

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.

Measures Heard: SB 615 (WRK) SB 101 (WRK) SB 404 (WRK) SB 852 (PAW) HB 2026 (WRK) HB 2031 (WRK) HB 2035 (WRK) HB 2418 (WRK) HB 2027 (WRK) HB 2020 (WRK) HB 2022 (WRK) HB 2023 (WRK) HB 2024 (WRK) HB 2033 (WRK) HB 2034 (PAW) HB 2036 (PAW) HB 2733 (PUB) HB 2028 (PUB) HB 2311 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

May 15, 1991Hearing Room C 1:05 p.m.Tapes 164 - 166

MEMBERS PRESENT:SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR  
SEN. JIM BUNN SEN. JEANNETTE HAMBY SEN. BOB SHOEMAKER SEN. DICK SPRINGER

MEMBER EXCUSED: SEN. PETER BROCKMAN

STAFF PRESENT: WILLIAM TAYLOR, COMMITTEE COUNSEL INGRID SWENSON,  
COMMITTEE COUNSEL MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: DAVE HEYNDERICKX, DEPUTY LEGISLATIVE  
COUNSEL PAT HEARN, OREGON GOVERNMENT ETHICS COMMISSION PETE SHEPHERD,  
DEPARTMENT OF JUSTICE GEORGE STEVENSON, SALEM CITY ATTORNEY'S OFFICE  
PAUL ELSNER, PORTLAND CITY ATTORNEY'S OFFICE DAVID FIDANQUE, AMERICAN  
CIVIL LIBERTIES UNION SHAUN MCCREA, OREGON CRIMINAL DEFENSE LAWYERS  
ASSOCIATION KATHYRN WOOD, ATTORNEY AT LAW FRANK BRAWNER, OREGON BANKERS  
ASSOCIATION GENOA INGRAM, OREGON ASSOCIATION OF REALTORS

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 164, SIDE A

003 CHAIR COHEN: Calls meting to order at 1:15 p.m.

SB 615

007 CHAIR COHEN: Let's take 615.

008 INGRID SWENSON, COMMITTEE COUNSEL: There are dash A6 amendments (Exhibit A). Explains the amendments. There are no other amendments.

017 CHAIR COHEN: Am willing to send the bill on its way.

019 MOTION: Sen. Springer moves the amendments.

020 CHAIR COHEN: Calls for objections; hearing none, so ordered.

022 SEN. HILL: Sen. Springer is trying to move something.

023 SEN. SPRINGER: We're looking at the aye votes; I don't think anybody else . . . .

026 CHAIR COHEN: Sen. Brockman voted no at the Transportation Committee.

030 MOTION: Sen. Springer moves SB 615 as amended to the floor with a "do pass" recommendation.

032 VOTE: Motion fails; 3 ayes votes to 1 no with 3 excused; Sen. Shoemaker voting no and Sens. Brockman, Bunn, and Hamby excused.

SB 101

037 CHAIR COHEN: Invites Mr. Heynderickx to testify. Comments on the bill.

045 DAVE HEYNDERICKX, DEPUTY LEGISLATIVE COUNSEL: Have sought input from all agencies. From the feedback, there have been a few substances changes that are reflected in the dash one amendments (Exhibit B). There are also dash two amendments (Exhibit C) which incorporate the dash one and reflects quite a few Senate bills that have duplicative language that were made in them after referral to this committee. Explains the effect on the duplicative language.

- Discusses the major changes in the dash one amendments.

071 SWENSON: The committee is working from the dash two.

072 CHAIR COHEN: We're working from the hand engrossed bill (Exhibit D) that reflects the dash one amendments.

074 HEYNDERICKX: Asks for copy of the hand engrossed bill.

077 CHAIR COHEN: We can't find our way through the dash ones.

078 HEYNDERICKX: Discusses the changes found in the hand engrossed bill.

095 CHAIR COHEN: Please move on.

096 HEYNDERICKX: Continues discussing the changes.

- There was one section that was deleted dealing with the Bureau of Labor that they were concerned about. Discusses the reason why.

187 CHAIR COHEN: So we're not bothering the Department of Labor?

190 HEYNDERICKX: They wanted it removed.

191 CHAIR COHEN: So we're removing that section and choosing not to bother them?

193 HEYNDERICKX: Yes.

- There are other things we did for the Department of Labor. Explains.

