the WaterWatch amendments.
198	Sanders	The group should be focused on one idea. I should not be allowed to have a group take up my personal legal actions.

218	Rep. Eighmey	I don't see people lining up to do that. Keep it simple and straightforward.
235	Chair Shetterly	I want to close this. There is no agreement on the bill or the amendments. Closes the subcommittee at 2:25 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2308, proposed amendments (dated 5/12/97), staff, 4 pp.

B - SB 268, proposed amendments (dated 4/15/97), staff, 1 p.

C - HB 2947, written testimony, Larry Campbell, 3 pp.

D - HB 2947, written materials, Mic Alexander, 3 pp.

E - HB 3491, proposed amendments (dated 5/16/97), staff, 4 pp.

F - HB 3491, written materials, Jeffrey Curtis, 1 p.

G - HB 3491, written materials, Linda Williams, 12 pp.