

HOUSE COMMITTEE ON GOVERNMENT EFFICIENCY

March 20, 2001
8:30 AM

Hearing Room D
Tapes 36 - 38

MEMBERS PRESENT: **Rep. Jerry Krummel, Chair**
 Rep. Chris Beck, Vice-Chair
 Rep. Alan Brown
 Rep. Bill Garrard
 Rep. Jim Hill
 Rep. Deborah Kafoury
 Rep. Jeff Kruse
 Rep. Steve March
 Rep. Carolyn Tomei
 Rep. Kelley Wirth

MEMBER EXCUSED: **Rep. Patti Smith, Vice-Chair**

STAFF PRESENT: **Matt Wingard, Committee Administrator**
 Patrick Brennan, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2197 Public Hearing and Work Session**
 SB 349 Public Hearing and Work Session
 HB 3423 Public Hearing
 SJM 3 Public Hearing and Work Session
 SB 488 Public Hearing
 HB 2906 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
TAPE 36, A		
004	Chair Krummel	Calls the meeting to order at 8:38 a.m. Opens a public hearing on HB 2197.
<u>HB 2197 PUBLIC HEARING</u>		
008	Matt Wingard	Committee Administrator. Gives a brief description of the bill. States that the measure conforms language in statute related to registered geologists.
020	Susanna Knight	Administrator, Oregon State Board of Geological Examiners (OSBGE). Testifies in support of HB 2197 (EXHIBIT A). States that the bill bestows the title of "registered geologist" solely upon those who have received registration with OSBGE and removes the word "professional" from statutory usage regarding geologists.
040	Rep. Tomei	Asks what qualifies a geologist as a professional.
044	Knight	Replies that geologists spend a lot of time becoming educated on their field of study. Clarifies that the bill delineates who can and cannot use the nomenclature "registered geologist."
057	Rep. Tomei	Asks whether a person could use the title "geologist" without first receiving the requisite degree.
060	Knight	Replies affirmatively.
064	Rep. Tomei	Requests a description of the educational requirements for becoming a registered geologist.

066	Knight	States that the requirements are completion of a degree in geology and five years experience working under a registered geologist. Indicates that once a person has attained these two goals they become eligible to take a 10-hour examination and are eligible to be a registered geologist if they pass that examination. Closes the public hearing and opens a work session on HB 2197.
080	Rep. Garrard	
<u>HB 2197 WORK SESSION</u>		
083	Rep. March	MOTION: Moves HB 2197 to the floor with a DO PASS recommendation.
089		VOTE: 7-0-4
	Rep. Garrard	EXCUSED: 4 - Hill, Kruse, Smith, Krummel
093	Rep. Tomei	Hearing no objection, declares the motion CARRIED.
		MOTION: Moves HB 2197 be placed on the Consent Calendar for floor consideration.
099		VOTE: 7-0-4
	Rep. Garrard	AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 4 - Hill, Kruse, Smith, Krummel
103	Rep. Garrard	The motion CARRIES.
		Closes the work session on HB 2197 and opens a public hearing on SB 349.
<u>SB 349 PUBLIC HEARING</u>		
105	Joe McNaught	Business Transactions Section, General Counsel Division, Oregon Department of Justice (DOJ). Testifies in support of SB 349 (EXHIBIT B). Indicates that the Oregon Attorney General (AG) is required to review all interstate cooperation agreements of Oregon public agencies. States the bill removes the requirement that the AG be provided with interstate agreements entered into by non-state public agencies.
139	Rep. Beck	Mentions that federal agencies sometimes ask the state to manage lands and the state sometimes makes similar arrangements with local governments with regard to state lands. Asks whether SB 349 affects these types of agreements.
147	McNaught	Replies that the statute amended here affects only agreements between agencies or political subdivisions of states, not other forms of intergovernmental agreements.
155	Rep. Garrard	Closes the public hearing and opens a work session on SB 349.
<u>SB 349 WORK SESSION</u>		
162	Rep. Beck	MOTION: Moves SB 349 to the floor with a DO PASS recommendation.
168		VOTE: 7-0-4
	Rep. Garrard	AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 4 - Hill, Kruse, Smith, Krummel
173	Rep. Beck	The motion CARRIES.
		MOTION: Moves SB 349 be placed on the Consent Calendar for floor consideration.
185		VOTE: 7-0-4
	Rep. Garrard	EXCUSED: 4 - Hill, Kruse, Smith, Krummel
		Hearing no objection, declares the motion CARRIED.
190	Rep. Garrard	Closes the work session on SB 349 and opens a public hearing on HB 3423.
<u>HB 3423 PUBLIC HEARING</u>		
194	Matt Wingard	Committee Administrator. Gives a brief description of the bill. States that the measure prohibits the reinstatement of public

