

HOUSE COMMITTEE ON JUDICIARY

April 30, 2003 Hearing Room 357

1:00 p.m. Tapes 167-168

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**
 Patsy Wood, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2802 Reconsideration and Work Session**
 HB 2074 Work Session
 HB 2638 Work Session
 HB 3119 Work Session
 HB 3193 Work Session

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

TAPE/#	Speaker	Comments
TAPE 167, A		
004	Chair Williams	Calls the meeting to order at 1:37 p.m. Opens a work session to reconsider HB 2802 which expands crime of arson in first degree.
<u>HB 2802 WORK SESSION</u>		
010	Vice Chair Ackerman	MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on HB 2802. VOTE: 6-0-3 EXCUSED: 3 - Jenson, Krummel, Shetterly
012	Chair Williams	Hearing no objection, declares the motion CARRIED.
021	Chair Williams	Explains reason that HB 2802 has to go to Ways and Means – large fiscal impact.
032	Vice Chair Ackerman	MOTION: Moves to RECONSIDER the vote by which HB 2802 was sent to the floor with a DO PASS AS AMENDED recommendation. VOTE: 6-0-3 EXCUSED: 3 - Jenson, Krummel, Shetterly
033	Chair Williams	Hearing no objection, declares the motion CARRIED.
035	Vice Chair Anderson	Discusses arson situations in his district and feels this bill would be helpful in that respect.
045	Chair Williams	Agrees the bill is needed, but says the increased penalties increase the fiscal.
063	Vice Chair Anderson	Asks if there is a way to underfund the bill to keep it out of Way and Means.

065	Chair Williams	Discusses the possibility of that happening. Encourages Rep. Anderson to testify in Ways and Means.
085	Rep. Ackerman	MOTION: Moves HB 2802 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
		VOTE: 9-0
093	Chair Williams	Hearing no objection, declares the motion CARRIED.
094	Chair Williams	Closes the work session on HB 2802 and opens a work session on HB 2074.
<u>HB 2074 WORK SESSION</u>		
096	Bill Taylor	Committee Counsel. Explains HB 2074 which requires Public Defense Services Commission to submit report to Legislative Assembly biennially. Discusses the -3 and -4 amendments (EXHIBITS A & B) .
170	Chair Williams	Explains the -4 amendments are the efforts of a work group to look at extraordinary expenses.
190	Peter Ozanne	Director, Office of Public Defense Services. Testifies in support of HB 2074 and the amendments.
199	Chair Williams	Notes that several Public Defense Services Commission members have expressed their support of this legislation with the -4 amendments.
223	Ozanne	Agrees.
234	Ann Christian	Director, Indigent Defense Services. Submits a hand-engrossed version of HB 2074 and a summary of the -3 and -4 amendments (EXHIBITS C & D) . Characterizes -3 amendments as additional housekeeping measure.
292	Rep. Jenson	Asks about -4 amendments, page 2, Section 42, regarding expert witnesses. Expresses concern about being able to get “expert” witnesses in rural parts of Oregon. Suggests something is needed in this bill to clarify this concern.
333	Chair Williams	Discusses options to satisfy this concern about getting expert witnesses to rural parts of Oregon.
357	Rep. Barker	Expresses concerns that someone might come in with a low expense to testify, but not be qualified.
364	Vice Chair Anderson	Asks about -4 amendments, page 2, line 27. Wonders if district attorneys are ruled out.
373	Taylor	Responds that if you have district attorneys on this panel then constitutional questions would be raised.
379	Vice Chair Anderson	Asks if it is pre-trial or post-trial.
381	Chair Williams	Responds it is on-going.
400	Christian	Comments on how the attorneys will be qualified and chosen to testify.
418	Vice Chair Ackerman	Questions the -4 amendments, page 2, line 30. Wonders about rationale for language of the public to file complaints.
429	Taylor	Says this was a suggestion from the Lane County District Attorney.
438	Chair Williams	Points out this is a public commission and, therefore, open to public scrutiny.
474	Ozanne	Says the commission would be welcome to public response.
TAPE 168, A		
030	Christian	Discusses complaints that are currently received and addressed.
046	Vice Chair	Questions “full disclosure” to the public.

