

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**May 5, 1997 Hearing Room 357**

**1:00 P.M. Tapes 75 - 77**

**MEMBERS PRESENT:**

**Rep. Lane Shetterly, Chair**

**Rep. Judy Uherbelau, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Jo Ann Bowman**

**Rep. George Eighmey**

**Rep. Floyd Prozanski**

**Rep. Charles Starr**

**Rep. Larry Wells**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Gina Cross, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 3356 Work Session**

**HB 3491 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 75, A</b>		
004	Chair	Calls the meeting to order at 1:05 p.m. >will limit testimony

	Shetterly	>treat as public hearing
<b><u>HB 3356 - WORK SESSION</u></b>		
014	Chair Shetterly	Opens the work session on HB 3356.
019	Bill Taylor	Committee Counsel >summarizes HB 3356
031	Rep. Liz VanLeeuwen	State Representative, District 37 >Discusses concerns with the bill.
038	Rep. Bowman	Can you be more specific about your concerns?
039	Rep. VanLeeuwen	My concerns are with the effects on the current grain and seed lien law. I am not sure what it actually does. We need to balance priorities on who collects the money first.
049	Rep. Bowman	Could you tell me a little of the law as it now exists?
051	Rep. VanLeeuwen	I would assume staff has provided that for you. You can do your own comparisons.
053	Chair Shetterly	It is in the bill.
057	Chair Shetterly	The law is such that if the farmer purchases materials for his crop and doesn't pay his supplier, the supplier has priority over the bank.
069	Rep. Ken Messerle	State Representative, House District 48 >gives background to his experiences under the lien law >difficult for banks to hang in there with farm loans >needs to have balance to the law
103	Chair Shetterly	"Unfair disadvantage?"
104	Rep. Messerle	Yes.
105	Rep. Eighmey	Are you saying that if the seed company extends credit beyond 60 days then they should be placed in a secondary position?
108	Rep. Messerle	They should at least be on an equal basis.
110	Rep. Eighmey	If the bank extends credit to you, and you use that to buy supplies, should the supplier have priority?
117	Rep. Messerle	I would have to think this through and let you know. Notification is also an issue that banks should know about.
121	Rep. Eighmey	How would the seed company know if the lien has been extended without a default taking place?

126	Rep. Messerle	Once there is a default, it is too late for the banks to collect the loan.
127	Rep. Eighmey	How does the seed company give notice if they don't know there is a default? Should there be required a notice of a potential lien?
124	Rep. Messerle	Yes.
131	Rep. Prozanski	Crop rotation can run anywhere from 90-120 days, correct?
136	Rep. Messerle	Yes.
137	Rep. Prozanski	It seems that the crop in the ground is where the money to pay off the loans is coming from.
142	Rep. Messerle	In most cases that is true.
143	Rep. Uherbelau	Many banks take collateral. I don't see this as being an equal playing field.
153	Rep. Messerle	Banks look heavily at cash flow. Rules and regulations have changed the way they look at collateral.
167	Rep. Uherbelau	I am concerned about the banking environment in Oregon. Is it not localization of banks anymore. We have more of a nationalization of banks.
178	Rep. Messerle	This is an indication that banks need to know what's going on and manage the collateral.
188	Rep. Bowman	This seems to be a hotly contested bill. The small community banks are now being asked to get in line behind the big banks. Relationships are not as important as they used to be. What should we be looking out for?
219	Rep. Messerle	I am not advocating that lien holders get behind the banks; it should be on an equal basis.
233	Rep. Eighmey	Banks used to have rules of thumb when it came to collateral. You are saying that cash flow is more important. What is the rule of thumb now with collateral and cash flow?
245	Rep. Messerle	I can't give you a specific number, but I know that it has changed. Each bank has its own criteria.
250	Chair Shetterly	Does this have anything to do with environmental regulations and the fact that real property is not as appealing as it once was?
254	Rep. Messerle	It used to be that if you had a shop on your property, it was good collateral.
262	Rep. Uherbelau	Are you saying that banks would forego their traditional collateral they have used in the past?
268	Rep. Messerle	No.
269	Rep. Uherbelau	So they would still want that?
269	Messerle	Yes.
		Oregon Bankers Association, testifies in support of HB 3356.

