

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

March 15, 1999 Hearing Room 357

1:00 p.m. Tapes 64 - 66

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2610 - 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 64, A		
004	Chair Shetterly	Calls meeting to order at 1:49 p.m.

HB 2610 n PUBLIC HEARING

017	Counsel Felton	HB 2610 establishes that burden of persuasion rests with forfeiting agency in action for forfeiture of proceeds of drug-related activities.
022	Rep. Jo Ann Bowman	State Representative, House District 19 Testifies and submits testimony in support of HB 2610 (EXHIBIT A). Discusses and gives examples of the lack of checks and balances for citizens regarding forfeiture of property. Discusses HB 2676 and how it relates to HB 2610. States that HB 2610 is a consumer rights bill.
077	Rep. Floyd Prozanski	State Representative, House District 40 Testifies and submits written testimony and proposed n2 amendment in support of HB 2610 (EXHIBITS B-I). Gives a history of the Asset Oversight Advisory Committee. Discusses his reasons for not supporting the current forfeiture laws. Refers to article on "Confiscation Without Conviction" regarding property forfeiture in England's laws. Refers to article "Civil Forfeiture", part I and part II regarding safeguards to protect property owners. Refers to article "Civil Asset Forfeiture On The Rise" regarding forfeiting civil rights. Refers to article "Uncle Sam Wants Your Stuff: is asset forfeiture another term for theft?" regarding federal government using laws for seizure of property to gain valuable assets. Reviews the proposed -2 amendments for SB 408. Discusses what the opponent's will testify to HB 2610.
258	Rep. Walker	Asks about the difference in the n1 amendment and the n2 amendment regarding changing the standard proof from "preponderance" to "clear and convincing".
272	Rep. Prozanski	Discusses the difference of standards between "preponderance" and "clear and convincing".
282	Chair Shetterly	States that in most civil court proceedings, the burden of proof is by preponderance of the evidence.
304	Rep. Uherbelau	Asks about page 2, lines 37-41 in HB 2610 regarding probable cause and the possibility it will prohibit the use of drug sniffing dogs.
329	Rep. Prozanski	Explains that HB 2610 addresses forfeiting property, not seizing property by law enforcement agencies.
343	Rep. Uherbelau	Asks about section 1 and section 2 of HB 2610 regarding civil action. Why is the language deleted on page 2 having to do with seizure of property?
354	Rep. Prozanski	Discusses the intent of HB 2610 regarding the seizure of property.
360	Rep. Uherbelau	Asks why section 2 of HB 2610 regarding "seizure" is being deleted in the amendments and is not addressing "civil action".

365	Rep. Prozanski	States that the intent of HB 2610 is not to effect seizure of property, but to effect the <u>forfeiture</u> of the seized property. Discusses whether the language of the amendment regarding "seizure" would hinder the law enforcement's ability to seize the property. Explains why the purpose of HB 2610 has not previously been addressed.
437	Sen. Veral Tarno	State Senator, District 24 Testifies and submits written testimony against HB 2610. Discusses the language of HB 2610 regarding forfeiture of property and the effect on law enforcement agencies.
Tape 65, A		
035	Rep. Uherbelau	Asks whether there is a distinction regarding forfeiture of property before or after a person has been proven guilty. Would the "clear and convincing" evidence be alright before conviction?
052	Rep. Tarno	Explains "clear and convincing" evidence regarding criminal procedure by law enforcement agencies.
062	Rep. Uherbelau	Could the problem be resolved in the -2 amendments with the language that property can be seized at anytime, but no civil action can be taken until the person has been convicted?
076	Rep. Rob Patridge	State Representative, House District 50 Testifies in opposition to HB 2610. Discusses why there needs to be no change with civil forfeiture law in the State of Oregon. Discusses why it would be impossible for law enforcement officers pursuing a search warrant to seize any evidence if section 2, sub-section 8 of HB 2610 was deleted.
128	Rick Lewis	Chief Police, Silverton Police Department Testifies and submits written testimony in opposition to HB 2610 (EXHIBIT J). Discusses the purposes of the Asset Forfeiture Oversight Advisory Committee (AFOA). States that the committee has seen no abuses of the forfeiture law and has seen no need to change the law. Discusses the safeguards that oversee the proper forfeiture of property. Explains "probable cause" in property seizure during an arrest. Discusses ORS 475A.035 regarding seizure of property for forfeiture.
209	Rep. Walker	What about the arrested person who was later found innocent and does not have the financial means to hire an attorney for return of seized property?
223	Lewis	I do not know, but those testifying later would know the answer.
230	Rep. Uherbelau	Asks how the process of probable cause and the seizure of property works.

