SLAPPs Legislation in the 70th Legislative Assembly

Agency's No./Concept No. 660-01- 03

LEGISLATIVE CONCEPT

Date April 13, 1998

Attach draft language.
If the concept has any fiscal or position impact, attach a complete Fiscal Impact Estimate.
Deliver an original and four copies with draft language and attachments to Department of Administrative Services, 155 Cottage Street NE, Salem, OR 97310 ***on or before April 15, 1998.***

Agency Dept. of Land Conservation and Development

Division/Program Director's Office

Concept Subject/Title Controlling SLAPP's ("Strategic Lawsuits Against Public Participation")

Contact Person/Phone No. Mitch Rohse, 503 373-0064; e-mail *mitch.rohse@state.or.us*

Purpose of This Concept: To limit the filing of groundless lawsuits against citizens participating in governmental processes such as land use planning, when the chief purpose of the suit is to intimidate citizens and thereby block their participation.

Policy Implications: State law encourages public participation in many aspects of state and local policy-making and decision-making. But at the same time, the law also enables individuals to block such participation by filing SLAPP's. The legal threshold for filing suits over vague concerns such as "defamation of character" is low; the process for resolving such complaints is time-consuming (and therefore expensive); and that process puts the burden of proof on the citizen being sued. This combination of factors makes citizens vulnerable to SLAPP suits and thereby hinders public participation. This proposal would encourage public participation by increasing protection against SLAPP's, expediting the resolution of such litigation, and shifting the burden of proof onto the filer of the SLAPP.

Other State or Local Agencies Affected:

Agency:	Person you talked to about concept:	Phone:
Division of State Lands	Jennifer Robison	503 378-3805, X 227

(It's likely that many state agencies with environmental, health, or other programs that encourage public participation would be affected by SLAPP's. The only other agency that I have talked with, the Division of State Lands, confirms that SLAPP's are occasionally a problem there and supports the concept in this legislative proposal.)

Known Opposition: None. It is likely, however, that some development interests would oppose the legislation if it were seen to be a lowering of their protection against defamation or an encouragement of "spurious appeals" of development proposals.

This Concept: (Do not skip answers. Enter none or N/A as needed.)
Revises or repeals ORS: NA Adds new sections to ORS Chapter: NA
Check one: _ Major program. change X Minor program change _ Technical correction/housekeeping only
Was previously proposed in: Year NA as Bill No. NA
Why are you proposing it again? NA

Is a PLACEHOLDER? No X Yes __ Expected date of completion NA
Is due to legal decision: Case cite: No or AGO No./date NA (attach copy)
Raises fees or assessments? No X Yes __ (attach Fiscal Impact Estimate) The fiscal impact is likely to be a net savings, due to a reduction in the number of suits filed.
Imposes or adds to unfunded mandate on local governments? No X Yes __ (attach Fiscal Impact Estimate)
Has other fiscal or position impacts? No X Yes __ (attach Fiscal Impact Estimate)

APPROVED FOR DRAFTING Dept. of Administrative Services Date Governor's Office Date

Section 1. Title
This Act may be cited as the "Citizen Participation in Government Act of 1999."

Section 2. Findings
The legislature finds and declares the following:
a. Citizen participation in government is an inalienable right essential to the survival of democracy. Such participation is protected through the right to petition the government for redress of grievances in the First Amendment to U.S. Constitution.
b. The communications, information, opinions, reports, testimony, claims, and arguments provided by citizens to their government are essential to the making of sound government decisions and policies regarding the public health, safety, and welfare.
c. Civil lawsuits and counterclaims, often seeking millions of dollars, have been and are being filed against citizens and organizations exercising their valid right to petition and to participate in the making of sound government decision and policies.
d. The great majority of such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPP's," are dismissed, but not before the defendant citizens or organizations have incurred great expense, stress, and interruption of their personal life.
e. SLAPP's are an abuse of the judicial process, in that they are groundless suits intended to intimidate or punish citizens and organizations for involving themselves in public affairs.
f. SLAPP's have compelled citizens and organizations in Oregon to withdraw from rightful participation in government decisions and processes.
g. Control of SLAPP's will bring a significant reduction in the amount of litigation in Oregon's courts and a consequent saving of public funds.
h. The threat of financial liability, litigation costs, loss of business, loss of one's home, and other personal losses from groundless lawsuits seriously affects state government by diminishing citizen participation in government, in public issues, and in voluntary service.
i. Although courts have recognized and discouraged SLAPP's, protection from SLAPP's has been neither uniform nor comprehensive.
j. Although some citizen communications to government inevitably will be incorrect, unsound, self-interested, or not in good faith, it is essential to democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly and comprehensively protected and encouraged.

Section 3. Purpose
This Act has five purposes:
a. To protect and to encourage citizen participation in government to the maximum extent permitted by law;
b. To create a more equitable balance between the rights of persons to file lawsuits and

the rights of persons to petition, speak out, associate, and otherwise participate in government;
c. To protect the public's health, safety, and welfare by protecting public participation in the government programs, decisions, and other actions that affect the public's health, safety, and welfare;
d. To establish a balanced, uniform, and comprehensive process for rapid, equitable, and cost-effective adjudication of SLAPP's; and
e. To provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

Section 4. Immunity
Acts involving a citizen's constitutional right to petition, influence, inform, communicate with, or otherwise participate in the processes of government shall be immune from civil liability, regardless of their intent or purpose, except when such acts are not intended to procure any governmental action, result, or outcome.