279	Frank Brawner	<p>&gt;Oregon is the only west coast state which has a lien law priority. &gt;This bill is about farmers and agricultural credit.</p> <p>&gt;Many of our loans are on the crop only.</p> <p>&gt;This bill is about putting things on a level playing field.</p>
318	Ken Sherman	<p>Oregon Bankers Association, submits written testimony and testifies in support of HB 3356 (<b>EXHIBIT A</b>).</p> <p>&gt;Explains the agricultural lien.</p> <p>&gt;Liens have been intended to be used on a short term basis.</p> <p>&gt;Creditors have access to the Uniform Commercial Code (UCC).</p> <p>&gt;Exploitation of the agriculture services lien has brought the need for this bill.</p>
365	Sherman	<p>Continues testimony</p> <p>&gt;Agricultural services lien can be claimed by persons who provide services as well as those who perform labor.</p> <p>&gt;This amendment clarifies the law.</p> <p>&gt;It is unfortunate that Oregon has this secret super priority lien.</p> <p>&gt;&gt;want the UCC rules to govern liens</p>
413	Sherman	<p>Continues testimony.</p> <p>&gt;The least we can do is make the agricultural services liens accessible to all.</p> <p>&gt;get the inconsistencies out of existing law</p>
<b>TAPE 76, A</b>		
001	Sherman	<p>Continues testimony.</p> <p>&gt;We want the system to be fair and equitable for all persons.</p> <p>&gt;Those who abuse the system don't want the status quo to be taken away.</p>
019	Rep. Prozanski	Asks for examples about how these other entities provide long term financing.
023	Sherman	He defers to Steven Clive.
		Oregon Bankers Association Agriculture Committee Chair, testifies and submits testimony in support of HB 3356 ( <b>EXHIBIT B</b> ).

026	Steven Clive	>invaluable source to joint agricultural clients >collection risk is on the back of the banks now >gives example of risk taken by banks
043	Rep. Bowman	Why was the bank forced to pay the outstanding loan?
045	Clive	Due to the superpriority the agricultural lien provider has, the suppliers get paid before the bank gets paid.
049	Rep. Bowman	The bank doesn't pay the loan; the one with the line of credit pays the loan.
051	Clive	The bank gives money to the farmer to pay the supplier.
052	Brawner	We had to do this in order to have our interest in the crop.
055	Rep. Bowman	Clarifies what the farmer owes to the bank and the supplier.
058	Clive	He owes the bank \$1,000,000 and the supplier \$200,000. The bank didn't know about the money owed the supplier.
070	Rep. Bowman	You gave him more money to pay the outstanding debt.
071	Clive	Correct.
071	Rep. Bowman	I wanted to be clear that the farmer still owes both the bank and the supplier.
073	Brawner	We now start the year in the deficit position which may mean that we can't loan more money to the farmers.
078	Rep. Uherbelau	Could you get to the same place by requiring a notice to lien?
083	Clive	That is another approach that could be taken. At the end of the year we find out about these liens.
096	Sherman	The existing law does provide for notice, but it comes too late in the process.
102	Rep. Uherbelau	Do you know what the time period is?
103	Sherman	It is 60 days after the last delivery of seed, fertilizer, money, etc.
107	Chair Shetterly	In the example of the farmer's budget, why didn't his debt show up in tracking the budget?
112	Clive	Different banks do things differently. Those moneys were expended for different things.
125	Chair Shetterly	Was it a default on the farmers' loan?
127	Clive	We would have recognized it as a default if it would have been paid on time.
134	Clive	Continues testimony. >Some agricultural service businesses are doing traditional banking activities as a result of their preferential treatment.

