

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

Hearing Room
Tapes - 75

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Mike Lehman, Vice-Chair
Rep. Bev. Clarno
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Bill Markham
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck
Rep. Sharon Wylie

MEMBER EXCUSED:

Rep. Lonnie Roberts

STAFF PRESENT:

Anne Tweedt, Committee Counsel
Annetta Mullins, Committee Assistant

MEASURES HEARD:

HB 3370 - Work Session
HJR 2 - Work Session
HJR 17 - Work Session
HB 3222 - Public Hearing and Work Session
HB 2554 - Work Session
HB 2421 - Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004 CHAIR TIERNAN: Calls the meeting to order at 1:43 p.m., outlines agenda for the meeting.
and opens the work session on HB 2554.

HB 2554 - WORK SESSION

014 ANNE TWEEDT, Counsel: Explains the bill. The Preliminary Staff Measure Summary, the HB 2554-2 amendments, and Legislative Fiscal and Revenue statements are hereby made a part of these minutes (EXHIBIT A).

025 MOTION: REP. JOHNSTON moves HB 2554, as amended, to the Floor with a DO PASS RECOMMENDATION.

028 VOTE: In a roll call vote, all members present vote AYE. REPS. CLARNO, ROBERTS AND STARR ARE EXCUSED.

033 CHAIR TIERNAN: Declares the motion PASSED. REP. GRISHAM will lead

discussion on the Floor.

040 CHAIR TIERNAN: Opens the work session on HB 2421.

HB 2421 - WORK SESSION

The Preliminary Staff Measure Summary, NCSL memo on economic analysis statements by other states, and the Mississippi law are hereby made a part of these minutes (EXHIBIT B).

039 REP. JOHNSTON: Reports that the group was not able to figure out how to do the cost benefit analysis, and that Committee Counsel did some research (see NCSL memo and Mississippi law). The work group came up with two suggestions but neither capture the spirit of the bill. One recommendation is contained in the NCSL memo which says the State of Florida has changed the staff reporting form. That would mean that our bill summary form would be changed so that cost benefit analysis, at least the discussion as how it might affect this bill, is reflected. Each committee would have to make that kind of mental awareness a part of their discussion. The other alternative is to do what the State of Mississippi has done which is to pick a segment or agency you are concerned with and let them do the analysis for a biennium to see if it accomplishes what is intended. We think it will not. We think it is nebulous. How do you compare certain regulations to protect an osprey nest--what cost might be attainable and what is the benefit. The work group doesn't think that will result in the kind of meaningful deliberations that we think the drafters and supporters of this bill meant to have occur.

089 CHAIR TIERNAN: What does the Mississippi bill do?

090 MS. TWEEDT: The 1994 Mississippi bill (EXHIBIT B) looks at the environmental statutes, rules and regulations and requires the Commission on Environmental Quality to consider the economic impact and environmental benefits of any rules or regulations. However, at this point they have not adopted a single regulation. They are in the process of prioritizing and trying to find out exactly how this would affect their priority areas of rule making. They are required to report back to the next session regarding the amount of funding they would need to implement it.

099 CHAIR TIERNAN: Comments on building bridges in scenic areas.

131 REP. MARKHAM: Asks if the work group looked at the economic problems when DEQ promulgates rules as to what the effect it will have on industry?

134 REP. JOHNSTON: They are required to do some of the cost analysis under the APA in terms of hard costs--what the paper work requirement is, the amount of time it takes someone to comply with the regulation--they need to generate a work sheet that has some of those economic indicators in it.

142 REP. MARKHAM: Is that a requirement by law?

142 REP. JOHNSTON: Yes, it is part of the Administrative Procedures Act.

139 REP. LEHMAN: In effect, the Mississippi law says they put the tests in place for all rules not required by federal regulations. It is a stringency test. HB 2118, as it passed out of this committee, along with what they have done in DEQ already goes 70 or 90 percent of the direction we would go with this cost benefit analysis.

159 REP. MARKHAM: Comments that DEQ regulations on pulp mills are more stringent than the EPA requires and the cost to our people who compete with the southern states is much higher, thanks to the owl. We are forcing them to do more than the federal EPA requires of the southern states.

174 REP. STROBECK: The Mississippi law says they want to have rules and regulations that can be implemented on a least-costs basis and in a least-intrusive manner. I don't think there is any law we would want to pass here where we would want to do anything other than that. We already require a fiscal statement and a revenue statement and I think it is the collective wisdom of the committees and of those who are deliberating the merits of any one of these bills to decide what the benefit is, whether it is a tangible or aesthetic benefit and weigh that against what we see as the cost.

191 REP. JOHNSTON: That is what we thought we might capture if you said it in a measure summary to ensure that committees had that kind of discussion.

We thought statutorily, it is outside our grasps.

202 REP. STROBECK: I think any committee that went through a deliberative process without addressing those issues would be irresponsible and derelict in their duties if they didn't evaluate the costs in terms of the benefits.

217 MS. TWEEDT: Rep. Johnston, was your suggestion to make the Staff Measure Summary statutory?

219 REP. JOHNSTON: No. My suggestion was that we alter the staff measure summary and attempt to encapsulate the philosophy of this measure.

