

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**April 2, 1997 Hearing Room 357**

**1:00 P.M. Tapes 52 - 53**

**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**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Lisa Fritz, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HJR 40 - Public Hearing**

**HJR 34 - Public Hearing**

**HB 3002 - 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 52, A</b>		

006	Chair Shetterly	Calls the meeting to order at 1:06 p.m.
<b><u>OPENS PUBLIC HEARINGS ON HJR 40 and HJR 34</u></b>		
010	Rep. Bob Jenson	District 57 Submits and reads aloud written testimony in support of HJR 40 ( <b>EXHIBIT A</b> ).
060	Rep. Beyer	Why do we have this bill? It seems as if it should go to the Rules and Elections Committee. Does it have a subsequent referral?
067	Chair Shetterly	No, there's no subsequent referral. Chair Minnis assigned the bill to use, and therefore, they are for us to deal with.
069	Rep. Wells	I'm having a hard time understanding sections 1a and 1b. Would someone explain what it says in section 1b, line 29, page two, and line 18 on page three?
082	Rep. Randall Edwards	District 15 It basically says that this doesn't affect those measures that are coming now, that have been gathering signatures, or those that would be gathering signatures.
087	Rep. Wells	One says "does not" on line 30, and on lines 33-34 it says that it does apply. It's the same language in each one.
088	Chair Shetterly	I think that 1b basically says that this does not apply to any constitutional amendment that would be voted on in the November general election of 1988. Section 1b says that it does apply to any constitutional amendment that would be voted on after the November election of 1988. The language of the "first Tuesday after the first Monday" refers to the general election date.
107	Rep. Floyd Prozanski	District 40 There is only a small difference between HJR 40 and HJR 34: the amount needed for passage. Mine (HJR 34) requires two-thirds, and Rep. Jenson's proposal (HJR 40) requires three-fifths. I'd like to make note that a correction needs to be made, regarding the parts that deal with anything being referred by this body. That should still be able to be past by a simple majority of the voters. Comments that more safeguards need to be involved, when dealing with Oregon's Constitution. References and quotes "The Voter Initiative" and "Direct Democracy Update" by Tommy Neal ( <b>EXHIBIT B</b> ). Compares Oregon's process to other states' processes.
157	Rep. Prozanski	Continues testimony.
193	Rep. Wells	Whether we increase the number of signatures or the number of votes, that still doesn't address the issues of major problems with legislation, proposed legislation, or proposed change. Have you looked at some type

		of review, by the legislature, before these issues go onto the ballot?
200	Rep. Prozanski	I have, and I knew that there were going to be other proposals coming forward. I am very open to allowing that type of amendment to be place in this, if we are going to move one of these two resolutions out. I agree with you. I think we need some additional safeguards to save the state the cost of defending something that has been determined to be unconstitutional. I think this would also give strength and assurance to the voters, so they realize what is before them is constitutional. Some states will not put a measure forward without some type of fix or attempt to fix. Others will put it forward, and they will put, in the voters' pamphlets, the problem that exist. That way, the voters have information, so they can review it, before making a decision. Discusses how money helps the initiative process and, again, references Tommy Neal.
223	Rep. Wells	The Portland Civic Club put out a book addressing this issue. They allowed for legislative oversight or review, and they allowed changes to be made. If everyone worked together, then the legislature moved the proposal to the people. That would save them from having to get the signatures. If they could not come to an agreement, then they let them go ahead and get the signatures on their own. At least they put out the information that there was disagreement on the issue. It seems to me that we need to be addressing these issues. This is fine. it's going to make it more difficult to get there, but it's not going to keep "bad" issues from getting there or us having to deal with them.
239	Rep. Prozanski	I agree with you. References Tommy Neal's layout of the processes that different states go through. (Uses South Dakota as an example.)
253	Chair Shetterly	Do you know if, when the initiative is presented to the legislature first, the legislature must vote up or down on the initiative, or can they amend it? If so, what happens if the amendment is not satisfactory to the proponents of the initiative; do they go back out with it anyway?
261	Rep. Prozanski	I know there are a couple of different processes. There is one process where they can actually view and decide whether to enact it or put an alternative before the voters, giving an "either/or" type of choice. A lot of the information I have received has been anecdotal. We need to retain the ability of people to redress what we, as body, do not. Gives example.
282	Rep. Bowman	I also have quite a few bills, dealing with initiative reform. I, personally, don't care how we get this done; I just want to get it done. Is there a preference for one bill or another? Is it your plan to consolidate these into one bill, or do you just want to concentrate on one and forget about the other?
292	Rep. Edwards	Comments on HJR 46 ( <b>EXHIBIT C</b> ). I think all three of us (Rep. Edwards, Rep. Prozanski, and Rep. Jenson) would be happy to sit down and work on one bill.
335	Rep. Edwards	I think the reason that these two bills are in your committee is because they deal with the Constitution, which is only one facet of the process.
	Rep.	The Constitution should be treated a little more delicately than the simple enactment of a statute. I would support any other amendments that might