		>The proposed legislation will allow all businesses to work fairly and equally.
152	Rep. Eighmey	Refers to Mr. Sherman's testimony and asks if there has been litigation?
158	Sherman	No, but the language is very broad.
168	Rep. Eighmey	I understand that similar types of legislation have been attempted to protect banks' interests.
175	Brawner	We decided to join them since we can't beat them. Ninety - to -ninety-five percent of the cases aren't a problem. We're a part of the agriculture community, too.
194	Rep. Eighmey	That is premature of you to make a legal recommendation which says that you are equal.
201	Sherman	The question is who can claim such a lien. What does the law really say? We thought that it would be best if the legislature straightened this out. If we don't straighten this mess out, we will reduce the availability of lending for agriculture as we get more into an interstate environment.
231	Brawner	No other industry has a secret priority lien other than this one.
248	Stan Star	Star Agriculture Products, Albany >We need to get to the truth of the matter. >Farmers have to notify all parties when there is over \$20,000 involved.
261	Rep. Prozanski	Could you give me the break point again?
262	Star	It is \$20,000.
263	Star	Continues testimony. >Banks can lend up to 80% of their money. >I have growers who pay me off at the end of the season. >There are growers who won't farm if this program is cut down. >I don't lend money to just get credit.
309	Chair Shetterly	What bank are you on?
310	Star	Linn-Benton Bank, Albany.
312	Walter Gowell	Attorney at Law, McMinnville, submits testimony ( <b>EXHIBIT C</b> ). >discusses the Agricultural Services Lien

		>This bill advertises itself as a level playing field.
362	Gowell	Continues testimony. >The banks gain priority under this bill. >We are seeing, in the agricultural community, a trend towards remote banking.
415	Gowell	Continues testimony.
<b>TAPE 75, B</b>		
002	Chair Shetterly	Refers to Mr. Gowell's memorandum.
008	Larry Crook	Ag West Supply, Rickreal >never filed secret liens >encourage customers to pay bills when due >If banks would work with customers, we wouldn't be faced with this dilemma. >only form of protection
032	Rep. Uherbelau	In other types of industries, banks will ask the outstanding debt to subordinate their loan and their place in the priority list. Do they do that in the farming industry?
038	Crook	Once in awhile it may happen.
039	Gallow	Most of the liens are paid for during the crop year. The subordination is not something the banks usually ask for.
046	Joel Hobson	General Counsel, Oregon Farm Bureau >The ability to gain materials needed for a job is restricted. >Banking is not an agricultural service. >The agricultural lender who is on top of the loan is not likely to be surprised. >plenty of room to protect the banks
084	Rep. Uherbelau	When the farmer goes to get the loan, doesn't he have to fill out a financing statement?
089	Hobson	Yes, like any other loan situation, the borrower must disclose sources of income.
090	Rep. Uherbelau	Is it a practice that the lending institution notify the borrower of a pending lien?
096	Hobson	I would assume that is correct.

103	Gowell	The standard security agreement would allow for a lien. The statute calls for an involuntary lien as a protective measure.
116	Chair Shetterly	The agreements I've seen have a prohibition against the permitting and suffering of collateral.
119	Gowell	When the borrower is not in default, and a lien is filed, that would be stretching it.
123	Rep. Eighmey	How do you protect a bank from sloppy work or getting in over their head?
134	Gowell	In an underwriting process an investigation by the bank is warranted and ongoing involvement limits the number of cases like that mentioned by Mr. Clive. There will always be cases where borrowers borrow more than they have. Both sides of the equation are subject to the same circumstances, and neither side should be immune from the risk.
158	Rep. Eighmey	Refers to the ones who default on purpose and those who accidentally default. This lien gives the supplier priority over the bank. This is a matter between the supplier and the bank as to who gets priority.
180	Gowell	There are certain prerequisites in making sure that every lenders collateral is maximized. The priority needs to be on preserving the herd or producing the crop so that the loss is minimized to everyone. As an incentive to make sure harvests are completed this priority was created 25 years ago.
206	Rep. Eighmey	How many of the states have this priority?
207	Gowell	I am not sure.
214	Star	I don't know of any banks that are not getting notification. It would be foolish for me not to give notification.
232	Rep. Uherbelau	Where did this \$20,000 come from?
234	Star	It began in 1993.
235	Gowell	ORS 87.242 provides that, under the notice provision, you lose your priority to that portion of your lien over \$20,000 if you fail to give a notice to the bank that you have filed a lien.
250	Chair Shetterly	Asks if there are any other proponents for this measure.
259	Tom Hunton	Farmer, Junction City >It is important to realize that we, in the supply business, protect the banks interest. >We are partners with banks in this venture, but they have the security available.
298	Bob Long	Western Farm Service >Bankers tend to leave the farmers without anything.