236	Lewis	Explains the process of property seizure for forfeiture.
248	Rep. Uherbelau	Is the process different if the person is convicted?
251	Lewis	The AFOA committee could answer that question when they testify.
253	Rep. Uherbelau	States when someone is arrested, they cannot be held indefinitely. Can you hold the forfeited property until there is a judgment by the court regarding conviction?
260	Rep. Patridge	There is an opportunity to post bond in a bail proceeding.
264	Rep. Uherbelau	What is the amount of the bond according to the value of the property asset?
266	Rep. Patridge	I do not know.
287	Lil Desoto	Citizen, State of Oregon Testifies in support of HB 2610. Discusses civil rights of the citizen regarding seizure of property.
302	Reginald DeSoto	Citizen, State of Oregon Testifies in support of HB 2610. Discusses the unfairness of the current forfeiture laws.
322	John Flannery	Citizen, State of Oregon Testifies in support of HB 2610. Discusses the claimant having to defend the burden of proof in court cases and to obtain a bail bond without financial means. Discusses property seized illegally by law enforcement agencies.
408	Linda Law	Deputy City Attorney, City of Portland Testifies and submits written testimony in opposition to HB 2610 (EXHIBIT K). Discusses and gives examples of the reasons why the City of Portland opposes HB 2610 regarding the effectiveness of Oregon's comprehensive Forfeiture statute.
Tape 64, B		
034	Law	Discusses the reasons for opposition to HB 2610.
090	Rep. Lowe	Is an attorney provided for an arrested individual, who has no financial means, for the return of seized property?

095	Law	Yes.
098	Rep. Lowe	Do most of the claimants that ask for a hearing receive representation?
103	Law	Most of the time. Sometimes, they have an attorney through their own funds or a referral from the State Bar.
111	Rep. Lowe	Are those that cannot afford an attorney not represented in court?
113	Law	No.
118	Rep. Lowe	What percentage of property forfeiture cases makes it to a hearing?
125	Law	I do not know.
127	Chris Carey	District Attorney, Multnomah County Testifies in opposition to HB 2610. Discusses the process of filing property forfeiture claims.
144	Rep. Lowe	Asks about the percentage of claims that are settled and those that actually go to a hearing.
155	Carey	Discusses the civil statutory property forfeiture and the criminal statutory property forfeiture with their own set of rules regarding claims. States that he doesn't know the exact percentage of cases that are settled and those that go to court.
186	Rep. Lowe	Asks about comparing the percentage of claims that are settled and those that actually go to a hearing regarding property forfeiture claims.
191	Carey	Discusses the eighty percent that lose their forfeited property due to lack of legal representation or because it is settled.
219	Rep. Uherbelau	Asks for explanation of Ms. Law's comments about the process of property forfeiture working well under the "250 years of law".
225	Law	Gives examples of historical cases regarding property forfeiture during the last 250 years.
247	Rep. Uherbelau	Asks if Ms. Law means that the property forfeiture procedure and the statutory law have been in place for 250 years.

250	Law	No. Explains the State of Oregon procedures for property forfeiture.
260	Rep. Uherbelau	Asks about Ms. Lawis comments about property forfeiture regarding the criminals vs. the law abiding citizens.
264	Law	Discusses the two categories of property seizure regarding civil and criminal cases.
280	Rep. Uherbelau	How can you say that there are law abiding citizens on one side and criminal on the other side if no one has even been convicted yet?
284	Law	Explains the distinguishing factor of the criminal setting and the civil setting of a crime.
298	Carey	Explains the forfeiture procedure regarding the descriptive use of the word, "claimants".
306	Rep. Uherbelau	Explains "infinite domain" regarding property seizure.
314	Law	Explains the difference in "infinite domain" and "forfeiture" procedures regarding property.
353	Rep. Uherbelau	What did Multnomah county make from forfeitures in 1997 and 1998?
357	Carey	I do not know.
365	Rep. Lowe	Is the federal government re-examining the Internal Revenue Service forfeiture procedures laws?
375	Law	States that even in the IRS setting, there is no clear and convincing burden regarding property forfeiture.
378	Rep. Lowe	Asks if the IRS is going to make the burden of proof into preponderance regarding property forfeiture.
381	Carey	Explains the federal process of eliminating the forfeiture provision and the compromise of using the preponderance of evidence standard.
406	Rep. Lowe	How would HB 2610 be affected with the shift of the burden of proof?
424	Carey	Discusses the government's role in burden of proof regarding property forfeiture.

