

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
10:00 am Tapes - 6

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

HB 2209 - Relating to appeals of mental commitment orders
HB 2211 - Relating to public contracting
HB 2214 - Relating to corrections

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 5, SIDE A

004 CHAIR PARKS: Opens hearing at 10:19 am.

PUBLIC HEARING ON HB 2209

007 MILT JONES, COMMITTEE COUNSEL: Reviews HB 2209 - Appellate review of mental commitment orders. Eliminates de novo review.

Witnesses: Bob Joondeph, Oregon Advocacy
Virginia Linder, Department of Justice

015 BOB JOONDEPH, OREGON ADVOCACY: Testifies and submits written testimony in opposition to HB 2209. (EXHIBIT A)

088 REP. NAITO: If it is a fact dependent decision, that should be made by the trier of fact with all of the facts presented. You are suggesting that

they are represented by incompetent counsel and that the proceedings at the court level are too relaxed?

098 JOONDEPH: The proceedings are often relaxed in nature and highly fact dependent. The de novo review is the best way to assure that there is a thorough review of a decision. Explains why the proceedings have had a de novo review.

117 CHAIR PARKS: Explains what de novo review means.

129 REP. JOHNSTON: Would you agree with the general proposition that as for factual decisions, the de novo review is not as good as being present in

the courtroom at the time?

132 JOONDEPH: Yes, absolutely.

133 REP. JOHNSTON: We need the de novo review to protect the rights of the alleged mentally ill person?

136 JOONDEPH: Discusses why his clients would be at a disadvantage in not having an objective court review the record.

141 REP. JOHNSTON: Last year there were 65 cases reviewed by the court of appeals. Do you know how many of those were on factual matters?

143 JOONDEPH: No, but I will research that.

145 REP. QUTUB: The problem with eliminating the de novo review may be that the first hearing is somewhat informal and if there is no more de novo review, wouldn't it mean that the hearing may be more formal, and is that where the problem is?

154 JOONDEPH: I don't think so. Cites example in Marion county about commitment hearings. Cites example of factual based case on a homeless woman who took care of herself.

188 REP. JOHNSTON: The courts can still do this under this bill, explains.

191 JOONDEPH: Gives understanding of standard review.

208 CHAIR PARKS: Cites example of when he was in the courtroom with a client who was mentally ill, and the basic premise of the way the appellate system looks at trials.

227 VIRGINIA LINDER, DEPARTMENT OF JUSTICE: Testifies in support of HB 2209. Explains de novo review. (EXHIBIT B)

308 REP. JOHNSTON: Cites fiscal impact savings. Asks about risk for only small savings.

322 LINDER: It could be less but no more than \$10,000 - 20,000. Explains why this is needed and would work.

PUBLIC HEARING ON HB 2211

366 MILT JONES, COMMITTEE COUNSEL: HB 2211 - Limits damages in suits under public contracting law. Eliminates court authority to award fees and costs to prevailing party.

Witnesses: William Cloran, Department of Justice
Jack Nelson, Association of General Contractors

394 WILLIAM CLORAN, DEPARTMENT OF JUSTICE: Testifies and submits written testimony in support of HB 2211. (EXHIBIT C)

TAPE 6, SIDE A

023 CHAIR PARKS: Who would be the prevailing party in a case like that, was there a prevailing party?

025 CLORAN: The prevailing party in that case was the State of Oregon. We did not collect fees, no one was awarded fees. Explains what the court decision was.

037 CHAIR PARKS: Asks about statutory language, 'may award attorney fees'.

038 CLORAN: Yes, that is how it is now.

039 CHAIR PARKS: You are proposing that the above language be eliminated and that no one receives attorney fees?

040 CLORAN: Yes, explains.

047 REP. NAITO: What types of conduct might this apply to, i.e. in the human service area?

049 CLORAN: Cites (EXHIBIT C), and explains ORS 279.

053 REP. TIERNAN: Cites concerns, examples, and questions about bids and suing.

070 CLORAN: Explains that (EXHIBIT C), tries to add to what the existing bill already was.

081 REP. TIERNAN: What does your bill clean up concerning the bill that was already amended?

083 CLORAN: Explains (EXHIBIT C) further.

160 REP. TIERNAN: Asks about attorney's fees, and only allowing redress for bid.

175 CLORAN: The \$5000 estimate would be for a small product. The fees for big projects is a substantial amount. Explains true focus in litigation - work and opportunity.

