

CONFERENCE COMMITTEE ON HB 2221B

July 15, 2003 Hearing Room D
1:00 PM Tape 1 - 2

MEMBERS PRESENT: **Rep. Alan Brown, Chair**
 Rep. Elizabeth Beyer
 Rep. John Mabrey
 Sen. Rick Metsger
 Sen. Bruce Starr

STAFF PRESENT: **Janet Adkins, Committee Administrator**
 Ryan Sherlock, Committee Assistant

MEASURE: **HB 2221B - 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 1, A		
004	Chair Brown	Calls the meeting to order at 1:06 p.m. and opens a conference committee work session on HB 2221B.
<u>HB 2221B WORK SESSION</u>		
010	Janet Adkins	Committee Administrator. Offers a description of the bill and the issues to be addressed by the conference committee. Offers a description of, and enters into the record, the -B9 amendments (EXHIBIT A) .
035	Sen. Minnis	Comments on the process regarding DUII convictions and diversion programs.
037	Adkins	Questions whether this is the effect of the amendments.
040	Sen. Minnis	Further comments on the conviction process.
043	Adkins	Further clarifies the conviction process.
045	Rep. Greenlick	Points out that the conviction process depends on the state in which the conviction occurred.
050	Sen. Burdick	Expresses concern for the decrease in number of allowable convictions in the bill.
055	Rep. Brown	Explains that he asked for the amendments which brought the number of convictions down from two to one, and explains why he requested those amendments.
060	Sen. Burdick	Points out that the diversion could have taken place before the ten year time frame.
062	Rep. Brown	Comments on the scope of the bill.
065	Ingrid Swenson	Oregon Criminal Defense Lawyers Association. Offers testimony in opposition to HB 2221B.
075	Sen. Minnis	Comments on the important role judges play in the judicial process.
080	Swenson	Points out that judges are human and fallible, not unlike legislators.
085	Sen. Minnis	Points out that legislators have a check on there power which is

		their colleagues, while judges, who might be under the influence, are not checked.
095	Rep. Greenlick	Points out that this is not an issue of the judge being drunk on the bench, and further discusses the issues surrounding the bill.
105	Chair Brown	Recognizes Ms. Swenson to discuss the blood test portion of the amendments.
110	Swenson	Comments on court decisions which would contradict this provision of the bill. Further discusses the issues. Points out that different components of blood are tested, when testing for DUII's, than when conducted in the hospital.
140	Rep. Greenlick	Asks Judicial Counsel Prins to address the issue.
155	Craig Prins	Committee Counsel. Points out that there are representatives from the Attorney Generals office, and Multnomah County Prosecutors office present at the meeting.
160	Rep. Greenlick	Clarifies that there is a legal difference between blood drawn in various settings, and different procedures for which that blood is drawn.
185	Prins	Points out the difference between "relevance" and "competency." Further discusses the admissibility of evidence, with reference to submitted appeals court decision (EXHIBIT B).
230	Rep. Greenlick	Questions how the validity of evidence is then determined.
235	Sen. Minnis	Points out that these are questions which could be argued by the defense at trial, and the issue at hand is getting this evidence into the trial.
245	Rep. Greenlick	Further comments on the statute relating to "competency," and questions whether they are building an ambiguity.
255	Sen. Minnis	Clarifies that Ms. Swanson has practiced as a defense attorney, and asks how these questions would be addressed in trial.
260	Swanson	Comments on how a defense attorney would address the issue.
275	Sen. Minnis	Asks whether Ms. Swanson would call to testify the criminalists from the state, in a murder trial. Questions whether that wouldn't be similar to the blood draw issue.
280	Swanson	Acknowledges, and further comments.
285	Sen. Minnis	Points out that the information provided through the hospital blood test could be challenged by the defense attorney.
290	Sen. Burdick	Asks for a clarification of the Snyder Case which was referenced as creating the need for this bill.
295	Prins	Outlines the substantive issues surrounding the Snyder Case.
340	Sen. Burdick	Clarifies that the issue is not about consent but rather about the qualifications of the individual drawing the blood.
355	Rep. Greenlick	Clarifies the statute which allows blood draws as admissible in court, and points out the possible contradiction being created by a section of the amendments.
360	Prins	Comments on the issue regarding "otherwise competent" evidence.
370	Rep. Greenlick	Comments on specific wording in the statute.
375	Prins	Acknowledges the clarification, further points out the policy question at issue.
410	Rep. Greenlick	Questions the reasoning for the change.
415	Prins	Points out that the legislature attempted to clarify this issue during the 1999 session. Points out the representatives from the Multnomah County District Attorney's office could better address the issue in question.
435	Brandon Thompson	Deputy District Attorney, Multnomah County. Testifies in