		employees if an arbitrator determines that state certification or licensing is required for the job and the employee violated standards related to the certificate or license in question. Mentions that the –1 amendments have been submitted for the committee’s consideration (EXHIBIT C).
198	Jim Spinden	Washington County Sheriff. Testifies in support of HB 3423 (EXHIBIT D). Indicates that the –1 amendments change the bill so that it applies only to police or corrections officers. Discusses the meaning and importance of the oath taken by deputy police officers and the expectations and standards of employment that go with the position.
245	Spinden	Asserts that police officers pride themselves on their reputations and the way in which they uphold their oath and perform their duties. Reads the oath taken by deputy police officers at the time they are sworn in. Asserts that no other public position requires such an oath to be taken, which is reflective of the oath’s importance. Lists the traits that police officers are expected to have and maintain.
396	Spinden	Opines that arbitrators have largely ignored these traits when resolving disputes. Refers metaphorically to the arbitration process as “splitting the baby.” States that arbitrators should be held to their decisions. Opines that the public is very concerned about possible misconduct by police officers. Acknowledges that sheriffs are responsible for keeping their officers in line. Disputes the typical assertion made by police unions that this type of investigation is unfair or incomplete. Assures he is not interested in enforcing higher standards of conduct for other professions, but reiterates they are vital for police officers.
356	Rep. Hill	Indicates he asked to have his name removed from the bill after learning more about it. Says that state police officers have been reinstated after having sex in their patrol car because the state had been inconsistent in its application of the rules. Asserts that the issue is more complicated than simply deciding that the arbitrator was wrong.
TAPE 37, A 008	Spinden	Responds to the case mentioned by Rep. Hill and explains that in that particular instance the arbitrator’s decision had to do with the definition of the word “transport.” Asserts that the case took the focused on irrelevant issues rather than the misconduct. Opines that the deputy involved in the case failed to follow the code of conduct. Compares the arbitrator’s decision in the case to declaring it is all right to ignore the rules since others are doing the same.
039	Rep. March	Agrees that the bill is too broadly written, as it might apply to him as a credentialed teacher. Opines that if there is a disagreement on the definition of transport then there is a problem with the training officers are receiving. Remarks that arbitration is part of a negotiated labor contract and asks whether different negotiations in that contract could achieve the same goal that the bill seeks to reach.
054	Spinden	Responds that it is difficult to write a contract to cover every such contingency. Disagrees that there is a training problem. Mentions that 36 sheriffs throughout the state support the concept embodied in the bill as amended by the –1 amendments.

065	Chair Krummel	Declares that a clear message needs to be sent to arbitrators that police officers should be held to a higher standard. Asks if the primary purpose of the bill is to provide higher standards of conduct.
070	Spinden	Replies affirmatively.
076	Akin Blitz	Attorney, Oregon State Sheriffs Association (OSSA). Testifies in support of HB 3423. Clarifies that the bill is not designed to advance the goals of lawyers, but says the bill does so anyway. Asserts that the measure advances the public good. Condenses the issue to the question of what authority the arbitrator should have to overrule the decision of a superior regarding a subordinate's violation of a code of conduct. Acknowledges that the majority of Oregon public employees do well at serving the public. Provides anecdotes that illustrate the need to hold police officers to a higher code of conduct.
126	Blitz	Says the officers in the examples provided were afforded lengthy and expensive arbitration processes paid for by taxpayers. Indicates that these officers are allowed to retain their certification and managed to obtain subsequent employment by lying on job applications. Says that the possibility that an arbitrator may overturn a dismissal often persuades superiors to revoke dismissal in order to avoid having the dismissal overturned by an expensive and time-consuming arbitration process.
180	Blitz	Continues to offer anecdotal cases to illustrate the need for the bill. Explains that Sheriff Spinden's example involved an officer who purchased marijuana, yet was reinstated by an arbitrator after discharge. Asserts phrases such as "he was never convicted" or "he lied, but not under oath" have been used to keep dishonest officers on the job or licensed. Laments that there seems to be no public policy against dishonesty among police officers.
238	Blitz	States that it is clear that arbitrators will not respond to the concerns OSSA has raised. Argues that standards applicable to other professions are not public policy statements the way they are for police officers. Posits that newly trained officers become confused when they are told that arbitrators do not hold officers accountable to their training and their oath.
297	Rep. March	Requests elaboration on how the Department of Public Safety Standards and Training (DPSST) operates. Says DPSST has licensing authority over police officers and should therefore have the authority to decertify them as well.
303	Blitz	Clarifies that DPSST could overrule an arbitrator's decision only to sustain the discharge. Explains that an officer can commit heinous offenses, of which DPSST will be notified but will take no action until an arbitrator has affirmed the dismissal. Says that only then will DPSST initiate revocation proceedings.
337	Rep. March	Asserts that DPSST should have the authority to revoke licensure.
339	Blitz	Acknowledges that certification should have been revoked in the aforementioned case.
341	Rep. March	Asks whether the problem could be addressed by granting DPSST authority to revoke certification rather than using HB 3423 as the mechanism to do so.