Section 5. Applicability
This act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act of the moving party in furtherance of the moving party's rights as described in Section 4.

Section 6. Required Practices
1. On the filing of any motion as described in Section 5, the following steps shall be taken:

a. The motion shall be treated as one for summary judgment.
b. The trial court shall set a schedule appropriate to preferred or expedited motions.
c. The moving party shall have a right of expedited appeal from a trial court order denying such a motion or from a trial court failure to rule on such a motion in an expedited fashion.
d. Discovery shall be suspended, pending decision on the motion and appeals.
e. The responding party shall have the burden of proof, of going forward with the evidence, and of persuasion on the motion.
f. The court shall make its determination based on the facts contained in the pleadings and affidavits filed.
g. The court shall grant the motion and dismiss the judicial claim, unless the responding party has produced substantial evidence that the acts of the moving party are not immune from liability as described in Section 4.
h. Any governmental body to which the moving party's acts were directed or the

Attorney General may intervene to defend or otherwise support the moving party.

i. The court shall award to a moving party who is dismissed the following:

i. Costs of litigation, including reasonable fees for attorneys and expert witnesses, incurred in conjunction with the motion; and

ii. Such additional sanctions upon the responding party or its attorney or both as the court determines will be sufficient to deter repetition of such conduct and comparable conduct by others similarly situated.

2. A person damaged or injured by reason of a claim filed in violation of their rights under Section 4 of this act may seek relief from the person responsible in the form of a claim for actual or compensatory damages, as well as for punitive damages, attorney fees, and costs.

Section 7. Definitions

a. "***Government***" includes any branch, department, agency, instrumentality, official, employee, agent, or other person acting under the law of the United States, the State of Oregon, or any city or county within the State of Oregon,

b. "***Person***" includes any individual, corporation, association, organization, partnership, or other legal entity.

c. "***Judicial claim***" or "***claim***" includes any lawsuit, cause of motion, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

d. "***Motion***" includes any motion to dismiss, for summary judgement, for judgment on the pleadings, to strike, demurrer, or any other judicial pleading filed to dispose of a judicial claim.

e. "***Moving party***" means any person on whose behalf the motion described in Section 5 is filed seeking dismissal of the judicial claim.

f. "***Responding party***" means any person against whom the motion described in Section 5 is filed. ❑

GREGORY A. CHAIMOV
LEGISLATIVE COUNSEL

S101 STATE CAPITOL
SALEM, OREGON 97310-0630
(503) 986-1243
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Benner
Rindy
Rohse
Daniels
VanVelsor

STATE OF OREGON
Legislative Counsel Committee

DEPT OF
OCT 28 1998
LAND CONSERVATION
AND DEVELOPMENT

TO: State Agencies

FROM: Legislative Counsel's Office

DATE June 1, 1998

SUBJECT: Proposed legislation for 1998 Session

Attached you will find a **"Draft Copy"** of your proposed legislation. we suggest that you circulate this draft to all appropriate people for their review. If changes are necessary, mark this copy, describe in a separate writing what you are seeking to accomplish, and return this information to us. The necessary changes will be made and the revised draft returned to you.

WE WILL REVISE THIS DRAFT ONLY ONE TIME BEFORE IT IS INTRODUCED

If you have **no changes or are in receipt of a revised copy**, please send 5 copies of the draft to the Department of Administrative Services, Statewide Legislative Coordinator for final review and decisions. Also include a revised Fiscal Impact Estimate and Form #333 (Request for Fee Increase/Establishment/Decrease), if appropriate.

The deadline for pre-session filing is 5:00 p.m., Tuesday, December 15, 1998. **Notification of final filing decisions and instructions for pre-session filing and introduction packets will be sent to you from the Department of Administrative Services.**

Requests which have been received on or before May 29, 1998, but for which the agency fails to provide necessary substantive or administrative details on or before Friday, July 31, 1998, will be given drafting attention only **after** bill drafting work for legislators and legislative committees is completed. We cannot guarantee this information will be included. All drafting for agency bills will be discontinued at 5:00 p.m., Tuesday, December 1, 1998.

DEADLINE FOR PRESESSION FILING IS 5:00 PM, TUESDAY, DECEMBER 15, 1998

GREGORY A. CHAIMOV
LEGISLATIVE COUNSEL

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STATE OF OREGON
Legislative Counsel Committee

October 26, 1998

To: Mitch Rohse, Department of Land Conservation and Development

From: David W. Heynderickx, Deputy Legislative Counsel

Subject: LC 798—Strategic Lawsuits Against Public Participation (SLAPP)

Enclosed is LC 798, the draft you requested relating to civil immunity for people participating in governmental proceedings. As we discussed, this is a difficult area to draft in because of the potential for unintended consequences. You should note the following about the draft:

(1) The language you sent me would have covered almost any statement or act of a person that was deemed to be "participating" in the process of government. As I mentioned, it is difficult to determine how many different types of activities that might have immunized (e.g. planting bombs). Since most SLAPP suits are predicated on defamation or other legal theories for attacking speech, it would make more sense to direct the immunity specifically to speech.

