

HOUSE COMMITTEE ON JUDICIARY

March 31, 2003 Hearing Room 357

1:00 p.m. Tapes 110 - 112

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Gordon Anderson, Vice-Chair
 Rep. Robert Ackerman, Vice-Chair
 Rep. Jeff Barker
 Rep. Bob Jenson
 Rep. Jerry Krummel
 Rep. Greg Macpherson
 Rep. Floyd Prozanski
 Rep. Lane Shetterly

STAFF PRESENT: **Bill Taylor, Counsel**
 Bill Joseph, Counsel
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **HB 3389 Public Hearing**
 HB 2672 Public Hearing
 HB 2900 Public Hearing
 HB 2901 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
110, A		
003	Vice-Chair Ackerman	Calls the meeting to order at 1:42 p.m. Opens a public hearing on HB 3389.
<u>HB 3389 PUBLIC HEARING</u>		
007	Bill Taylor	Committee Counsel. Introduces HB 3389 which provides additional means of establishing identity of controlled substance in prosecutions involving controlled substances.
025	Michael Dugan	District Attorney, Deschutes County. Submits testimony and testifies in support of HB 3389 (EXHIBIT A).
067	Doug Harcleroad	District Attorney, Lane County. Testifies in support of HB 3389.
090	Dr. Ray Grimsbo	Submits testimony and testifies in opposition to HB 3389 (EXHIBIT B).
136	Rep. Barker	Wonders why Dr. Grimsbo is against using the field test to test the drug.
148	Dr. Grimsbo	Explains how it's a double-edged sword.
164	Rep. Macpherson	Asks Dr. Grimsbo if he thinks the tests are subjective.
173	Dr. Grimsbo	Answers that he thinks the tests are purely indicators.
180	Rep. Macpherson	Asks Dr. Grimsbo how accurate these tests are.
183	Dr. Grimsbo	Says that it depends upon the drug that is tested.
199	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 3389.
333	Rep. Barker	Wonders if the test is negative, would the defendant have to pay for it.

334	Skye	Answers that is correct.
336	Rep. Barker	Believes that this bill would save money for the state and the constitutional rights of the defendant would be protected.
353	Skye	Explains that the courts have repeatedly recognized the strengths of scientific evidence. Thinks that the field test is not accurate and not fair.
393	Rep. Barker	Says that he does not agree with her and that most people that are caught with drugs plead guilty.
410	Rep. Krummel	Inquires about the differences between a drug field test and a breathalyzer.
419	Skye	Points out the differences.
TAPE 111, A		
011	Rep. Jenson	Asks if Ms. Skye has knowledge to the reliability of the field test.
018	Skye	Says no.
020	Rep. Jenson	Wonders if all of the male officers will be tested for color blindness.
024	Skye	Says that issue is part of the issue of the subjective interpretation of the results.
028	Rep. Macpherson	Asks who pays for a test done by the state lab that is positive.
035	Skye	Explains that the court would order the defendant to pay for the test.
055	Rep. Macpherson	Wonders if this could be a deterrent for a defendant with financial issues.
058	Skye	Says that the biggest cost would be incarceration for the defendant until the test is confirmed.
079	Dr. Emma Dutton	Oregon State Police, Forensic Services Division. Submits testimony and testifies as neutral on HB 3389 (EXHIBIT C). Discusses test kits.
139	Linton Von Beroldingen	Oregon State Police, Forensic Services Division. Testifies as neutral on HB 3389. Discusses test kits and their accuracies.
171	Vice-Chair Ackerman	Asks what are the common noncontrolled substances that will yield a false positive.
178	Beroldingen	Explains those substances. Says that the likelihood of a false positive is quite low.
212	Rep. Barker	Asks what happens in the field if a drug is tested and it is negative.
220	Beroldingen	Answers that he does not know, but the possibility exists of a false negative.
243	Rep. Jenson	Asks if it is important for the officer to not be distracted when taking a field test.
248	Beroldingen	Explains the best circumstances for conducting a field test.
255	Chair Williams	Closes the public hearing on HB 3389 and opens a public hearing on HB 2672.

HB 2672 PUBLIC HEARING

262	Victor Hoffer	Submits testimony and testifies in support of HB 2672 which requires firefighters and emergency medical technicians to report abuse of elderly persons (EXHIBIT D).
370	Hoffer	Continues his testimony in support of HB 2672.
400	Rep. Jenson	Says that legislators should be included in this bill as reporters.
TAPE 110, B		
001	Rep. Shetterly	Comments that they are included because they are a public official.
029	Hoffer	Says that he is an attorney and believes that attorneys are

042 Chair Williams included in the mandatory reporting of child abuse. Notes that Jacquelyn Zimmer Jones and the Oregon Association of Area Agencies on Aging are in support of HB 2672.

046 Shawn Baird Oregon Ambulance Association. Submits testimony and testifies in support of HB 2672 **(EXHIBIT E)**.

052 Rep. Shetterly Says that this is not a 24-hour reporting obligation as it is under the child abuse reporting statute.

066 Bob Livingston Oregon Firefighters Association. Testifies as neutral on HB 2672.

120 Ken Armstrong Oregon Fire Chiefs Association. Testifies as neutral on HB 2672.

141 Genoa Ingram Oregon Fire District Directors Association. Testifies on HB 2672 with some concerns.

158 Rep. Barker Asks if Department of Public Safety Standards and Training (DPSST) is still training the smaller police departments.

162 Livingston Says, yes, DPSST does still train small departments, but with budget constraints they may not be doing that in the future.

