

House Committee on Judiciary April 25, 1991 - Page

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.

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

April 25, 1991 Hearing Room 357 2:00 p.m. Tapes 82-83

MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix
Rep. Randy Miller

STAFF PRESENT: Greg Chaimov, Committee Counsel Karen Edwards,
Committee Assistant

MEASURES HEARD: HB 3304 - Vehicle Forfeiture Pilot Program -
PH/WS HB 2014 - Impounding Vehicles for Driving While Suspended - PH SB
505 - Repealing the Mountain Safety Device Sunset - PH/WS HB 2037 -
Releasing Seized Property - PH SB 228 - Increasing Civil Penalties for
Violating Natural Gas Safety Regulations - PH/WS

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TAPE 82, SIDE A

004 CHAIR RAY BAUM: Opens Subcommittee on Civil Law and Judicial Administration at 2:43 p.m.

HB 3304 - PUBLIC HEARING Witnesses: Representative Ted Calouri, District 7 Judge Bill Keys, District Court

011 REPRESENTATIVE TED CALOURI, DISTRICT 7: Would like to have an amendment

considered that was suggested by the Department of Motor Vehicles.

JUDGE BILL KEYS, DISTRICT COURT: Discusses HB 3304-2 amendments dated 4/25/91 (EXHIBIT A). Refers to section seven. These amendments give clarification of the Department of Motor Vehicles' notice of hearing. HB 3304 is limited to driving while suspended charges as a result of convictions for driving under the influence.

043 GREG CHAIMOV, COMMITTEE COUNSEL: Would like to change the wording on page 11, line 38 from "registered mail" to "certified mail".

JUDGE KEYS: Believes that the HB 3304-2 amendments (EXHIBIT A) refer

the to the registered and certified mail process.

CHAIMOV: If this wording is not in the HB 3304-2 amendments (EXHIBIT A) would there be any problems with you if that were changed?

JUDGE KEYS: Absolutely.

057 REP. KELLY CLARK: In order to have a driving while suspended charge with an underlying driving under the influence conviction that is subject to forfeiture, the driving while suspended itself has to be reduced from a crime to a violation, correct?

JUDGE KEYS: It does not have to be. Reducing the violation will create a savings through the Judicial Department. The elimination of criminal cases will help pay for the costs of the forfeiture process.

REP. CLARK: Thought the notion of forfeiture was civil?

JUDGE KEYS: It is.

REP. CLARK: The driving while suspended charge can be both criminal and subject to forfeiture?

JUDGE KEYS: Thinks it can.

069 REP. CLARK: How?

JUDGE KEYS: They are separate just as a drug offense. It can be both criminal and civil in terms of forfeiture. So can this. The point of decriminalization was due to the fact that criminal sanctions are not working. Why spend the money?

REP. CLARK: Will decriminalization have a noticeable affect on the indigent defense system?

JUDGE KEYS: Spoke with Bill Linden, State Court Administrator. He said it would be substantial and will submit figures.

REP. BAUM: Before us, there is a forfeiture bill that decriminalizes driving while suspended for any reason. Could you clarify that?

088 JUDGE KEYS: It decriminalizes driving while suspended when the original suspension is based on a prior driving while under the influence conviction. In those cases, the civil forfeiture procedure takes place.

REP. BAUM: It appears to be a different approach than what has been discussed.

JUDGE KEYS: This is one of the more serious situations on how a person can get suspended. Wanted to leave forfeiture in those areas where there is a serious original problem.

CHAIMOV: Under section 19 of HB 3304, could you clarify for me who sends the election of the jury trial to whom?

103 JUDGE KEYS: The election of the jury trial is by the person whose interest would be forfeited, the owner of the vehicle.

CHAIMOV: Who is that sent to? Concerned that subsection two(a) on

lines 28-31 and subsection three on line 35 may be inconsistent.

JUDGE KEYS: Understands the election will be sent to the district court. Who will then be obligated to notify the Department of Motor Vehicles. Who will then proceed with the next steps.

CHAIMOV: Page 11, line 35 states, "Within five days of the election, the division shall cause a complaint and the election to be filed in district court."

JUDGE KEYS: Yes.

CHAIMOV: Why is the division filing the election if the owner of the vehicle has already filed?

JUDGE KEYS: Felt the division was going to attach a copy of the election to their complaint.

REP. BAUM: What percentage of driving while suspended charges are for driving under the influence?