344	Blitz	Agrees that addressing the issue through DPSST would work but says another concern is the cost of the system, as it typically costs a great deal to dismiss officers. Explains that the high cost is due in large part to the strong labor unions. Reiterates that the primary issue is whether there is to be guaranteed consequences for conduct unbecoming an officer.
TAPE 36, B		
010	Blitz	Asserts that the personality of schoolteachers is significantly different than that of police officers given the difference in responsibilities. Submits that the legislature must determine whether there is a minimum level of expectation police and corrections officers.
026	Rep. Garrard	Expresses unease with the notion that deals are made in order to avoid costly arbitration. Inquires how often such deals are made.
032	Blitz	Responds that a high percentage of cases involve the sealing of records. States that the law makes clear that there is public interest in knowing how its public employees are conducting themselves. Recalls making recommendations on a handful of cases where dismissal was virtually guaranteed but the decision was made nonetheless to avoid the possibility of expensive arbitration and seal the records instead.
053	Rep. Hill	Says this is the first time he has heard that SB 750 (1995) is problematic. Asks why a city or government would enter into a labor agreement that typically has such objectionable ramifications.
060	Blitz	Explains that with respect to law enforcement, management does not have the same level of bargaining power or persuasiveness as is the case with other areas of public or private employment. Says that interest arbitrators regularly decide contract terms. Concedes that grievance arbitration is a hallowed, long-standing means of resolving disputes, but says that a new generation of arbitrators have a different set of values and have therefore begun to turn out different results than was once the case. Comments that this committee will decide whether to make the bill applicable only to law enforcement, as the problem does not usually apply to other professions.
105	Rep. Hill	Asserts that the issue should be resolved by granting DPSST greater authority to revoke certification. Compares police officers to doctors, for whom the highest authority is the Board of Medical Examiners, which has the ability to revoke certification and thereby eliminate the ability of a doctor to practice medicine. Wonders why the problem should not be addressed in that manner.
116	Blitz	Replies that such an effort would simply shift the form and cost of litigation from counties to DPSST. Remarks that DPSST has neither the time nor the resources to investigate such matters. Reiterates that the goal of HB 3423 is to restrict the unpredictability of grievance arbitration.
138	Brian DeLashmutt	Oregon Council of Police Associations (OCPA). Testifies in opposition to HB 3423. Says the bill takes away due process upon dismissal. Asserts that the bill creates an unbalanced process.
172	Jamie Goldberg	Attorney, Former Portland Police Officer. Testifies in opposition to HB 3423. States that not all officers involved in