259 Discussion continues on examples of aesthetic values versus cost benefits.

276 CHAIR TIERNAN: Do you want to pursue revision of the staff measure summary or the Mississippi law?

282 REP. STROBECK: Are we talking about having another line (on the staff measure summary) that says "cost benefit"?

285 MS. TWEEDT: Who would provide the information?

286 REP. STROBECK: That is another question. Is it just a subjective conclusion of whoever happens to be the committee staff based on the debate that goes around the committee.

291 REP. JOHNSTON: We didn't refine the idea. We thought of it as only one of the possibilities. All we are trying to do is create a mechanism that institutionalizes this piece of the discussion. It should occur in everything we do.

308 REP. LEHMAN: It is so simple and makes so much sense, it could probably fit on the staff measure summary, except I think we are adding more to the staff. If we are not doing this, we probably won't be here long anyway. At least, the current trend of this body is to think about the analysis--how much does it cost--what is the benefit to the broadest number of people. I don't mind putting it in the staff measure summary, I just don't know if it adds much more than work for the staff.

323 REP. HAYDEN: Most intrusive and most costly are not necessarily opposed to more beneficial. The cost may be the most intrusive and most costly, but we might say we want the most costly and most intrusive because that is where we will get the most benefit.

373 CHAIR TIERNAN: Closes the work session on HB 2421 and opens the work session on HB 3370, HJR 2, HJR 17 and HB 3222.

HB 3370, HJR 2, HJR 17 AND HB 3222 - WORK SESSION

373 CHAIR TIERNAN: Explains that staff has provided a matrix of amendments and will review the history of the measures before the committee and explain the proposed amendments, and announces that HJR 17 and HB 3222 will not be discussed unless some insists because they are very similar.

396 MS. TWEEDT: Explains materials provided to the committee on HB 3370 and HJR 2

The Preliminary Staff Measure Summary on HB 3370, memo from League of Oregon Cities, the Preliminary Staff Measure Summary on HJR 2, matrix of proposed amendments to HB 3370 and HJR 2, proposed amendments HB 3370-2, -4, -5, -6, -7, -8, -9, and -10, and HJR 2-2 through -6 are hereby made a part of these amendments (EXHIBIT C). The Preliminary

Staff Measure Summary on HB 3222 and a letter from the Employment Department are hereby made a part of these minutes (EXHIBIT D).

415 MS. TWEEDT: Explains that HB 3222 was not before the committee when the committee heard the other unfunded mandates bill. It is the enacting language for HJR 2. Legislative Counsel has said that if the committee passes HB 3370, it will be the enacting language if HJR 2 goes to the people and it passes. HB 3222 was the specific enacting language that was drafted as a partner to HJR 2. HB 3222 was posted for a public hearing and no one signed up to testify on it.

TAPE 74, A

008 MS. TWEEDT: HB 3370 and HJR 2 are bills that require state government to allocate money to state governments for usual and reasonable costs of the programs required to be provided by local government by law or by administrative rule. Both bills define local government, program, usual and reasonable costs, but differently. There was discussion at the last hearing that the committee may desire to make them mirror each other if they are moved out of committee. The matrix (EXHIBIT C, page 4) shows what

the committee would need to do to make the bills nearly identical to each other:

- > if the committee wishes to include school districts in the definition of local government, the HB 3370-10 amendments say school districts will be included and adds municipal utilities as in HJR 2

- > HJR 2 at this time does not include school districts; the committee would need to adopt HJR 2-3 amendments if school districts are to be added

- > if the committee wishes to exclude school districts, since they are only mentioned in HB 3370, then the committee would need to adopt HB 3370-2 to remove school districts

- > the same is true for the other four subject matter areas

- > fiscal statements have not been requested because of the number of proposed amendments

039 CHAIR TIERNAN: The matrix will allow the committee to vote the amendments up or down.

045 REP. ROSS: Local government has raised the question of regulation as opposed to imposing new programs. The question they have is, if you have an existing program and there are state regulations about how it is to be run but is a part of a regular county program at this time, then the state takes the regulations away and imposes new regulations that are essentially

similar in costs, but they are new ways of doing the same thing. How does that fit into this? I think the fear is that counties that did not philosophically agree with that would say it is an unfunded mandate, and others would say it is the same amount of money and do it. We might have some counties and cities refusing to do things and others saying it is great. We would not have the consistency we expect out of state standards.

057 MS. TWEEDT: A lot of agencies have called with those concerns based on the fact that HJR 2 provides ways in which claims can be made by local governments to contest such matters. Legislative Counsel pointed out that in HJR 17, the definition of the word "program" is different than that in HJR 2. HJR 17 includes the word "responsibility" in defining a program. HJR 2 does not. Legislative Counsel indicated that in that specific instance, although counties and cities might have a different interpretation, the bill talks about new programs, which is easy enough to define, and increased service levels of programs but not changing responsibility that local governments have in administering existing programs, for example. The Employment Department (EXHIBIT D, page 2) was concerned about unemployment insurance. But if the state changed the tables, then would that allow different counties to say you are not sending

us funds to do that." I can't answer the question concisely, but Legislative Counsel has advised me that because the word "responsibility" has been specifically omitted from HJR 2, he doesn't think a county that was trying to contest would be successful.

