

SENATE COMMITTEE ON  
JUDICIARY

July 16, 1993      Hearing Room C  
1:00 p.m.      Tapes 221 - 222

MEMBERS PRESENT:    Sen. Dick Springer, Chair  
                          Sen. Jeannette Hamby  
                          Sen. Karsten Rasmussen  
                          Sen. Bob Shoemaker  
                          Sen. Gordon Smith  
                          Sen. Catherine Webber

STAFF PRESENT:      Bill Taylor, Committee Counsel  
                          Karen Quigley, Committee Counsel  
                          Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Work Session on HB 2386, HB 3052, HB 2887, HB 2381, HB  
285 4,

                          HB 2514, HB 2477, HB 2984, HB 3233

                          Public Hearing & Work Session on HB 2630, HB 3427

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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.

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TAPE 221, SIDE A

003      CHAIR SPRINGER: Opens the hearing at 1:20 pm.

HB 2514: Provides that person seeking relief from prohibition  
against  
          possession of firearm apply to district or circuit court.

WITNESSES:      REP. KEVIN MANNIX, HOUSE DISTRICT 32

010    REP. MANNIX: Requests replacing the contents of HB 2514 with HB  
236 5

          (EXHIBIT A).

          - There's a hole in the law regarding firearms. If a minor commits a  
crime and is adjudicated, once they become 21 years old they are free  
to

          carry firearms with no restrictions.

          - If the person had been 18 years old at the time of the crime, they  
would be prevented from possessing a firearm for 15 years.

          - This bill states that anyone adjudicated for committing a crime is  
restricted from possessing a firearm if that crime would have resulted  
in an adult being similarly restricted - misdemeanors involving  
violence, and felonies.

          - The bill specifies the age of 25 to allow for rehabilitation.

          - ORS 166.274 allows a person barred from possessing a firearm to seek

relief from a court. There is currently no requirement that this information - approval or denial - be entered into LEDS. The bill corrects this. Some people who are denied permits go from county to county with their request and this information needs to be in the system.

054 CHAIR SPRINGER: What happened to HB 2365 in House?

056 REP. MANNIX: There was no action, then time ran out.

060 SEN. HAMBY: Most NRA members are unaware that it is illegal to carry concealed weapons into federal buildings and national parks. Would you object to adding to the bill a requirement that local sheriffs identify where it is illegal to carry a concealed weapon?

084 REP. MANNIX: That is a good idea.

HB 2854: Removes two-year statute of limitation on actions against wife for expenses of family and education of children.

090 REP. MANNIX: This is an old law that wasn't amended when no-fault divorce was passed. The question is whether one spouse is liable for the debts contracted by the other after the separation. This bill states that the spouse is not responsible for those debts, except those debts incurred for the maintenance, support, and education of the children of the spouses.  
- This bill was substantially "worked over" by the House Judiciary Committee. A compromise has been worked out.

109 CHAIR SPRINGER: This bill had been passed out of committee, but was brought back at the request of Rep. Parks to include additional language (EXHIBIT B).

115 MANNIX: The common law marriages are recognized in this narrow circumstance.  
- There is precedent for this in workers' compensation law, and am comfortable with that.

HB 2630: Exempts remanded offenders from population limit for juvenile training schools.

121 REP. MANNIX: There is a statutory population cap for the MacLaren

Juvenile Home set in 1985 of 513 persons. In the last eight years the pressure on these facilities has increased.

- This bill would modify that cap. Beginning in Jan. 1994, a population formula would be applied.

- Adult remand offenders would not be counted in terms of the cap.

Everyone agreed to this.

- Hillcrest and MacLaren have been forced to release offenders before their treatment is concluded. Adult remand offenders push out those who may be more amenable to treatment.

- As an Appropriations Committee member, I will try to provide CSD with funds to deal with the cost of the adult remand offenders. There is \$1.12 million in the budget to be contracted between the Corrections Dept. and CSD to provide CSD with those funds.

HB 2854: Removes two-year statute of limitation on actions against wife for expenses of family and education of children.

178 BILL TAYLOR: This will require a vote to reconsider, as it has already passed out of committee. Reviews the -A4 amendments (EXHIBIT B).