452	Rep. Lowe	Asks about the threshold for seizing property with "probable cause".
459	Carey	Explains "probable cause" hearings regarding property forfeiture.
Tape 65, B		
020	Brenda Rocklin	Assistant Attorney General, Department of Justice (DOJ) Testifies in opposition of HB 2610. Discusses three points of HB 2610 regarding how forfeiture laws affect burden of proof on the claimant.
068	Rep. Uherbelau	Could you give me the cite of the case that you mentioned regarding the forfeiture laws?
070	Rocklin	The site is 152 OrApp 770, a 1998 case by Judge Armstrong.
082	David Fidanque	Executive Director, American Civil Liberties Union of Oregon (ACLU) Testifies in support of HB 2610. Discusses the Civil Forfeiture Statute regarding federal forfeiture law. Discusses the principle behind HB 2610 regarding government standards of property forfeiture. Discusses the history of the Oversight Advisory Committee.
164	Michele Burrows	Defense Attorney, Portland Testifies in support of HB 2610. Discusses proposals by federal legislature regarding the forfeiture process. States that the ñ2 amendment deals with judicial forfeitures. Discusses the large amount of assets involved in federal forfeitures. Discusses the preponderance of evidence standard regarding government forfeiture laws. Explains posting bonds for property forfeiture. Discusses who hires attorneys regarding property forfeitures.
311	Shaun McCrea	Defense Attorney, Eugene Testifies in support of HB 2610. Discusses and gives examples of property forfeitures relating to burden of proof and probable cause.
Tape 66, A		
015	Charles Zennache	Private Attorney, Oregon Testifies and submits written testimony in support of HB 2610 (EXHIBIT L). Expresses his support of HB 2610. Discusses Rep. Henry Hyde's book regarding forfeiting property rights. Discusses the rights of property owners in the Oregon Bill of Rights regarding property seizure. Discusses good public policy regarding police being denied forfeiture of property. HB 2610 strikes a more appropriate balance between the interest of the state and the interest of property owners.

114	Fidanque	Discusses the need for the Oversight Committee. States that local governments are proposing new ordinances regarding property forfeitures.
147	Beth Vargas Duncan	League of Oregon Cities (LOC) Testifies in neutrality of HB 2610. Discusses the concern that LOC has with the different levels of "clear and convincing" and "shifting of burden" regarding property forfeiture.
170	KevinCampbell	Oregon State Police Association Testifies in opposition of HB 2610. Discusses the report in 1997 regarding property forfeiture report forms. Expresses his support for the Oversight Committee.
223	Ed Monehey	Drug Enforcement Division, State Oregon Police Expresses their opposition to HB 2610.
233	Chair Shetterly	Adjourns meeting at 3:56 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2610, Written testimony, Rep. Bowman, p. 2

B - HB 2610, 1997 Oregon Revised Statutes, Rep. Prozanski, p. 29

C - HB 2610, Article, "Confiscation without conviction", Rep. Prozanski, p. 2

D - HB 2610, Article, "Civil Forfeiture Part I", Rep. Prozanski, p. 3

E - HB 2610, Article, "Civil Forfeiture Part II", Rep. Prozanski, p. 3

F - HB 2610, Article, "Forfeiting rights", Rep. Prozanski, p. 3

G - HB 2610, Article, "Uncle Same wants your stuff: is asset forfeiture another term for theft?", Rep. Prozanski, p. 4

H - HB 2610, Proposed -1 amendment, Rep. Prozanski, p. 1

I - HB 2610, Proposed -2 amendment, Rep. Prozanski, p. 1

J - HB 2610, Written testimony, Rick Lewis, p. 2

K - HB 2610, Written testimony, Linda Law, p. 5

L - HB 2610, Written testimony, Charles Zennache, p. 3