172 Armstrong Adds that DPSST does not do much training of the fire departments.

177 Rep. Barker Asks about the liability if they are not trained properly.

185 Armstrong Answers that most of the problems would occur in the small districts.

192 Chair Williams Closes the public hearing on HB 2672 and opens a public hearing on HB 2900.

HB 2900 PUBLIC HEARING

205 Dawn Phillips Chief of Staff for Rep. Randy Miller. Submits testimony and -2 amendments and testifies in support of HB 2900 which requires Department of Transportation to impose civil penalty of at least \$500 and not more than \$1,000 on person who refuses to take breath test **(EXHIBITS F & G)**.

227 Bruce Pratt Springfield, Crime Victims United. Testifies in support of HB 2900.

285 Anne Pratt Springfield, Crime Victims United. Submits testimony and testifies in support of HB 2900 **(EXHIBIT H)**.

398 Rep. Jeff Barker House District 28. Testifies in support of HB 2900.

TAPE 111, B

006 David Vill Assistant Deputy District Attorney, Lane County. Testifies in support of HB 2900.

028 Doug Harcleroad District Attorney, Lane County. Testifies in support of HB 2900.

033 Chair Williams Asks if it would be easier to tag the amount of the violation.

051 Vill Answers that the judge would decide.

065 Rep. Krummel Asks if this gets us in a situation of quotas or abuse of power.

074 Harcleroad Says he doesn't think so and explains.

082 Rep. Prozanski Asks about the distribution of monies.

099 Phillips Comments that in section 5, page 7 of the bill, the monies are split up among the agencies that do the test.

121 Chuck Hayes Captain, Oregon State Police. Submits testimony and testifies in support of HB 2900 **(EXHIBIT I)**.

174 Jeff Rost Director, Oregon State Police, Implied Consent Program. Submits testimony and testifies in support of HB 2900 **(EXHIBIT J)**.

224 Chair Williams Discusses the bill and how it may need to be referred to the Ways and Means Committee.

236 Rep. Shetterly Asks about the implied consent law.

245 Bill Joseph Committee Counsel. Says that under the current law you can bring into court evidence that one refused to take the breath test.
 260 Chair Williams Closes the public hearing on HB 2900 and opens a public hearing on HB 2901.

HB 2901 PUBLIC HEARING

281 Anne Pratt Springfield, Crime Victims United. Testifies in support of HB 2901 which requires person to sign certain acknowledgment and agreement as part of application for driver license or permit or vehicle registration.
 354 Bruce Pratt Springfield, Crime Victims United. Submits testimony and testifies in support of HB 2901 (**EXHIBIT K**).
 378 Barbara Stoeffler Mothers Against Drunk Driving (MADD). Testifies in support of HB 2901.
 429 Rep. Prozanski Asks if we are adding costs to state government and what the purpose is for retaining the records.
 443 A. Pratt Says that they do not have an estimate of how much it will cost.
 448 Chair Williams Mentions that Kelly Taylor from ODOT will be testifying and could probably answer Rep. Prozanski's questions.
 451 Rep. Prozanski Asks if there has been a decision for the records to be used in civil litigation.
 459 A. Pratt Answers that was not their intention.
TAPE 112, A
 013 Janet Lovelace Eugene, Crime Victims United. Submits testimony and testifies in support of HB 2901 (**EXHIBITS L & M**).
 061 Doug Harcleroad Lane County District Attorney. Testifies in support of HB 2901.
 081 David Vill Assistant Deputy District Attorney, Lane County. Testifies in support of HB 2901.
 091 Kelly Taylor Oregon Department of Transportation. Testifies in support of HB 2901.
 106 Rep. Prozanski Asks if they are looking to use these documents in civil cases.
 112 Taylor Says that it does include the microfilming of the documents, but does not include pulling the documents off of microfilm for any court cases.
 118 Rep. Barker Asks how much it will cost.
 118 Taylor Answers about \$534,000 in the first biennium and \$689,000 in the second biennium. Says this includes eight additional positions.
 112 Rep. Shetterly Asks why they would need these documents for prosecution purposes.
 128 Chair Williams Explains how the documents could help in prosecuting someone.
 137 Vill Says that this would be evidence that they were aware of the risks.
 143 Chair Williams Closes the public hearing on HB 2901. Adjourns the meeting at 3:40 p.m.

EXHIBIT SUMMARY

- A – HB 3389, written testimony submitted by Michael Dugan, 3 pgs.**
- B – HB 3389, written testimony and Forensic Science Handbook, submitted by Dr. Ray Grimsbo, 10 pgs.**
- C – HB 3389, written testimony submitted by Dr. Emma Dutton, 3 pgs.**
- D – HB 2672, written testimony of Cliff Zauner and Holly Robinson, and news article, submitted**

by Victor Hoffer, 4 pgs.

E – HB 2672, written testimony of Shawn Baird, 1 pg.

F – HB 2900, -2 amendments, submitted by staff, dated 3/26/03, 6 pgs.

G – HB 2900, facts sheets and written testimony of Bruce Pratt, submitted by Dawn Phillips, 4 pgs.

H – HB 2900, written testimony of Buffalo Zobel and article, submitted by Anne Pratt, 6 pgs.

I – HB 2900, written testimony submitted by Captain Chuck Hayes, 2 pgs.

J – HB 2900, written testimony submitted by Jeff Rost, 2 pgs.

K – HB 2901, fact sheet and written testimony submitted by Bruce Pratt, 2 pgs.

L – HB 2900, written testimony submitted by Janet Lovelace, 1 pg.

M – HB 2901, written testimony submitted by Janet Lovelace, 2 pgs.