The approach taken in LC 798 is analogous to the approach taken in many laws for communications made by citizens to professional licensing boards. These laws generally give complete immunity for the information given and testimony made with respect to pending matters before the boards. See, e.g., ORS 9.537.

In looking back at the statute that deals with speech in committee hearings conducted by the Legislative Assembly, I found that the law provides only limited protection for the witness. ORS 171.530. Since I did not think that you would want to tinker with this law, I made a specific exception for testimony that is subject to this section.

(2) As we discussed, there may be some ambiguity in determining which statements are made "in the course of participating" in a governmental proceeding. It would seem clear that this language covers testimony, but may not necessarily cover such activities as writing letters to newspapers. My inclination would be to leave this as stated since restricting the protection to "testimony" would probably exclude many of the activities that you would want to immunize.

(3) Your draft request had extensive language on procedural aspects of asserting this defense. I would recommend against inserting a special procedure applicable only to this particular defense. Since the immunity is absolute, the only fact issue a court would need to address would be whether the statement was made in "the course of participating" in governmental proceedings. In most cases, this will not present a problem. In those cases

LC 798
660-01-03
10/26/98 (DH/ps)

DRAFT

SUMMARY

Provides civil immunity for statements made by person in course of participating in administrative, quasi-judicial or legislative proceeding conducted by public body.

A BILL FOR AN ACT

Relating to liability.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any statement made by the person in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260. Statements protected under this section include, but are not limited to, statements made for the purpose of influencing governmental decisions or informing government officials or employees on issues being considered by a public body, as defined in ORS 30.260.

(2) The immunity conveyed by this section:

(a) Does not apply in any action brought by a public body for the purpose of enforcing the laws of this state; and

(b) Does not apply to statements that are subject to ORS 171.530.

(3) This section does not limit any other immunity or defense under common or statutory law that may be available to a defendant in a civil action based on statements made by the defendant.

(4) The court shall award reasonable attorney fees, costs and all other reasonable expenses, including expert witness expenses, incurred by a defendant who prevails in a civil action by reason of the immunity conveyed by this section.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **<u>SECTION 2.</u> The immunity conveyed by section 1 of this 1999 Act**
2 **applies only to statements made on or after the effective date of this**
3 **1999 Act.**
4

SB 330 Printed pursuant to Senate Interim Rule 213.28. (at the
request of Department of Land Conservation and Development) -- Relating to liability.
1-26(S) Introduction and first reading. Referred to President's
desk.
Referred to Judiciary.
7-24 In committee upon adjournment.
Provides civil immunity for statements made by person in course
of participating in administrative, quasi-judicial or legislative
proceeding conducted by public body.

Source: State of Oregon Legislative Web Site
http://www.leg.state.or.us/99reg/pubs/senmh.txt

70th OREGON LEGISLATIVE ASSEMBLY–1999 Regular Session

Senate Bill 330

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Land Conservation and Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Provides civil immunity for statements made by person in course of participating in administrative, quasi-judicial or legislative proceeding conducted by public body.

1 **A BILL FOR AN ACT**

2 Relating to liability.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any**
5 **statement made by the person in the course of participating in an administrative, quasi-**
6 **judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260.**
7 **Statements protected under this section include, but are not limited to, statements made for**
8 **the purpose of influencing governmental decisions or informing government officials or em-**
9 **ployees on issues being considered by a public body, as defined in ORS 30.260.**

10 **(2) The immunity conveyed by this section:**

11 **(a) Does not apply in any action brought by a public body for the purpose of enforcing**
12 **the laws of this state; and**

13 **(b) Does not apply to statements that are subject to ORS 171.530.**

14 **(3) This section does not limit any other immunity or defense under common or statutory**
15 **law that may be available to a defendant in a civil action based on statements made by the**
16 **defendant.**

17 **(4) The court shall award reasonable attorney fees, costs and all other reasonable ex-**
18 **penses, including expert witness expenses, incurred by a defendant who prevails in a civil**
19 **action by reason of the immunity conveyed by this section.**

20 **SECTION 2. The immunity conveyed by section 1 of this 1999 Act applies only to state-**
21 **ments made on or after the effective date of this 1999 Act.**

22

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

>

Transfer interrupted!

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 798

Senate Bill 330

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Land Conservation and Development)

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(2) The immunity conveyed by this section:

(a) Does not apply in any action brought by a public body for the purpose of enforcing the laws of this state; and

(b) Does not apply to statements that are subject to ORS 171.530.

(3) This section does not limit any other immunity or defense under common or statutory law that may be available to a defendant in a civil action based on statements made by the defendant.