JUDGE KEYS: Thinks there are many. The Department of Motor Vehicles knows the number of driving while suspended charges.

REP. BAUM: It is 54 percent.

133 JUDGE KEYS: That is 54 percent of the felony driving while suspended charges. There may be 20, 30, 40 or even 50 thousand total driving while suspended convictions.

CHAIMOV: Have you had a chance to look at the amendments suggested by the Debtor/Creditors Section of the Oregon State Bar (EXHIBIT B)?

JUDGE KEYS: No.

REP. BAUM: Did you mention earlier Judge Keys whether or not the individuals who are involved in financial interests are in support of HB 3304?

150 JUDGE KEYS: They have testified previously in favor of HB 3304.

REP. BAUM: Are they also in favor of the HB 3304-2 amendments (EXHIBIT A)?

JUDGE KEYS: The HB 3304-2 amendments (EXHIBIT A) were a result of negotiations and discussions with the financial institutions with the exception of the language that is in section seven about notice.

REP. BAUM. Wanted to make sure that was clear for the record.

JUDGE KEYS: Does not have a problem with the proposed amendments.

REP. TOM BRIAN: Does HB 3304 have a 2 million dollar impact?

CHAIMOV: In reading the Fiscal Analysis (EXHIBIT C), it appears to net out to about a 1.2 million dollar impact for the coming biennium.

176 REP. CALOURI: The Department of Motor Vehicles has recently done a revision to those numbers.

Tape 82, Side A HB 2014 - PUBLIC HEARING Witnesses:Walter Pendergrass,
Traffic Safety Commission

229 CHAIMOV: Summarizes HB 2014 (EXHIBIT D).

WALTER PENDERGRASS, TRAFFIC SAFETY COMMISSION: Discusses HB 2014: >The present system does not work. >Would like to see something happen now instead of having to wait six months. Would to like see the process handled administratively, with the opportunity for a hearing.

294 REP. BAUM: Have you had a chance to review HB 3304?

PENDERGRASS: No. To me, the difference between HB 3304 and 2014 appears to be a basic philosophical difference. One is keeping the individual in the court system. The other is getting the individual out through an administrative process.

REP. BAUM: One is a judicial forfeiture and you are doing an administrative forfeiture?

PENDERGRASS: It is not an administrative forfeiture. The individual simply can not have their vehicle for two weeks.

REP. BAUM: A temporary impoundment?

PENDERGRASS: That is right.

REP. BRIAN: Would this be an option for the police officer? Or would the impoundment procedure be done versus an additional citation or arrest?

313 PENDERGRASS: Thinks it would be either or both.

REP. BRIAN: Refers to section two, page one. If an arrest is implied here, there can not be a civil impoundment?

PENDERGRASS: Does not think it is referring to an arrest for driving while suspended. It would be an arrest for something else. This is a civil impoundment of the automobile. It would not get in the way of whatever else happens.

Tape 82, Side A SB 505 - PUBLIC HEARING Witnesses:Stephen Kafoury,
Mountain Signal Memorial Fund Donald McClave, Mountain Signal Memorial
Fund Tom Springfield, Portland Mountain Rescue

357 STEPHEN KAFOURY, MOUNTAIN SIGNAL MEMORIAL FUND: Asks for the removal of the sunset clause on SB 505. Submits written testimony on SB 505 (EXHIBIT E).

434 DONALD McCLAVE, MOUNTAIN SIGNAL MEMORIAL FUND: Daughter was one of the climbers who was lost in Mt. Hood in 1986. This is not a response to a one time occurrence. There have been dozens of deaths and documented instances since the 1920's. Things happen on Mount Hood that can not be anticipated. SB 505 is a sound bill.

TAPE 83, SIDE A

026 TOM STRINGFIELD, PORTLAND MOUNTAIN RESCUE: Testifies in support of SB 505 . Submits written testimony (EXHIBIT F).

REP. BAUM: Understands there was no opposition from the Senate.

REP. CLARK: Do you know how often persons going up the mountain carry radios?

055 STRINGFIELD: Not often enough. This is a voluntary program and an education process. Written testimony submitted on SB 505 (EXHIBIT G).

