

HOUSE COMMITTEE ON JUDICIARY

May 18, 2001
8:00 a.m.

Hearing Room 357
Tapes 59 - 62

MEMBERS PRESENT: Rep. Max Williams, Chair
Rep. Wayne Krieger, Vice-Chair
Rep. Kathy Lowe, Vice-Chair
Rep. Robert Ackerman
Rep. Vic Backlund
Rep. Jackie Dingfelder
Rep. Charlie Ringo
Rep. Lane Shetterly
Rep. Cheryl Walker
Rep. Vicki Walker
Rep. Carl Wilson

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

MEASURES HEARD: HB 3357 Work Session
HB 2513 Work Session
HB 3642 Work Session
HB 2551 Public Hearing
HB 2865 Public Hearing
HB 3857 Work Session
HB 2590 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 59, A		
276 *Meeting starts here on tape	Chair Williams	Calls the meeting to order at 8:15 a.m. Announces that SB 318A, HB 2917, HJR 66, HB 2356, and HB 3675 will all be held over until next week. Opens the work session on HB 3357.
<u>HB 3357 WORK SESSION</u>		
309	Rep. Rob Patridge	House District 50 Testifies in support of HB 3357, which allows proceeds from forfeited security to be applied to unsatisfied child support judgments or as security for child support payments. States support for HB 3357-2 amendments, (EXHIBIT A) and explains the differences in the -3 amendments (EXHIBIT B) .
367	Ronelle Shankle	Department of Justice Testifies in support of HB 3357 and the -3 amendments.
370	Rep. Lowe	Questions how forfeited bail money is used.
375	Shankle	Discusses the flow chart (EXHIBIT C) .
415	Rep. Lowe	States that (EXHIBIT C) does not illustrate that the case against the defendant is concluded prior to an order of forfeiture.

430 Shankle Questions if the order of forfeiture can be requested anytime after the first failure to appear. Answers affirmatively. Responds to Rep. Lowe’s earlier question regarding how forfeited bail money is used and refers to section 5, **(EXHIBIT B)** regarding where the funds are directed.

451 Rep. Shetterly Refers to section 5, **(EXHIBIT B)** and questions the distinction between the general fund portion and the specific distribution of the amount forfeited.

TAPE 60, A

024 Shankle Refers to page 2, section 1, lines 26 – 29, **(EXHIBIT B)**.

061 Rep. Ackerman Questions why this cannot be accomplished with a garnishment.

079 Karl Stencker Marion County Deputy District Attorney

Refers to ORS Chapter 29. States that funds held by the court are except from garnishment.

096 Rep. Shetterly Questions how much would be withheld in a biennium that was not allocated to the general fund or the other accounts.

107 Stencker Responds about \$300,000 in the last biennium.

122 Rep. Ackerman Questions why a child support mechanism is being used to collect money that is not going back to the family.

139 Rep. Patridge Responds that the –2 amendments do not allow for the 46% to go to the state.

146 Rep. Dingfelder Asks if either of these amendments accelerate the time it takes to recover child support payments.

164 Rep. Patridge Responds that a larger portion of the judgment could be satisfied with the –2 amendments.

180 Chair Williams Questions what the impact will be if either the –2 or –3 amendments are adopted and the anticipated changes in HB 2877.

187 Rep. Patridge Responds he does not believe it will have a significant effect.

268 Chair Williams Closes the work session on HB 3357 and opens the work session on HB 2513.

HB 2513 WORK SESSION

280 Rep. Rob Patridge

House District 50

Explains that the HB 2513-1 amendments **(EXHIBIT D)**, are gut-n-stuff amendments that require municipal and justice courts to register with the state court administrator.

308 Bradd Swank

State Court Administrator’s Office

States that justice courts are registered with the Secretary of State office, municipal courts have a voluntary registry with the Department of Revenue. Proposes that there be one registry and a consequence for not registering.