(4) The court shall award reasonable attorney fees, costs and all other reasonable expenses, including expert witness expenses, incurred by a defendant who prevails in a civil action by reason of the immunity conveyed by this section. + }

SECTION 2. { + The immunity conveyed by section 1 of this 1999 Act applies only to statements made on or after the effective date of this 1999 Act. + }

Notes on HB 2805 Hearing -- March 24, 1999

The hearing began at about 1:30 and lasted until 4:00 p.m. Nineteen people testified, in the following order:

1. Mitch Rohse, DLCD
2. Jeff Lamb, Oregon Communities for a Voice in Annexations
3. Rep. Kurt Schrader (sponsor of the bill)
4. Liz Frenkel, League of Women Voters
5. Portia Foster, SLAPP victim
6. Charlotte Mills, SLAPP victim
7. Jerry Scott, SLAPP victim
8. Sid Friedman
9. Larry De Bates
10. Henry Reeves
11. Peggy Lynch
12. Jim Ludwick, Friends of Yamhill County
13. Katie Kohl, Friends of Linn County
14. Randy Rupa
15. James Monroe
16. ??? ???
17. Evan Manvel, 1000 Friends of Oregon
18. John Engelbrecht
19. Jon Chandler, Oregon Building Industry Association

The committee also received written testimony from Mickey Killingsworth, President of the Jefferson County Farm Bureau; Matt Jarvis, President of Jarvis Communications; Marvin Durham; Blenda Sanders; and Vic Affolter, Tillamook County Planning Director.

Rohr

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

House Bill 2805

Sponsored by Representative SCHRADER; Representatives EDWARDS, KAFOURY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Provides civil immunity for statements made by person in course of participating in administrative, quasi-judicial or legislative proceeding conducted by public body.

1 **A BILL FOR AN ACT**

2 Relating to liability.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any**
5 **statement made by the person in the course of participating in an administrative, quasi-**
6 **judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260.**
7 **Statements protected under this section include, but are not limited to, statements made for**
8 **the purpose of influencing governmental decisions or informing government officials or em-**
9 **ployees on issues being considered by a public body, as defined in ORS 30.260.**

10 **(2) The immunity conveyed by this section:**

11 **(a) Does not apply in any action brought by a public body for the purpose of enforcing**
12 **the laws of this state; and**

13 **(b) Does not apply to statements that are subject to ORS 171.530.**

14 **(3) This section does not limit any other immunity or defense under common or statutory**
15 **law that may be available to a defendant in a civil action based on statements made by the**
16 **defendant.**

17 **(4) The court shall award reasonable attorney fees, costs and all other reasonable ex-**
18 **penses, including expert witness expenses, incurred by a defendant who prevails in a civil**
19 **action by reason of the immunity conveyed by this section. The court may award punitive**
20 **damages to a defendant who prevails in a civil action by reason of the immunity conveyed**
21 **by this section.**

22 **SECTION 2. The immunity conveyed by section 1 of this 1999 Act applies only to state-**
23 **ments made on or after the effective date of this 1999 Act.**

24

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

HB 2805-5
(LC 2983)
4/26/99 (DH/ps)

PROPOSED AMENDMENTS TO HOUSE BILL 2805

1 After line 9 of the printed bill, insert:

2 "(2) The immunity conveyed by this section does not apply to any state-
3 ment of fact that is known to be false at the time the statement is made and
4 that is not material to any issue being considered by a public body, as de-
5 fined in ORS 30.260.".

6 In line 10, delete "(2)" and insert "(3)".

7 In line 14, delete "(3)" and insert "(4)".

8 In line 17, delete "(4)" and insert "(5)".

9

HB 2805-3
(LC 2983)
4/26/99 (DH/ps)

PROPOSED AMENDMENTS TO HOUSE BILL 2805

1 After line 16 of the printed bill, insert:

2 "(4) The court shall expedite any motion for summary judgment filed by
3 a defendant that asserts the immunity provided by this section.".

4 In line 17, delete "(4)" and insert "(5)".

5

HB 2805-4
(LC 2983)
4/26/99 (DH/ps)

PROPOSED AMENDMENTS TO HOUSE BILL 2805

1 After line 2 of the printed bill, insert:
2 "Whereas citizen participation in government is a right essential to the
3 survival of democracy; and
4 "Whereas the communications, information, opinions, reports, testimony,
5 claims and arguments provided by citizens to their government are essential
6 to the making of sound government decisions and policies on public health,
7 safety and welfare; and
8 "Whereas civil actions, often seeking millions of dollars in damages, have
9 been filed against citizens and organizations exercising their right to petition
10 and to participate in the making of sound government decisions and policies;
11 and
12 "Whereas many of the actions filed against citizens, referred to as 'Stra-
13 tegic Lawsuits Against Public Participation' (SLAPP suits) are dismissed,
14 but not before the defendant citizens or organizations have incurred great
15 expense, stress and interruption of life and business; and
16 "Whereas SLAPP suits are an abuse of the judicial process, in that they
17 are designed to intimidate or punish citizens and organizations for involve-
18 ment in public affairs; and
19 "Whereas SLAPP suits have compelled citizens and organizations in
20 Oregon to withdraw from rightful participation in government participation
21 and processes; and
22 "Whereas control of SLAPP suits will reduce litigation in Oregon courts
23 and result in better use of judicial resources; and
24 "Whereas the threat of financial liability, litigation expenses, loss of