225 CHAIR COHEN: Anything else?

226 HEYNDERICKX: No.

- The dash two reflects the statutes that have passed that needed to be conformed. We'll be tracking those bills.

234 CHAIR COHEN: Calls for questions; thanks witness.

236 SEN. HILL: Do we need to move the dash one?

237 CHAIR COHEN: The dash two.

242 MOTION: Sen. Hill moves the dash two amendments.

244 CHAIR COHEN: Calls for objections; hearing none, so ordered. Sen.s Brockman and Springer excused.

246 MOTION: Sen. Hill moves SB 101 as amended to the floor with a "do pass"

recommendation.

249 VOTE: Motion unanimously passes; Sen.s Brockman and Springer excused.

254 CHAIR COHEN: Comments on input from state agencies and the work spent on the bill.

259 SEN. HILL: Credos to Ingrid Swenson and Legislative Counsel.

SB 404

260 CHAIR COHEN: Let's go to 404.

267 BILL TAYLOR, COMMITTEE COUNSEL: I'll pass out the dash four amendments (Exhibit E).

268 CHAIR COHEN: Comments on the bill.

- Invites Pat Hearn to testify and directs Bill Taylor to explain the amendments.

284 TAYLOR: Explains the amendments.

296 CHAIR COHEN: And we've heard about the concerns of the judges; cites example.

312 SEN. HAMBY: I recall testimony that, statutorily, the justice of the peace are allowed to pocket \$15.

316 CHAIR COHEN: It's on page two of the . . . .

317 SEN. HAMBY: That's right. How about amending the dash four and identify an acceptable fee of \$100 plus expenses incurred?

- Summarizes testimony from last week from Judge Baker.

338 CHAIR COHEN: Let's hear from Mr. Hearn.

340 PAT HEARN, OREGON GOVERNMENT ETHICS COMMISSION: Paraphrases Exhibit F.

352 CHAIR COHEN: Most judges don't want to be bothered at all.

353 HEARN: That's probably true.

354 CHAIR COHEN: And that's the problem. Could we ask them to do a quota?

355 HEARN: A quota of weddings?

357 CHAIR COHEN: Yes.

358 SEN. SPRINGER: (Inaudible)

359 CHAIR COHEN: Right. Go ahead please.

360 HEARN: Continues paraphrasing Exhibit F.

392 SEN. SHOEMAKER: It's been suggested that it is not necessary for the judge to set a fee and that it's appropriate to take honorariums if it's offered. Can the judge suggest that an honorarium is appropriate?

402 HEARN: No; however, if the judge were asked what an acceptable honorarium would be, it would not be inappropriate for the judge to respond.

409 SEN. SHOEMAKER: With the amount?

410 HEARN: With the amount.

411 SEN. SHOEMAKER: And preceding that question, can the judge say, when called, were you intending to pay an honorarium?

413 HEARN: That would be inappropriate.

415 SEN. SHOEMAKER: So the judge cannot raise the issue, but if the person calling asks if an honorarium is acceptable, then the judge can say yes and the person can ask what would be an appropriate honorarium and the judge can then indicate what that is?

421 HEARN: Yes.

423 CHAIR COHEN: Is there any interest in the dash four amendments or in Sen. Hamby's suggestion?

435 SEN. HILL: Is there an emergency clause on this bill?

438 CHAIR COHEN: We probably should.

441 SEN. SPRINGER: Slightly more persuaded by testimony from the judges. Discusses Judge Baker's testimony.

458 MOTION: Sen. Springer moves the dash four amendments.

459 SEN. SPRINGER: Cites reasons for motion.

471 CHAIR COHEN: Calls for objections; hearing none, so ordered. Sen. Brockman excused.

474 MOTION: Sen. Springer moves SB 404 as amended to the floor with a "do pass" recommendation.

477 TAYLOR: An emergency clause in there too?

478 CHAIR COHEN: Yes.

480 SEN. BUNN: Would have opposed the emergency clause, but will not object if it's already in.

482 CHAIR COHEN: If we're going to do it, you really . . . .

483 SEN. SPRINGER: That would be part of my motion.

485 SEN. BUNN: Explains why he's in favor of the bill.

TAPE 165, SIDE A (000 to 013 identical to 000 to 013 on Tape 164, Side A)

053 VOTE: Motion passes unanimously; Sen. Brockman excused.

057 CHAIR COHEN: For the record, the Oregon Judicial Conference has no position on the amendments. And entered into the record is a letter from Bill Linden (Exhibit G).