344	Jenson	enable or facilitate us to do this. I'd like to keep the Constitutional issue separate from the statute issue.
373	Rep. Prozanski	Whatever we plan to do, we need to focus as to what we can bring to the body that will be accepted and not an overhaul. That might be why we have the different bills before us. The reason I chose two-thirds, rather than three-fifths, is that when you look at the U.S. Constitution, as to how it can be changed, the calling for a new Constitutional Convention has never been done. What has been accepted and used is Congress and both Houses need to vote two-thirds. Once that is done, it has to go out to the states for ratification, requiring three-fourths. There are significant safeguards, regarding the federal Constitution. I would submit to you that when you look at the nation's Constitution, it is a very lean and focused document, as compared to what we have ended up with because of the process. The reason I am really concerned, about the number of votes it takes to pass, is because of what we found in this last election. I think that it's probably the best example in recent history. The individuals who are in to the profession of doing initiative processes have decided and realized that they can spend the same amount of money that they do to put something in the Constitution as they do to put something into statute.
<b>TAPE 53, A</b>		
006	Rep. Prozanski	I think three-fifths is not a high enough threshold to put something into the Constitution. I know that it's only two or three percentage points, but I think that's necessary. You will see that individuals will realize. Instead of trying to stick something in the Constitution, they will be more inclined to use the process that, I believe, is the most reliable and appropriate: the statutes.
021	Rep. Jenson	I started out thinking of the two-thirds vote, and I admit that my reason for changing to the three-fifths was because I thought the three-fifths would have a better chance of passing. My personal preference would be to have this pass at the two-thirds vote, but it seemed like the 60 percent was, perhaps, more sellable to the public, but I'd be very comfortable with the two-thirds.
035	Rep. Uherbelau	Did any of you consider Measure 47? They can't be added to the Constitution, unless 50 percent of the people vote on it.
037	Rep. Edwards	I don't think our bills contemplated that, but that may be something you want to consider. There is an issue that the City Club did raise, which is sort of tangential to this: What should you allow to be put in the Constitution? Anything that has to deal with fiscal matters really doesn't need to be in the Constitution, if you believe that it should describe basic functions of the government and rights. That is an issue of process, on the one hand, but on the other hand, maybe it is appropriate for us to have that discussion here. I do think that what Rep. Uherbelau just described is a problem.
		According to Tommy Neal, there are five states that have a percentage.

049	Rep. Prozanski	Wyoming requires an excess of 50 percent, to be voting in the general election, for passage. Nevada says that the initiative Constitutional amendments must receive a majority vote in two successive general elections, so it's almost like a "second look." One of the problems we have right now is ballot shopping. Individuals are astute. If they don't like the first ballot title they get, they put basically the same initiative out there. We have a law right now that says you cannot assign the same ballot title to similar petitions, so they wait until they get the best one for marketing purposes. I think that if we had something like Nevada has, and require things to be voted on twice, many of the things that passed the first time wouldn't pass the second. That's not what I'm proposing, but it's interesting that 24 different states have looked at this problem and addressed it.
089	Rep. Starr	I would support the two-thirds vote.
103	Rep. Edwards	States, for the record, that he will be submitting testimony in support of HJR 40 for the committee after the meeting ( <b>EXHIBIT E</b> ).
104	Chair Shetterly	Closes Public Hearings on HJR 40 and HJR 34.
<b><u>OPENS WORK SESSION ON HB 3002</u></b>		
114	Bill Taylor	Committee Counsel Discusses HB 3002 and the -1 amendments to the bill ( <b>EXHIBIT D</b> ).
124	Rep. Prozanski	I have been working with David Nebel, and he has brought to my attention that there is a technical problem with the -1 amendments.
132	David Nebel	Oregon Law Center, Oregon Coalition of Domestic and Sexual Violence, and Concerned Citizens for the Health and Safety of Women in Lane County There have been several challenges to the constitutionality of the Family Abuse Prevention Act. The -1 amendments attempt to deal with those constitutional challenges. The problem that's dealt with on the first page has to deal with the renewal of restraining orders. Explains what the law allows those, who have had restraining orders, to do, once the restraining order has expired. There are two potential problems: (1) The only standard for granting a renewal that's in statute now is for "good cause shown" (appears in line eight, deleted language), and (2) there's nothing specific in the statute that allows for a hearing on the renewal of a restraining order. Explains what the proposed amendments would do, and makes some further suggestions for amendments.
182	Nebel	Continues testimony.
200	Rep. Prozanski	Does the "good cause shown" part need to go back in?
212	Nebel	No. I would suggest that that language be deleted.