		>Suppliers are in a long-term partnership with farmers.
330	Dave Nelson	Oregon Seed Council and Oregon Dairy Farmers Association >We need the agricultural service organizations to be a part of the process.
367	Rep. Uherbelau	I know you buy the land, but I'm not sure I understand the actual process. Why would you need a banker?
382	Hunton	It may be that you need a supply at the end of the harvest, or during pollination.
400	Rep. Bowman	Would this bill put farmers and bankers on an equal surface?
407	Long	Not at all. We aren't looking for a UCC filing.
420	Rep. Bowman	What are the normal terms for someone getting supplies from you?
424	Long	Our terms are net 30 days.
425	Rep. Bowman	When would you file a lien against that property?
426	Long	If a grower had not paid us at the end of 30 days, we would visit with him. After 60 days, we would dig deeper into the situation. After 75 days, we are mandated to file a lien or we don't have any position.
<b>TAPE 76, B</b>		
002	Bob Wix	DuPont >Leins are the single most important issue to my customers. >growers interests need to be protected >If the farmer needs one last hoist, the bank won't be there to give him a hand.
023	Kevin Crowson	Island Produce Company, Monroe >The agricultural lien is a valuable tool for small farmers. >Small farmers will be eliminated if this tool is taken away. >opportunity to help others
049	Chair Shetterly	You can't be placed in the banks' field and they don't want to be in yours.
051	Rep. Eighmey	Some suppliers have extended larger and longer term credits. Are there some suppliers who are exploiting this?
064	Hunton	Most of us don't want to be in the lien business. The lower amount of liens are a symptom of the agricultural economy which has improved.
074	Wix	As far as fertilizer dealers go, most don't try and extend the liens.
082	Nelson	Gives example of farmers not getting paid until the spring, and people waiting for money.
098	Rep. Starr	Is the availability of credit used as a competitive advantage?

104	Hunton	If we lose customers, it is because we got out hustled. It is never because another company is giving farmers a longer lien.
113	Crowson	Farmers haven't been solicited by different companies. The different companies are working partners with us.
131	Rep. Bowman	How long have you been a farmer?
132	Long	22 years.
133	Rep. Bowman	How many liens have you had?
134	Long	I don't know.
135	Rep. Bowman	I am just trying to get a feel for how often this is used. This lien is not your preference?
137	Long	Absolutely not. I wish we would never have to file liens.
142	Rep. Uherbelau	What are we talking about when we say "long term?"
147	Nelson	I believe it is 6 months or longer. It depends on the crop production cycle.
153	Rep. Beyer	It depends on what types of crops you grow.
165	Sandy Flicker	Oregon Rural Electric Cooperative Association, submits and reads testimony of William Sheridan ( <b>EXHIBIT D</b> ).  >This bill would not level the playing field.
212	Rep. Uherbelau	This bill doesn't purport to do anything to ORS 87.362.
216	Flicker	Mr. Sheridan may have written this under the assumption that it did.
222	Chair Shetterly	In case it ever comes up, we have his testimony.
224	Flicker	Hopefully, his testimony in concept, applies to this bill.
232	Jonathan Schlueter	Pacific Northwest Grain and Feed Association, submits and reads testimony in support of HB 3356( <b>EXHIBIT E</b> ).  >Anything that jeopardizes agricultural credit to the producers is contradictory to our members.  >operated under this law for 25 years  >No amount of legislation can take the place of good credit management.  >Bankers own the playing field.
283	Schlueter	Continues testimony.  >Agricultural lending will not be cheaper or more available with this legislation.
	Rep.	Do the suppliers in states without this type of lien law operate at a