HB 2026 and SB 852

066 CHAIR COHEN: On to HB 2026 which includes SB 852.

072 SEN. SHOEMAKER: What bill?

073 CHAIR COHEN: 2026.

- We've had testimony on 852 and 2026 at the same time; 852 encompasses the entirety of 2026 with certain exceptions. Discusses changes needed if committee passes 852; at that point, the bill could be adopted as an amendment to 2026.

104 MOTION: Sen. Bunn has moved the Chair's suggested changes in 852 and to move 852 as a substitute for 2026.

108 CHAIR COHEN: Calls for objections; hearing none, so ordered. Sen. Brockman excused.

- Calls for further discussion for what is now 2026.

113 MOTION: Sen. Bunn moves HB 2026 to the floor with a "do pass" recommendation.

116 VOTE: Motion passes unanimously; Sen. Brockman excused.

HB 2031

122 CHAIR COHEN: On to 2031.

124 SWENSON: Explains the bill.

128 CHAIR COHEN: We had no opposition, no objections, no amendments.

130 MOTION: Sen. Hill moves HB 2031 to the floor with a "do pass" recommendation.

133 VOTE: Motion passes unanimously; Sen. Brockman excused.

HB 2035

138 CHAIR COHEN: Next is 2035. There is a dash one amendment (Exhibit H) from Representative Burton.

145 SWENSON: Explains the bill and the amendments.

153 MOTION: Sen. Hamby moves the dash one amendments.

154 CHAIR COHEN: Calls for objections; hearing none, so ordered. Sen. Brockman excused.

155 MOTION: Sen. Hamby moves HB 2035 as amended to the floor with a "do pass" recommendation.

157 VOTE: Motion passes unanimously; Sen. Brockman excused.

HB 2418

164 CHAIR COHEN: We still have some unresolved issues regarding HB 2418; we'll set this one over.

HB 2027

168 CHAIR COHEN: Go to 2027; we do have amendments (Exhibit I) from Senator

Shoemaker.

177 SEN. SHOEMAKER: It was Sen. Bunn who suggested adding "reasonable;" I agree with it.

178 SWENSON: Explains the amendment.

198 SEN. SHOEMAKER: Do we have Rule 68 here?

199 SWENSON: Yes.

200 SEN. SHOEMAKER: It's the whole thing.

201 SWENSON: Yes; the whole rule would apply.

204 SEN. SHOEMAKER: Where in the bill is that?

206 SWENSON: Page three, line 19.

212 SEN. SHOEMAKER: The point was, if there could have been a settlement earlier, and the attorney spurned the settlement, they shouldn't be awarded attorney fees for work done after they settled.

215 SWENSON: That's in Rule 54 (e) of the Oregon Rules of Civil Procedure; that rule would also be applicable.

217 SEN. SHOEMAKER: O.K.

221 CHAIR COHEN: So we have the dash two amendments?

222 SWENSON: The word "reasonable" in line three of the amendment is redundant. Explains why.

228 MOTION: Sen. Shoemaker moves the amendment with the deletion of the word "reasonable."

231 CHAIR COHEN: And with the understanding that, by deleting "reasonable," we are not . . . . (inaudible) . . . . by virtue of the fact that that is redundant and covered by the rules of civil procedure as well as the issue of the unwillingness to settle.

- Calls for objections to the motion; hearing none, so ordered; Sen. Brockman excused.

