

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CRIMINAL LAW**

**March 24, 1997 Hearing Room 357**

**3:15 PM Tapes 61-62**

**MEMBERS PRESENT:**

**Rep. JOHN MINNIS, Chair**

**Rep. JO ANN BOWMAN, Vice-Chair**

**Rep. PETER COURTNEY**

**Rep. FLOYD PROZANSKI**

**Rep. LANE SHETTERLY**

**Rep. RON SUNSERI**

**Rep. LARRY WELLS**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**SCOTT LUMSDEN, Counsel**

**BRIAN HIGGINS, Administrative Support**

**MEASURE/ISSUES HEARD:**

**Public Hearing - HB 3007, HB 3357**

**Public Hearing and Work Sessions - HB 2727, HB 3059, HB 3365**

**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 61, A</b>		
005	Chair Minnis	Calls subcommittee to order at 3:19 PM

<b>HB 2727 - PUBLIC HEARING</b>		
006	Chair Minnis	Opens public hearing on HB 2727
010	George Eighmey	State Representative, District 14  >introduces Legislative Assistant, Todd Olson  >intent of bill is to limit law enforcement agencies ability to do intelligence works on subjects believed to be involved with Class A misdemeanors  >submits proposed amendments, <b>(EXHIBIT A)</b>  >allows for access to courts if they feel a law enforcement agency violates the ORS  >no opposition to redraft
043	Chair Minnis	How is it envisioned that a law enforcement agency would violate this?
045	Rep. Eighmey	Defers to Legislative Assistant
046	Todd Olson	Relates instances in which an agency could violate this
057	Chair Minnis	Is this assuming they are not already investigating a specific crime or allegation?
059	Olson	This is different than the investigations which normal agencies would engage in.
065	Chair Minnis	The current language says "is or maybe" involved in criminal conduct.
066	Olson	Right.
067	Rep. Eighmey	The "is or maybe" language remains.
069	Rep. Wells	Asks for clarification in regards to line 9, relating to criminal activities >Why do we need this because we have the current language saying it must relate to criminal activities?
088	Rep. Eighmey	We're working off of the -2 amendments.
093	Rep. Wells	My question was about Section 1 which is current law.  >It seems like the activities you pointed out in your example are not criminal.

101	Olson	In Section 1, the statute addresses the collection and maintenance of information on an individual's activities.
109	Chair Minnis	I believe the bill creates a private right of action if they feel the agency is in violation of the existing language.
115	Rep. Eighmey	This gives redress to the individual who feels there is a violation of Section 1. >Currently violations exist, but there is no recourse for the individual.
125	Rep. Bowman	In the City of Portland, they were keeping records of gang activities for people who weren't involved in criminal activities, but these were perceptions of people who were involved and these people were kept on this list for 2-5 years with no means of taking their names off the list.
136	Rep. Shetterly	This bill does really create a minimum damages amount of \$5000. >It does seem that there probably is a private right of action. >It also provides for recovery of attorney fees. >Do you know where the last sentence came from?
148	Rep. Eighmey	Responds that it came from Legislative Counsel
152	Chair Minnis	Don't they (the fees) need to be approved by the court?
153	Rep. Shetterly	The attorney fee agreement does not need to be approved, but the amount of fees is approved. >This agreement is between the plaintiff and the plaintiff's attorney.
156	Chair Minnis	Maybe they were thinking about the actual fees being charged or assessed.
158	Rep. Eighmey	In my opinion, the reasonable attorney fees clause is reasonable to protect the state and police against excessive charges. >not adverse to deleting that clause; necessary under estate taxes >may have been personal action available previously, but individuals were intimidated to believe that they have no redress >No attorney has pursued the action under the statute.
181	Rep. Sunseri	How do you have access to the records to determine this exists?
187	Rep. Eighmey	There is no way to know that private information. >In Rep. Bowman's example, that information came out of public records law.