405 Chair Williams

MOTION: Moves to ADOPT HB 2513-1 amendments dated 04/27/01.

VOTE: 9-0-2

EXCUSED: 2 – Dingfelder, Wilson

406 Chair Williams

Hearing no objection, declares the motion CARRIED.

418 Chair Williams

MOTION: Moves HB 2513 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 9-0-2

EXCUSED: 2 – Dingfelder, Wilson

420	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. PATRIDGE will lead discussion on the floor.
426	Chair Williams	Closes the work session on HB 2513 and opens a work session on HB 3642.
<u>HB 3642 WORK SESSION</u>		
TAPE 59, B		
007	Dave Fidanque	Executive Director, American Civil Liberties Union of Oregon Discusses the efforts of the work group. States that the Department of Justice and the District Attorney's are in support of HB 3642.
045	Daina Vitolins	Department of Justice Presents an overview of HB 3642, which provides that all proceeds and instrumentalities of misdemeanor or felony are subject to criminal forfeiture upon conviction. Discusses HB 3642-9 amendments, (EXHIBIT E) .
100	Mark McDonnell	Multnomah County District Attorney's Office Testifies in support of HB 3642.
101	Fidanque	Reviews the property protections for innocent property owners.
162	Rep. Ringo	Asks about civil forfeitures.
182	Fidanque	Responds in civil forfeiture it is the property that has violated the law not the owner of the property. Continues that in a criminal forfeiture, the judgement is against a defendant's interest in a property.
208	Rep. Ringo	Questions would Driving Under the Influence of Intoxicants (DUII) apply a civil or a criminal forfeiture.
218	McDonnell	Responds that cities and counties can pursue civil forfeiture for DUII, Driving While Suspended (DWS) and felony DUII and DWS.
265	Rep. Dingfelder	Questions what changes have been made regarding animal forfeitures.
270	Fidanque	Responds that prior to conviction, neglected animals would go the humane society or other care provider and the instrumentality would be subject to criminal forfeiture.
TAPE 60, B		
040	Fidanque	States that the assumption of the work group is that animals are not proceeds or instrumentalities of criminal activity.
057	Fidanque	Refers to the definition on page 3, lines 16 – 20 of HB 3642 that explains the distribution of proceeds.
127	George Stevenson	Salem City Attorney's Office Presents (EXHIBIT F) in support of HB 3642. Testifies on the features that are important to the city of Salem.
181	Rep. Williams	MOTION: Moves to ADOPT HB 3642-9 amendments dated 05/18/01.
184	Chair Williams	VOTE: 8-0-3 EXCUSED: Shetterly, Walker C., Walker V. Hearing no objection, declares the motion CARRIED.

185	Chair Williams	MOTION: Moves HB 3642 to the floor with a DO PASS AS AMENDED recommendation.
188		<u>VOTE: 8-0-3</u>
	Chair Williams	EXCUSED: 3 – Shetterly, Walker C., Walker V. The motion CARRIES. REP. WILLIAMS will lead discussion on the floor.
200	Chair Williams	Closes the work session on HB 3642 and opens the public hearing on HB 2551.
<u>HB 2551 PUBLIC HEARING</u>		
202	Rep. Tom Butler	House District 60 Testifies in support of HB 2551, which requires that agency official who either alone or with other officials will render final order in contested case proceeding must report ex parte communications and provide opportunity to parties for rebuttal. Discusses line 26, HB 2551-3 amendments, (EXHIBIT G) .
240	Chair Williams	Refers to the correspondence from Henry H. Lazenby, (EXHIBIT H) .
297	Rep. Butler	Responds that this would help quantify procedures and recommendations by the interim task force.
309	Rep. Ackerman	Describes a hypothetical lobbying situation and asks if it would be covered by the provisions in HB 2551.
321	Rep. Butler	Responds he is not certain.
316	Rep. Dingfelder	Refers to testimony submitted by OSB Administrative Law from April 27 and questions if the interests expressed have been incorporated in HB 2551-3 amendments.
350	Rep. Butler	Responds he does not have that letter.
332	Ginny Lang	Qwest
371	Rep. Shetterly	Responds that she does not believe those interests are included. Responds that the original bill would have expanded the ex parte contact rules written into HB 2525 (1999). States that the –3 amendments (EXHIBIT G) departs from the original bill and applies new standards for ex parte communications to PUC proceedings.
392	Chair Williams	Closes the public hearing on HB 2551 and opens the public hearing on HB 2865.
<u>HB 2865 PUBLIC HEARING</u>		
370	Andrea Shartel	Counselor. Summarizes HB 2865, which provides that court in civil action may not make award of attorney fees to public body that exceeds actual cost of legal services.
428	Dave Hunnicutt	Oregonians in Action Explains that HB 2865 limits the costs of legal services to the actual cost incurred by the local government.
TAPE 61, A 048	Andrew Aubertine	Assistant Attorney General, Oregon Department of Justice Testifies in support of HB 2865-1 amendments, (EXHIBIT H) . States for clarification that the Attorney General’s office can represent public bodies in anti-trust enforcement actions as plaintiffs.
085	Cheryl Pellegrini	Oregon Department of Justice