188 REP. JOHNSTON: Are some of these cases settled?

189 CLORAN: These cases go on so fast, we'd like to see more settlements, explains.

195 REP. JOHNSTON: I was concerned about the chilling effect on bringing a suit. Only 2 out of 7 cases resulted in awarding of attorney's fee. How many cases that were settled, if any, involved the use of attorney fees as a lever for settlement?

204 CLORAN: The remaining 5 cases out of 7 this year did result in settlement either after the temporary restraining order or the preliminary injunction, explains.

211 REP. JOHNSTON: The courts are reluctant to award fair market value?

214 CLORAN: Yes.

215 REP. JOHNSTON: Can we cure that problem?

216 CLORAN: Yes, it's within your power to do that.

218 REP. JOHNSTON: There should be a level playing field on both sides because that would encourage settlements.

223 CLORAN: We would encourage to the degree possible, settlement, explains.

229 REP. NAITO: The state is a part of this dispute and always has an attorney. Asks how this effects the 'little guy's' with out attorney's.

237 CLORAN: We usually see that a great number of state contracts are purchase order that would not come under ORS 279, explains. Usually the people we dispute with are large firms that have firms to represent them. Explains that the bonding requirement on most jobs would eliminate people who did not have ability to hire a lawyer.

255 CHAIR PARKS: There are no 'little guy's'?

256 CLORAN: There are some, but most of them have the financial means to deal in this area.

264 JACK NELSON, ASSOCIATION OF GENERAL CONTRACTORS: Testifies and submits written testimony in opposition to HB 2211. (EXHIBIT D)

336 CHAIR PARKS: What about the previous testimony where there are multiple plaintiffs involved and the attorney's fees provision discourages settlements? That would make it difficult for the State to take the

position of the re-bidding process.

349 NELSON: That may be correct, explains. The statutes are broad based.

358 CHAIR PARKS: Gives example of rights about suing and being sued.

371 NELSON: I spent 14 years in local government, they want to do what is right. Explains the publics understanding of the statutes process and need

for procedures to follow.

402 CHAIR PARKS: What do you feel that the law should allow as damages other than bid preparations and cost?

408 NELSON: There are circumstances where only those costs are reasonable, gives examples.

448 REP. JOHNSTON: HB 2211, seems to be two bills.

456 CHAIR PARKS: What is the scope of damages that we allow? (Statement)

TAPE 5, SIDE B

WORK SESSION ON HB 2209

022 MOTION: CHAIR PARKS: Moves HB 2209 to the FLOOR with DO PASS recommendation.

026 REP. BROWN: It concerns me to eliminate 'de novo review'.

031 REP. TIERNAN: Can someone further explain the bill?

034 CHAIR PARKS: It does not save that much money and I think that the court will do a de novo review whether we tell them to or not. I don't think this will change the way trial courts proceed. HB 2209 will go against the limiting of procedural steps and the time courts spend on these areas.

053 REP. TIERNAN: I have doubts about this bill.

055 REP. NAITO: In principal, I agree with this bill, but I don't see the need for it.

063 VOTE: 1-6 MOTION FAILS
AYE: Parks
NO: Brown, Carpenter, Johnston, Naito, Qutub, Tiernan

PUBLIC HEARING ON HB 2214

076 MILT JONES, COMMITTEE COUNSEL: HB 2214 - Expands scope of rule of evidence governing inadmissibility of certain health care data to include data of medical staff committees of Department of Corrections.

Witnesses: Steve Shelton MD., Oregon Department of Corrections
Jef Van Valkenburgh, Oregon Department of Justice
Scott Gallant, Oregon Medical Association
Tom Cooney, Counsel for Oregon Medical Association
Bob Wheeler MD., Oregon Medical Association

089 STEVE SHELTON M.D., OREGON DEPARTMENT OF CORRECTIONS: Testifies and submits written testimony in support of HB 2214. (EXHIBIT E)

130 REP. JOHNSTON: Anecdotally, has there been a problem with the existing law?

133 SHELTON: No there has not been. This bill is to assure that we can improve our quality and make fine detail comments on peer review with the comfortable feeling that the things we are saying, to improve the quality of Health Care, are protected and privileged, similar to the private industry.