		>This would reinforce among law enforcement that they can't do some of the extra stuff they were doing in the past.
206	Rep. Prozanski	Looking at the second to last sentence of subsection 2 about prevailing plaintiff's costs, it is my understanding that this would open it up to both parties.
214	Rep. Eighmey	That's correct.
218	Rep. Prozanski	Would it be better to say "prevailing party" instead of "prevailing plaintiff"? >There is a statute, under civil law, that both parties are allowed to collect.
233	Rep. Eighmey	Yes.
236	Chair Minnis	Rep. Shetterly said this may already be actionable under some other theories?
241	Rep. Shetterly	Clarifies that this bill goes farther in specifying damages and attorney fees
251	Chair Minnis	I'm assuming that when someone is going to file a complaint in circuit court alleging a violation, they need to set forth some facts. >Does this amendment need to say which facts need to be put forth?
261	Rep. Shetterly	It would simply need to be that the defendant has acted against the statute.
269	Chair Minnis	That's only an allegation.
271	Rep. Shetterly	An allegation gets you through the door of the courthouse.
273	Rep. Prozanski	Some notice would be required, but the requirements in Oregon are broader to get in the door of the courts.
277	Rep. Shetterly	Ultimate facts are all you have to allege. >You may amend your complaint as you go.
286	Rep. Eighmey	We are a "general pleading" and not a "specific pleading" state. >In this case, we also require notice to the governmental agencies before we can file a complaint and ask for response. >The intent of this is not to raise standards, but it would clarify redress people believe they don't have now. >This amendment shows that there is a minimum redress for the grievance which should resolve the problem.
	Chair	

314	Minnis	Closes public hearing on HB 2727
<b><u>HB 2727 - WORK SESSION</u></b>		
319	Chair Minnis	Opens work session on HB 2727
334	Rep. Prozanski	There was some discussion regarding the end of the amendments, so is that included in the motion?
337	Rep. Bowman	Clarifies her motion that the last line was deleted
342	Chair Minnis	Restates the motion: adoption of the -2 amendments with elimination of word "plaintiff" on line 17 and insertion of "party"; deletion of lines 18-19 of the bill, and deletion of "such" on line 10
355	Rep. Shetterly	<b>MOTION: Moves to ADOPT HB 2727-2 amendments dated 03/18/97 and that the measure be FURTHER AMENDED on page 1, line 17, by changing "plaintiff" to "party" and on page 1, line 10, by deleting "such" and by deleting lines 18-19.</b>
356		<b>VOTE: 7-0-0</b>
	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
358	Rep. Bowman	<b>MOTION: Moves HB 2727 to the full committee with a DO PASS AS AMENDED recommendation.</b>
362		<b>VOTE: 7-0-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Minnis	<b>The motion CARRIES.</b> <b>REP. EIGHMEY will lead discussion on the floor.</b>
367	Chair Minnis	Closes work session on HB 2727
<b><u>HB 3007 - PUBLIC HEARING</u></b>		
373	Chair Minnis	Opens public hearing on HB 3007
389	Willie Tiffany	Legislative Assistant, Rep. Mike Lehman >introduced on behalf of Animal Control Council

400	John D. Adair	Director, Linn County Dog Control >submits and summarizes written testimony, <b>(EXHIBIT B)</b>
<b>TAPE 62, A</b>		
017	Larry Crabb	Multnomah County Animal Control >gives history of issues in regards to the need for the bill >HB 2608 and HB 3136 address the same issues which are also in the Judiciary Committee.
026	Rep. Bowman	Would you repeat those bill numbers?
027	Crabb	Responds and continues testimony >have asked to be able to attend BPSST training classes but not allowed
061	Rebecca Von Stein	President, Oregon Animal Control Council >gives responsibilities of council, including: coordination and providing training for animal control officers, opportunities for networking
087	Rep. Bowman	Asks what HB 2608 is about
089	Von Stein	Reads "relating-to" clause of bill
094	Chair Minnis	They sound a lot like this bill.
095	Von Stein	They are companion bills.
098	Chair Minnis	Why were there three bills introduced?
099	Von Stein	There are three bills because we talked to a Senator who wasn't reelected and so we didn't think that bill was going to go anywhere, so Rep. Fahey was contacted to introduce a bill and the third one I just found out about.
109	Rep. Bowman	HB 3136 is similar to these two?
111	Von Stein	Reads summary of bill
118	Rep. Wells	Asks about the amount and type of training required to execute the goals of the bill >Are we talking about a full-fledged peace officer here?
127	Von Stein	It's limited to enforcing the animal protection statutes. That is the language of HB 2608 which doesn't appear in HB 3007.
132	Rep. Wells	How much training is it going to require and is there a program set up?