085 REP. ROSS: I have no objection to saying that the state ought to fund new programs. I am concerned about cities and counties choosing which regulations or which modification of regulations they want to abide by just because they don't like what is being promulgated at the state level.

090 REP. LEHMAN: The general concept is terrific. The problem comes in implication of what occurs. For Multnomah County there may be no cost, but in a smaller county there may be a burden. They may use the justification they cannot afford to do it. At what point does the cost become a problem?

123 CHAIR TIERNAN: The cities and counties can do anything they want on their own as long as they are not in violation of state law. But Item 3 on the matrix basically says if we believe there is something that is absolutely essential. And we can send out unfunded mandates as long as we have a two-thirds majority vote of both houses. I think that language was put in to allow the legislature make something mandatory whether the (city or county) could pay for it or not.

137 REP. MARKHAM: I thought if we pass a bill that mandates, the money follows. If some of the counties don't need the money, they don't have to ask for it. The smaller counties that need it can. Otherwise it is null and void.

141 REP. HAYDEN: Ever since I have been in the legislature we have had fiscal impact statements on the cost of the bills and it has worked reasonably well. I don't see there being a problem in doing a fiscal impact statement on something we send to the cities and counties. If there are any remonstrances by the cities or counties, it would be resolved on the same basis we have resolved things for decades.

151 REP. JOHNSTON: Under Section 3 of HB 3370, if a local government has a question and they don't think they have to comply, who resolves it?

CHAIR TIERNAN: I think it is the Attorney General.

166 MS. TWEEDT: Section 2 on page 2 of HB 3370, subsections 2 and 3 outline a system in which the Department of Administrative Services will be allocating funds and accepting claims based on prior years budgetary costs as well.

179 REP. HAYDEN: Are we going to be passing mandates that have no cost to cities and counties?

187 REP. JOHNSTON: If our fiscal impact comes back indicating no costs and Deschutes decides there is a cost and they say they are not going to do it unless the state pays up \$50,000. They then notify DAS that they have a

claim or they simply notify DAS that they are not going to comply. How do we resolve that?

198 REP. LEHMAN: I don't think any of us would look at a fiscal and say we will mandate without any money knowing this is in place. At times there is

an impact nobody realized or at times the impact is isolated to specific local entities because of their unique nature. Rep. Johnston is right--how

do you resolve that dispute without a multitude of entities around the state they are not going to do a certain part of the law because it costs them money and somebody somewhere else says the same about a part of some other law. I don't have a problem if there is some way to resolve that dispute of whether it costs money and is it significant.

221 CHAIR TIERNAN: Another point is not only is it a cost, but whether the dollars sent were enough to cover the bill. I think we have to come up with a resolution or arbiter of that. Rep. Johnston was suggesting DAS.

235 REP. JOHNSTON: I don't know if that is a fair way of resolving it, but we need to create some complaint resolution process--they file it with DAS and DAS gives them an answer.

243 REP. WYLIE: It sounds like we will have to set up a new division of government to do more elaborate anticipation of impacts and to determine what the impacts are. Understanding local impacts is a pretty complex process. Is the intent of this effort to keep the state from doing anything more? Or is the intent to compensate local government? It is not

an absolute question--it would be more of where are you going with this? Is the intent to slow things down at the state level so we cannot, without real compelling reasons, put anything that costs money onto local governments? Or, are we trying to force ourselves to pay the money when something costs at the local level?

266 REP. JOHNSTON: I think we are trying to be honest with our partners rather than treat them as our agents in government. We are trying to treat

county and local government officials as partners. If we tell them to do something, we do it fairly--send them money if it costs money and if it is something we say is mandatory, we resort to the power we are given.

280 REP. HAYDEN: Do we want a trigger mechanism that there is a minimal impact which won't trigger until we get to a small percentage of that entity's total budget? That will be different for different cities.

291 REP. ROSS: I think it would be very helpful to have some kind of minimum so we are not in litigation over \$185. The other piece we need to look at is avoiding situations where the county has an open checking account because they have decided it is the state's responsibility. An example would be the bill we passed changing appeals for property tax assessments from the Department of Revenue to the courts. Now counties will have to use their county counsel to defend their appraisal. If they are paying the bill themselves, they will be pretty reserved in their use of attorneys. If they think it is the state's responsibility to pay that attorney, where is the limit? It is a new program this session.

312 REP. HAYDEN: They would send us a bill. Maybe that should trigger the dispute resolution.

317 REP. LEHMAN: I don't want to suggest there are a lot of entities that will play games with this. I think if they know they can submit the bill and someone will look at it, I think there will be very few disputes that will arise from that. On the other hand, I think if you leave it wide open

and they can do what they want, there will be more games being played when they get into disputes with state government. More likely we will see disputes over something else show their face. If think if we said there would be any kind of a review process, we will eliminate a lot of issues that might arise. Then we run into the question of whether we are adding

to state government to eliminate state government.

