

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL  
ADMINISTRATION

May 11, 1993           Hearing Room 357 1:00 p.m.   Tapes 106 - 107

MEMBERS PRESENT:   Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson  
Rep. Tom Mason

STAFF PRESENT:           Carole Souvenir, Committee Counsel Sarah May,  
Committee Clerk

MEASURES CONSIDERED:           HB 3432 - Relating to forfeiture of  
vehicles HB 2381 - Relating to forfeiture

HB    2359       -       Relating       to       forfeiture, appropriating  
money,                                declaring an emergency HB 2563 -  
Relating to forfeiture

[--- Unable To Translate Graphic ---]

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. [--- Unable To Translate  
Graphic ---]

TAPE 106, SIDE A

006   CHAIR BRIAN:   Calls the meeting to order at 1:15 P.M.

WORK SESSION ON HB 2563

Witness:    Rep. Kevin Mannix, District 32

(HB 2563 Relating to Forfeiture - Repeals sunset on laws  
relating to forfeiture of assets arising out of drug-related activities.  
[EXHIBITS A, B])

009   REP. KEVIN MANNIX, DISTRICT 32: Testifies in support of HB  
256 3-1 amendments.

048   REP. EDMUNSON:   What is the fiscal impact on your amendment?

049   REP. MANNIX:    It is guaranteed to save money.

050   REP. EDMUNSON:   More than \$50,000?

051   REP. MANNIX:    Not sure, but is definitely money saving.

064   CHAIR BRIAN:   Anything we do that has a fiscal impact, has to  
go to Appropriations.

077   REP. EDMUNSON:   Any bill that is sent to the Appropriations

Committee is effectively defeated if the Appropriations Committee, due to it's time

constraint, isn't able to hear the bill and pass it out.

088 REP. MANNIX: If this bill was passed out, and our committee determined that it has an indeterminate but positive fiscal impact, this could

serve as a good example to question why someone would decide to have a

subsequent referral to Appropriations when it is unnecessary. 114 CHAIR BRIAN: Should HB 2563 be inserted into the other forfeiture bill that is moving along?

120 REP. MANNIX: The fiscal impact on this is only local government. The state doesn't run forfeiture notice. We should keep it separate.

128 CHAIR BRIAN: Let's set aside HB 2563 temporarily.

131 REP. EDMUNSON: In Section 5, of HB 2381-4 amendments, there is refund of monies to the political subdivisions that have contributed to the

illegal drug clean-up fund. Wouldn't that include refund to the state?

WORK SESSION ON HB 2381

(HB 2381 Repeals sunset on asset forfeiture law)

Witness: David Fidanque, American Civil Liberties Union of Oregon

154 CAROLE SOUVENIR, COMMITTEE COUNSEL: Summarizes HB 2381-4 amendments. (EXHIBITS C,D,E)

240 CHAIR BRIAN: This is \$250,000 in addition to the local \$250,000. It creates maximum fund of \$500,000 per biennium for cite cleanup.

244 CAROLE SOUVENIR, COMMITTEE COUNSEL: Correct. Continues summary of HB 2381-4 amendments.

270 REP. BAKER: Where do you get the 5% that goes to the illegal dump cleanup fund on pg. 4?

273 CAROLE SOUVENIR, COMMITTEE COUNSEL: That number came from Rep. Van Leeuwen's bill.

276 REP. BAKER: Why 5% rather than 10% or 25%?

278 CHAIR BRIAN: It was a figure that reasonably got us to the fund based on current forfeitures. 282 REP. BAKER: How much money can you have in the illegal dump cleanup fund?

283 CHAIR BRIAN: It cannot exceed \$500,000.

285 CAROLE SOUVENIR, COMMITTEE COUNSEL: The cleanup fund can have more than \$500,000, but not from this source.

288 REP. BAKER: Why not 2 million dollars rather than \$500,000?

289 CHAIR BRIAN: The need is declining in terms of drug houses.

305 CAROLE SOUVENIR, COMMITTEE COUNSEL: In HB 2382, we made the reports to the oversight committee annually rather than quarterly. Is it going to

make it difficult for the asset forfeiture oversight committee, under HB 2381-4 amendments, if they get annual reports as to the actual forfeitures, but quarterly reports regarding their payments to the illegal dump cleanup fund?

332 CAROLE SOUVENIR, COMMITTEE COUNSEL: Cites EXHIBIT D & E. Should we amend the Oregon statute to comply with Federal statute to make sure

that the innocent owner defense is clear?

375 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION OF OREGON (ACLU): It was intended to be a greater protection for innocent owners than is provided by the federal statute. The quarterly reporting issue shouldn't be a

problem because the annual reporting only goes to the use of proceeds.

Forfeiture counsel are required to report to the oversight committee upon completion of case. It should be a fairly simple process to report on a quarterly basis.

415 CHAIR BRIAN: Rep. Mannix has some language in HB 2563, concerning consolidation of advertising that he wanted incorporated into HB 2381.

426 MOTION: REP. BAKER: Moves to AMEND HB 2381 by incorporating the language from HB 2563-1 amendments into HB 2381-4.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

443 MOTION: REP. BAKER: Moves to ADOPT HB 2381-4 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

450 MOTION: REP. BAKER: Moves HB 2381 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian NO: None

TAPE 107, SIDE A

WORK SESSION ON HB 2539

036 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2539 requires that forfeiture proceeds first deposited to Special Crime and Forfeiture Account be

used for staff and administrative expenses of Asset Forfeiture Oversight Advisory. Summarizes HB 2539-3 amendments. (EXHIBIT H)

053 MOTION: REP. EDMUNSON: Moves to ADOPT HB 2539-3 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

056 MOTION: REP. EDMUNSON: Moves HB 2539 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian NO: None

PUBLIC HEARING ON HB 3432

Witnesses: Kingsley Click, Deputy State Court Administrator Fred Avera, Oregon District Attorney's Association David Fidanque, American Civil Liberties Union of Oregon

062 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 3432 would authorizes seizure and forfeiture of vehicle of person who is driving while suspended.