Tape 83, Side A SB 505 - WORK SESSION

MOTION: REP. MILLER moves SB 505 to the full committee with a "due pass" recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

Tape 83, Side A HB 3304 & HB 2014 - PUBLIC HEARING Witnesses:Nancy Wolfe, Mothers Against Drunk Drivers Robert Bothman, Oregon Department of Transportation

089 NANCY WOLFE, MOTHERS AGAINST DRUNK DRIVERS (MADD): Reads written testimony in support of HB 3304 (EXHIBIT H). Submits written testimony on HB 201 4 (EXHIBIT I).

118 ROBERT BOTHMAN, OREGON DEPARTMENT OF TRANSPORTATION: Testifies in support of HB 3304 and HB 2014: >Believes there will be a substantial number of vehicle confiscations that will result in administrative hearings through the passing of HB 3304 and HB 2014. >Concerned about the costs that will be incurred once the vehicles are impounded. >HB 3304 focuses on the driving under the influence convictions. HB 2014 covers a broader range from not paying a traffic ticket to not paying for insurance. >Would like to have a pilot project done in four counties as opposed to implementing a statewide program. To cut costs and compare the differences in the chosen counties. Submits written testimony on HB 2014 (EXHIBIT J).

198 REP. KEN MANNIX: In reference to HB 3304 and HB 2014 could we not cut costs by stating that if a police officer has cited someone for driving while suspended and the suspension is due to a former conviction for drunk driving, the car will be impounded for 12 hours? It would be an immediate impoundment that would cause a lot of inconvenience but would get the message out.

BOTHMAN: Has no response to that.

WOLFE: These are individuals who have already been stopped for drunk driving twice. The first time they opted for diversion. The second time there was a conviction. These are individuals, who in many cases, have extremely high blood/alcohol content levels.

MANNIX: How about using HB 3304 as a pilot program? If an individual, at this time, is cited for drunk driving, the officer can impound the vehicle. Right?

216 WOLFE: Anywhere but Portland.

MANNIX: What about adding on the authority of impounding the vehicle if someone is cited for drunk driving? How do you feel about a 12 hour impoundment if someone is cited for drunk driving?

WOLFE: At which charge first, second or third?

MANNIX: Not separate from but in addition to HB 3304?

WOLFE: And taking the vehicle immediately?

MANNIX: The theory being the person should not be driving the vehicle for 12 hours anyway.

WOLFE: If the vehicle is in an unsafe place, the conscientious officer will usually have the vehicle towed to a safe place. In many cases, the vehicle is not accessible. It would depend upon whether or not someone else could get that vehicle and transport it back to the individual's home.

238 REP. BRIAN: If the vehicle is safely parked, is it not just locked and left? A friend or relative could pick up the vehicle and put it back into use.

REP. BAUM: HB 3304 essentially decriminalizes what used to be a felony to a violation. The trade off is you do something now rather than have the driver go on probation or continued suspensions. Does Mothers Against Drunk Drivers have a problem with the issue of decriminalizing drivers, while suspended, for this particular suspension offense?

WOLFE: We see driving while suspended as being a non-punitive charge. We are looking at this only as an alternative and would like to see if it is getting these people off of the road.

REP. BRIAN: It was mentioned in prior testimony that 70 percent of these cases occur in the Portland metropolitan area. We may want to administratively gear up the system statewide for a pilot program where we could have a result of 70 percent in one area.

271 WOLFE: Coordinates the victims panel in which all of the individuals who are charged with driving under the influence of intoxicants are ordered to attend. In the last week, 386 persons were ordered to attend. This covers a two week period in Portland.

REP. MILLER: With respect to decriminalization, when using the collective wording "we" in speaking for the Mothers Against Drunk Drivers, are you referring to all chapters throughout the state?

WOLFE: Yes.

Tape 83, Side A HB 3304 - WORK SESSION Witnesses: Judge Bill Keys, District Court Representative Ted Calouri, District 7 Frank Browner, Oregon Bankers Association

REP. MANNIX: Has a question about a provision stated in HB 3304. This would be the forfeiture procedure that has to be followed? Is this issue being addressed?

294 CHAIMOV: Only heard part of the question.

REP. MANNIX: Is there preemption language in HB 3304?

CHAIMOV: Yes. It is in section 23, page 14, line 18.

REP. MANNIX: Do any of the packaged amendments take out the preemption language?

CHAIMOV: No.

REP. MANNIX: Was there any testimony heard or discussed this afternoon regarding the preemption provision?

REP. BAUM: Does not know if the preemption provision applies or was discussed a month ago when HB 3304 was heard.