052	Ackerman Christian	Says that full disclosure is limited, cites the case <i>State v. Bradley Cunningham</i> , Court of Appeals.
060	Vice Chair Ackerman	Asks what would happen if a public records request is filed.
062	Christian	Explains how a particular case was handled.
074	Vice Chair Ackerman	Questions the lack of symmetry in Section 9, page 7 of the -4 amendments.
085	Christian	Explains current procedure regarding full disclosure at the end of a trial.
095	Chair Williams	Clarifies which items are disclosed as expenses.
102	Christian	Agrees it is a lump sum broken down by types of providers.
111	Chair Williams	Is cognizant of Rep. Jenson's concerns, but needs to move the bill forward.
116	Rep. Jenson	Suggests conceptual amendment in the -4 amendments.
129	Rep. Shetterly	Suggests this bill could be amended in the Senate.
133	Rep. Prozanski	Agrees, saying this language could be added in the Senate.
138	Taylor	Says he will forward this language to Legislative Counsel.
146	Chair Williams	MOTION: Moves to SUSPEND the rules for the purpose of CONCEPTUALLY AMENDING the -4 amendments to HB 2074.
		VOTE: 9-0
147	Chair Williams	Hearing no objection, declares the motion CARRIED.
148	Chair Williams	MOTION: Moves to CONCEPTUALLY AMEND HB 2074-4 amendments, dated 4/28/03, on page 2, line 21, by inserting "after the word available and before the semicolon add "or for cost considerations".
		VOTE: 9-0
153	Chair Williams	Hearing no objection, declares the motion CARRIED.
156	Chair Williams	MOTION: Moves to ADOPT HB 2074-3 amendments dated 04/28/03.
		VOTE: 9-0
157	Chair Williams	Hearing no objection, declares the motion CARRIED.
158	Chair Williams	MOTION: Moves to ADOPT HB 2074-4 amendments dated 04/28/03 as CONCEPTUALLY AMENDED.
		VOTE: 9-0
159	Chair Williams	Hearing no objection, declares the motion CARRIED.
162	Chair Williams	Asks about the fiscal impact.
164	Christian	Says there is no fiscal impact.
170	Chair Williams	MOTION: Moves HB 2074 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.
		VOTE: 9-0
178	Chair Williams	Hearing no objection, declares the motion CARRIED.
		REP. WILLIAMS will lead discussion on the floor.
180	Chair Williams	Closes the work session on HB 2074 and opens a work session on HB 2638.

HB 2638 WORK SESSION

181	Bill Taylor	Committee Counsel. Explains HB 2638 which allows county or city to retain one-half of traffic offense fines that would otherwise be paid to state if retained amounts are used solely for purpose of paying costs and expenses incurred by justice court or
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		municipal court in prosecuting crimes and conducting contempt and probation violation proceedings. Explains the -5 amendments (EXHIBIT E) .
210	Peter Gartlan	Office of Public Defense Services. Submits testimony and testifies in support of HB 2638 (EXHIBIT F) .
243	Jim Nass	Appellate Legal Counsel. Says he is in agreement with what Mr. Gartlan said.
245	Chair Williams	Discusses what could happen during the interim with this issue.
262	Gartlan	Agrees that would be fine.
270	Rep. Krummel	Asks if a person is charged with a crime, how do they find out about this legislation, and wonders about the expense of filing with the court of appeals.
283	Gartlan	Says this bill addresses only parolees. Explains what would happen when discussing this procedure with a parolee.
312	Rep. Prozanski	MOTION: Moves to ADOPT HB 2638-5 amendments dated 04/30/03.
		VOTE: 9-0
316	Chair Williams	Hearing no objection, declares the motion CARRIED.
333	Rep. Prozanski	MOTION: Moves HB 2638 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.
		VOTE: 9-0
346	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
350	Chair Williams	Closes the work session on HB 2638 and opens a work session on HB 3119.

HB 3119 WORK SESSION

351	Bill Taylor	Committee Counsel. Explains HB 3119 which authorizes court to place probationer under supervision of court.
375	Rep. Prozanski	Expresses concerns about the monthly fee.
388	Chair Williams	Reads letter from Judge Pratt which was given to him by Rep. Butler (EXHIBIT G) . Explains the mechanics of recovering the fee.
TAPE 167, B		
008	Rep. Jenson	Asks what happens if the fee is not paid.
010	Chair Williams	Asks Kelly Skye and Ann Christian to explain what would happen if the fee was not paid.
024	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Explains what might happen if the bench probation fee is not paid. Says it varies widely based upon the judge.
045	Ann Christian	Director, Indigent Defense Services. Discusses what happens in these cases from her standpoint. Testifies in support of HB 3119.
079	Skye	Suggests placing non-person felonies on bench probation.
094	Rep. Prozanski	Discusses the fines in Lane County and what the judge might take into consideration based upon a person's ability to pay.
118	Chair Williams	Speaks about his discussions with the Ways and Means people in this area of public safety.
144	Rep. Prozanski	MOTION: Moves HB 3119 to the floor with a DO PASS recommendation and BE REFERRED to the Committee on Ways and Means BY PRIOR REFERENCE.