336 REP. HAYDEN: Surely we would have someone in some branch of government or a group of people somewhere, without hiring more people, who would accept the bill and say whether it is or is not valid.

340 REP. JOHNSTON: I think the trigger mechanism is essential. I recommend we not create a new agency, but say DAS would designate a person and the counties would designate a person and another if you want to have a third, and that they meet once a month to review anything that has come in.

349 REP. WYLIE: Will we need more fiscal impacts for the state agencies that are being asked to do this?

351 CHAIR TIERNAN: We have not received any fiscal impacts yet because we are waiting to see what the committee decides to do.

359 CHAIR TIERNAN: To summarize (the committee discussion and questions):
> is there a dollar cost associated with it, which would make it unfunded?
> have a base of anything over \$1,000 per jurisdiction

370 REP. HAYDEN: We would want a percentage of the annual budget of the political entity, .001 percent, or something.

373 CHAIR TIERNAN: Continues to summarize the discussion and questions:
> bill to state government with a triggering mechanism saying it is funded or unfunded
> to whom to submit the bill to for determination

380 REP. JOHNSTON: Rep. Markham says the E-Board. I say we can create a committee that functions under it to give the counties some kind of partnership; maybe one from the League of Oregon Cities, one from the county organization and one from DAS.

391 CHAIR TIERNAN: This is not a new concept. The feds are talking about it. The way it would work is if there is a bone to pick, they write to the attorney general and the attorney general makes an opinion that this is a funded mandate or it is not a funded mandate and if the local jurisdiction wants to contest that----. How about the Dispute Resolution Commission?

408 REP. JOHNSTON: If you want to retain the original court structure, we can retain it. But why don't we at least allow an informal opinion from this little committee structure. I think it will resolve most of those things. It would be non-binding arbitration by a committee of three.

415 CHAIR TIERNAN: Continues to summarize discussion and questions:
> it would be a committee of four: DAS, county, city and schools

421 REP. JOHNSTON: If we put schools in, we ought to put schools on.

425 MS. TWEEDT: An area the committee did not talk about which was raised by cities and counties is that on HJR 2, page 2, lines 15-17, is one of the

exceptions to a program becoming optional. Since the committee is interested in clarifying the amount of money that would cause a local government to say it is a funded or unfunded mandate, whether it be a dollar or the cost of the whole program, the committee may want to specify exactly the amount of state funds or a percentage of the program that may be withdrawn before the program can be considered optional. The state could withdraw \$1 and the county or city could opt out of the program. It is another area, where if you are talking percentages, the committee might want to talk about percentages of program funding that is permissible to withdraw. If it is zero, then leave it as it is. If not, the committee might want to clarify it.

020 CHAIR TIERNAN: Should that be a question to vote on?

019 MS. TWEEDT: It is an issue, but we do not have an amendment on it.

022 REP. JOHNSTON: I think we should put in a percentage so that minor modifications can be made without triggering the dispute.

026 REP. LEHMAN: The number I have come up with to eliminate the diminimus is something around one-tenth of one percent or lower. Of a \$20 million budget, if it were to increase the cost by \$20,000 it is no longer diminimus.

049 MS. TWEEDT: Reviews the matrix:

> at the last hearing Rep. Lehman raised the point that incarceration and perhaps post-supervision were not law enforcement agency costs; Legislative

Counsel has drafted two different ways to address the problem: 1) delete law enforcement agencies so the bill reads, "any cost resulting from a law creating or changing the definition of a crime", or a specific amendment that says, "sentencing and post-supervision".

059 MS. TWEEDT: Matrix 3 takes the words "law enforcement agency" out of the first exception in both bills. The understanding (with the amendment) is that the mandate would not be optional.

Discussion continues on the requirement for two-thirds vote of each house to pass a mandate.

> a simple majority would make a mandate optional

> a two-thirds vote would make it mandatory

096 MS. TWEEDT: Matrix 4 is language to which PGE testified. If a municipal golf course were not mandated to follow a certain program or regulation because the money did not go with it, they could opt out, but their private counterpart could not. The League of Oregon Cities and the Association of Oregon Counties indicated they did not have opposition to untying private entities' hands if the public entity could opt out. I am sure there are more areas than golf courses and utilities, but the point was raised by a utility.

117 REP. LEHMAN: If we banned herbicide across the state and the next level

of herbicide costs more money, does the municipal golf course or city or county have the option to adhere to it.

123 MS. TWEEDT: That relates to Rep. Ross' question at the beginning of this hearing. I think it comes down to the definition of program. Is it a

new program or an increased level of service for an existing program. Legislative Counsel indicated that would not be an option because it is not a new program or an increased level of service.

139 REP. STROBECK: We don't like the federal government saying to the states something is a good program. We are just trying to make ourselves stop and think before doing it. We can define what it is and who makes that decision. We talked about fiscal impacts and how they tend to change and vary, but if we define what we mean by an unfunded mandate by what it says in the fiscal statement, it goes along with the bill. It depends on who defines what an unfunded mandate is. If we define it, then we will have that answer.