312 CHAIMOV: It was not.

REP. BAUM: Judge Keys could address the preemption issue.

REP. MANNIX: There is a preemption provision in HB 3304?

JUDGE BILL KEYS, DISTRICT COURT: We intended to preempt, yes.

REP. MANNIX: This is a pilot program. Are you only going to preempt where the pilot program takes place?

JUDGE KEYS: HB 3304, as written, is not limited to four counties. The Department of Motor Vehicles wanted to limit HB 3304 to four counties. The preemption would be statewide just as HB 3304 is now statewide.

338 REP. MANNIX: As an alternative, what if we said we are not going to limit HB 3304 to four counties? It could be everywhere. But, the preemption will take place in any county in which the program occurs.

JUDGE KEYS: That is fine, although we ought to define in HB 3304 who would make that election. Whether you make that an election of the Sheriff and the District Attorney or the Sheriff, the District Attorney and a third person to break a tie vote. That is certainly a possibility.

REP. MANNIX: What about County Commissioners?

JUDGE KEYS: That would be a possibility.

REP. MANNIX: Concerned with saying "statewide preemption" and finding the program is not occurring anywhere.

REPRESENTATIVE TED CALOURI, DISTRICT 7: Is concerned with getting into a lottery type situation. Feels that may create an extreme situation.

REP. MANNIX: What is your preference on HB 3304 in terms of having a pilot program?

365 REP. CALOURI: Prefers a statewide program.

FRANK BROWNER, OREGON BANKERS ASSOCIATION: Would be concerned about which rules financial institutions would follow if HB 3304 was not statewide in scope. Does not want to create a situation where two processes are available.

REP. MANNIX: Concerned that a local jurisdiction wanting to implement a pilot program may have had a stronger program than the one that will be implemented by the state.

422 JUDGE KEYS: The only thing a local jurisdiction has to do is have

the police officer notify the Department of Motor Vehicles. Realistically, the requirements for local jurisdictions are pretty minimal under HB 3304.

REP. MANNIX: If the local jurisdictions want to be aggressive, they can be aggressive?

REP. CALOURI: That is right. Would like to be partially in support of Mr. Browner. Right from the beginning, multiple rules was one of the Oregon Bankers Associations' concerns. In good faith, we tried to work out our concerns together. This whole thing is an experiment.

TAPE 82, SIDE B

MOTION: REP. MANNIX moves to adopt the dash two amendments dated 4/25/91 (EXHIBIT A) TO HB 3304.

DISCUSSION TO THE MOTION: Witnesses: Judge Bill Keys, District Court Representative Ted Calouri, District 7

027 REP. MARIE BELL: On the preemption provision, if this becomes a statewide bill or rule, who would administer the process in the larger cities?

REP. BAUM: It would be administered through police officers and the court system.

REP. BELL: We are saying these are the rules that are to be followed?

REP. BAUM: It would be like any civil or criminal law we have ever passed statewide.

REP. BELL: Would cities and counties have any flexibility?

REP. BAUM: Does not believe so.

JUDGE BILL KEYS, DISTRICT COURT: The majority of the administrative tasks are performed by a state agency, the Department of Motor Vehicles. All the police officer has to do is get the car towed and inform the Department of Motor Vehicles to start the process.

051 REP. BELL: Using Portland as the example, if HB 3304 passes, what will be the financial implications to the city of Portland and the various local agencies?

JUDGE KEYS: Minimal. The local jurisdictions are not storing the cars or holding the hearings, the Department of Motor Vehicles is.

REPRESENTATIVE TED CALOURI, DISTRICT 7: Local jurisdictions are not covered under HB 3304. Are you asking what the contrast of Portland's system is at this time compared to how it will be if HB 3304 passes?

REP. BELL: Yes.

REP. CALOURI: Under the Portland style of doing things, there are a number of changes. There are major differences in how financial agencies will be handled. This procedure will cost local jurisdictions less money.

REP. BELL: Even after the cars that are left are auctioned off?

REP. CALOURI: Does not see this process or the Portland process as a major money raiser. Hopefully, it will be revenue neutral.

071 REP. BELL: Does a local jurisdiction have the option of not impounding the vehicles?

REP. CALOURI: No. For the reasons that have been discussed. That is why the major burden was placed upon the Department of Motor Vehicles.

REP. BELL: Is this not a massive mandate?