125	David Barenberg	Testifies in support of HB 2865. Explains the reasons for proposing the –1 amendments, (EXHIBIT I) . Legislative Director for the League of Oregon Cities
177	Hunnicut	Testifies in opposition to HB 2865-1 amendments, submits testimony (EXHIBIT J) .
199	Rep. Shetterly	Responds that HB 2865 does not prevent local government from obtaining an award of attorney fees.
229	Chair Williams	Remarks that he is a little confused by the case law--discusses the Domingo case in the Court of Appeals and other cases.
258	Rep. Ringo	Expresses concern when attorney fees awarded are in excess of the cost incurred.
255	Chair Williams	States there are a variety of factors that determine attorney fees.
279	Rep. Ackerman	Discusses profit motive.
300	Rep. Lowe	Explains that under ORS 20.075, the court has discretionary authority to exceed market rates in some cases.
332	Rep. Ringo	Agrees with Rep. Ackerman’s statement.
340	Chair Williams	Questions if Chair Williams agrees with Mr. Hunnicutt that there is a disparity of power.
390	Rep. Shetterly	Comments that this is, on the whole, most often the case but is not always the case. Expresses his concerns are economic.
418	Aubertine	Remarks that if there are cases in which we want to establish penalties or fines, we can do that—the question is, is it appropriate to use attorney fees or request attorney fees as a means of extracting money from a litigant over and above what they are contractually obligated to pay or what some statute might require.
500	Chair Williams	Discusses post-judgement legal services. Closes the public hearing on HB 2865. States to Mr. Hunnicutt that the bill may have a constitutional issue. Opens the work session on HB 3857.

TAPE 62, A
HB 3857 WORK SESSION

050	Craig Prins	Counselor. Introduces HB 3857, which prohibits attorney who represents governing body of public body from representing public body in judicial or quasi-judicial proceeding if any member of governing body is party to proceeding and has adverse interests. States that the –4 amendments (EXHIBIT K) are the compromise solution to ORS 9.527 subsection 4.
060	Rep. Ackerman	Comments on an attorney being involved in covert activities.
077	Counsel Prins	Refers to the decision by the supreme court, comments on officers that are attorneys, and participation in covert activities.
123	Rep. Ackerman	States there is a distinction in subsection a, providing legal advice and in subsection b, may participate.
130	Chair Williams	Explains why he is comfortable with the language.
149	Rep. V. Walker	Concurs.
143	Rep. Shetterly	Notes that the underlying statute recognizes that the Supreme Court may discipline on conducts itemized on page three, (EXHIBIT K) .
230	Chair Williams	MOTION: Moves to ADOPT HB 3857-4 amendments dated 05/18/01.
		VOTE: 10-0-1
		EXCUSED: 1 - Walker C.
231	Chair Williams	Hearing no objection, declares the motion CARRIED.