165 REP. HAYDEN: Basically we are saying what we have always said. We let Legislative Fiscal define what it is. That is a non-partisan professional group of economists who make decisions based on the very best information they have. I don't see how we can do any better.

171 REP. ROSS: I think the two safeguards will help us. If it is a very small amount, they can't argue about it. Then we have the two-thirds majority. I use visualize that being mostly used in the standard or uniform situations, not where there is a lot of money involved, but where

we do expect everybody to act the same way. The two-thirds would make us think about whether it was prudent or not.

180 MS. TWEEDT: The other percentage is the percentage of state funds that could be withdrawn before the program would be optional.

182 REP. LEHMAN: I think Rep. Strobeck's comments get around the issue of diminimus and everything else. It just says we have a fiscal statement that says this is or is not an unfunded mandate. If it says this is an unfunded mandate, we have to have two-thirds of the body to prove it or we have to have the money to go along with it. But if we define what an unfunded mandate is, we get away from the whole issue.

194 REP. JOHNSTON: Administratively, that is absolutely correct. In practice I don't think it works quite as smoothly. I would prefer the other technique. Say here is the trigger. We are talking about creating a partnership.

204 REP. STROBECK: We are trying to make government simpler. We are not trying to get another hearing or report or statement about every thing that

is passed and have every city and county do the same thing. An example is a bill that was passed Monday out of the subcommittee. The bill has to do with the homeless education. The language of that bill says every municipality shall set up a system where they will have a homeless plan and

they will work with the police department. It came from Portland and Tigard and the police departments there who said this is working great, we like it and it is a cooperative effort. My question is if we put that in, why can't some city somewhere come and say it is an unfunded mandate. Our fiscal says zero impact. Will we have a couple hundred cities file a report saying they disagree. If we put all the responsibility back on the municipalities we are going to be in endless arguments over what is and what is not.

227 REP. JOHNSTON: I agree with Rep. Strobeck, but for some cities and counties, that would have been an unfunded mandate.

252 CHAIR TIERNAN: Reviews the matrix, including the three questions he has added:

> question 6 is one-tenth of one percent is going to be declared not diminimus; we will have an amendment drafted but will vote on the conceptual amendment; we will vote on .010 and .001

> question 7 will say if the jurisdiction believes the mandate is unfunded,

submit the bill to the special committee made up of the four entities and if they are not satisfied with that decision, they go to the attorney general

> the last question is the emergency clause; it would go into effect right away to include everything this legislature is doing

> the emergency clause is tied into 5, whether we go back to 1991

279 REP. STROBECK: Have you included my suggestion that says whatever the fiscal impact statement says the cost of the bill, is what the cost of the bill is as far as municipalities are concerned?

282 CHAIR TIERNAN: Explain how that would work. If we are saying there is no fiscal impact and yet the City of Fossil says it will cost them \$20,000 they can appeal to the special committee and if they don't like it they go to the attorney general.

288 REP. JOHNSTON: Under Rep. Strobeck's suggestion they would have no appeal.

289 CHAIR TIERNAN: Don't we go back to what we are doing right now?

290 REP. STROBECK: Yes, we do, but as our discussion just went on we are saying if this is the case, then every municipality can have a de facto

veto over every single thing we talk about.

295 CHAIR TIERNAN: That is the point of the bill.

296 REP. WYLIE: Could you articulate 7?

297 CHAIR TIERNAN: Declares the meeting in recess from 3:00 p.m. until 3:13 p.m.

314 CHAIR TIERNAN: The votes will be confusing. I would like to only have clarifications on the questions.

324 REP. ROSS: I still have a concern about counties thinking because this is state money, it is free money (just like we think federal money is free money). It is my understanding from what we have said before that if we pass the amendments as discussed, they would submit the bill after they have spent the money. Is there any kind of check and balance to help counties and cities to be conservative about the amount of money they have spent when they think it is state money and they are not responsible for the size of the bill? It seems it would be helpful if they had some guidance about the amount of money that would be allocated.

340 CHAIR TIERNAN: If someone is going to submit whether the money is going to cover the mandate, they had better submit that as an unfunded question before they spend the money; otherwise they have bought the farm.

343 REP. ROSS: I think it would be really helpful if somehow the amendment spoke to that.

346 CHAIR TIERNAN: That will be a separate amendment.

349 REP. HAYDEN: I wouldn't see a great problem. I think the greater safety is getting the bill after the fact because they don't know if they are going to get paid. If they don't know they are going to get paid, they are not going to spend a whole lot of money. I think that is a check.

359 CHAIR TIERNAN: We will have committee counsel go through each issue to be voted on, questions 1-10. If there are objections to amendments, we will vote by roll call.

384 REP. LEHMAN: Are we voting on amendments to get the bill out of committee today?

385 CHAIR TIERNAN: No. We will submit the amendments to Legislative Fiscal for a Fiscal Statement and we will reschedule the bill. If the members do not like the amendments upon review or do not like the Legislative Fiscal Statement, then the members can vote no on the entire bill.