285 4 MOTION: Chair Springer moves to reconsider the vote by which HB was passed from committee.

VOTE: Hearing no objections, the motion passes.

MOTION: Chair Springer moves adoption of the -A4 amendments.

VOTE: Hearing no objection, the amendments are adopted.

MOTION: Chair Springer moves HB 2854 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 6-0. Sen. Rasmussen will carry the bill.

HB 2477: Requires driver involved in accident in which person is killed or rendered unconscious to remain at the scene of accident until police officer arrives unless driver needs immediate medical attention.

WITNESSES: LT. BILL JOHNSON, OREGON STATE POLICE

215 BILL TAYLOR: Draws committee's attention to the amendments (EXHIBIT D). Bill Cross submitted written testimony (EXHIBIT C).

225 Lt. Bill Johnson: States support of the bill and proposed amendments.

When the bill was in the Senate Transportation Committee, there was concern that if a person had to leave a scene of an accident to obtain medical attention, they would be in violation. The bill was referred to the Judiciary Committee and the -A4 amendments were developed.

249 BILL TAYLOR: There was a case, State v. Burton where the Court of Appeals upheld a trial court decision which dismissed a felony hit and run charge, stating that statute does not require the driver to render assistance to a dead person. This bill is designed to take care of that problem and the amendment allows someone to leave a hurt person and obtain medical assistance.

MOTION: Sen. Hamby moves adoption of the -A4 amendments.

VOTE: Hearing no objections, the amendments are adopted.

MOTION: Sen. Hamby moves HB 2477 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 4 - 0, Sen. Springer and Webber excused. Sen. Hamby will carry the bill.

HB 2887: Modifies and defines "sexual abuse" and "rape of a child" when referring to sex acts against children.

283 BILL TAYLOR: There was a hearing on June 30; amendments have been proposed (EXHIBIT E). ORS Chapter 163 defines sex abuse, not sex abuse of a child, so the amendment makes that more specific.

MOTION: Sen. Hamby moves adoption of the -A2 amendment.

VOTE: Hearing no objections, the amendment is adopted.

MOTION: Sen. Hamby moves HB 2887 as amended, to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 5 - 0. Sen. Webber excused. Sen. Hamby will carry the bill on the Floor.

HB 3233: Adds county service district authorized to provide enhanced law enforcement services to definition of "law enforcement unit."

WITNESSES: ROBERT KING, BOARD ON PUBLIC SAFETY STANDARDS AND TRAINING

325 KAREN QUIGLEY: Reviews bill and the -A5 amendments (EXHIBIT F).

371 ROBERT KING: Has done a fiscal analysis of the bill, and very few officers would need training - approximately one officer per biennium. Because they generally hire experienced people, most could be grandfathered.

MOTION: Chair Springer moves the -A5 amendments to HB 3233.

VOTE: Hearing no objections, the amendments are adopted.

MOTION: Chair Springer moves HB 3233 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 6 - 0. Sen. Smith will carry the bill if Sen. Bryant doesn't care to.

HB 2386: Increases minimum damages that may be recovered for violation of unlawful trade practices law.

410 KAREN QUIGLEY: Reviews the bill and the -A5 amendments (EXHIBIT G). The amendments conform changes to SB 167 as conflict amendments. Exemptions are clarified and narrowed. New subsections are 8, 9, and 10.

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030 SEN. WEBBER: Has reviewed the cost of the bill with Gary Weeks (Dept. of Insurance & Finance) who has agreed that there is nominal impact.

MOTION: Sen. Webber moves adoption of the -A5 amendments.

VOTE: Hearing no objections, the motion is adopted.

MOTION: Sen. Webber moves HB 2386 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 6 - 0. Sen. Webber will carry the bill.

HB 2630: Exempts remanded offenders from population limit for juvenile training schools.

WITNESSES: BILL CAREY, CHILDREN'S SERVICES DIVISION  
RICK HILL, CHILDREN'S SERVICES DIVISION  
MARI ANNE GEST, OPEU  
MARY BOTKIN, AFSCME

DONNA MIDDLETON, JUVENILE DEPARTMENT DIRECTORS ASSOCIATION

056 BILL CAREY: Testifies in support of the bill (EXHIBIT H). The Juvenile Corrections Council also supports the bill (EXHIBIT I).