REP. CALOURI: It is except we are limiting it to four thousand cars because of the narrow focus on how HB 3304 was written.

REP. MANNIX: Should clarify the mandate. It is a local option for the police officer who is out there on patrol.

REP. CALOURI: If he does want to tow the vehicle, this process does not start. In that sense, there is a local option.

REP. BELL: Will this discourage the actual stopping of the problem? If we get police officers in a position where they do not want to impound the vehicle, do they leave the driver alone?

REP. CALOURI: Thinks police officers will be delighted to impound vehicles.

REP. BAUM: We have a local policy decision here. Would like to have a local option. HB 330 4 will have a potentially great affect on deterring repeated drunk drivers.

102 REP. MANNIX: Thinks Representative Bell's concern is about the mandate. We are not mandating local government to do anything more than what is authorized in our statewide code.

JUDGE KEYS: We spent some time contacting law enforcement agencies and local governments prior to doing this. It was with their input that we adopted these procedures.

REP. BAUM: The message has got to be sent that there are severe consequences for this continued behavior.

117 REP. JIM EDMUNSON: Is all for the criminal enforcement of these laws. HB 3304 seems to have an unintended affect of making tow companies rich.

REP. ROD JOHNSON: Does HB 3304 include all of the dash one amendments?

JUDGE KEYS: Yes.

VOTE: Hearing no objection, Chair Baum so moves.

MOTION: REP. MANNIX moves the Oregon State Bar Debtor/Creditor Section amendments (EXHIBIT B) to HB 3304.

VOTE: Hearing no objection, Chair Baum so moves.

CHAIMOV: Suggests an amendment on page one, line 17. Would like to substitute the phrase "probable cause" for the word "reason".

MOTION: REP. BAUM moves to amend HB 3304 on page 1, line 17, by changing the word "reason" to the phrase "probable cause".

VOTE: Hearing no objection, Chair Baum so moves.

156 CHAIMOV: Refers to page 11, line 38. Would like to substitute the phrase "registered mail" for the phrase "certified mail with a return receipt".

MOTION: REP. BAUM moves to amend HB 3304 on page 11, line 38, by changing the phrase "registered mail" to the phrase "certified mail with a return receipt".

VOTE: Hearing no objection, Chair Baum so moves.

MOTION: REP. MANNIX moves HB 3304 to the full committee with a "due pass" recommendation and that it be subsequently referred to the Ways and Means Committee.

DISCUSSION TO THE MOTION:

REP. BELL: Was wondering if the committee was going to bring to the attention of the Oregon Criminal Justice Council that 30 to 40 local jail beds and 60 to 70 prison beds could become available? Allowing the money that will be saved to be used on other bills.

REP. BAUM: Does the fiscal statement acknowledge that savings?

176 CHAIMOV: Yes.

REP. BAUM: Is that part of the indigent defense cost?

CHAIMOV: Does not know if it puts a specific dollar amount on that. It does acknowledge the input of the Criminal Justice Council and the preparation of the fiscal impact statement.

REP. CALOURI: Anticipates a full discussion will take place in the Ways and Means Committee. Will have had participation by a number of interests groups including the Court Administrator and Corrections. Thinks all concerns will be discussed and considered.

197 REP. BRIAN: Before the meeting takes place with the Ways and Means Committee, would like to see a list of what the subcommittee and full committee have suggested. Having the opportunity to comment on the prioritization of lists with overall recommendations.

VOTE: In a roll call vote, the motion carries with Representative Edmunson voting NAY.

Tape 82, Side B HB 2037 - PUBLIC HEARING Witnesses:Nancy Wolfe, Mothers Against Drunk Drivers David Fidanque, ACLU of Oregon

244 NANCY WOLFE, MOTHERS AGAINST DRUNK DRIVING (MADD): Reads written testimony (EXHIBIT K). Is concerned about HB 2037 unless something is added in lieu of a state impoundment forfeiture not passing this session.

283 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION (ACLU) OF OREGON: The ACLU opposed the language in the current statute last session that

gave local governments the option of adding on different offenses. Gives examples that relate to the city of Portland, Multnomah County ordinances regarding prostitution and gambling: >In the city of Portland, with regard to prostitution, there is a real potential for disproportionate penalties for people who are suspected of soliciting prostitutes from their vehicles. They do not ever have to be arrested, as provided under the state forfeiture law, or convicted. There may be a situation where a person can have a greater punishment imposed through the civil forfeiture proceeding than could possibly be imposed through a criminal conviction. >Two Portland Restaurants were seized by Multnomah County because of alleged gambling activity on their premises. In one case, the owner of the restaurant was never arrested or charged and ended up reaching a civil compromise with Multnomah County where if he paid \$10,000 they would let him have his business back. The other owner was subjected to a criminal prosecution, was acquitted and lost his business. One of his employees was convicted.