NOTE: ALL MOTIONS ARE BASED ON THE MATRIX OF AMENDMENTS AS AMENDED BY COMMITTEE DISCUSSION (SEE EXHIBIT C, PAGE 4)

419 MOTION: REP. JOHNSTON moves that the committee adopt 1b (to include school districts).

433 VOTE: REP. STROBECK objects to the motion. In a roll call vote, REPS. CLARNO, GRISHAM, HAYDEN, JOHNSTON, LEHMAN, MARKHAM, ROSS, STARR AND CHAIR TIERNAN VOTE AYE. REPS. STROBECK AND WYLIE VOTE NO. REP. ROBERTS IS EXCUSED

445 CHAIR TIERNAN: Declares the HB 3370-10 amendments ADOPTED.

TAPE 74, B

010 CHAIR TIERNAN: Question 2 is to clarify that incarceration and post-prison supervision are not optional programs. A yes vote means they are not optional and that means they will be a mandate.

014 MS. TWEEDT: The -6 and -8 amendments take care of the problem.

015 CHAIR TIERNAN: This amendment is for community correction programs, other correction programs. If we add a crime, this will have some impact.

We are excluding this from this bill. If you vote yes, it excludes. If you vote no, it would include.

018 REP. HAYDEN: We have city and county jails and if we pass a matrix that requires more people to be incarcerated, cities and counties pay.

021 CHAIR TIERNAN: Yes, if you vote yes.

022 MS. TWEEDT: The -8 amendments is the most simplified. The -8 removes in HB 3370, from line 27 on page 1, the words "law enforcement agency". Legislative Counsel informs me that would include post-prison supervision.

029 MOTION: REP. LEHMAN moves that the HB 3370-8 amendments BE ADOPTED.

032 VOTE: REP. STROBECK objects to the motion. In a roll call vote, REPS. CLARNO, GRISHAM, HAYDEN, JOHNSTON, LEHMAN, MARKHAM, ROSS AND STARR VOTE AYE. REPS. STROBECK AND WYLIE VOTE NO. REP. ROBERTS IS ABSENT.

041 CHAIR TIERNAN: No. 3 on the matrix reads, "To clarify that a bill passed by 2/3 majority of both houses is not to be an optional program"

043 MOTION: REP. HAYDEN moves that the HB 3370-4 amendments BE ADOPTED.

045 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the motion PASSED. REP. ROBERTS IS EXCUSED

048 CHAIR TIERNAN: No. 4 would allow private entities to be exempt when their municipal counterparts are exempt.

050 MS. TWEEDT: The first line in the HB 3370-5 amendments should read, "on page 1 of the printed bill, in line 9, insert...." not line 19.

054 MOTION: REP. HAYDEN moves that the HB 3370-5, as amended to delete "19" and insert "9", BE ADOPTED.

056 VOTE: CHAIR TIERNAN, hearing no objection to the motion, declares the HB 3370-5 amendments, as amended, ADOPTED.

057 CHAIR TIERNAN: No. 5. is if HB 3370 is not to be retroactive to January 14, 1991.

060 MS. TWEEDT: The HB 3370-9 amendments take out the retroactively and the committee would need to put in some other effective date to let people know when to start counting.

067 CHAIR TIERNAN: This will be a roll call vote. If you vote yes, you will make it not retroactive, only prospective. If you vote no, it will be retroactive to January 14, 1991.

074 MOTION: CHAIR TIERNAN moves that the HB 3370-7 and the HB 3370-9 amendments BE ADOPTED.

075 VOTE: In a roll call vote, REPS. CLARNO, JOHNSTON, LEHMAN, MARKHAM, ROSS, STROBECK AND WYLIE VOTE AYE. REPS. GRISHAM, HAYDEN, STARR AND CHAIR TIERNAN VOTE NO. REP. ROBERTS IS EXCUSED

086 CHAIR TIERNAN: Declares the motion PASSED.

092 CHAIR TIERNAN: This is the dollar figure we are going to promulgate in a conceptual amendment for whether the mandate is funded or not. This is the one-tenth of one percent we spoke about before. We have two suggestions. One is one-tenth of one percent, and one is one-hundredth of one percent. In the \$20 million scenario, one-tenth of one percent would be \$20,000, and one one-hundredth would be \$2,000.

108 MOTION: REP. MARKHAM moves that Matrix 6a (one-tenth) BE ADOPTED.

109 VOTE: In a roll call vote, REPS. JOHNSTON, LEHMAN, MARKHAM, ROSS AND WYLIE VOTE AYE. REPS. CLARNO, GRISHAM, HAYDEN, STARR, STROBECK AND CHAIR TIERNAN VOTE NO. REP. ROBERTS IS EXCUSED.

119 CHAIR TIERNAN: Declares the motion FAILED.

119 MOTION: REP. MARKHAM moves that 6b (one one-hundredth) BE ADOPTED.

120 VOTE: In a roll call vote, all members present vote AYE. REP. ROBERTS IS ABSENT.

127 CHAIR TIERNAN: Declares the amendment ADOPTED.

128 CHAIR TIERNAN: The next question is to adopt the next mechanisms represented by Rep. Johnston, which is if a county or city or school contests whether something is unfunded or not, that it will be submitted to a special commission of four entities: school boards, a county, a city representative and a DAS representative to mediate a yes or no, and if they don't like that suggestion or determination they will have to resort to the attorney general for enforcement,

138 REP. JOHNSTON: It goes to non-binding arbitration so they get a decision.

140 REP. STROBECK: If this fails, what is the alternative?

141 CHAIR TIERNAN: It would be the federal model which is if they consider it unfunded and if it is under one one-hundredth, the attorney general would have to enforce it.