242 MOTION: Sen. Shoemaker moves HB 2027 to the floor as amended with a "do pass" recommendation.

248 VOTE: Motion unanimously passes; Sen. Brockman excused.

HB 2020

256 CHAIR COHEN: Let's do 2020.

HB 2022

257 CHAIR COHEN: No; let's take up 2022.

263 SWENSON: Explains the bill.

283 CHAIR COHEN: And there are no amendments?

284 SWENSON: That's correct.

287 MOTION: Sen. Shoemaker moves HB 2022 to the floor with a "do pass" recommendation.

290 VOTE: Motion unanimously passes; Sen. Brockman excused.

HB 2023

295 CHAIR COHEN: On to 2023. There are no amendments?

298 SWENSON: That's correct. Explains the bill.

306 MOTION: Sen. Hamby moves HB 2023 to the floor with a "do pass" recommendation.

310 VOTE: Motion passes unanimously; Sen. Brockman excused.

HB 2020

316 CHAIR COHEN: Back to 2020.

324 SWENSON: Recalls no testimony in opposition to the measure.  
Explains concern on page three regarding award of attorney fees to a prevailing party.

344 CHAIR COHEN: So we want to make sure it's just not the . . . . we need to enlist Sen. Shoemaker's assistance.

- Invites Genoa Ingram to testify about the intent behind the bill.

359 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: Discusses intent of attorney fees provision.

365 CHAIR COHEN: Invites Pete Shepherd to testify.

371 PETE SHEPHERD, DEPARTMENT OF JUSTICE: The Department supports the bill. Comments on effect of attorney fees provision.

382 CHAIR COHEN: So this would . . . . you could still interpret this in its narrow sense that you've just shared with us and still go under the bill that we've just passed out; under either one, if you won the case.

388 SHEPHERD: That's my reading of the bill.

389 CHAIR COHEN: So we could adopt this as it is and then the two, combined, would give the relief that Genoa are trying to get to.

394 SHEPHERD: That would be my reading.

396 CHAIR COHEN: Ingrid, are there any further comments?

398 SWENSON: Reminds the committee that 2027 (sic?) deals only with the situation where civil action has been filed; explains effect of that.

406 SHEPHERD: Counsel is correct; explains why.

412 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION OF OREGON: Discusses effect of page three, lines 7 and 8; discusses how this hooks with the amendment the committee just adopted to 2027.

432 SEN. SHOEMAKER: Is there any issue here about the reasonableness of attorney fees in this bill as there was in the other bill?

441 SWENSON: Thinks Rule 68 applies.

443 SEN. SHOEMAKER: It does apply to this? O.K.

446 CHAIR COHEN: We have that for the record.

447 SWENSON: That Act specifically provides that the rules of civil procedure apply to civil forfeiture actions unless otherwise noted.

453 MOTION: Sen. Hill moves HB 2020 to the floor with a "do pass" recommendation.

457 CHAIR COHEN: O.K?

458 SEN. SHOEMAKER: I guess so; I'm not really plugged into this one yet. Explains why.



469 VOTE: Motion passes unanimously; Sen. Brockman excused.

HB 2024

476 CHAIR COHEN: 2024.

481 SWENSON: Explains the bill and summarizes witnesses' testimony.

TAPE 164, SIDE A

031 CHAIR COHEN: We're really focusing on the top of page two. We're talking about the property in physical custody being subject to . . . . Ingrid went through it; I just want to focus also on what her comments will be regarding this area.

038 SWENSON: Continues explaining the bill, the witnesses' testimony, and the issue that arose at the public hearing.

053 SEN. BUNN: All of these are maintenance pending the final decision; do any of the statutes require . . . . seizing and forfeiture, that would lay into this?

- Explains question.

062 CHAIR COHEN: We've had testimony on another bill today that deals with businesses maintaining; this is not what we're talking about. We're talking about physical property in hand; explains.

079 SEN. BUNN: But isn't the key that we're changing it from "may" to "shall?"

081 CHAIR COHEN: But you would argue whether certain steps may not be reasonably appropriate, depending on what it was.

086 SEN. SHOEMAKER: What would be the sanction if an agency was found not to have done that?

088 CHAIR COHEN: We can ask Ingrid or call up Mr. Shepherd.

093 SHEPHERD: They have a statutory duty to maintain the property. If they fail to do so, they'd be liable for whatever damage there may be.

098 SEN. SHOEMAKER: They'd be liable to the owner then? Is sovereign immunity waived?

101 SHEPHERD: You would have a question of sovereign immunity here; on the House side, that issue was not discussed. This is the first time occasion I've had to think about the remedy. Strikes me that this is an absolute duty; would think a claimant would have good argument that this is not a discretionary role of the government.