1 business, loss of a home and other personal losses from SLAPP suits seri-
2 ously affect state government by diminishing citizen participation in gov-
3 ernment, in public debates and in voluntary service; and
4 "Whereas courts have sometimes recognized and discouraged SLAPP
5 suits, but not in a consistent or comprehensive manner; and
6 "Whereas even though some citizen communications to government may
7 prove to be incorrect, unsound or self-interested, it is essential to democracy
8 that the right of citizens to participate fully in the process of government
9 be uniformly and comprehensively protected and encouraged; now,
10 therefore,".
11

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

HA to HB 2805

LC 2983/HB 2805-7

HOUSE AMENDMENTS TO
HOUSE BILL 2805

By COMMITTEE ON JUDICIARY - CIVIL LAW

May 5

After line 9 of the printed bill, insert:
' (2) The immunity conveyed by this section does not apply to any statement of fact that is known to be false at the time the statement is made and that is not material to any issue being considered by a public body, as defined in ORS 30.260.'.
In line 10, delete '(2)' and insert '(3)'.
In line 14, delete '(3)' and insert '(4)'.
After line 16, insert:
' (5) The court shall expedite any motion for summary judgment filed by a defendant that asserts the immunity provided by this section.'.
In line 17, delete '(4)' and insert '(6)'.

HB 2805-A8
(LC 2983)
5/17/99 (DH/ps)

PROPOSED AMENDMENTS TO A-ENGROSSED HOUSE BILL 2805

1 On page 1 of the printed A-engrossed bill, delete lines 10 through 12 and
2 insert:
3 "(2) The immunity conveyed by this section does not apply to any state-
4 ment of fact that is known to be false at the time the statement is made, or
5 that is made with reckless disregard for the truth or falsity of the
6 statement.".
7

HB 2805-A9
(LC 2983)
6/15/99 (DH/ps)

PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2805

1 On page 1 of the printed A-engrossed bill, line 5, delete ", quasi-".
2 In line 6, delete "judicial".
3 In line 15, delete "and".
4 After line 15, insert:
5 "(b) Does not apply to any judicial or quasi-judicial proceeding conducted
6 by a public body; and".
7 In line 16, delete "(b)" and insert "(c)".
8

HB 2805-A10
(LC 2983)
6/21/99 (DH/ps)

PROPOSED AMENDMENTS TO A-ENGROSSED HOUSE BILL 2805

1 Delete lines 10 through 12 of the printed A-engrossed bill and insert:
2 "(2) The immunity conveyed by this section does not apply if:
3 "(a) The statement of fact is not material to any issue being considered
4 by a public body, as defined in ORS 30.260; and
5 "(b) The person making the statement knew or should have known that
6 the statement was false at the time the statement was made.".
7

HB 2805-A11
(LC 2983)
6/23/99 (DH/ps)

PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2805

1 On page 1 of the printed A-engrossed bill, delete lines 22 through 26 and
2 insert:
3 "(6) In any civil action in which the immunity conveyed by this section
4 is asserted as a defense, the court shall award to the prevailing party rea-
5 sonable attorney fees, costs and all other reasonable expenses, including ex-
6 pert witness expenses, incurred by the prevailing party.".
7

HB 2805-A13
(LC 2983)
6/23/99 (DH/ps)

PROPOSED AMENDMENTS TO A-ENGROSSED HOUSE BILL 2805

1 On page 1 of the printed A-engrossed bill, delete lines 22 through 26 and
2 insert:
3 "(6) In any civil action in which the immunity conveyed by this section
4 is asserted as a defense, the court may award to the prevailing party rea-
5 sonable attorney fees, costs and all other reasonable expenses, including ex-
6 pert witness expenses, incurred by the prevailing party.".
7

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

A-Engrossed
House Bill 2805

Ordered by the House May 5
Including House Amendments dated May 5

Sponsored by Representative SCHRADER; Representatives EDWARDS, KAFOURY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides civil immunity for statements made by person in course of participating in administrative, quasi-judicial or legislative proceeding conducted by public body.

1 **A BILL FOR AN ACT**

2 Relating to liability.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any**
5 **statement made by the person in the course of participating in an administrative, quasi-**
6 **judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260.**
7 **Statements protected under this section include, but are not limited to, statements made for**
8 **the purpose of influencing governmental decisions or informing government officials or em-**
9 **ployees on issues being considered by a public body, as defined in ORS 30.260.**

10 **(2) The immunity conveyed by this section does not apply to any statement of fact that**
11 **is known to be false at the time the statement is made and that is not material to any issue**
12 **being considered by a public body, as defined in ORS 30.260.**

13 **(3) The immunity conveyed by this section:**

14 **(a) Does not apply in any action brought by a public body for the purpose of enforcing**
15 **the laws of this state; and**