085 SEN. SHOEMAKER: With this, you can still handle increases in population.

090 CAREY: That is correct. The true cap on the operation is the budget, but the facilities can accommodate the increase in the remanded kids.

097 SEN. SHOEMAKER: Could the physical structure also handle the increase based on changes in the general population of persons under 18 years?

098 BILL CAREY: Yes.

105 HAMBY: There was nonconcurrency on the Corrections budget this morning, which included this money.

112 CAREY: We would like to see this bill approved regardless of whether there is money to manage the system. It would allow us to exclude the remanded youth.

121 SEN. WEBBER: There is no cap on the number of remanded kids? The functional cap is the budget?

122 CAREY: That is correct. Any youth between the ages 16 and 18 that is tried as an adult, committed as an adult, comes back to the juvenile institution for review to see if there is any service the juvenile institution can provide them.

128 SEN. WEBBER: You are going to have 17 new beds?

129 CAREY: If this portion stays in the budget, yes. Otherwise we will not have another cottage.

170 MARI ANNE GEST: Testifies in support of the bill with concerns (EXHIBIT J).

- There is a concern about there not being a commitment of dollars to adjust the cap.

- It is difficult to find a secure place to secure children.

205 MARY BOTKIN: Testifies in support of the bill and additional funds in the budget to support the adult remands.

- The greatest success with kids comes when intervention is early.

238 DONNA MIDDLETON: Testifies in support of the bill (EXHIBIT J).

281 STEVEN KAFOURY, ALLIANCE OF CHILDREN'S PROGRAMS: Testifies in support of the bill and clarifies provisions. The bill doesn't place more kids in these facilities, just legalizes what is being done now.

MOTION: Sen. Shoemaker moves HB 2630-A to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 6 - 0. Sen. Webber will carry the bill.

HB 3052: Requires public or private official to report information that causes official to believe child has been abused, unless communication is privileged.

WITNESSES: STEVEN KAFOURY, ALLIANCE OF CHILDREN'S PROGRAMS  
SUE COOK, CHILD ABUSE HOTLINE  
VICTOR CONGLETON, CSD

310 STEVEN KAFOURY, ALLIANCE OF CHILDREN'S PROGRAMS: Testifies in support of the bill. Section 1 is quite controversial and should be deleted, given the lateness of the session. Section 3 should be amended to include an emergency clause.  
- Current law requires professionals to report suspected child abuse to CSD. CSD is not open in the evening and to fill the gap, there are child abuse hotlines. There was an AG ruling that reports could not be made to anyone other than CSD.  
- We are asking the law be changed so that reporting can be done to a CSD designee.

399 SEN. HAMBY: Section 1 is too broad. There isn't any way to amend it?

400 KAFOURY: The bill was extensively reviewed in the House. This is narrower than the original; we wanted to avoid controversy.

445 SEN. WEBBER: Do all reports go to CSD? Do some go to the juvenile department?

450 SUE COOK: We report directly to CSD. If the child is in immediate danger we contact the police.

467 VICTOR CONGLETON: The hotline functions differently, county by

county.

Some use the juvenile detention facilities, some use private, non-profits.

496 SHOEMAKER: When a report received by designee, what does a designee do?

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038 CONGLETON: That is specified in the contract. They provide information to CSD the next day or Monday morning.

043 SHOEMAKER: It appears the bill needs clarification regarding who the designee reports to.

049 SUE COOK: Volunteers are trained to prioritize the calls and determine if the child is in immediate danger. If the child is not in immediate danger the report is phone into CSD in the morning. If the child is in danger we report to the police immediately and the police contact CSD also. CSD receives the report regardless.

057 CHAIR SPRINGER: Do you get referrals from 911?

063 SUE COOK: Calls from 911 are frequently referred to the hotline. The volunteer assesses the situation, and they may call 911 back. If there is a question as to what to do, they can always call an on-call supervisor from CSD and ask them.