109 SEN. SHOEMAKER: That's true, but it doesn't necessarily mean that the claimant can claim damages from the government if they don't do it. My question is whether that really exists.

113 SHEPHERD: This bill has not been discussed in that context.

115 SEN. SHOEMAKER: If there is a private right of action, we need to think about the implications of this. Discusses possibility of vendetta

cases.

121 CHAIR COHEN: But that would only be if they were proven that there was no forfeiture; there aren't very many of those.

122 SEN. SHOEMAKER: That's true.

123 CHAIR COHEN: We're not really opening it up to everybody who has a home

forfeiture.

124 SEN. SHOEMAKER: It's only those who get it back. I just don't know where I'm going to come out.

126 FIDANQUE: The question I would have is whether there is a remedy for someone who did prevail. I don't know what the answer to that is.

135 PAUL ELSNER, PORTLAND CITY ATTORNEY'S OFFICE: There would be an absolute duty of care. I think they could bring an action under the Oregon Tort Claims Act; explains how that would work. They might be able to bring a tort action in conjunction with the forfeiture action. If they're a nonprevailing claimant, there are no damages. For the prevailing party, the government's actions would be negligence per se.

150 SEN. SHOEMAKER: You're sure that the Oregon Tort Claims Act gives a right of action for failure to follow a statutory duty and that it's not exactly a tort?

153 ELSNER: Discusses definitions under the Tort Claims Act.

158 SEN. SHOEMAKER: How about attorney fees on such a claim?

159 ELSNER: There are none.

160 SEN. SHOEMAKER: So the claimant would be on his own on that?

161 ELSNER: On that issue.

161 SEN. SHOEMAKER: So there would be that against bringing inappropriate and excessive claims?

162 ELSNER: Would not call that a disincentive, but in fact, you're right.

166 SEN. SHOEMAKER: That satisfies me.

167 CHAIR COHEN: We have no amendments?

168 SWENSON: That's correct.

168 MOTION: Sen. Shoemaker moves HB 2024 to the floor with a "do pass" recommendation.

169 CHAIR COHEN: We've got three members; need to wait for another member on that.

HB 2033

174 CHAIR COHEN: Let's go to 2033; invites witnesses to testify.

183 FIDANQUE: Involved in the initial drafting of this proposal. Explains the bill and its history. It's not intended to override Oregon State Bar Disciplinary Rules; there's a letter from George Riemer (Exhibit J) which discusses the issue; discusses part the letter. We all agree that we don't want district attorneys coercing criminal defendants and forfeiture claimants into settlements; that's the purpose behind lines 22 through 25.

232 SHEPHERD: The Department of Justice supports the bill. Discusses the amendment that was adopted in the House that is on line 19 and 20 on page 2.

245 CHAIR COHEN: Calls for questions.

HB 2024

249 CHAIR COHEN: Back to 2024.

251 MOTION: Sen. Shoemaker moves HB 2024, A-engrossed, to the floor with a "do pass" recommendation.

255 VOTE: Motion unanimously passes; Sen.s Brockman and Hill excused.

HB 2034

260 CHAIR COHEN: Back (sic) to 2034. Invites Pete Shepherd to testify.

266 SHEPHERD: The Department of Justice supports the bill; explains why.

278 GEORGE STEVENSON, SALEM CITY ATTORNEY'S OFFICE: Supports the bill; describes what it does. Submits Exhibit N.

286 CHAIR COHEN: Any other witnesses? We can move the bill today.

289 SEN. SHOEMAKER: The ACLU has no problems with this?

290 CHAIR COHEN: Anyone else have anything to say?

292 MOTION: Sen. Shoemaker moves HB 2034 to the floor with a "do pass" recommendation.

295 VOTE: Motion passes 4 to 1; Sen. Springer voting no and Sen.s Brockman and Hill excused.

HB 2036

300 CHAIR COHEN: Let's move to 2036. Invites witnesses to testify.

305 SHEPHERD: The Department of Justice supports the bill; explains why and explains the bill.

320 SWENSON: Mr. Shepherd is referring to matters under previous ordinances; a Supreme Court case held that they were preempted, is that correct?