		such disputes are allowed to take their case to arbitration and that in most cases his office recommends not to seek arbitration. Acknowledges the need for high code of conduct and integrity in police officers. Says the issue should be addressed in contract arbitration rather than through legislation. Says that the contract signed by Sheriff Spinden allowed for the officer to opt for drug counseling following a first offense.
223	Goldberg	Comments on the specifics of the case involving the officer who was accused of purchasing marijuana. Explains that there is no evidence that the officer lied to a superior, only to coworkers out of embarrassment. Indicates that the arbitrator's decision was based on the contract under which both parties were operating. Mentions that the Oregon Court of Appeals has declared that there should not be a determination of wrong or right made in these cases.
274	Goldberg	Notes that the United States Supreme Court has declared that smoking marijuana is not a public policy violation. Presumes that Washington County wants to escape the ramifications of a contract that they signed allowing for drug counseling. Indicates there are no cases in Oregon where purchasing marijuana has been prosecuted as a crime.
343	Goldberg	Mentions that the arbitrator in the case is a veteran and does a good job. Suggests that full and fair investigations should take place in accordance with arbitration hearings.
372	Todd Duncan	President, Oregon Deputies Association. Indicates that investigations are often performed by corrections officers poorly trained to carry out such tasks. Asserts that corrections officers should not perform internal affairs investigations, but concedes that it is sometimes necessary to do so due to lack of manpower.
395	Rep. Hill	Acknowledges the desire to protect fellow officers, but what the association has to gain from protecting a deputy who is unable to adequately perform the tasks of the job. Asks how protecting an unfit officer serves or protects the public.
TAPE 37, B		
014	Goldberg	Says there have been efforts to advance physical fitness programs and weight requirements. Explains that most physical duties of deputies involve physical strength rather than speed. Clarifies that physical fitness was not used as grounds for the deputy's dismissal in this particular case. Agrees that standards of physical fitness should be promulgated and followed.
027	Duncan	Remarks that the deputy in question was a big man when he was hired, adding that his size is an asset in a courtroom setting.
037	Rep. Hill	Expresses doubt regarding the logic in having a slow officer escorting an offender who has a history of escape attempts. Says the person should have either been handcuffed or leg cuffed, or a different officer should have escorted him. Asks if the Sheriff directed that this strategy not be used.
054	Goldberg	Concurs that the officer needed to be held responsible but says that a suspension would have been more appropriate than dismissal.
062	Duncan	Remarks that use of leg braces was once common practice but that they have not been used recently due to function problems. Mentions that the county disconnected the gate system that helps hinder escape attempts, meaning that not all the blame belongs

		on the shoulders of the officer.
080 084	Rep. Wirth Goldberg	Asks if this problem is systemic or centered in a particular area. Replies that the problem is mostly in particular areas. Reiterates that deputies convicted of committing crimes will be arrested, convicted, and stripped of their credentials.
094	DeLashmutt	Comments that most of the cases mentioned by the proponents of the bill are not applicable because arbitration does not apply to them. Reiterates that the bill deals with only a small select set of instances.
106 110	Chair Krummel Goldberg	Inquires how often arbitration results in upholding a dismissal. Estimates that arbitrators uphold dismissals about half of the time. Adds that many other cases do not go to arbitration because of weakness in one side's case against the other.
118	Mary Botkin	Association of Federal, State, County, and Municipal Employees (AFSCME). Testifies in opposition to HB 3423. Comments on arbitration proceedings as they relate to contract negotiations. Refutes the assertion that sealing records is common practice and says an arbitrator's ability to seal records is limited. Says that even if a record is sealed, public records law is clear that the Secretary of State's office determines whether the right to know overrides the right to privacy. Suggests that the committee solicit testimony from the Employee Relations Board and the Secretary Of State regarding their practices in this regard. Concludes that collective bargaining is a give-and-take process in which neither side gets all that they want.
192	Tricia Bozak	Oregon Education Association (OEA). Testifies in opposition to HB 3423 (EXHIBIT E). Says the bill is a major departure from current practice and will disrupt the collective bargaining process. Predicts the bill will create more disputes. Comments that arbitration is widely accepted and used for resolving employment disputes. States that the bill assumes that only the employee could be the bad actor in an arbitration case. Objects with how the bill circumvents relevant licensing boards such as DPSST and the Teacher Standards and Practices Commission (TSPC).
232	Tricia Smith	Oregon School Employees Association (OSEA). Testifies in opposition to HB 3423. Says the bill is a solution in search of a problem, as arbitration is the surest and fairest way to determine what has been and should be done. Asserts that an arbitrator's duty is not to determine whether something was done wrong, but rather what if any punitive action should be taken and whether an employer followed the appropriate procedure in disciplining the employee. Reiterates that employers have the power to negotiate contracts that are more to their liking.
278	Rich Peppers	Oregon Public Employees Union (OPEU). Testifies in opposition to HB 3423. Expresses concern that the bill is too broad, even with the -1 amendments. Asserts the bill undermines licensing boards. Argues that the measure shifts the balance of collective bargaining against employees. Opines that the current system is not broken, as new contracts have succeeded in changing the process when necessary.
311	Rep. Garrard	Asks if the union representatives would object to the bill if it were amended so that it applied strictly to police and corrections officers.

317 Botkin Responds that AFSCME would still oppose the measure. Mentions that DPSST is currently in dispute with its union over the rescinding of a license. Concludes that the measure is an attempt to avoid addressing issues at the bargaining table.