072 SHOEMAKER: Suggests adding a sentence to section 2, "When a report is received by a designee of the Children's Services Division, the designee shall notify a law enforcement agency or the Children's Services Division as the contract with the designee provides."

MOTION: Chair Springer moves to delete section 1, add an emergency clause, and add the sentence offered by Sen. Shoemaker.

VOTE: Hearing on objections, the amendment is adopted.

MOTION: Chair Springer moves HB 3052 as amended, to the Floor, with a "do pass" recommendation.

VOTE: The motion passes 6 - 0. Sen. Hamby will carry the bill.

HB 3427: Authorizes agencies to use dispute resolution for rulemaking



proceedings.

WITNESSES: DON ARNOLD, DEPARTMENT OF JUSTICE

109 KAREN QUIGLEY: Reviews the bill and -A4 amendments (EXHIBIT K).

120 DON ARNOLD: Testifies in support of the bill. Sen. Springer expressed concern that the language in the bill might allow agencies to avoid the public meetings or public records law while they were engaged in alternative dispute resolution. While we don't believe that is a problem with the bill, we have prepared this amendment to make that clear.

134 QUIGLEY: Are you familiar with SB 1136, which pertains to alternative dispute resolution? It seems similar to this bill. We also want to make clear that arbitration is included as an alternative.

171 ARNOLD: SB 1136 poses no reason not to go forward with this bill.

MOTION: Sen. Shoemaker moves to insert the word, "arbitration" before the word, "mediation" on line 13.

VOTE: Hearing no objections, the motion is adopted.

MOTION: Sen. Hamby moves adoption of the -A4 amendments.

VOTE: Hearing no objection, the amendments are adopted.

MOTION: Sen. Shoemaker moves HB 3427 as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 6 - 0. Sen. Shoemaker will carry the bill.

is Sen. Shoemaker notes he may have a conflict of interest because he is a member of the Oregon Mediation Association.

HB 2381: Extends sunset on asset forfeiture law to Dec. 31, 1997.

WITNESSES: DAVID FIDANQUE, ACLU  
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION  
FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION  
PETE SHEPHERD, DEPARTMENT OF JUSTICE  
SHAUN MCCREA, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

207 BILL TAYLOR: Notes there are a number of proposed amendments to the bill (EXHIBITS L - S).  
- The -A20 amendments give the judge the discretion of forfeiting a fishing boat.

MOTION: Chair Springer moves adoption of the -A20 amendment

VOTE: Hearing no objections, the motion is adopted.

236 BILL TAYLOR: Reviews the -A15 amendment (EXHIBIT N). This relates  
to SB 1046, concerning consensual searches of motor vehicles. It requires multi-lingual notice prior to a search, and that refusal of a search request cannot be used against the person. The amendment is supported by the ACLU, the Oregon Criminal Defense Lawyers Association, and the District Attorneys Association.

MOTION: Sen. Hamby moves adoption of the -A15 amendments.

VOTE: Hearing no objection, the amendments are adopted.

270 BILL TAYLOR: Reviews -A13 amendments (EXHIBIT M). There is  
no opposition.

MOTION: Chair Springer moves adoption of the -A13 amendments.

VOTE: Hearing no objections, the amendments are adopted.

282 BILL TAYLOR: Reviews the -A23 amendments (EXHIBIT R). These  
supercede the -A18 amendments (EXHIBIT O). This deals with proportionality.  
There is no opposition and is the result of a recent Supreme Court case.  
SB 139 also has forfeiture provision in it dealing with driving while suspended. This may cause a problem; the taking of the car may exceed the criminal fine.

313 CHAIR SPRINGER: I moved for non-concurrence on SB 139 to make sure  
we had a chance to examine the forfeiture provision that was inserted on the House side, and also to see that there is some degree of consistency and conformity with how we deal with forfeiture. We may want to remove the vehicle forfeiture language from SB 139 and insert it in this bill.  
Recommends against final action on this bill today.

340 DAVID FIDANQUE, ACLU: The only change in the -A23 amendments is the  
addition of language on page 2, line 25, section 14 that adds the words,  
"except as otherwise agreed to by the parties." Other than that change,  
the -A23 amendments are identical to the -A18 amendments, which were

discussed at an earlier meeting.