(EXHIBITS I,J)

077 KINGSLEY CLICK, DEPUTY STATE COURT ADMINISTRATOR: Testifies and submits written testimony of William Linden, with a neutral opinion of HB 343 2.

122 REP. EDMUNSON: Is the forfeiture dependent on a conviction?

124 CLICK: In 80% of our cases, there is an administrative suspension for failure to take the breath test. The greatest majority of these have

underlying convictions.

135 REP. EDMUNSON: To successfully undertake forfeiture of property, is a conviction necessary?

139 CLICK: No.

141 REP. EDMUNSON: Could a person who is innocent, have property seized and forfeited?

144 CLICK: There has to be an administrative suspension or a court suspension, based on a conviction.

159 REP. EDMUNSON: What are the differences between the concepts?

162 CLICK: The concept is that there is a driving while suspended, suspension. There would not be an opportunity of a

forfeiture unless

that administrative or court determination already existed.

173 REP. EDMUNSON: What if a stop was executed illegally? Would that vehicle be returned?

185 CLICK: If they are driving while suspended, they are technically violating the suspension by driving, so it may relate if they can be

charged of another DWS charge.

194 REP. EDMUNSON: Are we going to treat the forfeiture under the same rules that any evidence seized during that stop would be treated?

201 FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Under current law, if evidence is seized, and it was determined that it was seized

unconstitutionally, it would not only be suppressed in the criminal case, but it would void the forfeiture action.

218 REP. EDMUNSON: Would forfeiture of vehicle under HB 3432 require that there either be an underlying judicial or administrative sanction as a

prerequisite for a suspension?

226 AVERA: Yes. There would have to be a situation where a person's license was suspended for a reason that would justify a criminal DWS

charge.

244 REP. EDMUNSON: What is the criminal penalty for a DWS?

247 AVERA: There are two levels: 1) Class C felony suspension if person is a habitual offender, a conviction for drunk driving, a hit and run,

reckless driving, or attempting to allude. 2) There is a misdemeanor list also.

267 REP. EDMUNSON: HB 3432 adds an additional penalty beyond those of a felony or a misdemeanor?

274 AVERA: Correct.

275 REP. EDMUNSON: Why is it called forfeiture then?

277 AVERA: The constitutional underpinnings are different.

281 REP. EDMUNSON: It is a penalty, not a forfeiture.

295 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION OF OREGON: Testifies in opposition to HB 3432.

400 REP. EDMUNSON: The forfeiture is operating on a conviction.

435 FIDANQUE: If true purpose of the forfeiture statute where to prevent the conduct of driving while suspended, that could be accomplished

without violating the constitution by having impoundment. We should provide a procedure for people to get car back rather than automatically losing it.

Tape 106, Side B

017 AVERA: Driving while suspended in violation of the statute, would be the prohibiting conduct. Continues with testimony.

059 CHAIR BRIAN: The purpose of HB 3432 is to stop DWS, where people are being stopped continuously and recited?

063 AVERA: Yes.

065 CHAIR BRIAN: Why couldn't we as an available sanction to the court upon conviction of a second criminal DWS, allow forfeiture at that time?

071 REP. EDMUNSON: Cites Section 25 of the Oregon constitution.

077 FIDANQUE: Explains forfeiture provisions throughout history. When Oregon constitution was adopted, there was no civil forfeiture based on criminal conduct. The provision prohibiting forfeiture of a state upon

a conviction would only apply to an entire estate as an automatic penalty.

106 REP. BAKER: Don't we now forfeit weapons?

108 FIDANQUE: Yes. Under the federal constitution of civil and criminal forfeitures, we haven't had it resolved under the Oregon constitution.

Forfeiture upon conviction would be consistent with the Oregon bill of Rights, as long as the property forfeited was proportionate to the offense. 119 CHAIR BRIAN: Forfeiture of automobile under criminal conviction of DWS, would be adequately related or proportionate?

122 FIDANQUE: Yes, as long as the potential fine could be at least the value of the car.

133 CHAIR BRIAN: What is the fine on a Class C felony?

134 FIDANQUE: \$100,000. If these were felony DWS, there wouldn't be a problem upon conviction.

136 AVERA: HB 3432 was to be a companion measure to HB 3424, which reduces most felony driving while suspended cases to misdemeanors.

142 CHAIR BRIAN: Would it save indigent defense costs by

eliminating the Class C felonies?

147 AVERA: It would save indigent defense costs and Department of Corrections costs.

151 REP. EDMUNSON: Suggests that criminal convictions be limited to fines and imprisonment, and not seizing of property.

176 CHAIR BRIAN: Adjourns the meeting at 2:25 P.M.

Submitted by:

Reviewed by:

Sarah May  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed Amendments to HB 2563 - Committee Counsel - 4 pages B - Testimony on HB 22563 - Rep. Mannix - 2 pages C - Proposed Amendments to HB 2381 - Committee Counsel - 11 pages D - Testimony on HB 2381 - Committee Counsel - 10 pages E - Testimony on HB 2381 - Committee Counsel - 2 pages F - Testimony on HB 2381 - Department of Justice - 1 page G - Testimony on HB 2381 - Oregon Criminal Defense Lawyers Association - 1 page H - Proposed Amendments to HB 2539 - Committee Counsel - 4 pages I - Proposed Amendments to HB 3432 - Committee Counsel - 1 page J - Testimony on HB 3432 - Committee Counsel - 3 pages K - Testimony on HB 3432 - Judiciary Department - 2 pages