217	Rep. Prozanski	I believe the only change that we would have would be the insertion that we just made. Two parties should not be in contact before renewal of a restraining order. This would permit the respondent to have access to the court, in order to request that additional issues be heard at that time.
226	Rep. Eighmey	On line 13, "of" is a mistake.
229	Chair Shetterly	How long is a restraining order valid, under the Act?
230	Nebel	One year from the date it's issued.
232	Chair Shetterly	You get a restraining order entered, and in order to get it entered, you have to show abuse or reasonable fear of abuse, etc. At the end of the year, the person has not violated the restraining order, but the relationship has remained unchanged. The concern is that, if all that occurs and the restraining order is lifted, the risk of abuse will arise again, without the restraining order.
243	Nebel	That's correct.
244	Chair Shetterly	That's why you don't have to show abuse for renewal of the restraining order; you just have to show fear of abuse.
245	Nebel	That's correct. If the restraining order has been effective, then there would be no abuse.
247	Chair Shetterly	As a practical matter, what do you show to establish reasonable fear of abuse when the order's been in effect for a year and the respondent has abided by that order?
252	Nebel	I think you would say that there was a pattern of abuse, prior to entry of the order. The order has been effective in preventing further abuse, but there's no evidence that the respondent has done anything to want to change that pattern of abuse. Gives example.
266	Chair Shetterly	You mentioned that there were some constitutional issues. Where do those come in, regarding this language?
271	Nebel	The language is providing more of a standard for the court to consider in renewing a restraining order. It's also clear that the respondent, in a renewal situation, has the right to request and be granted a hearing.
275	Chair Shetterly	All of this has been practiced in the counties, except for Lane County.
276	Nebel	That's my understanding.
277	Rep. Uherbelau	Rep. Prozanski just said something that seemed to contradict what was said before, but I may have misunderstood. I thought I heard him say that the additional language on line 17 allows the respondent to request a hearing and put everyone on notice, but it does more than that. It says that it has to be agreed to, among the parties, and that means contact is going to take place.
		I don't think that's necessarily direct contact. The way this is being proposed, with the additional amendments, is the respondent would be served again with (what would be) the subsequent order, and then at that

289	Rep. Prozanski	point, they request a hearing. At the same time, if they wanted to address other issues, they would put that on (what would be) the request form. At that point in time, in my opinion, the request form is going to be a public record, and that would get back to the petitioner. Then, they would be able to agree or disagree in moving forward with these additional issues, without any direct contact with the respondent.
306	Rep. Uherbelau	So, you think this would mean that the respondent files the paper, showing that they want other issues considered at hearing, and at that hearing, the party would say, "I agree," or "I don't agree."
312	Rep. Prozanski	I assume that the court is going to be setting these matters for hearing, and the court would have some rule or process for the petitioner to respond to what is on the request form. For notice purposes, I don't think you could wait until the day of the hearing to see whether or not they would be willing to go forward on the issues.
322	Rep. Uherbelau	I'd like David (Nebel) to address that because I think that, with the way it's worded, many people are going to interpret that you had to have agreed when you put it on the request for hearing.
326	Nebel	I think that when the respondent is served with the renewal, he/she would be served with the request form. At that point, the respondent can say, "I request a hearing on the basis for the renewal, and I also request a hearing on a custody order." A copy of that would be provided to the petitioner, and the petitioner could agree or decide not to deal with that issue at the hearing. I think the other remedy, if the petitioner does not agree, would be for the respondent to file some type of modification proceeding of regular domestic relations.
349	Chair Shetterly	If Rep. Uherbelau's concern is that this statement, on the request for hearing, and agreements have to come at the same time, we could add to the amendment to make it clear.
357	Rep. Uherbelau	Explains other processes where on the request form to the petitioner it says "not objected to." By not objecting, you're implying agreement. You're putting the burden on them to object.
374	Rep. Eighmey	What I normally try to do is simply say, "and consented to, in writing, by the parties," so that there's a mandatory. Explains why he does not like the term "agreed," and why he prefers "consented."
391	Chair Shetterly	Are these typically handled without counsel?
392	Nebel	I believe most are.
394	Chair Shetterly	Then, we don't want to make this too difficult.
399	Rep. Uherbelau	I think you're right. We don't want to make it complicated. However, even though these are handled, many times, without the aid of counsel, the domestic violence people are very astute as to what procedures are, and they are good counselors (e.g. about where you need to go, what you need to fill out, etc.). I think we can have some requirements, but we have to be careful that it's not too complex.