137	Crabb	There is a standard course as prescribed in ORS 181.610 - 181.690.
150	Sharon Middleton	Multnomah County Animal Control, Shelter Operations Supervisor >Member, Training Committee, Oregon Animal Control Council >The training program is a one-week basic course followed by a two-week advanced course. >This bill will increase professionalism among officers and standardize training, improve community relations, standardize humane animal control, improve inter-agency cooperation, and reduce vicarious liability.
177	Rep. Bowman	How will the new training be different than what animal control officers currently receive?
179	Middleton	Most of the current training is done in-house and so there is no standardization.
193	Rep. Bowman	When would you have the need to make an arrest?
195	Crabb	Officers do come into situations now where they encounter felony animal abuse cases.
205	Rep. Bowman	Currently you would call the Multnomah County Sheriff?
209	Crabb	As the situation is at this time, we would contact the Sheriff's Department, but when they respond they are unaware of the animal control ordinances.
224	Rep. Bowman	You mentioned that you pay into the BPSST training fund but you don't have access to the actual training, so why do you pay?
229	Crabb	By the ORS statute on public safety and training, 181.690, which establishes in the general fund a training account established through payment of violation fees.
245	Rep. Prozanski	I agree with some type of standardization, but I do have some concerns. >Becoming certified police officers presents some difficulties, as you would become part of PERS, is that your intent?
258	Crabb	The ORS's do differentiate between a police and peace officer. >Under a signed and sworn statement that I would do my duty to enforce the laws, I have the authority of a peace officer, but the statute does not include animal control officers.
275	Rep. Prozanski	Who is going to pay for the training?
279	Von Stein	It would be under the county's discretion to decide whether they want their officers to go through the training, and if they do, they will pay for it.

288	Rep. Prozanski	I'm worried about the unfunded mandates.
292	Von Stein	There is no requirement in this measure requiring that they be certified, but it allows for the opportunity if they choose to have their officers certified.  >If they do, they would have to meet this criteria.
311	Rep. Prozanski	Either we're going to be uniform throughout the state or not, and I don't see it as an either/or situation.  >If it's not mandatory, you'll defeat the purpose.
321	Rep. Shetterly	Line 12 of the bill appears to make it mandatory.
325	Chair Minnis	I don't know if it is an unfunded mandate, but we should look into that.  >BPSST does pick up the training and curriculum costs, in general.  >There are some discussions this session that would seek to have officers certified before they can be employed.
342	Crabb	Some people had problems getting the permission to attend the Humane Society training because BPSST doesn't recognize this.
372	Rep. Prozanski	Asks about other states requirements
374	Crabb	Washington required it a year and a half ago; California passed something about 15 years ago.
384	Rep. Prozanski	I take issue on the statement that it will decrease the liability especially in light of the fact they will be carrying firearms.  >In the situation of a Class C felony, I assume you would be calling for backup before trying to effect the arrest on your own?
397	Crabb	This bill is not asking that all officers be allowed to carry firearms.
417	Rep. Prozanski	My question is more in regards to your reply to Rep. Bowman's question that you wouldn't be trying to effect an arrest without the appropriate backup and authority to do that.
427	Rep. Shetterly	If we are going to go any farther with this bill, I have some questions about Section 2.
<b>TAPE 61, B</b>		
007	Rep. Shetterly	I am not sure where Section 2 is coming from, especially the second sentence.  >I don't see 133.310 as a definitional statute, but it also says "within the scope of their employment."



		>The second sections seems to broaden the authority given in the first section.
025	Mary Botkin	AFSCME >submits and summarizes written testimony, <b>(EXHIBIT C)</b>
075		Continues testimony
097	Rep. Bowman	What is the minimum training for peace officers?
098	Botkin	I think it is 8 weeks, but it is going up to 12.
101	Chair Minnis	It is 320 hours.
102	Botkin	Corrections officers don't receive that. I think when you are establishing a new training program, I think you have an incredible amount of leeway to say we're going to provide this much training.
107	Rep. Bowman	I understand the importance of the job of animal control officers, but my concern is giving people 2-3 weeks of training and then putting them on the same level as peace officers along with the broad-based authority that goes along with this.  >What I heard was that there seems to be a need for training, but I am concerned about equating animal control officers with peace officers.
124	Botkin	There are other peace officer issues which will be coming before you, and we need to separate the issues.  >We need to be able to detain a person until the arrival of regular law enforcement officers.
143	Hank Megans	In Multnomah County, we send out single officers, but I would hope that our officers are trained enough to recognize situations in which they need to seek back-up.  >There are circumstances where we need officers to do certain things and we have to wait until we can go and get a law enforcement officer to sign off on what we've done.
159	Botkin	It says specifically that these individuals must be performing duties within the scope of their employment.
181	Cindy Robert	Roger Martin & Associates, Oregon Pet Industry Association  >testifies in opposition to the bill for the reason that it allows an animal control officer to carry a weapon  >dangerous to combine high emotion issues with weapons  >would be able to make an arrest any time, day or night, as long as they have probable cause