161	Rep. Jenson	Talks about nicknaming this bill – like the revenue-shift bill.
180		VOTE: 9-0
182	Chair Williams	Hearing no objection, declares the motion CARRIED.
183	Chair Williams	Closes work session on HB 3119 and opens a work session on HB 3193.
<u>HB 3193 WORK SESSION</u>		
184	Bill Taylor	Committee Counsel. Explains HB 3193 which reclassifies certain crimes against animal to double maximum fine when crime is committed as part of single criminal episode involving eight or more animals, with each animal being subjected to one or more of certain crimes. Discusses the -3 amendments (EXHIBIT H).
190	Rep. Brad Avakian	House District 34. Testifies in support of HB 3193 and explains the -3 amendments.
205	Rep. Prozanski	Explains the statute.
213	Vice Chair Anderson	Questions the fine amount of \$200,000 penalty.
222	Rep. Avakian	Explains where that amount applies.
226	Chair Williams	Clarifies where this amount applies on page 2, section 3, subsection 4 of the original bill.
237	Rep. Avakian	Says the premises definition is the only thing changed.
241	Rep. Prozanski	Reads definition of premises in statute.
254	Vice Chair Anderson	Still questions the \$200,000 fine.
258	Chair Williams	Clarifies where the penalty would apply.
274	Rep. Avakian	Restates where the violations might occur.
276	Vice Chair Anderson	Asks for examples.
278	Rep. Avakian	Gives examples of where this type of animal abuse might occur.
292	Rep. Jenson	Says he does not see that this is in the law.
297	Chair Williams	States this is in the original bill, but not yet in statute.
303	Rep. Avakian	Explains where this legislation would affect current law.
308	Taylor	Reads the statutes that this legislation would apply to.
320	Chair Williams	Explains why the penalty is being increased.
330	Rep. Jenson	Still questions the discretion in the \$200,000 fine – does not see “not to exceed” in the bill.
346	Rep. Shetterly	Suggests conceptually amending the bill to read “not to exceed.”
360	Chair Williams	Clarifies how a conceptual amendment might read in this regard.
374	Rep. Avakian	Agrees with the conceptual amendment.
376	Rep. Shetterly	Questions an animal being considered a “victim” in the -3 amendments.
404	Rep. Prozanski	Suggests adding the word “animal” after the word victim.
422	Chair Williams	Clarifies the bill being conceptually amended to address the fine, but not the animal being a victim.
455	Rep. Macpherson	MOTION: Moves to ADOPT HB 3193-3 amendments dated 04/29/03.
		VOTE: 9-0
457	Chair Williams	Hearing no objection, declares the motion CARRIED.
464	Rep. Prozanski	MOTION: Moves to CONCEPTUALLY AMEND HB 3193 by inserting “not exceeding” in front of the numerical number and deleting “of” on page 1, line 16; page 2, line 16; page 2, line 23; page 2, line 42; page 3, line 9; page 3, line 22; page 3, line 33; and on page 4, line 2.
		VOTE: 9-0
470	Chair Williams	Hearing no objection, declares the motion CARRIED.

517	Rep. Prozanski	MOTION: Moves HB 3193 to the floor with a DO PASS AS AMENDED recommendation.
TAPE 168, B		
045	Vice Chair Ackerman	Asks about a fiscal.
048	Chair Williams	Explains there should not be a significant fiscal impact.
051		VOTE: 9-0
052	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. AVAKIAN will lead discussion on the floor.
059	Chair Williams	Closes the work session on HB 3193 and adjourns the meeting at 3:00 p.m.

EXHIBIT SUMMARY

- A – HB 2074, -3 amendments, dated 4/28/03, 2 pgs.
- B – HB 2074, -4 amendments, dated 4/28/03, 18 pgs.
- C – HB 2074, hand-engrossed bill and -4 amendments, 44 pgs.
- D – HB 2074, written testimony submitted by Ann Christian, 1 pg.
- E – HB 2638, -5 amendments, dated 4/30/03, 1 pg.
- F – HB 2638, written testimony submitted by Peter Gartlan, 2 pgs.
- G – HB 3119, letter from Judge Burdette Pratt, emailed from Judge Pratt to Rep. Butler, submitted by Rep. Max Williams, 1 pg.
- H – HB 3193, -3 amendments, submitted by staff, dated 4/29/03, 2 pgs.