<b>TAPE 52, B</b>		
005	Rep. Prozanski	I would suggested inserting "thereafter" to give distinction. My biggest concern is that some counties may not have those type of counselors that are going to be advocates for the petitioner to walk them through the process.
017	Rep. Uherbelau	What would you suggest as far as the language goes?
019	Rep. Prozanski	The Chair suggested that after the inserted language ("requested in the hearing request form") we insert "thereafter."
021	Chair Shetterly	It seems that that leaves a flexible process. Gives examples of how he feels the process would occur, under the bill (as amended).
046	Nebel	Explains the -1 amendments (page two).
089	Rep. Prozanski	Explains the reasonable person test and gives an example to help clarify.
102	Chair Shetterly	I think this looks very good. We have a good bipartisan interest in this.
112	Rep. Prozanski	There is one other issue that came up in our first public hearing. The amendments, which came from Doug Bray of the State Court Administrator's Office, were not drafted into Legislative Counsel (LC) form, and I'm not sure if the subcommittee would want to consider those at this time or not.
117	Doug Bray	Deputy State Court Administrator Gives background on restraining orders, as they pertain to the bill, and his amendments to the bill (see Civil Law Subcommittee minutes from 3/17/97 -- EXHIBIT B).
167	Bray	Continues testimony.
171	Rep. Prozanski	I do not oppose these amendments. I believe they act as a safety mechanism.
174	Chair Shetterly	I think so too, especially of the provision for a peace officer accompanying a stray person. I would be willing to move on these amendments today, if the committee is satisfied. We would have to move on them as conceptual amendments because they are not in LC form, but that would give LC until Friday to get them in proper form for the full committee.
<b>187</b>	<b>Rep. Prozanski</b>	<b>MOTION: Moves to ADOPT HB 3002-1 amendments dated 3/31/97.</b>
191	Chair	Reiterates amended version of -1 amendments. On line 13 of the -1 amendments, we are striking the word "of". Beginning on line 17, insert, after "unless," "requested in the hearing request form and thereafter agreed



	Shetterly	to by the petitioner." Delete the rest of line 17, and put a period after petitioner.
202	Rep. Bowman	I would suggest taking the "of" that's between "you" and "and."
204	Chair Shetterly	That's right. Take out "of " in the middle of the line.
		<b>VOTE: 7-0</b>
		<b>EXCUSED: 1 - Rep. Eighmey</b>
210	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b>
211	Rep. Prozanski	<b>MOTION: Moves to ADOPT the amendments (as amended by the -1 amendments) offered by Doug Bray, Deputy State Court Administrator, dated 3/17/97 to HB 3002.</b>
		<b>VOTE: 7-0</b>
		<b>EXCUSED: 1 - Rep. Eighmey</b>
215	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b>
220	Rep. Prozanski	<b>MOTION: Moves HB 3002 to the full committee with a DO PASS AS AMENDED recommendation.</b>
228	Rep. Wells	Have we addressed any of the issues the Oregon Men's Association brought to our attention?
230	Chair Shetterly	I think not, but my sense was that the Men's Association testimony really addressed the Abuse Prevention Act, in general, and none of these amendments in particular. My feeling is that their objection was not really to these amendments but to the Family Abuse Prevention Act.
		<b>VOTE: 8-0</b>
239	Chair Shetterly	<b>Hearing no objection, declares the motion CARRIED.</b> <b>REP. PROZANSKI will lead discussion on the floor.</b>

244	Chair Shetterly	Adjourns at 2:20 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - HJR 40, written testimony, Rep. Bob Jenson, District 57, 1 page.**

**B - HJR 34, written testimony, Rep. Floyd Prozanski, District 40, 7 pages.**

**C - HJR 40, copy of HJR 46, Rep. Randall Edwards, 2 pages.**

**D - HB 3002, proposed amendments, Legislative Counsel, 2 pages.**

**E - HJR 40, written testimony, Rep. Randall Edwards, 2 pages.**