

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 27, 1993      Hearing Room 357 3:00 p.m.      Tapes 88 - 89

MEMBERS PRESENT:    Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

STAFF PRESENT:            Julie Nolta, Committee Clerk Holly Robinson, Committee Counsel

MEASURES CONSIDERED:            HB 3321 - Relating to motor vehicles HB 3424 - Relating to driving while suspended or revoked HB 3432 - Relating to forfeiture of vehicles

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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 88, SIDE A

001      CHAIR TIERNAN:    Calls meeting to order at 3:10 p.m.

HB 3321, HB 3424, HB 3432 - WORK SESSION

Witnesses:      Ross Shepard, Oregon Criminal Defense Lawyers Association Fred Avera, Oregon District Attorneys Association Frank Brawner, Oregon Bankers Association

011      HOLLY ROBINSON, COMMITTEE COUNSEL:    HB 3424 modifies penalties for driving while suspended or revoked. Has biggest impact on Department of Corrections and Community Corrections.

HB 3432 authorizes seizure and forfeiture of vehicles for all driving while suspended offenses under the provisions of Chapter 791, Oregon Laws 1989.

HB 3321 defines criminal driving while suspended as prohibited conduct for purposes of the state civil forfeiture statute if the suspension was for conviction of driving while under the influence of intoxicants.

050      HOLLY ROBINSON, COMMITTEE COUNSEL:    Summarizes the fiscal impact for HB 3424. (EXHIBIT A) Biggest impact is on state institutions, estimating a \$4.6 million savings this biennium.

065      REP. TARNO:      Would the habitual offender status also apply to someone

convicted of more than one reckless offense?

HOLLY ROBINSON, COMMITTEE COUNSEL: Correct. Explains classification of driving crimes.

073 CHAIR TIERNAN: Discusses with Counsel about types of felony Driving While Suspended (DWS) convictions in HB 3424.

HOLLY ROBINSON, COMMITTEE COUNSEL: The underlying offense is not being changed it is when the license is suspended as a result of one of these convictions.

095 REP. TARNO: The offenses listed in the bill are the five major traffic violations.

103 CHAIR TIERNAN: If our intention was to allow broad forfeiture for DWS, do you recommend any that are not included?

HOLLY ROBINSON, COMMITTEE COUNSEL: The language of the enabling legislation wouldn't have to differentiate between felonies or misdemeanors.

CHAIR TIERNAN: Doesn't like HB 3321 because it is too complicated and limited. Likes HB 3432 because it is straightforward and simple. Would like to use it as a vehicle for a broad forfeiture statute. Are there other situations in which DWS should be subject to a forfeiture?

131 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Concerned that Section 2 of HB 3432 will throw the net over DWS infractions also. Should check the traffic code to see if it encompasses DWS infractions.

138 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: ORS 811.175 is the key statute. HB 3432 would make all vehicles driven by a suspended driver subject to forfeiture.

HOLLY ROBINSON, COMMITTEE COUNSEL: Because of the way HB 3424 is drafted, all of the vehicles subject to forfeiture would be in ORS 811.182. The bill does not propose to move any offenses from misdemeanors to infractions.

156 REP. TARNO: Asks the witnesses their opinion on seizing a vehicle when it is used in the commission of a crime.

AVERA: If I drive while intoxicated, get my license suspended and then am caught driving while suspended based upon that, should that be subject to vehicle forfeiture? Has no problem with that. In HB 3432 if we delete reference to ORS 811.175 and left as 811.182 that would accomplish that. 179 CHAIR TIERNAN: Is there anything not in ORS 811.182 that we could add that would make a better bill?

AVERA: If HB 3424 becomes law you have all that is currently felony, failing the breath test, refusing the breath test.

HOLLY ROBINSON, COMMITTEE COUNSEL: ORS 811.182 is reprinted in the bill.

197 SHEPARD: There is drivers license suspension for possession of

less than ounce of marijuana that shouldn't be thrown in.

208 CHAIR TIERNAN: Aren't you automatically suspended if your license is

lapsed?