293	Uherbelau	disadvantage?
304	Schlueter	Yes. It is more difficult to get supplies without this type of law.
316	Rep. Uherbelau	Is there an actual study which covers what you stated?
319	Schlueter	States that it is a mystery why this bill comes up again when the agricultural economy is as good as it is.
331	Frank Brawner	<p>Oregon Bankers Association</p> <ul style="list-style-type: none"> <li>&gt;We require in our loan documents that borrowers give notice of any additional loan borrowing.</li> <li>&gt;We are in the business of harvesting the crops.</li> <li>&gt;We take the biggest risk and stand at the end of the line.</li> <li>&gt;We have expert agricultural bankers.</li> <li>&gt;The budget is all there until an unfortunate circumstance occurs.</li> <li>&gt;Agricultural bankers extend the credit which is fine with banks as long as they know about it.</li> </ul>
382	Rep. Prozanski	What kind of impact does the farmer not reporting other loans have on the banks?
389	Brawner	Banks are protected up to \$300,000. It would work if notice had to be given the day of the last delivery.
408	Rep. Eighmey	The secrecy issue is secret only because it's unknown until 75 days after the last delivery.
419	Brawner	The secrecy is not intentional.
423	Chair Shetterly	Closes the work session on HB 3356.
<b><u>HB 3491 - WORK SESSION</u></b>		
434	Chair Shetterly	Opens the work session on HB 3491.
<b><u>TAPE 77, A</u></b>		
011	Jean Nath	<p>League of Women Voters testifies and submits testimony in support of HB 3491 (<b>EXHIBIT F</b>).</p> <ul style="list-style-type: none"> <li>&gt;seek judicial review of a state order</li> <li>&gt;This would restore the right to carry out those actions we believe to be in the public interest.</li> </ul>
		Waterwatch, testifies and submits testimony in support of HB 3491

		<b>(EXHIBIT G).</b>
025	Jeff Curtis	>effects citizens ability to participate in government >essential to keep agencies honest
077	Bart Brush	Northwest Environmental Defense Center President >Organizations do not have standing in the courts.
106	Jim Conley	North Santiam Watershed Council, submits testimony in support of HB 3491 <b>(EXHIBIT H).</b>
112	Chair Shetterly	We can bring this back in order to hear from Department of Environmental Quality (DEQ). Have you spoken with them about this?
114	Brush	I believe there was a letter from the Environmental Protection Association urging DEQ to speak to the legislature about this.
118	Chair Shetterly	We will contact DEQ about this.
120	Chair Shetterly	Closes the public hearing on HB 3491.
123	Chair Shetterly	Adjourns the subcommittee at 3:06 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - HB 3356, written testimony, Kenneth Sherman, 5 pp.**

**B - HB 3356, written testimony, Stephen Clive, 3 pp.**

**C - HB 3356, written testimony, Walter Gowell, 9 pp.**

**D - HB 3356, written testimony, William Sheridan, 2 pp.**

**E - HB 3356, written testimony, Jonathan Schlueter, 3 pp.**

**F - HB 3491, written testimony, Jean Nath, 1 p.**

**G - HB 3491, written testimony, Jeffrey Curtis, 3 pp.**

**H - HB 3491, written materials, Jim Conley, 2 pp.**

**I - HB 3491, written materials, Jim Myron, 1 p.**