

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**May 2, 2005 Hearing Room 357**

**8:30 A.M. Tapes 70 - 71**

**MEMBERS PRESENT:        Rep. Bob Ackerman, Chair**

**Rep. Linda Flores**

**Rep. Bill Garrard**

**Rep. Kelley Wirth**

**GUEST MEMBERS:        Rep. Jeff Barker**

**Rep. Wayne Krieger**

**Rep. Greg Macpherson**

**STAFF PRESENT:        Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 2912 – Public Hearing**

**HB 3124 – Public Hearing**

**HB 2203 – Public Hearing and Work Session**

**HB 2205 – Public Hearing and Work Session**

**HB 2228 – Public Hearing and Work Session**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

TAPE/#	Speaker	Comments
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**TAPE 70, A**

003	Chair Ackerman	Calls the meeting to order at 8:45 a.m. and opens a public hearing on HB 2912.
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**HB 2912 – PUBLIC HEARING**

008	Sam Sears	Counsel. Explains HB 2912 is the Religious Freedom Restoration Act (RFRA) modeled after the federal act passed in 1993 and subsequently found unconstitutional as it applied to the states. States that the purpose is to bring back the standard used by the Supreme Court prior to the Smith decision in 1990 on how they decide free exercise of religion cases.
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024	Dorothy Karman	Oregon Christian Home Education Association Network. Testifies and submits written testimony in support of HB 2912 ( <b>EXHIBIT A</b> ). Discusses <i>Pierce v. Society of Sisters</i> which went all the way to the Supreme Court and is a foundational court case for home school freedom.
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056	Karman	Continues reading from written testimony. Refers to the Smith decision that reduced the standard of review in religious freedom cases to a reasonableness standard.
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086	Karman	States that HB 2912 would restore the “compelling interest test” in this state.
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117	Karman	Refers to Page 4 of <b>EXHIBIT A</b> . Advises that HB 2912 does not create new standards of protection of individuals.
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160	Karman	Reads Justice O'Connor's statements on interpretation of the Free Exercise Clause.
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177	Karman	Concludes by reading the First Amendment to the U. S. Constitution.
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186	Bruce Fitzwater	Christian Science Churches. Testifies in support of HB 2912.
201	Rep. Macpherson	Asks if there is anything about the current requirements for home schools that would be a basis for challenge under HB 2912.
208	Karman	Responds that under current law, no religious burdens are placed on home school families.
220	Andrea Meyer	American Civil Liberties Union of Oregon (ACLU). Testifies and submits written testimony in opposition to HB 2912 <b>(EXHIBIT B)</b> .
271	Meyer	Continues reading from written testimony.
294	Meyer	States that an amendment to exempt state and local civil rights laws from coverage under HB 2912 would be in order, but the ACLU believes HB 2912 is unnecessary. Points out that the Oregon Constitution has seven amendments on religious freedom.
314	Meyer	Refers to Congressional passage of the Religious Land Use and Institutionalized Persons Act (RLUIPA).
342	Harry Auerbach	City of Portland. Testifies and submits written testimony of Pete Kasting in opposition to HB 2912 <b>(EXHIBIT C)</b> . Indicates that there doesn't appear to be an actual problem that HB 2912 is designed to solve. States that the cases referred to in earlier testimony are very old.

**TAPE 71, A**

022	Auerbach	Discusses unintended consequences. Raises a concern about government involvement in things they should not be involved in.
045	Auerbach	Believes HB 2912 will make it harder for local governments to solve problems.
066	Christy Monson	League of Oregon Cities. Testifies and submits written testimony in opposition to HB 2912 <b>(EXHIBIT D)</b> . Comments that HB 2912 does not just affect local civil rights law. Asserts that HB 2912 changes the way courts review local and state government legislation.
110	Monson	

		Discusses the fiscal impact. Believes HB 2912 will increase liability to governments.
124	Monson	States that the Association of Oregon Counties also has concerns about HB 2912.
127	Sears	Asks what standard the Oregon Supreme Court applies to free exercise cases.
130	Meyer	Responds that there aren't many cases under Article I, Sections 2 and 3.
138	Chair Ackerman	Inquires if there is already an adequate remedy under federal civil rights laws. Requests written testimony in response to the question.
151	Auerbach	Believes the existing federal remedies are adequate.
159	Chair Ackerman	Indicates that any responses to his question will be distributed to the committee members.
161	Meyer	States that the federal RLUIPA covers much, if not all, the areas that have been problems and applies to states.
177	Fitzwater	Cites an example from about a year ago in the City of Portland regarding denial of unemployment benefits to a woman who refused a job that violated her religious conscience.
208	Robert Costagna	Oregon Catholic Conference. States that HB 2912 does not invent a new legal standard but returns to the standard before <i>Employment Division v. Smith</i> . Responds to the City of Portland testimony.
241	Rep. Macpherson	Asks Mr. Fitzwater what type of employment was refused in the case cited.
244	Fitzwater	Responds that the individual was a Christian Scientist and did not want to be affiliated with a medical establishment.
264	Chair Ackerman	Closes the public hearing on HB 2912 and opens a public hearing on HB 3124.