329 SHEPHERD: Explains the court decision, its effect, and the intent of the bill.

342 SEN. SPRINGER: Is this going to cut off anybody at the ankles who is now in the appellate courts?

346 SHEPHERD: No. Explains how the matter came to the attention of the oversight committee. Not aware of any pending case that would be effected by the bill.

359 SHAUN MCCREA, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: We agree with the Department of Justice and thinks this will be a good bill to pass. There are now three forfeiture cases on appeal; those all deal with cases after the 1989 date. Discusses the purpose of the bill.

376 FIDANQUE: The only cases that might be out there that this would have any effect on would be those criminal cases where there was an associated civil forfeiture in a drug prosecution of a vehicle or conveyance. Explains why.

390 CHAIR COHEN: So by doing this, you really couldn't reach back on those old cases?

394 FIDANQUE: Right.

396 SHEPHERD: Whatever the old law was would continue to apply.

397 CHAIR COHEN: Right. You couldn't wrap in this more lenient procedure to those old cases.

405 MOTION: Sen. Shoemaker moves HB 2036 A-engrossed to the floor with a "do pass" recommendation.

411 VOTE: Motion unanimously passes; Sen.s Brockman and Hill excused.

HB 2733

417 CHAIR COHEN: Let's move to 2733; lists witnesses.

432 FIDANQUE: Defers to Kathryn Wood

436 KATHRYN WOOD, ATTORNEY AT LAW: Opposes the bill. Opposes the forfeiture law that exists, but if it remains, opposes eliminating the sunset provision at this time. Explains why.

TAPE 165, SIDE B

007 WOOD: Continues explanation of opposition against the bill and of ill effects of the forfeiture statute; cites examples. Submits Exhibits K and L.

137 FIDANQUE: Has mixed feelings about this bill. It's better than the original bill; explains why. Would prefer to see this statute expire, but would rather see the sunset provision extended than eliminated.

- Anticipates that more problems will be caused by the statute as time passes.

157 SEN. SHOEMAKER: I think I hear you testifying that you prefer it to sunset in 1993 than in 1995.

158 FIDANQUE: Would rather it sunset in 1991.

159 SEN. SHOEMAKER: I hear that as well.

160 SEN. SPRINGER: Have you seen any abuse of discretion in terms of certain distinct racial or ethnic or other impermissible class discretion exercised in terms of what is prosecuted? How about fraternity houses being forfeited?

172 WOOD: Have not seen fraternity houses being forfeited nor observed any racial distinctions as to the forfeiture bill. Get frequent complaints from minorities that police are stopping and harassing them, but its not related to the forfeiture proceeding. Gives examples of what has gone on against college students.

192 FIDANQUE: The most troubling situations that I've heard about have related to stop and consent searches of people who fit the drug courier profile. Discusses factors in the drug courier profile. Have heard various antidotal stories; cites examples.

241 MCCREA: Echoes what Wood has said about HB 2733. Cites problems she's seen as to sexual discrimination in application of the forfeiture statutes; cites examples.

272 CHAIR COHEN: Anyone else on 2733?

HB 2028

275 CHAIR COHEN: Let's go to HB 2028.

280 FIDANQUE: This is one of the more important forfeiture bills; explains why. Has disagreements with Pete Shepherd about the bill. Cites examples of what ought to happen under the bill.

- The ACLU would like to see a process in place that would allow a claimant to go to court and say that the forfeiture is unreasonable, explain why, and ask for interim relief.

- Has no problem with the current section 4 of the A-engrossed bill.

361 SEN. SPRINGER: How can a person cash out the equity in their house when its subject to forfeiture?

370 FIDANQUE: They can't.

371 SEN. SHOEMAKER: Are they going to find themselves in an accelerated foreclosure proceeding?

376 FIDANQUE: I can't answer that; it's probably less likely that you'll be dealing with real property in these situations; explains why.

- The number of real property cases has been relatively small.

- Cites examples of potential benefits of the bill.

- Other than those who want to prove an affirmative defense, the only kind of relief possible under the bill is a receivership; that's expensive. There might be other alternatives worth considering.

TAPE 16, SIDE A

006 SHEPHERD: The Department of Justice supports the bill. David

Fidanque and I are in agreement over almost everything in this bill; disagree over whose entitled to custody of the property if the court conducts a hearing and concludes that the government has probable cause to believe that the property will be subjected to forfeiture and that there is no affirmative defense on the facts available to the court. Cites examples. Cites the Department's position.