		support of the HB 2221B amendments.
TAPE 2, A		
010	Rep. Greenlick	Clarifies that the blood draws in questions would not be incidental medical care, but a special process.
020	Thompson	Indicates that this is not the case. Comments on the reasons a blood draw would be conducted in a DUII case.
045	Rep. Greenlick	Points out that, by statute, there are two conditions for which blood would be drawn in a DUII case.
055	Thompson	Comments on the use of a search warrant in drawing blood from an individual.
075	Sen. Minnis	Asks about the -B6 amendments (EXHIBIT C), which would make the time period ten years and increase the number of convictions to two. Indicates his support for including those amendments, but also points out his wish to see the blood draw issue included.
080	Rep. Greenlick	Points out his wish to conceptually amend provisions of the original bill to allow the counties to decide the fees, and explains the reasoning for allowing discretion to the counties.
102	Chair Brown	Asks how the fee's upper limit would be decided.
107	Rep. Greenlick	Explains that 'true cost' would decide the fee's upper limit.
110	Gina Mattioda	Multnomah County. Offers testimony regarding the possibility of allowing fee discretion to the counties.
125	Gretchen McKenzie	Governor's Committee on DUII. Offers testimony regarding the proposed conceptual amendments.
160	Rep. Greenlick	Points out the possible effects on Multnomah county.
170	Sen. Minnis	Points out the agreement which has already been reached on the issue, and questions whether this might drive the cost up.
180	Rep. Greenlick	Comments on the cost assessment issues.
190	Sen. Minnis	Points out that there are evaluators who will do the job for \$130.
195	Rep. Greenlick	Points out the consensus came at a very late date.
200	Sen. Minnis	MOTION: Moves to ADOPT HB 2221B-B6 amendments dated 06/24/03, and the HB 2221B-B8 amendments dated 07/09/03 (EXHIBIT D).
210	Janet Adkins	Clarifies the effects of the -B6 amendments.
220	Rep. Greenlick	Asks that the motion on the amendments be done separately.
225	Sen. Minnis	WITHDRAWS previous motion. Motion: Moves to ADOPT HB 2221B-B6 amendments dated 06/24/03.
230		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.
235	Chair Brown Sen. Minnis	MOTION: Moves to ADOPT HB 2221B-B8 amendments dated 07/09/03.
240	Rep. Greenlick	Highlights the need to send the bill through a Judiciary Committee and therefore his intent to vote No on the motion.
245	Chair Brown	Points out that Sen. Minnis and Sen. Burdick are the Chair and Vice-Chair respectively, of the Sen. Judiciary Committee.
250	Sen. Burdick	Points out that the Senate Judiciary Committee did hear the bill, and added the provisions associated with the -B8 amendments.
252	Rep. Greenlick	Clarifies his intent to vote Aye on the motion.
255		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.
	Chair Brown	

260	Rep. Greenlick	Indicates his interest in seeing an amendment which would incorporate the conceptual amendments addressed earlier.
265	Sen. Burdick	Indicates that this amendment would need a suspension of the rules, which she would support, but indicates her lack of support for the conceptual amendments.
270	Rep. Greenlick	MOTION: Moves to SUSPEND the rules for the purpose of adopting the proposed conceptual amendments to HB 2221B.
275	Adkins	Points out that a Conference Committee does not have rules of procedure like either the House or Senate Committee, so therefore does not need to suspend the rules for the vote on the proposed conceptual amendment. Observes that conceptual amendments are still discouraged by Legislative Counsel.
280	Chair Brown	VOTE: 5-0
285	Rep. Greenlick	Hearing no objection, declares the motion CARRIED. Points out it is a privilege to go into diversion and that those who go into diversion should pay the true cost of that program.
300	Rep. Greenlick	MOTION: Moves to AMEND HB 2221B on page 1, in line 12, after "\$130," insert "or, at the discretion of the agency, actual cost if it is over \$130."
305	Rep. Mabrey	Clarifies the intent and wording of the proposed conceptual amendment.
310	Rep. Greenlick	Further clarifies the language of the conceptual amendments.
325		VOTE: 2-2* AYE: 2 – Rep. Greenlick, Rep. Mabrey NAY: 2 – Sen. Burdick, Sen. Minnis *Chair Brown did not vote on the motion due to the lack of a majority Senate vote on the motion.
340	Chair Brown Rep. Mabrey	The motion Fails. MOTION: Moves HB 2221B to the floor with the recommendation that the House CONCUR in Senate amendments dated 06/11/03 and that the bill be FURTHER AMENDED by the -B6 amendments and -B8 amendments, and the measure be REPASSED.
350	Chair Brown	VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. SEN. MINNIS AND REP. BROWN will lead discussion on the floors.
365	Chair Brown	Closes the work session on HB 2221B, and adjourns the meeting at 1:56 p.m.

EXHIBIT SUMMARY

- A – HB 2221B, -B9 amendments, Staff, 3 pp.
- B – HB 2221B, appeals court opinion, Craig Prins, 6 pp.
- C – HB 2221B, -B6 amendments, Staff, 2 pp.
- D – HB 2221B, -B8 amendments, Staff, 2 pp.