16 **(b) Does not apply to statements that are subject to ORS 171.530.**

17 **(4) This section does not limit any other immunity or defense under common or statutory**
18 **law that may be available to a defendant in a civil action based on statements made by the**
19 **defendant.**

20 **(5) The court shall expedite any motion for summary judgment filed by a defendant that**
21 **asserts the immunity provided by this section.**

22 **(6) The court shall award reasonable attorney fees, costs and all other reasonable ex-**
23 **penses, including expert witness expenses, incurred by a defendant who prevails in a civil**
24 **action by reason of the immunity conveyed by this section. The court may award punitive**
25 **damages to a defendant who prevails in a civil action by reason of the immunity conveyed**
26 **by this section.**

27 **SECTION 2. The immunity conveyed by section 1 of this 1999 Act applies only to state-**
28 **ments made on or after the effective date of this 1999 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 2983

B-Engrossed

House Bill 2805
Ordered by the Senate July 1
Including House Amendments dated May 5 and Senate Amendments dated
July 1

Sponsored by Representative SCHRADER; Representatives EDWARDS, KAFOURY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides civil immunity for statements made by person in course of participating in administrative, quasi-judicial or legislative proceeding conducted by public body.

A BILL FOR AN ACT

Relating to liability.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + (1) Except as provided in this section, a person is not civilly liable for any statement made by the person in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260. Statements protected under this section include, but are not limited to, statements made for the purpose of influencing governmental decisions or informing government officials or employees on issues being considered by a public body, as defined in ORS 30.260.

(2) The immunity conveyed by this section does not apply if:

(a) The statement is not material to any issue being considered by a public body, as defined in ORS 30.260; and

(b) The person making the statement knew or should have known that the statement was false at the time the statement was made.

(3) The immunity conveyed by this section:

(a) Does not apply in any action brought by a public body for the purpose of enforcing the laws of this state; and

(b) Does not apply to statements that are subject to ORS 171.530.

(4) This section does not limit any other immunity or defense under common or statutory law that may be available to a defendant in a civil action based on statements made by the defendant.

(5) The court shall expedite any motion for summary judgment filed by a defendant that asserts the immunity provided by this section.

(6) In any civil action in which the immunity conveyed by this section is asserted as a defense, the court may award to the prevailing party reasonable attorney fees, costs and other reasonable expenses, including expert witness expenses, incurred by the prevailing party. + }

SECTION 2. { + The immunity conveyed by section 1 of this 1999 Act applies only to statements made on or after the effective date of this 1999 Act. + }

1000 FRIENDS OF OREGON
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Comparison of Versions of HB 2805

HB 2805-A passed the House by a 49-9 vote. The Minority Report is the House version. The amended version is on the right. Only Sections 2 and 6 differ. Emphases are added.

1000 Friends of Oregon Supports the Minority Report

Minority Report

A BILL FOR AN ACT
Relating to liability.

SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any statement made by the person in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260. Statements protected under this section include, but are not limited to, statements made for the purpose of influencing governmental decisions or informing government officials or employees on issues being considered by a public body, as defined in ORS 30.260.

(2) The immunity conveyed by this section does not apply to any statement of fact that is known to be false at the time the statement is made and that is not material to any issue being considered by a public body, as defined in ORS 30.260.

(3) The immunity conveyed by this section:
(a) Does not apply in any action brought by a public body for the purpose of enforcing the laws of this state; and
(b) Does not apply to statements that are subject to ORS 171.530.
(4) This section does not limit any other immunity or defense under common or statutory law that may be available to a defendant in a civil action based on statements made by the defendant.
(5) The court shall expedite any motion for summary judgment filed by a defendant that asserts the immunity provided by this section.

(6) The court shall award reasonable attorney fees, costs and all other reasonable expenses, including expert witness expenses, incurred by a defendant who prevails in a civil action by reason of the immunity conveyed by this section. The court may award punitive damages to a defendant who prevails in a civil action by reason of the immunity conveyed by this section.

SECTION 2. The immunity conveyed by section 1 of this 1999 Act applies only to statements made on or after the effective date of this 1999 Act.

Committee Report

A BILL FOR AN ACT
Relating to liability.

SECTION 1. (1) Except as provided in this section, a person is not civilly liable for any statement made by the person in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body, as defined in ORS 30.260. Statements protected under this section include, but are not limited to, statements made for the purpose of influencing governmental decisions or informing government officials or employees on issues being considered by a public body, as defined in ORS 30.260.

(2) The immunity conveyed by this section does not apply if:
(a) The statement of fact is not material to any issue being considered by a public body, as defined in ORS 30.260; and
(b) The person making the statement knew or should have known that the statement was false at the time the statement was made.

(3) The immunity conveyed by this section:
(a) Does not apply in any action brought by a public body for the purpose of enforcing the laws of this state; and
(b) Does not apply to statements that are subject to ORS 171.530.
(4) This section does not limit any other immunity or defense under common or statutory law that may be available to a defendant in a civil action based on statements made by the defendant.
(5) The court shall expedite any motion for summary judgment filed by a defendant that asserts the immunity provided by this section.