- Also supports the receiver provisions.

042 SEN. SHOEMAKER: As to the ongoing business situation, would a receivership really resolve that? Is it possible that a receivership could be denied under that situation?

057 SHEPHERD: The relevant provision is section two, subsection 4(b). Explains his reading of that provision.

071 CHAIR COHEN: Who has to foot the bill into . . . .

073 FIDANQUE: Who pays for the receiver?

074 SEN. SHOEMAKER: Who pays for the proceeding and who pays for the receiver?

075 SHEPHERD: The government is going to pay for the proceeding, win or lose. The bill does not say who may request for the appointment of the receiver nor who is going to pay for the receiver. Understand that, under the racketeering statute, costs are paid from whatever income is generated by the property itself; gives examples.

090 SEN. SHOEMAKER: And if the claimant ultimately prevails?

091 SHEPHERD: This bill does not answer that question and I do not know the answer.

092 SEN. SHOEMAKER: And no other bill does?

093 SHEPHERD: None of the other forfeiture bills address this question.

094 SEN. SHOEMAKER: Could end up with a situation where a person ultimately found innocent gets the property back, but has to foot the bill for the receiver. That isn't fair.

100 FIDANQUE: That is the reason why we think the court ought to have discretion to order relief short of a receivership. Cites example.

108 SEN. SHOEMAKER: Wonders if that goes far enough.

110 FIDANQUE: I share that concern.

111 SEN. SHOEMAKER: Wonders whether that ought to be a cost to the state or county.

112 FIDANQUE: I don't know whether ORCP 68 includes receiver costs are included in "costs and disbursements."

116 CHAIR COHEN: We'll do a little work on it.

117 SEN. SHOEMAKER: (Inaudible)

117 SHEPHERD: I'd be surprised if the costs of managing the property pending the forfeiture matter could be recovered as a cost and disbursement.

- Happy to work with Counsel to address that.

- Really do not see this as a very likely problem; explains why.

127 SEN. SHOEMAKER: So you really wouldn't object to provisions to provide for recouping those costs.

128 SHEPHERD: I think we can live with that.

HB 2311

129 CHAIR COHEN: House Bill 2311.

134 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Explains the bill and the reasons behind it. The House amended the bill and we agree with the amendment.

201 MCCREA: The OCDLA supports the bill; explains why. It has not stated remedy, but one might be implied under the Oregon Tort Claims Act.

219 FIDANQUE: The ACLU supports the bill.

221 CHAIR COHEN: Adjourns the meeting at 3:10 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A - Amendments to SB 615 - Senator Roberts - 1 page  
B - Amendments (dash one) to SB 101 - Dave Heynderickx - 8 pages  
C - Amendments (dash two) to SB 101 - Dave Heynderickx - 30 pages  
D - Hand Engrossed Version of SB 101 - Dave Heynderickx - 62  
pages E - Amendments to SB 404 - Committee Staff - 3 pages  
F - Testimony on SB 404 - Pat Hearn - 2 pages G - Tort  
Reporting Requirements Memorandum re: SB 404 - Bill Linden - 48 pages  
H - Amendments to HB 2035 - Representative Burton - 1 page  
I - Amendments to HB 2027 - Senator Shoemaker - 1 page  
J - Letter from Oregon State Bar re: HB 2033 - David Fidanque - 3  
pages K - Letter decision of Judge Gardner re: HB 2733 - Kathryn  
Wood - 4 pages L- Corvallis Gazette-Times newspaper article re:  
HB 2733 - Kathryn Wood - 2 pages N - Letter re: HB 2034 - George  
Stevenson - 2 pages

EXHIBITS DISTRIBUTED TO COMMITTEE BUT NOT MENTIONED DURING HEARING

M - List of Civil Penalty Bill before 1991/66th Legislative  
Assembly - Committee Staff - 29 pages O - Copies of ORS 8.680 and  
ORS 8.720 - Committee Staff - 3 pages P - Letter re: HB 2027 -  
Paul Snider - 2 pages Q - Oregon Law Review article re: HB 2733 -  
Committee Staff - 7 pages R - Willamette Law Review article re: HB  
2733 - Committee Staff - 66 pages