

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
8:30 am Tapes - 21

MEMBERS PRESENT:
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Eileen Qutub
Rep. Bob Tiernan

MEMBERS EXCUSED: Rep. Del Parks
 Rep. Chuck Carpenter
 Rep. Lisa Naito

STAFF PRESENT:
Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:
HB 2351 - Public Hearing and Work Session
HB 2119 - Public Hearing and Work Session
HB 2378 - Public Hearing and 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 , SIDE A

004 REP. JOHNSTON: Calls the meeting to order at 8:35 am

PUBLIC HEARING ON HB 2378

(HB 2378 allows reward for information leading to apprehension and
conviction of person for theft of livestock animal)

Witnesses: Rep. Lynn Lundquist, District 59
 John McCulley, Oregon Cattlemen's Association

009 REP. LYNN LUNDQUIST, DISTRICT 59: Testifies in support of HB 2378.

041 REP. TIERNAN: When there is a reward offered from Crime Stoppers or an
independent party, can they seek reimbursement on that from the defendant?

047 MILT JONES, COMMITTEE COUNSEL: There is no impediment to offering a
reward, but there is an impediment to seeking reimbursement for the reward.

050 REP. TIERNAN: Why can't we broaden this out to include murder, etc.

054 MILT JONES, COMMITTEE COUNSEL: I think you could.

054 REP. TIERNAN: Do you have any problems if we include that in this bill?

055 REP. LUNDQUIST: No, I don't.

056 REP. TIERNAN: Discusses example about stolen goods and being
reimbursed.

059 REP. BROWN: Can't the court order restitution at this point anyway?

060 REP. JOHNSTON: Yes and no. They can order restitution but it has to be
related to the criminal activity. This bill allows the court to compensate

the reward offers. The most significant piece we are changing in this bill is reimbursement.

074 REP. NAITO: Why is there a \$5,000 maximum reward?

081 REP. LUNDQUIST: The reason we came up with this figure is because we have a lot of pressure from the general public to help in the process to protect wildlife. The livestock situation seems to take more money because

it is an industry of it's own. Gives livestock example and that it helped when the reward was raised. I see no problem in raising the wildlife reward figure to \$5,000 as well, but I don not want to lower the livestock reward.

092 REP. TIERNAN: Discusses cases in Portland and Wheeler county and rewards on those cases.

115 JOHN MCCULLEY, OREGON CATTLEMEN'S ASSOCIATION: Testifies and submits written testimony in support of HB 2378. (EXHIBIT A)

128 REP. NAITO: Would this prevent someone in providing a greater reward if they wanted?

134 MCCULLEY: Yes, it would limit the reward to \$5,000.

136 REP. TIERNAN: From my experience on the crime board, a \$2000 reward is enough to make someone come out with information. After that, the money is being wasted.

PUBLIC HEARING ON HB 2119

155 MILT JONES, COMMITTEE COUNSEL: HB 2119 requires person suing landowner under pesticide liability statute to provide notice.

Witnesses: Terry Witt, Oregonians for Food and Shelter
Rep. Liz VanLeeuwen, District 37

173 TERRY WITT, OREGONIANS FOR FOOD AND SHELTER: Testifies and submits written testimony in support of HB 2119. (EXHIBIT B)

236 REP. LIZ VANLEEUEWEN, DISTRICT 37: Testifies and submits written testimony and proposed amendments in support of HB 2119. (EXHIBITS C, D)

306 WITT: Continues testimony in support of HB 2119.

433 REP. TIERNAN: What is a slimeacide?

436 WITT: It is a chemical that controls slime that appear especially in water; swimming pools.

TAPE 21, SIDE A

005 REP. TIERNAN: Can I buy this in a store?

010 WITT: Explains what slimeacides are used for and that anyone can use and buy them.

018 REP. BROWN: Is the landowner the person for whom the pesticide was applied. Is that the iintent?

024 WITT: It could be, but it may not be. We have many situations where the landowner is an absentee landowner who leases the property to someone else. The correct interpretation would be, "landowner, person for which the pesticide is applied, or the person who is operating the pesticide". There are three distinct individuals who are involved in the process, explains.

037 REP. JOHNSTON: There are three separate entities; the landowner, the person who applies the pesticide, and the person for whom the pesticide was applied for. How is it discerned who these people are?

044 WITT: In most cases, the people are right there, possibly neighHB ors.

If there were any questions as to who the landowner is, the Department of Agriculture has those records.