370 REP. MANNIX: Their actions would not jeopardize the forfeiture process because they are simply using a process. The question may be whether or not these ordinances are appropriate and whether or not substantive due process is violated by a local ordinance?

FIDANQUE: Or other provisions of the State Constitution?

REP. MANNIX: Are they required to follow the state forfeiture procedure?

FIDANQUE: Right.

REP. MANNIX: The state itself has established a forfeiture procedure only for drug law enforcement. We also stated specifically that local jurisdictions are not prohibited from setting up their own substantive forfeiture provisions. But, if that were their choice, they had to follow the procedure of state law. Was that not the agreement that was made?

FIDANQUE: Essentially, believes there was a second bill, HB 3400, that extended some specific authority to impose forfeitures on the part of local governments.

392 REP. MANNIX: HB 2037 is saying we are not going to let the local jurisdictions do anything. Other than what has been decided. We are not giving any additional authority. Is that not the bottom line here?

FIDANQUE: Thinks so.

REP. MANNIX: The manager or whomever was convicted. Was he convicted beyond a reasonable doubt in a criminal proceeding for running an enterprise for gambling?

FIDANQUE: Does not remember the details of what the indictment was against that individual. Heard testimony in the Oversight Committee from the owner of the establishment and that individual's attorney.

REP. MANNIX: Do you think the owner would have returned the profits from this illegal activity when the manager had reported it later on? The owner gets the good and the bad in terms of what he allows to go on in his business, does he not?

419 FIDANQUE: Does not believe there was any evidence that the owner

had profited from what had taken place.

REP. MANNIX: The forfeiture statute allows for many defenses. One of them is that you did not know what was going on with your property, does it not?

FIDANQUE: Yes. It is very difficult for someone who owned a business and no longer has control of that business, to defend themselves in the context of that type of a civil forfeiture proceeding.

REP. MANNIX: We have addressed this in part with another bill which states that if there is a business involved, it can run in trust while the forfeiture is proceeding, have we not?

FIDANQUE: That would have helped. It would not have solved that person's problem. The basic problem is inherent in the state forfeiture law. It would be most appropriate for the Legislative body to make decisions about how those laws are going to be enforced. That discretion should not be left up to individual cities and counties to enhance penalties at the local level.

TAPE 83, SIDE B

025 REP. EDMUNSON: You heard the former members of this committee two years ago deal with the conception of the forfeiture laws for Oregon, including the local options. Did you also hear the city of Portland's deliberations on the ordinance?

FIDANQUE: Was not present in Portland when that was considered.

REP. EDMUNSON: Does not think it is fair in testimony or in argument to focus on Portland. Would like to know, how did Portland or any other city or county that has adopted an ordinance like the forfeiture ordinance address the details of the balance that has to be made in forfeiture law?

050 FIDANQUE: Not having been present when the Portland City Council and the Multnomah County Commissioners adopted their specific ordinances, that question can not be answered. Hope it is has been made clear that the ACLU believes the statute is unconstitutional under the Oregon Bill of Rights. There will eventually be some cases up on appeal because of the way the statute has been put together.

REP. BAUM: Your remarks imply that there has not been a court decision on that yet or has there been?

FIDANQUE: There have been some trial court decisions on some of the constitutional issues involved but none of the cases have gone to the Court of Appeals.

077 REP. BAUM: They are not even pending?

FIDANQUE: Not aware of any cases pending.

REP. BAUM: Was your Association not interested in testing this?

FIDANQUE: Has been looking for cases. Confident there is going to be a case.

REP. EDMUNSON: Wants local governments of the State of Oregon to know

the Legislature is not blind to their actions. We are watching them as closely as they are watching us.

Tape 83, Side B SB 228 - PUBLIC HEARING Witnesses: Jerry Murray, Oregon Public Utility Commission Bob Garabrant, Oregon Public Utility Commission

118 CHAIMOV: Summarizes SB 228 (EXHIBIT L).

JERRY MURRAY, OREGON PUBLIC UTILITY COMMISSION: Reads written testimony in support of SB 228 (EXHIBIT M).