209	Chair Minnis	Who do you represent?
209	Robert	Oregon Pet Industry Association
212	Chair Minnis	So you don't want these people to carry a gun?
214	Robert	No. This is not an issue of whether or not to be an officer because this is a very passionate issue.
224	Rep. Wells	There was a comment made regarding the wearing of a uniform. Is that where we are going with this bill?
228	Chair Minnis	Some do, at least in our county they do.
231	Rep. Shetterly	Is it my understanding that some already carry guns?
233	Robert	Some do, yes.
241	Rod Harder	Lobbyist, National Animal Interests Alliance >comments on HB 3136 which does not make animal control officers peace officers >submits and summarizes written testimony, <b>(EXHIBIT D)</b>
291	Chair Minnis	Closes public hearing on HB 3007
<b><u>HB 3059- PUBLIC HEARING</u></b>		
295	Chair Minnis	Opens public hearing on HB 3059
305	Liz Van Leeuwen	State Representative, District 37 >submits proposed -1 amendments dated 3/24/97, <b>(EXHIBIT E)</b> >comments on bill and amendments
355		>amendment clarifies her intent in sponsoring the bill >does not want to hold the innocent landlord responsible for the bill of cleanup >comments that HB 3365 looks quite similar to this bill
399	Rep. Prozanski	Where will the funding be coming from and where is the fiscal impact statement?
		Your committee would do the fiscal if you go ahead on this bill, but my

404	Van Leeuwen	hope would be that if there is any way they could apprehend the ones doing the illegal drug activity, they would pay the price.
416	Chair Minnis	Part of the existing forfeiture law does designate for the clean up of clandestine drug labs, but we probably need some analysis as to how this bill would impact that.
425	Rep. Prozanski	It would be great to collect the money from the individuals causing the problems, but the reality is that it is rarely collected or it is very far in the future and my feeling is that we should get DEQ to clean it up immediately.
433	Rep. Van Leeuwen	I don't care who the property owner is, but very often it is older property owners who are held responsible. >Unless we change the rental laws, we need to do this to protect the property owners.
<b>TAPE 62, B</b>		
008	Rep. Shetterly	I understand that the -1's are the real crux of the bill, so I am curious in looking at page 2 of the bill, lines 16-18, if it was your intent to have DEQ pay all of the costs?
017	Rep. Van Leeuwen	But if you read further in the bill, they are to collect from the owner of the property.
020	Rep. Shetterly	Were lines 16-18 a particular objective of yours?
022	Rep. Van Leeuwen	Who else would you have do it?
022	Rep. Shetterly	I assume DEQ does it now.
024	Van Leeuwen	I don't think fire departments do it, but maybe they do.
027	Chair Minnis	Whatever they do is at the direction of the DEQ. >What I would like to do is adopt -1 amendments into the bill and then get a fiscal analysis on the bill.
036	Rep. Bowman	On page 2, lines 11- 14, is it possible that people would have drug labs in those locations as well?
041	Rep. Van Leeuwen	Well, you do read that people have drug labs in those locations.
043	Rep. Bowman	But it would be a different situation, wouldn't you agree?
044	Rep. Van Leeuwen	Well, there's real property and abodes.
	Chair	What they are trying to get at is that someone may be storing precursor