054 REP. JOHNSTON: What is the typical loss complained of?

055 WITT: Anything from a damaged plant or tree to people alleging that they suffered severe emotional stress.

065 LORNA YOUNG, OREGON DEPARTMENT OF AGRICULTURE: Testifies in support of HB 2119.

080 MIKE DEWEY, OREGON WHEAT GROWERS LEAGUE: Testifies in support of HB 2119 and proposed amendments.

101 REP. JOHNSTON: Is there an average time lapse between the application of a pesticide and the perception of loss?

105 YOUNG: In most cases, it is very soon after. Many cases, the results are found out down the road in cases of crop loss, etc. Discusses survey of aerial application, usually within 2 or 3 weeks results are seen.

115 REP. JOHNSTON: Can your clients tell if they have been harmed within the sixty day period?

116 DEWEY: It depends on when the application took place. Cites example, and that usually consecutive landowners know what is grown and what is going to be used on the land.

123 YOUNG: The law does provide for sixty days after discovery, not after application. It may be several weeks after the application that they are discovered.

126 DEWEY: We do have record keeping requirements to find out what is used on the land.

PUBLIC HEARING ON HB 2351

148 MILT JONES, COMMITTEE COUNSEL: HB 2351 prohibits prosecution of person and civil forfeiture of property.

Witnesses: David Fidanque, ACLU of Oregon
Pete Shepherd, Department of Justice
Jef Ratliff, Multnomah County District Attorney Office

157 DAVID FIDANQUE, ACLU OF OREGON: Testifies in support of HB 2351, but does not agree with the amendments as they are unconstitutional.

181 REP. TIERNAN: Do you also believe that the amendments are unconstitutional?

184 PETE SHEPHERD, OREGON DEPARTMENT OF JUSTICE: We believe that the amendments are constitutional and cure the problem.

190 FIDANQUE: Continues with testimony on HB 2351.

232 PETE SHEPHERD, OREGON DEPARTMENT OF JUSTICE: Testifies in support of HB 2351 -1 amendments.

244 REP. JOHNSTON: Can you summarize the amendments for us?

245 SHEPHERD: The idea is that instead of having the proceedings going on at two different times and tracks, we would have one proceeding with the jury deciding both issues. We hope that there would be a consideration and an emergency clause to this bill.

270 REP. JOHNSTON: This still entails reopening of evidence after the close of the criminal proceeding?

273 JEFF RATLIFF, MULTNOMAH COUNTY DISTRICT ATTORNEY OFFICE: If need be.

274 REP. JOHNSTON: By either side?

275 RATLIFF: Correct.

276 REP. JOHNSTON: The jury had returned it's verdict on the underlying

criminal charge before the case is reopened?

280 RATLIFF: Correct, that kind of proceeding happens everyday when there is a traffic DUII crime. The traffic crime goes to the jury and then the judge makes a finding as to the violations.

286 REP. JOHNSTON: Does it make any difference as to what the jury decides.

Can you still proceed on the civil forfeiture?

291 RATLIFF: Yes, because of the different burdens of proof.

292 REP. JOHNSTON: That is no different than what is currently done now?

294 RATLIFF: That is the current status of the law.

295 REP. JOHNSTON: How are the third parties in the trial handled?

297 SHEPHERD: The bill wouldn't change the current protections for other parties of interest in the property, gives example.

304 REP. QUTUB: Can you give a scenario where someone would be found not guilty of criminal charges, but go on to be prosecuted on civil forfeiture charges?

309 SHEPHERD: Gives example of a case where a man was acquitted on most of the criminal charges, then the jury decided not to forfeit his property. The question that the jury decides is whether the government has proven it's case "beyond a reasonable doubt".

343 REP. QUTUB: Are there any instances where someone was found not guilty of the crime, but then their property was forfeited?

348 SHEPHERD: I can't give you an example, but it is theoretically possible.

352 RATLIFF: I'm not aware of any of those instances.

353 REP. JOHNSTON: How about a situation where the decision was made not to proceed criminally, but there was a decision made to proceed civilly? Gives example.

356 SHEPHERD: There are many of those cases, cites examples.

387 REP. JOHNSTON: Would you expect it to be successful?

388 SHEPHERD: Yes.

391 REP. JOHNSTON: Not withstanding the fact that they committed any crime, you could convince a jury by a preponderance of the evidence that the money was the fruit of criminal activity?

399 SHEPHERD: Yes. There are two questions presented to the jury under the existing forfeiture statute, explains.

413 REP. BROWN: Discusses \$405,089 case. The only way we can do one proceeding is to have it be a criminal forfeiture because you give the defendant the criminal protections that they would have in the first trial and through the second trial. Gives analogy on murder trial. Can you respond?

430 SHEPHERD: I do not agree that the \$405,089 case compels the answer that there can only be forfeitures if they are in connection with a criminal charge.

TAPE 20, SIDE B

010 RATLIFF: It is my understanding that the \$405,089 case prohibits multiple punishments in separate proceedings. Discusses United States vs. Halper.