- The addition of that language in section 14, was due to my concerns, particularly the forfeiture of vehicles. As we began considering the issue of proportionality, we were thinking in terms of statewide forfeitures involving illegal drug activity. In most of those cases, the value of the assets clearly exceeds the amount of costs incurred by forfeiting agencies. That is not the case with regard to vehicle forfeitures. The affect of section 14 in the -A23 amendments is to make automatic that the costs of the forfeiting agency will be paid, even if the effect of that is disproportionate. That causes some concern for the ACLU, particularly if the legislature expands the forfeiture of vehicles statewide. Local governments have the option of forfeiture for violation of local ordinances; but the ACLU is strongly opposed to statewide provisions of forfeiture of vehicles for driving while suspended. One of the reasons is proportionality.

- We are prepared to accept the -A23 amendments, assuming statewide vehicle forfeiture doesn't get added later.

- We believe that in many instances, the value of the vehicle seized may be outstripped by the costs of the forfeiting agency, so there would be no incentive for the agencies to settle these cases.

- The addition of language in section 14 would encourage settlement in other cases.

420 ROSS SHEPARD: Concurs with David Fidanque.

422 FRED AVERA: Reviews SB 139 history. That concept was originally in  
HB 3432. The District Attorneys Association neither supported nor opposed the concept in HB 3432. Since the Austin v. United States decision was handed down regarding proportionality, the issue of forfeiture of driving while suspended is even a greater problem. Particularly when  
SB 139 reduces most driving while suspended cases to misdemeanors.

463 PETE SHEPARD: The amendments represent agreement as to how to handle Austin v. U.S.

474 SHAUN MCCREA: Concurs.

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057 MOTION: Chair Springer moves adoption of the -A23 amendments.

VOTE: Hearing no objections, the amendments are adopted.

060 BILL TAYLOR: Reviews the -A24 amendments (EXHIBIT S) and relates to the burden of proof. Under current law, the state shows probable cause, and the claimant for the property has the burden of proof. This amendment would change that and make it similar to other civil law provisions.

068 DAVE FIDANQUE: Supports the amendments (EXHIBIT T), which change the burden of proof to the preponderance of the evidence. Currently, all the government has to do is show probable cause. That is a standard that is used all the time for searches and seizures, and one that the law enforcement community would like to maintain. Many factors are considered in determining probable cause. For purposes of seizing evidence and arrests, probable cause is a good standard. But when you get into court in a contested case, the burden on the government should be more than that, under the standard rules of evidence, to prove their case. Law enforcement would like to continue to use hearsay evidence in these proceedings. Preponderance is not much greater a standard than probable cause. The standard has been shifting and may be very close to probable cause. The -A24 amendments would make it clear that the government has the initial burden to come forward with evidence to persuade the court that the property is forfeitable at the time of trial. Today, innocent holders of property have to prove their innocence of criminal activity. This statute punishes people for criminal conduct without bothering to go through the procedure of finding them guilty of a crime first. We think that eventually the Oregon courts are going to require that finding.

128 PETE SHEPHERD: Testifies in opposition to the amendments. The present law is fair and workable. The statute contains protections for

claimants. Claimants are entitled to require the government to prove probable cause early in the process. Claimants are entitled to retain custody of the property if the government doesn't prove its case. The government must pay the claimant's attorney fees. Claimants are entitled to a jury trial. It is not unusual to require someone to prove something to validate a societal interest. As example, in discrimination cases employers must prove they didn't discriminate. This is because society places a great deal of importance on discrimination. Current law works. Heresay is admissible because the out of court statement is to show the effect on a reasonable person to believe the property is subject to forfeiture. If the probable cause standard is not maintained, then heresay will not be admissible. The practical effect of that will cause us to lose cases when we seize cash.