049	Minnis	chemicals in a car, trailer, boat, etc.
055	Rep. Sunseri	Real property is different than a house or mobile home which is personal property.
058	Chair Minnis	They are trying to envision all of the stuff you might find on an abandoned property.
061	Rep. Shetterly	I appreciate the gist of the -1 amendments because ORS 475.455, lines 9-10, really do seem to create strict liability for the owner of the property on which a manufacturing site is situated.  >It is appropriate to protect an innocent landowner who had no knowledge of the activities.
069	Rep. Van Leeuwen	According to the law if you have some knowledge and don't report it, this will not exempt you.
073	Rep. Wells	On the back page, it seems to remove the limitation. What is the effect of that?  >How does that affect the other disbursements coming from asset forfeiture?
079	Van Leeuwen	This is current law in there.
080	Chair Minnis	I'm not sure which is reason to have Legislative Fiscal look at it.
<b><u>HB 3059 - WORK SESSION</u></b>		
081	Chair Minnis	Opens work session on HB 3059
083	Rep. Bowman	<b>MOTION: Moves to ADOPT HB 3059-1 amendments dated 03/24/97.</b>
084		<b>VOTE: 7-0</b>
	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
		Closes work session on HB 3059
<b><u>HB 3357 - PUBLIC HEARING</u></b>		
092	Chair Minnis	Opens public hearing on HB 3357

105	Lindsay Ball	Captain, Oregon State Police, Fish and Wildlife Division >submits and reads written testimony, <b>(EXHIBIT F)</b>
154	Ingrid Swensen	Oregon Criminal Defense Lawyers Association >would like at some time to forward comments of partners who work in racketeering area >We would be opposed to the expansion of the racketeering law. >We were assured that the racketeering law would be using sparingly by the attorney general when it was enacted. >Page 1, regarding participants, provides that they can be doubly prosecuted which creates numerous issues.
196		>Valerie Wright, one of our members and one of the lawyers in the <i>Nason</i> case, believes racketeering law was grossly misapplied. >would like to submit written testimony in the future
216	Rep. Wells	Asks for explanation of racketeering activity
224	Swensen	The intention was to mirror the Federal Racketeering Act in the states. >defines it as a series of acts that are part of an enterprise >idea of law was to get at criminal enterprises
253	Rep. Wells	So racketeering usually involves groups of people conspiring?
259	Swensen	If you look at section 2, individual acts can be included.
267	Rep. Shetterly	On page 1, line 10 enterprising includes individuals. >On lines 2-24 on the first page, it appears a criminal prosecution in which a defendant was acquitted could be used as predicate for establishing a future racketeering charge?
285	Swensen	I would hate to think that it reaches that point, but I suppose that is a legitimate fear given the different burden of proof.
293	Rep. Prozanski	I think it should be noted that definition six under racketeering activity includes conduct, even before the age of 18.
308	Brenda Rocklin	Assistant Attorney General, Criminal Justice Division, Department of Justice >introduces Dale Penn, District Attorney, Marion County >submits and summarizes written testimony and informational materials, <b>(EXHIBIT G)</b>
364	Rep. Prozanski	Asks for clarification of her last statement

366	Rocklin	Responds that ORS 131.505 - 131.525, the former jeopardy statutes for adult prosecutions, and the reference to 419A.190 is the juvenile former jeopardy statute  >The language of this bill would provide that a previous prosecution is not a bar to using that conduct in a Rico prosecution.
383	Rep. Prozanski	If it was passed as written, it would provide for that as it is currently not available, correct?
389	Rocklin	Responds that she is not sure and would like an opportunity to provide some case authority  >appears to be an unresolved issue in Oregon
398	Rep. Sunseri	How does this relate to illegal hunting trips?
411	Rocklin	Captain Ball was talking about one specific provision of this bill.
419	Chair Minnis	We'll set this for a future date seeing as how both sides said they need additional time.
		Declares committee adjourned at 5:11 PM

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 2727, Proposed amendments (-2 dated 3/18/97), Staff, 1 p.**

**B - HB 3007, Written testimony, John Adair, Oregon Animal Control Council, 1 p.**

**C - HB 3007, Written testimony, Mary Botkin, AFSCME, 1 p.**

**D - HB 3007, Written testimony, Rod Harder, National Animal Interests, 2 pp.**

**E - HB 3059, Proposed amendments (-1 dated 3/24/97), Rep. Van Leeuwen, 5 pp.**

**F - HB 3357, Written testimony, Captain Lindsay Ball, OSP, 3 pp.**

**G - HB 3357, Written testimony, Brenda Rocklin, Department of Justice, 7 pp.**