143 JEF VAN VALKENBURGH, OREGON DEPARTMENT OF JUSTICE: Here to answer

questions committee may have about the legal effect of language.

146 REP. NAITO: Give us a framework as to how it applies to the private sector and why you want to be included in it?

155 REP. JOHNSTON: Explains how HB 2214 deals with peer review and what concerns might be.

164 SHELTON: In peer review, if someone feared that comments they made could later be used against them in a court case, they wouldn't get candid statements as to help the quality of care. If there was an issue of poor quality care, it would be dealt with properly. This bill does not involve that.

177 REP. JOHNSTON: You might have to convince us that you are not trying to hide behind practical and resourceful comments that were made, and wouldn't want to be used against you.

185 SHELTON: The bill already states that peer review is a valuable process practice in private industry. The public industry just wants to be included in this.

194 REP. NAITO: In private industry a person can choose their physicians, but the inmate has no choice about their health care facility.

203 VAN VALKENBURGH: Explains governing standards about patient medical records.

246 REP. JOHNSTON: How frequently are peer evaluations conducted?

247 SHELTON: In some form, monthly among physician. Monthly and quarterly among nurses.

257 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Introduces men with him.

265 TOM COONEY, COUNSEL FOR OREGON MEDICAL ASSOCIATION: Testifies and submits written testimony in support of HB 2214 with amendment. (EXHIBIT F)

299 REP. JOHNSTON: Could you define utilization review and quality assurance?

300 COONEY: Explains.

321 REP. NAITO: You are proposing this as an amendment to HB 2214, but the relating clauses seem like a totally different bill.

325 COONEY: Originally, it was supposed to be a separate bill, explains.

333 MILT JONES, COMMITTEE COUNSEL: May have a problem with relating clauses in HB 2214, explains.

342 REP. TIERNAN: We may need to discuss language with Ramona. This may be able to fit in with the relating clause because of the subject matter discussed.

349 COONEY: Continues with testimony and amendments.

399 REP. NAITO: Is the patients name deleted?

401 COONEY: Generally not. they are not deleted in private hospital peer review either.

403 REP. NAITO: In a hospital, anyone on that staff may have access to a patients records. What concerns me is that those records could be released to a third party that is not an insurance company.

412 COONEY: That is done now, under joint commission requirements, explains.

418 REP. JOHNSTON: The confidentiality you seek is different in other provisions in that it is limited for purposes of proving liability. Is that essential for the peer review process?

432 COONEY: Gives an explanation of proving liability.

435 REP. JOHNSTON: There is no purpose limitations. Cites concerns with this bill.

443 COONEY: That is the law now, with hospital association to peer review.

444 REP. JOHNSTON: You are seeking consistency with the current state?

TAPE 6, SIDE B

006 COONEY: Explains policy for this. Difference between in and out patient review.

015 BOB WHEELER, M.D., OREGON MEDICAL ASSOCIATION: Testifies and submits written testimony in support of HB 2214 with amendments. (EXHIBIT G)

052 CHAIR PARKS: Adjourns the meeting at 11:45 am.

Submitted by, Reviewed by,

Sarah May	Debby Johnson
Committee Assistant	Committee Coordinator

EXHIBIT SUMMARY:

A.	Testimony on HB 2209 - Bob Joondeph - 2 pages
B.	Testimony on HB 2209 - Virginia Linder - 3 pages
C.	Testimony on HB 221 - William Cloran - 4 pages
D.	Testimony on HB 2211 - Jack Nelson - 1 page
E.	Testimony on HB 2214 - Steve Shelton, M.D. - 1 page
F.	Proposed Amendments to HB 2214 - Oregon Medical Association - 2 pages
G.	Testimony on HB 2214 - Robert Wheeler, M.D. - 1 page