018 REP. JOHNSTON: You are convinced that this is the same proceeding?

020 SHEPHERD: Yes.

022 FIDANQUE: The more they are the same proceeding, the more likely the court is going to hold that the forfeiture is a criminal proceeding. Then all of the protections of criminal due process is going to apply, that is the risk with these amendments. The process favors the government in the forfeiture proceedings.

039 REP. JOHNSTON: I think this works in the defendants favor. Gives example as to why. Discusses the 5th amendment right.

047 FIDANQUE: I disagree because the current statute already provides for a stay by a claimant in a forfeiture proceeding if criminal charges have been filed or if they are being contemplated. The current law require prosecutors to make the decision quickly if they want to proceed with civil forfeiture or if they want to allow the local government to proceed with civil forfeiture.

WORK SESSION ON HB 2119

063 MOTION: REP. BROWN: Moves to ADOPT HB 2119 -1 AMENDMENTS.

VOTE: 4-0 MOTION PASSES
AYE: Brown, Johnston, Qutub, Tiernan
NO: None
EXCUSED: Carpenter, Naito, Parks

071 MOTION: REP. BROWN: Moves HB 2119 AS AMENDED to the FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES
AYE: Brown, Johnston, Qutub, Tiernan
NO: None
EXCUSED: Carpenter, Naito, Parks

WORK SESSION ON HB 2378

080 MOTION: REP. TIERNAN: Moves conceptual amendment of adding "LIVESTOCK BUT OTHER AWARDS TO BE OFFERED IN A VIOLATION OF THE CRIMINAL CODE".

084 REP. JOHNSTON: Explains Rep. Tiernan's amendment. It would open it up so that the money would be recoverable.

089 REP. BROWN: They all need to be consistent as far as the reward money value of animals and people.

094 REP. TIERNAN: Withdraws amendment.

095 MILT JONES, COMMITTEE COUNSEL: Discusses possibility of wording amendment to allow rewards for apprehension of criminals in an amount not to exceed a specific amount, and to allow the court to award a reimbursement of an award as a blanket measure.

102 REP. TIERNAN: We are just putting a \$5000 cap on that?

108 REP. JOHNSTON: We are considering adding a provision that would allow a court to impose as a fine for a criminal conviction the recapture of award moneys that were offered in that particular case. Is that a problem?

114 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: No, it could actually be helpful.

125 MILT JONES, COMMITTEE COUNSEL: Discusses conceptual amendment wording.

It would revise the statute in it's entirety to allow rewards for the apprehension and conviction for persons for criminal activity in an amount not to exceed \$5,000. This also would allow the court to provide that the reward be reimbursed to the person who put up the reward by the convicted defendant.

133 REP. QUTUB: This means that someone will provide for that reward? Does this mean that someone has to provide the money for the wildlife as well?

141 REP. JOHNSTON: The statute caps the amount. No one has to put up an award, but if an organization wants to put up a reward, they can.

145 MOTION: REP. TIERNAN: Moves the CONCEPTUAL AMENDMENT TO HB 2378.

VOTE: 4-0 MOTION PASSES
AYE: Brown, Johnston, Qutub, Tiernan
NO: None
EXCUSED: Carpenter, Naito, Parks

149 MOTION: REP. TIERNAN: Moves HB 2378 AS AMENDED TO THE FULL
with a DO PASS recommendation.

COMMITTEE

VOTE: 4-0 MOTION PASSES
AYE: Brown, Johnston, Qutub, Tiernan
NO: None
EXCUSED: Carpenter, Naito, Parks

WORK SESSION ON HB 2351

158 MOTION: REP. TIERNAN: Moves TO ADOPT PROPOSED AMENDMENTS TO HB 2351.

161 REP. BROWN: I will support the amendments, but can't support the bill.

165 REP. JOHNSTON: We may not need your vote.

170 VOTE: 4-0 MOTION PASSES
AYE: Brown, Johnston, Qutub, Tiernan
NO: None
EXCUSED: Carpenter, Naito, Parks

174 MOTION: REP. TIERNAN: Moves HB 2351 AS AMENDED TO FULL COMMITTEE
DO PASS recommendation.

with a

VOTE: 3-1 MOTION PASSES
AYE: Johnston, Qutub, Tiernan
NO: Brown
EXCUSED: Carpenter, Naito, Parks

182 REP. JOHNSTON: Adjourns the hearing at 9:44 am.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on HB 2378 - John McCulley - 1 page
- B. Testimony on HB 2119 - Terry Witt - 2 pages
- C. Testimony on HB 2119 - Rep. VanLeeuwen - 1 page
- D. Proposed Amendments to HB 2119 - Rep. VanLeeuwen - 1 page