149 MOTION: REP. JOHNSTON moves that HB 3370 be amended to include non-binding arbitration as previously stated (referred to as the -13 amendments).

152 VOTE: In a roll call vote, REPS. CLARNO, GRISHAM, HAYDEN, JOHNSTON, LEHMAN, MARKHAM, ROSS, STARR, WYLIE AND CHAIR TIERNAN VOTE AYE. REP. STROBECK VOTES NO. REP. ROBERTS IS EXCUSED

156 CHAIR TIERNAN: Declares the motion PASSED.

159 CHAIR TIERNAN: The next issue is the emergency clause, whether this should be implemented as soon as possible so as to apply to everything from this legislative session.

MOTION: CHAIR TIERNAN moves that the emergency clause be added to HB 3370.

173 REP. JOHNSTON: The HB 3370-7 amendments that were adopted inserts the January 1, 1997 date after line 19.

204 CHAIR TIERNAN: We have an HJR which doesn't go into effect until it passes the people. Then we have HB 3370 which will be identical to it which

can take effect immediately if we want. We can split the two off and the suggestions is that HB 3370 could take effect 90 days after session. The

question is whether you want HB 3370 to be effective immediately or as the currently bill reads, 1997. For the emergency clause, vote yes. If you want 1997, vote no.

219 VOTE: In a roll call vote, REPS. CLARNO, GRISHAM, HAYDEN, JOHNSTON, STARR, STROBECK AND CHAIR TIERNAN VOTE YES. REPS. LEHMAN, MARKHAM AND ROSS VOTE NO. REP. ROBERTS IS EXCUSED

231 CHAIR TIERNAN: Declares the motion PASSED.

233 CHAIR TIERNAN: The next recommendation is Rep. Strobeck's.

238 REP. STROBECK: I think what has been adopted negates my recommendation.

244 REP. LEHMAN: If you define unfunded mandates as being those that are represented by a fiscal statement, that defines this and generates everything else. I have been going along with some of these things knowing this was coming up.

253 MS. TWEEDT: What would the amendment do to the four-party work group that has been setup?

258 CHAIR TIERNAN: We are voting on conflicting amendments. If it passes, then we will have a discussion.

258 REP. ROSS: My understanding of what Rep. Strobeck was trying to do was if there is a fiscal impact, then that triggered it. But then if the county had a disagreement about the amount or whether an activity falls under a piece of legislation, then that could still trigger the other piece.

266 REP. STROBECK: What I said was the fiscal impact statement ought to be the final word on whether there is or isn't an impact to municipalities and the rest of the state, and the amount.

271 CHAIR TIERNAN: I will declare that the -15 amendment. Rep. Strobeck's amendment is that the Legislative Fiscal analysis as produced by this legislative body shall be the determination of whether there is an impact upon the legislation. That impact will dictate to the cities and counties and school districts whether it is a mandate unfunded or funded.

MOTION: REP. STROBECK moves that HB 3370 be further amended to include the provision that the Legislative Fiscal Analysis shall be the determination of whether it is a mandated unfunded or funded.

280 REP. MARKHAM: If this is adopted, does that mean that local governments have no recourse?

CHAIR TIERNAN: That is correct.

283 VOTE: In a roll call vote, REPS. LEHMAN AND STROBECK VOTE AYE. REPS. CLARNO, GRISHAM, HAYDEN, JOHNSTON, MARKHAM, ROSS, STARR AND CHAIR TIERNAN VOTE NO. REP. ROBERTS IS EXCUSED

291 CHAIR TIERNAN: Declares the motion FAILED.

294 CHAIR TIERNAN: We are going to submit an amendment that once a mandate has gone out, and money has accompanied that mandate, the city, county or local jurisdiction must contest whether it is enough money to fund the mandate or not before they spend the dollars. Once they spend the dollars, they can no longer have a claim that it was not enough dollars.

304 REP. STROBECK: If they contest it and say there are not enough dollars,

do they go back to the appeals board?

CHAIR TIERNAN: That is correct.

308 MS. TWEEDT: In HB 3370, on page 2, subsections (2) and (3) of Section 2, doesn't that already take care of that?

327 REP. ROSS: I believe that covers it.

343 REP. MARKHAM: When we passed the one one-hundredth, who was not here?

345 CHAIR TIERNAN: I believe it failed.

358 CHAIR TIERNAN: That completes the amendment on HB 3370. The bill will be back before the committee with the final amendments and fiscal statement

and we will have a vote on the bill.

362 HJR 2 - WORK SESSION

364 REP. LEHMAN: If we adopt the same provisions from HB 3370 into HJR 2 conceptually, can we get it Legislative Fiscal and back again?