(6) In any civil action in which the immunity conveyed by this section is asserted as a defense, the court may award to the prevailing party reasonable attorney fees, costs and all other reasonable expenses, including expert witness expenses, incurred by the prevailing party.

(Editor's note: no punitive damages provided for)

SECTION 2. The immunity conveyed by section 1 of this 1999 Act applies only to statements made on or after the effective date of this 1999 Act.

HB 2703 By Representative BECK; Representatives KNOPP, PATRIDGE, ROSENBAUM (at the request of Oregon Physical Therapy Association) -- Relating to Physical Therapist Licensing Board sanctions.
7-6(S) President signed.

HB 2706 By Representative SIMMONS (at the request of Don and Mary Ann Woodward of Wallowa) -- Relating to timbers.
7-6(S) Work Session cancelled.

HB 2731 By Representative WALKER; Representatives LEHMAN, MANNIX, SHETTERLY, UHERBELAU, WITT, Senator BROWN (at the request of Oregon Court Reporters Association) -- Relating to depositions.
7-7(S) Work Session scheduled.

HB 2743 By Representatives MANNIX, WINTERS; Representative BACKLUND, Senators COURTNEY, DERFLER -- Relating to state land within Marion County.
7-6(S) President signed.

HB 2772 By Representative MANNIX (At the request of Oregon Gun Owners) -- Relating to forfeiture of motor vehicles.
7-6(S) Recommendation: Do pass the A-Eng. bill.
Second reading.

HB 2805 By Representative SCHRADER; Representatives EDWARDS, KAFOURY -- Relating to liability.
7-6(S) Motion to substitute Minority Report for Committee Report failed.
Ayes, 13 --Nays, 16, Bryant, Derfler, Duncan, Ferrioli, Fisher, George, Hannon, Hartung, Miller, Nelson, Qutub, Shannon, Starr, Tarno, Timms, President Adams, Absent, 1--Wilde.
Motion to lay on the table carried.
Ayes, 17 --Nays, 12, Beyer, Brown, Burdick, Castillo, Corcoran, Courtney, Dukes, Gordly, Metsger, Shields, Trow, Yih, Absent, 1--Wilde.

HB 2830 By Representative KROPF -- Relating to occupational safety.
7-6(H) Second reading.

HB 2866 By Representative KING (at the request of Professional Land Surveyors of Oregon) -- Relating to land surveys.
7-6(S) Third reading. Carried by Shannon. Failed.
Ayes, 11 --Nays, 13, Beyer, Brown, Burdick, Castillo, Dukes, Duncan, George, Gordly, Hannon, Miller, Shannon, Trow, Yih, Absent, 1--Wilde, Excused, 1--Derfler, Attending Legislative Business, 4----Corcoran, Courtney, Ferrioli, Metsger.
Shannon served notice of possible reconsideration.

HB 2937 By Representative PROZANSKI; Representative WELLS, Senator GORDLY (at the request of Asset Forfeiture Oversight Advisory Committee) -- Relating to Asset Forfeiture Oversight Advisory Committee.
7-6(S) Third Reading. Carried by Tarno. Passed.
Ayes, 26 --Absent, 1--Wilde, Excused, 1--Derfler, Attending Legislative Business, 2----Corcoran, Ferrioli.

SENATE VOTE ON ANTI-SLAPP BILL, HB 2805 -- JULY 6, 1999			
SENATOR	**PARTY**	**Table HB 2805-B (Weaker Bill)**	**Accept Minority Rpt. (Stronger Bill)**
Adams	R	Yes	No
Beyer	D	No	Yes
Brown	D	No	Yes
Bryant	R	Yes	No
Burdick	D	No	Yes
Castillo	D	No	Yes
Corcoran	D	No	Yes
Courtney	D	No	Yes
Derfler	R	Yes	No
Dukes	D	No	Yes
Duncan	R	Yes	No
Ferrioli	R	Yes	No
Fisher	R	Yes	No
George	R	Yes	No
Gordly	D	No	Yes
Hannon	R	Yes	No
Hartung	R	Yes	No
Lim	R	Yes	Yes
Metsger	D	No	Yes
Miller	R	Yes	No
Nelson	R	Yes	No
Qutub	R	Yes	No
Shannon	R	Yes	No
Shields	D	No	Yes
Starr	R	Yes	No
Tarno	R	Yes	No
Timms	R	Yes	No
Trow	D	No	Yes
Wilde	D	Absent	Absent
Yih	D	No	Yes