346 Smith Acknowledges that OSEA would not have a direct interest in the bill if it were amended as Rep. Garrard suggests, but cautions that passing such a bill is still a move in the wrong direction.

357 Bozak Indicates that OEA would oppose the bill with the change suggested by Rep. Garrard.

361 Peppers Indicates that OPEU would also oppose such a bill.

390 Chair Krummel Closes the public hearing on HB 3423 and opens a joint public hearing on SJM 3 and SB 488.

SJM 3 PUBLIC HEARING

390 Chair Krummel Closes the public hearing on SJM 3 and SB 488 and opens a work session on SJM 3.

SJM 3 WORK SESSION

395 Rep. Kruse **MOTION: Moves to ADOPT SJM 3-1 amendments dated 3/13/01.**

400 **VOTE: 7-0-4**

EXCUSED: 4 – Beck, Hill, Kafoury, Smith

Hearing no objection, declares the motion CARRIED.

407 Chair Krummel **MOTION: Moves SJM 3 be sent to the floor with a BE**
Rep. Kruse **ADOPTED AS AMENDED recommendation.**

415 **VOTE: 7-0-4**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 4 – Beck, Hill, Kafoury, Smith
The motion CARRIES.
REP. TOMEI will lead discussion on the floor.

420 Chair Krummel Closes the work session on SJM 3 and opens a public hearing on SB 488.

SB 488 PUBLIC HEARING

430 Sen. Kate Brown Senate District 7. Testifies in support of SB 488. Requests that the committee recommend to the House Committee on Rules, Redistricting, and Public Affairs that the bill be sent to the floor with a do pass as amended recommendation.

TAPE 38, A

030 Rep. March Asks whether amendments have been prepared.

035 Sen. Brown Distributes copies of the –1 amendments (**EXHIBIT G**).

065 Chair Krummel Closes the public hearing on SB 488 and opens a public hearing on HB 2906.

HB 2906 PUBLIC HEARING

075 Rep. Mary Nolan House District 11. Testifies in support of HB 2906 (**EXHIBIT H**). Says that Native American tribes often do not enjoy full access to state agencies. Indicates that at times the agencies have not been able to engage in service contracts because the tribes are not referenced in statute. Clarifies that the bill does not obligate agencies to enter into contracts with tribes, but allows them to do so if both parties agree. Indicates that the Attorney General’s office has requested additional clarification but that language has not yet been received. Requests the opportunity to allow the tribal council, the Attorney General, and Legislative

113	Wayne Shammel	Counsel to bring compromise amendments to a future hearing. Cow Creek Band, Tribe of Umpqua. Testifies in support of HB 2906. Recalls previous work on the issue. States that Oregon tribes are relatively well off compared to members of tribes in other states with regard to intergovernmental relations. Comments on legal impediments to development on tribal lands. Explains that the tribes do not have ability to provide some services, yet are not permitted to work with state agencies to procure them.
164	Shammel	States that HB 2906 provides general authority to prevent the need to pass a new statute each time a tribe and government entity wish to work together. Reiterates that the bill is designed to be merely permissive, rather than proscriptive. Acknowledges the concerns raised by the Attorney General that the bill may authorize agencies to do things that they cannot do otherwise. Says there is general agreement on the issue and suggests it will not be difficult to reach an agreement on amendments.
207	Rep. Kruse	Comments that Oregon has been a leader with regard to tribal relations for many years. Opines that the bill is a matter of common sense. Expresses hope that this one change can prevent the need to make numerous tribe-specific changes in statute. Submits that agencies often use statute as an excuse not to foster relations with tribes. Remarks that the Cow Creek Band is a terrific neighbor to his community.
250	Chair Krummel	Closes the public hearing on HB 2906 and adjourns the meeting at 10:45 a.m.

Submitted By,

Reviewed By,

Patrick Brennan,
Committee Assistant

Matt Wingard,
Committee Administrator

EXHIBIT SUMMARY

- A – H 2197, testimony, Susanna Knight, 1 p.**
- B – SB 349, testimony, Joe McNaught, 1 p.**
- C – HB 3423, -1 amendments, staff, 1 p.**
- D – BH 3423, testimony, Joe Spinden, 4 pp.**
- E – HB 3423, testimony, Tricia Bozak, 1 p.**
- F – SJM 3, -1 amendments, staff, 1 p.**
- G – SB 488, -1 amendments, staff, 1 p.**
- H – HB 2906, testimony, Rep. Mary Nolan, 1 p.**