AVERA: No. You are unlicensed, not suspended.

CHAIR TIERNAN: Suspension after failure to pay a speeding ticket and getting caught driving is an infraction. If I get caught again it is an infraction.

SHEPARD: It has to be three traffic crimes to be a habitual offender.

225 CHAIR TIERNAN: We are looking at combining the three bills into one using HB 3432 as the vehicle and eliminating ORS 811.175 and making it

subject to ORS 811.182 which is the felony DWS.

HOLLY ROBINSON, COMMITTEE COUNSEL: If the reference to ORS 811.182 is maintained, then it is misdemeanors and felonies. It is the infractions that would be removed if the committee deletes the reference to ORS 811.175.

238 AVERA: Believes there is a rule that 20 minor traffic infraction convictions can lead to an habitual offender which is a felony.

CHAIR TIERNAN: There were concerns regarding the innocent owners of cars, owners of rental cars, the banks...

264 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Does using HB 3432 include line 12?

CHAIR TIERNAN: Yes.

BRAUNER: Repealing the sunset on all forfeiture? Testifies that we need to keep the oversight committee in place and we ask for a sunset.

278 HOLLY ROBINSON, COMMITTEE COUNSEL: It is difficult for this bill to go forward without addressing the issue of sunset because of the expectation that it will only be good for six months.

REP. TARNO: The four year sunset has been agreed to through the Asset

Oversight Forfeiture Committee? BRAUNER: No, the Civil subcommittee. The Oversight Committee recommended that the sunset be repealed.

317 AVERA: It is probably not wise to try to repeal the sunset provision. Discusses a Senate bill on forfeiture. By deleting line 12 in Section 3 of HB 3432, it will probably be adequate.

341 CHAIR TIERNAN: Do we have to address the issues of the cars belonging to others or is that taken care of in the forfeiture statute?

HOLLY ROBINSON, COMMITTEE COUNSEL: The procedures are in place. If they are deemed inadequate then it should be taken care of in the bills dealing with forfeiture statutes. 376 CHAIR TIERNAN: Do we have an

amendment to HB

381 MOTION: REP. BROWN: Moves to AMEND HB 3432 line 7 by eliminating ORS 811.175, and eliminating line 12.

392 HOLLY ROBINSON, COMMITTEE COUNSEL: There is discussion occurring about current use of proceeds and repealing or extending the sunset issue.

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

430 MOTION: REP. BROWN: Moves HB 3432 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

483 REP. BROWN: Withdraws motion.

TAPE 89, SIDE A

024 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3432 can go into HB 3424 if you want one bill that reclassifies the offenses and also gives the ability to do forfeiture.

039 REP. COURTNEY: Wants to keep the bills separate.

056 MOTION: REP. BROWN: Moves HB 3432 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

060 REP. TARNO: Are we sure that HB 3432 will not have some kind of budget impact?

HOLLY ROBINSON, COMMITTEE COUNSEL: All the bill does is authorize an event to occur. If law enforcement chooses to do it, then there may be an impact at that point. It is not mandatory seizure.

067 REP. TARNO: Isn't there a presumption that it will be used if passed?

HOLLY ROBINSON, COMMITTEE COUNSEL: Not necessarily. The state police have a policy of not seizing a car worth less than \$2,000. Many agencies are already doing forfeiture so there should be no start up costs.

087 REP. TARNO: Is language on line 8 mandatory?

HOLLY ROBINSON, COMMITTEE COUNSEL: No, it is permissive.

093 VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan  
NO: None

098 MOTION: REP. COURTNEY: Moves HB 3424 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation with a subsequent referral to the

Appropriations Committee.

101 HOLLY ROBINSON, COMMITTEE COUNSEL: In answer to a previous question, 20 infractions within a five year period does create a felony offender status.

115 VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno,  
Tiernan NO: None

121 CHAIR TIERNAN: Adjourns meeting at 3:45 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Fiscal analysis of HB 3424 - Committee Counsel - 2 pages