182 SHAUN MCCREA: Testifies in support of preponderance cause standard. A claimant has to pay \$100 to file it, it takes a long time for the court to set it on the docket. If the government is going to take property, they should come forward with information to support that initially. It is difficult for the claimant to prove a negative - that the property isn't subject to forfeiture. In Southern Oregon, law enforcement is seizing property wholesale, figuring that what property is really forfeitable can be worked out later, and there is an abuse of the process. The preponderance standard would help to alleviate this abuse and make the proceedings more fair.

198 FRED AVERA: Testifies in opposition to the amendments. Drug dealers hide their assets. When a house is raided, drugs, records, and money is found. It is not possible for law enforcement to subpoena every employer in the world and ask them if the money is from wages paid.

231 SEN. WEBBER: Aren't you asking law enforcement to prove negative?

236 MCCREA: In that sense, yes. But you are also asking them to produce evidence to show that, more likely than not, that the property is

subject to forfeiture, as opposed to putting the initial burden on the claimant to show that the property is not subject to forfeiture.

MOTION: Chair Springer moves adoption of the -A24 amendments.

245 SEN. HAMBY: What are examples of abuses?

247 FIDANQUE: Notes lack of funding for the Oversight Committee.  
The Committee does not do auditing. The only initiative the committee has taken has involved the harassment of Hispanics along Interstate 5. That showed hundreds of instances where innocent parties were subject to searches. The committee receives anecdotal information where there have been disputed facts. There are a number of defaults. In contested cases, the vast majority are settled and never go to trial. Why is that happening? Law enforcement will say it is because they are doing a good job at targeting drug dealers. I hear from criminal defense attorneys and individuals who have been subjected to this process is that they have no way to win. They stand to lose everything - their life savings, their retirement, in these cases. All the government has to do is show probable cause, and the person has to prove their assets are innocent. The pressure is tremendous on claimants to cut a deal. This is not a situation where the government is refereeing between two private parties such as in a discrimination case; this is a situation where the government is bringing its power to bear on one side of the equation and it holds all the cards. The proceeds of these forfeitures go back to the budgets of the same people who make the decision as to whether the property is going to be seized. This amendment is an attempt to put some balance into the equation.

322 SEN. SHOEMAKER: If the police linked the money with the drugs through circumstantial evidence, and the claimant was unable to explain the money adequately, there is no fifth amendment privilege, the government would have met its burden, would it not?

330 MCCREA: There is a fifth amendment right under these proceedings.

But

given the facts as you state them, it may be that if the government is able to present that circumstantial evidence, the court would be willing to find that they had met their burden under a preponderance standard.

VOTE: The motion fails 2-4. Voting no: Rasmussen, Smith, Webber, Hamby. Voting aye: Shoemaker, Springer.

380 CHAIR SPRINGER: Adjourns hearing at 3:00 pm.

Submitted by,

Reviewed by,

Kirk Bailey  
Assistant

Bill Taylor  
Counsel

#### EXHIBIT SUMMARY

A - HB 2365, HB 2514, Rep. Mannix, 6 pgs.  
B - proposed amendments, HB 2854, staff, 1 pg.  
C - testimony, HB 2477, Bill Cross, 1 pg.  
D - proposed amendments, HB 2477, staff, 1 pg.  
E - proposed amendments, HB 2887, staff, 1 pg.  
F - proposed amendments, HB 3233, staff, 1 pg.  
G - proposed amendments, HB 2386, staff, 15 pgs.  
H - testimony, HB 2630, Carey, 2 pgs.  
I - testimony, HB 2630, Goldman, 1 pg.  
J - testimony, HB 2630, Middleton, 1 pg.  
K - proposed amendments, HB 3427, staff, 1 pg.  
L - proposed amendments, HB 2381, Cooke, 6 pgs.  
M - proposed amendments, HB 2381, staff, 6 pgs.  
N - proposed amendments, HB 2381, staff, 3 pgs.  
O - proposed amendments, HB 2381, staff, 4 pgs.  
P - proposed amendments, HB 2381, staff, 4 pgs.  
Q - proposed amendments, HB 2381, staff, 1 pg.  
R - proposed amendments, HB 2381, staff, 4 pgs.  
S - proposed amendments, HB 2381, staff, 1 pg.  
T - testimony, HB 2381, Fidanque, 3 pgs.