HB 2721 By Representative WILLIAMS; Senator BRYANT;
Representative SHETTERLY -- Relating to civil procedure.
2-26(H) First reading. Referred to Speaker's desk.
3-1 Referred to Judiciary - Civil Law.
4-21 Public Hearing held.
4-22 Public Hearing and Work Session held.
4-28 Recommendation: Do pass with amendments and be printed A-Engrossed.
4-30 Second reading.
5-3 Third reading. Carried by Williams. Passed.
Ayes, 35 --Nays, 23, Beck, Bowman, Deckert, Devlin, Edwards, Gardner, Hansen, Hopson, Kafoury, King, Lehman, Leonard, Lowe, Merkley, Morrisette, Piercy, Prozanski, Rasmussen, Rosenbaum, Ross, Taylor, Uherbelau, Walker, Absent, 1--Shetterly, Excused, 1--Speaker Snodgrass.
Vote explanation(s) filed by Edwards entered in Journal.
5-4(S) First reading. Referred to President's desk.
5-5 Referred to Judiciary.
5-18 Public Hearing held.
5-27 Work Session held.
6-9 Recommendation: Do pass the A-Eng. bill.
Second reading.
6-10 Carried over to 06-11 by unanimous consent.
6-11 Third Reading. Carried by Bryant. Passed.
Ayes, 17 --Nays, 9, Beyer, Brown, Burdick, Castillo, Corcoran, Gordly, Hannon, Shields, Trow, Excused, 2--Courtney, Hartung, Attending Legislative Business, 2----Dukes, President Adams.
7-7(H) Speaker signed.
7-9(S) President signed.
7-20(H) Governor signed.
(Chapter 815, 1999 Session Laws) Effective date: October 23, 1999.
Requires court to grant motion for summary judgment if adverse party fails to support µessential° element of case for which adverse party would have burden of persuasion at trial.

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

House Bill 2721

Sponsored by Representative WILLIAMS, Senator BRYANT; Representatives EDWARDS, SHETTERLY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Requires court to grant motion for summary judgment if adverse party fails to support essential element of case.

A BILL FOR AN ACT

Relating to civil procedure; creating new provisions; and amending ORCP 47C.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 47 C is amended to read:

C Motion and proceedings thereon.

C(1) The motion and all supporting documents shall be served and filed at least 45 days before the date set for trial. The adverse party shall have 20 days in which to serve and file opposing affidavits and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times.

C(2) The [*judgment sought shall be rendered forthwith*] **court shall enter judgment for the moving party** if the pleadings, depositions, **affidavits** and admissions on file[, *together with the affidavits, if any,*] show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment.

C(3)(a) The court shall enter judgment for the moving party if:

C(3)(a)(i) The pleadings, depositions, affidavits and admissions on file, viewed in a manner most favorable to the adverse party, do not contain evidence that is adequate to support findings of the specific facts that are necessary to establish an essential element of the adverse party's claim or defense; and

C(3)(a)(ii) The adverse party would have the burden of proving that element of the claim or defense at trial.

(C)(3)(b) Evidence adequate to support findings of specific facts under this subsection need not be evidence that would be admissible at trial.

C(4) A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

SECTION 2. The amendments to ORCP 47 C by section 1 of this 1999 Act apply to all actions pending on or commenced after the effective date of this 1999 Act.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

ORS 9.537, ON IMMUNITY OF WITNESSES WHO TESTIFY BEFORE THE OREGON STATE BAR (ADOPTED IN 1983)

9.537 Civil immunity of witnesses; bar officials and employees. (1) Any person who has made a complaint to the bar concerning the conduct of an attorney, or who has given information or testimony in or relative to a proposed or pending admission, reinstatement or disciplinary proceeding shall be absolutely immune from civil liability for any such acts.

(2) The Oregon State Bar, its officers, the members of local professional responsibility committees, the state professional responsibility board, the board of bar examiners, the board of governors, the disciplinary board, and bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending admission, reinstatement or disciplinary proceedings. [1983 c.618 §7]

ORS 9.537

9.537 Civil immunity of witnesses; bar officials and employees.
(1) Any person who has made a complaint to the bar concerning the conduct of an attorney, or who has given information or testimony in or relative to a proposed or pending admission, reinstatement or disciplinary proceeding shall be ***absolutely immune*** from civil liability for any such acts.

(2) The Oregon State Bar, its officers, the members of local professional responsibility committees, the state professional responsibility board, the board of bar examiners, the board of governors, the disciplinary board, and bar counsel, investigators and employees of the bar shall be ***absolutely immune*** from civil liability in the performance of their duties relative to proposed or pending admission, reinstatement or disciplinary proceedings. [**1983** c.618 s.7
(*Emphasis added*)

ORS 171.525 AND 530, ON IMMUNITY OF WITNESSES WHO TESTIFY BEFORE LEGISLATIVE COMMITTEES (ADOPTED IN 1987)

171.525 Immunities of witness before legislative committee. Any testimony given by a witness before any legislative committee shall not be used against the witness in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by the witness, except for perjury committed before such committee. [Formerly 171.078]

171.530 Privilege of witness before legislative committee. (1) The privilege of a witness who appears voluntarily or under subpoena before a committee of the Legislative Assembly in a matter within the jurisdiction of the committee is the same as that of a witness in judicial proceedings. A statement made by the witness before a legislative committee which is pertinent to the matter before the legislative committee is privileged and the witness shall not be subject to an action for civil damages as a result thereof unless the witness knowingly makes a false and immaterial statement for the purpose of defaming another.

(2) As used in this section, "legislative committee" means a statutory, standing, special or interim committee of either or both houses, including a legislative task force, established by rule of either or both houses, by resolution or by law and whether or not all members of the legislative committee are also members of the Legislative Assembly. [1987 c.797 §1]