233 Chair Williams **MOTION: Moves HB 3857 to the floor with a DO PASS AS AMENDED recommendation.**
VOTE: 8-2-1
AYE: 8 - Backlund, Krieger, Lowe, Ringo, Shetterly, Walker V, Wilson, Williams
NAY: 2 - Ackerman, Dingfelder
EXCUSED: 1 - Walker C

238 Chair Williams **The motion CARRIES.**
REP. WILLIAMS will lead discussion on the floor.

254 Chair Williams Closes the work session on HB 3857 and opens the work session on HB 2590.

HB 2590 WORK SESSION

256 Chair Williams Introduces HB 2590 that directs Juvenile Crime Prevention Advisory Committee to make grants to partnerships of local public entities and private nonprofit entities for after-school programs. Explains HB 2590-4 amendments, and submits supportive written materials (**EXHIBIT L**).

275 Chair Williams States there are two conceptual amendments:

- in line seven, change “or” to “and”.
- in line nineteen, delete “\$300,000” and leave a blank line.

292 Chair Williams **MOTION: Moves to SUSPEND the rules for the purpose of making conceptual amendments to HB 2590.**
VOTE: 10-0-1
EXCUSED: 1 – Walker C.

295 Chair Williams **Hearing no objection, the rules are SUSPENDED.**

296 Chair Williams **MOTION: Moves to CONCEPTUALLY AMEND HB 2590 the -4 amendments dated 5/18/01, on line 7, changing the word "or" to "and", and on line 19, by striking “\$300,000” and inserting a “_____”.**
VOTE: 10-0-1
EXCUSED: 1 - Walker C.

298 Chair Williams **Hearing no objection, declares the motion CARRIED.**

300 Chair Williams **MOTION: Moves to ADOPT HB 2590-4 amendments dated 05/18/01 as CONCEPTUALLY AMENDED.**
VOTE: 10-0-1
EXCUSED: 1 – Walker C.

302 Chair Williams **Hearing no objection, declares the motion CARRIED.**

303 Chair Williams **MOTION: Moves HB 2590 to the committee on Ways and Means with a DO PASS recommendation.**
VOTE: 10-0-1
EXCUSED: 1 – Walker C.

307 Chair Williams **Hearing no objection, declares the motion CARRIED.**

309 Chair Williams Closes the work session on HB 2590 and adjourns the meeting at 10:30 a.m.

Submitted By,

Reviewed By,

Ann Martin
Committee Assistant

Bill Taylor,
Counsel

Transcribed By,

Linda K. Gatto,
Committee Assistant

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EXHIBIT SUMMARY

- A. HB 3357, -2 amendments, dated 5/7/01, Rep. Rob Patridge, 3 pp.**
- B. HB 3357, -3 amendments, dated 5/7/01, Rep. Rob Patridge, 7 pp.**
- C. HB 3357, diagram, Ronnelle Shankle, 1 p**
- D. HB 2513, -1 amendments, dated 4/27/01, Rep. Rob Patridge, 2 pp.**
- E. HB 3642, -9 amendments, dated 5/18/01, 69 pp.**
- F. HB 3642, correspondence, George Stevenson, 1 p**
- G. HB 2551, -3 amendments, dated 5/15/01, Rep. Tom Butler, 2 pp.**
- H. HB 2551, correspondence, Henry H. Lazenby, 4 pp.**
- I. HB 2865, -1 amendments, dated 4/19/01, Andrew Aubertine, 1 p**
- J. HB 2865, prepared testimony, David Barenberg, 2 pp.**
- K. HB 3857, -4 amendments, dated 5/18/01, staff, 3 pp.**
- L. HB 2590, -4 amendments, dated 5/18/01, and correspondence, Rep. Max Williams, 7 pp.**