367 MS. TWEEDT: We wouldn't need the emergency clause.

370 CHAIR TIERNAN: We will take the suggestion from Rep. Lehman that we will have one vote that will make all the votes on HB 3370 conceptual amendments to HJR 2, with the exception of the emergency clause.

MOTION: CHAIR TIERNAN: Moves that all amendments adopted in HB 3370 BE ADOPTED as conceptual amendments to HJR 2 with the exception of the emergency clause.

381 VOTE: In a roll call vote, all members present vote AYE. REPS. ROBERTS AND WYLIE ARE ABSENT.

387 CHAIR TIERNAN: Declares the amendments ADOPTED.

392 REP. ROSS: Since we passed the emergency clause, what will be the effective date on which the unfunded mandates will no longer be accepted?

396 REP. MARKHAM: It is 90 days after session, as I recall. If it has an emergency clause, it becomes effective upon the Governor's signature.

406 REP. ROSS: That means that legislation passed this session would be subject to this limitation.

CHAIR TIERNAN: Correct.

408 REP. HAYDEN: What does the 1997 date do?

409 CHAIR TIERNAN: The 1997 date only applies to HJR 2.

414 REP. HAYDEN: So we are going to impose this statute now on an emergency basis, and then constitutionally in 1997.

415 CHAIR TIERNAN: No. We amended HB 3370 with an emergency clause and we adopted conceptual amendments into HJR 2 with the exception of the emergency clause.

423 REP. JOHNSON: I don't think that is the net effect of this. I think HB 3370 as it currently stands will be signed by the governor and be effective

immediately. It will say orders after 1997 will have to comply with the law. It will be the law of the land as soon as it is signed. We passed two conflicting things. One just makes the act law. And the law says

starting in 1997, do this.

437 MS. TWEEDT: I believe the motion clearly said it would supersede the amendment adopted earlier.

439 CHAIR TIERNAN: When the amendments come back, they will be cleaned up and if we have any problems with how the amendments are written or if they are inconsistent we will have to send them back again.

446 REP. ROSS: The question I have is whether this legislation will affect the mandates that this legislature sends out.

454 CHAIR TIERNAN: It will if the Governor's signature precedes it.

456 REP. ROSS: That means that Ways and Means is going to have to take into account things we pass this session that counties would say are new programs.

459 CHAIR TIERNAN: That is correct.

TAPE 75, A

023 REP. MARKHAM: Are we going forward with the statutory and constitutional measures?

023 CHAIR TIERNAN: Yes.

025 REP. MARKHAM: Suggests that after the committee receives the amendments, the city, county and school people should respond to it.

032 CHAIR TIERNAN: We will have a work session when the amendments are returned, and if the cities, counties or school districts want to comment on them, they will be provided that opportunity.

039 MS. TWEEDT: There needs to be one additional amendment to HJR 2. It is the amount of state funds that can be withdrawn from an existing program before counties and cities could opt out of it.

044 MOTION: CHAIR TIERNAN moves that HJR 2 be further amended to indicate the amount of moneys that are withdrawn from a mandate and therefore declaring it optional will be one one-hundredth of one percent.

048 REP. JOHNSON: I think that is too low because now we are talking about the moneys that are in the program.

049 CHAIR TIERNAN: Withdraws his motion.

049 MOTION: REP. JOHNSON moves that HJR 2 be further amended to include the provision that if five percent of the moneys that were previously allocated to the program last year are not allocated, the program will become optional.

056 CHAIR TIERNAN: If there is money already allocated for a program in 1993-94, 94-95, 95-96, if the state takes away all that money, it is optional. If the state takes away half of that money, it is optional. If the state takes away less than five percent, under this amendment, it is still mandated. The state can take away up to five percent of the funding of a mandate before it becomes optional.

068 CHAIR TIERNAN: I would like to make it five percent of that year's actual cost. If the costs go up 10 percent, you are working yourself backward.

MOTION: REP. JOHNSON amends his previous motion to amend HJR 2: If more than five percent of the actual expenditures are removed, the program becomes optional.

079 VOTE: In a voice vote, all members present vote AYE. REP. ROBERTS IS
ABSENT.

080 CHAIR TIERNAN: Declares the motion PASSED.

083 CHAIR TIERNAN: Declares the meeting adjourned at 3:53 p.m.

Submitted by, Reviewed by,

Annetta Mullins Anne Tweedt
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - HB 2554, Preliminary Staff Measure Summary, HB 2554-2 amendments, and

Legislative Fiscal and Revenue statements, staff, 5 pp

B - HB 2421, Preliminary Staff Measure Summary, NCSL memo on economic
analysis statements by other states, and the Mississippi law, staff, 13 pp

C - HB 3370 and HJR 2, Preliminary Staff Measure Summary on HB 3370, memo
from League of Oregon Cities, the Preliminary Staff Measure Summary on HJR

2, matrix of proposed amendments to HB 3370 and HJR 2, proposed amendments
HB 3370-2, -4, -5, -6, -7, -8, -9, and -10, and HJR 2-2 through -6, staff,

17 pp

D - HB 3222, Preliminary Staff Measure Summary and a letter from the
Employment Department, staff, 2 pp