REP. JOHNSON: Is there anything in the current rules that compares the size of the violator to the size of the fine?

181 MURRAY: There is really nothing in the rules. We would be reasonable in making that judgement.

BOB GARABRANT, OREGON PUBLIC UTILITY COMMISSION: In regard to your question, in the PUC rules, the evaluation of seriousness of the penalty would be recommended by staff. Would judge on past performance, the seriousness of the crime and the magnitude. Has no intention of breaking a small operator with a fine like this.

REP. JOHNSON: You are saying that you do take the size of the violator into consideration?

GARABRANT: We do take the size of the company into consideration.

REP. JOHNSON: Refers to lines 10-12. Would you be opposed to having language inserted into this paragraph that would require that type of analysis to be made?

208 GARABRANT: The Department of Transportation wants us to copy their same wording.

Tape 83, Side B SB 228 - WORK SESSION Witnesses: Bob Garabrant, Oregon Public Utility Commission

REP. JOHNSON: Would feel more comfortable if there was some kind of guidance in the statute relating to the size of the fine to the size of the violator.

REP. BAUM: Is the limit of \$10,000 mandated by federal law?

GARABRANT: That is correct.

REP. BAUM: In some areas we have to depend on the good judgement of the Public Utility Commission to levy fines in an appropriate manner. Northwest Natural Gas installed a pipeline about 10 years ago. We have survived a major construction project without having a lot of violations.

246 GARABRANT: Those type of construction projects are usually through the interstate pipeline companies. They do not come under the PUC safety jurisdiction. They come out of the western regional office in Denver.

REP. BAUM: Who do you have jurisdiction over in the state?

GARABRANT: Northwest Natural Gas Company, CP National and Cascade Natural Gas.

REP. EDMUNSON: Is SB 228 limited to natural gas?

GARABRANT: The way SB 228 is written, believes it is limited to natural gas.

REP. EDMUNSON: You have no small businesses engaged in this type of activity?

273 GARABRANT: No. Not at the present time.

REP. JOHNSON: Refers to line 5. Is there any office that has a contract to manage small businesses?

GARABRANT: Is not aware of any. There are basically 11 operators that are jurisdictional to the Pipeline Safety Act. Of those, only three are utility companies.

REP. JOHNSON: We have a federal mandate that states we have the ability to fine up to \$10,000 a day. Is that correct?

GARABRANT: Yes. It is used in the federal government's evaluation of our program. They assign a certain amount of points to each aspect of the program. They cut the funds back according to the point system that is developed. This is one of the more major points.

REP. JOHNSON: If the points are not met, what happens?

GARABRANT: The funds are cut. The state would have to pick up more of the costs of the program.

302 REP. JOHNSON: What program is that?

GARABRANT: That is the Gas Pipeline Safety Program under the Public Utility Commission.

REP. JOHNSON: If there was a gas pipeline program that we paid for in this state, would the federal government get involved?

GARABRANT: They have about four people in the western regional office. They would have to take on the authority of inspecting the operators in Oregon as well as the other 11 or 12 states that are covered under their jurisdiction.

MOTION: REP. EDMUNSON moves SB 228 to the full committee with a "due pass"

recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

CHAIR BAUM closes the work session and adjourns meeting at 4:33 p.m.

Submitted by: Reviewed by:

Karen Edwards Greg Chaimov Committee Assistant Committee Counsel

EXHIBIT LOG:

A - Amendments to HB 3304 - Staff- 5 pages B- Amendments to
HB 3304 - Staff- 1 page C - Legislative Fiscal Analysis on HB 3304
- Staff - 3 page D - Staff Measure Summary on HB 2014 - Staff - 3
pages E - Testimony on SB 505 - Stephen Kafoury - 7 pages
F - Testimony on SB 505 - Tim Springfield - 5 pages
G - Testimony on SB 505 - Bill Brooks - 14 pages
H - Testimony on HB 3304 - Nancy Wolfe - 1 page
I - Testimony on HB 2014 - Nancy Wolfe - 1 page
J - Testimony on HB 2014 - Robert Bothman - 2 pages
K - Testimony on HB 2037 - Nancy Wolfe - 1 page L - Staff
Measure Summary on SB 228 - Staff - 11 pages M - Testimony on SB
228 - Jerry Murray - 2 pages