## **HB 3124 – PUBLIC HEARING**

- 267 Sam sears Counsel. Explains that HB 3124 and the -1 amendments (**EXHIBIT E**) extend the sunset on the court surcharge fee for an additional 18 months. Refers to HB 2759 (2003) which authorized a 30 percent increase on certain court fees and was set to sunset July 1, 2005. Continues that HB 3124 exempts municipal, county and justice courts from collecting these fees; increases respondent fees; increases from \$4 to \$7 the amount the clerk may charge for a writ of execution of garnishment; increases the amount that a court may award for certain prevailing party fees; and modifies provision relating to Justice Courts in Deschutes County.
- 291 Anthony Bieda Lane County. Testifies as neutral on HB 3124. Explains the effects of the -2 amendments (**EXHIBIT F**). Explains that the county law library is supported by the court fees generated.
- 322 Jim Markee Oregon Collectors Association. Provides history of the law. Testifies that HB 3124 with the -1 amendments would continue the surcharge until January 1, 2007. Explains that HB 2305 was to be included in HB 3124. States that the committee already passed HB 2305 and asks for that language to be put in HB 3124.
- 381 Bill Linden Circuit Court Judges Association. Testifies they have no position on HB 3124. Refers to the 2003 process for discussions of filing fee surcharges in the circuit courts. States that the -1 amendments (**EXHIBIT E**) reflect those negotiations.

## **TAPE 70, B**

- 007 Linden Refers to Section 97 of HB 3124 which provides authority to Deschutes County to operate a justice court within the city limits of Bend.
- 027 Linden Believes there is no fiscal impact. Requests HB 3124 be scheduled for a work session.
- 032 Markee Refers to negotiations two years ago on who would pay what fees and where they would be distributed, and adjustments were made to the law library fees at that time. Opposes any further change and does not support adoption of the -2 amendments.
- 040 Linden

Believes the law library surcharge would be continued for the next 18 months in the -1 amendments. Offers to verify prior to work session.

049	Rep. Garrard	Asks why the Deschutes County issue is in HB 3124.
052	Linden	Gives history.
061	Rep. Garrard	Indicates that there would likely be disagreements over jurisdiction.
066	Linden	Responds that the Deschutes County Commissioners support the amendment. Explains how the county operates.
082	Rep. Garrard	Indicates support of HB 3124, except for Section 97.
085	Chair Ackerman	Reiterates the need for additional information from Deschutes County.
087	Rep. Flores	Asks for the location of language in the -1 amendments about the municipal and justice courts not being a part of HB 3124.
092	Markee	Replies that language in the 2003 legislation spoke to fees being charged by the clerk of the circuit court and other courts. Points out that “and other courts” has been deleted in HB 3124.
107	Rep. Flores	Asks if he is referring to the -1 amendments.
109	Markee	Replies, yes.
121	Rep. Gary Hansen	House District 44. Explains that HB 3124 was filed as a placeholder. Reads a prepared statement. Advises that these figures are in both co-chairs’ Ways and Means budgets.
152	Chair Ackerman	Closes the public hearing on HB 3124 and opens a public hearing on HB 2203.

### **HB 2203 – PUBLIC HEARING**

156	Sam Sears	Counsel. Describes HB 2203 which allows a state agency to adopt the Attorney General’s model rules on confidentiality of mediation communications without prior approval of the Governor.
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171	Mike Niemeyer	Department of Justice. Testifies and submits written testimony in support of HB 2203 ( <b>EXHIBIT G</b> ).
183	Rep. Flores	Asks if Governor approval was used often prior to the passage of the requirement to obtain approval.
186	Niemeyer	Responds that a statute did not exist until SB 160 (1997) was passed which modified ORS chapter 36 to provide for the availability of confidentiality in mediation for public bodies.
194	Rep. Wirth	Inquires if the agencies that have adopted the mediation confidentiality rules have some degree of standardization.
197	Niemeyer	Answers, yes. Points to ORS 36.224 which describes rules on general mediation and rules specific to workplaces that agencies can adopt.
208	Rep. Wirth	Asks if any agencies have adopted anything out of the norm.
210	Niemeyer	Replies that under the statute, agencies cannot adopt their own rules.
223	Chair Ackerman	Refers to the new language in Line 22 of HB 2203 which allows the Governor to disapprove agency rules. Asks how this differs from a veto.
232	Niemeyer	Replies that this is similar to past practice and explains that the intent is for the agency to notify the Governor simultaneous to providing public notice of rulemaking.
246	Chair Ackerman	Closes the public hearing and opens a work session on HB 2203.

**HB 2203 – WORK SESSION**

250	Chair Ackerman	<p><b>MOTION: Moves HB 2203 to the full committee with a DO PASS recommendation.</b></p> <p><b>VOTE: 4-0-0</b></p> <p><b>AYE:        In a roll call vote, all members present vote Aye.</b></p>
257	Chair Ackerman	<b>The motion CARRIES.</b>

**REP. ACKERMAN will lead discussion in the full committee.**

259            Chair Ackerman            Closes the work session on HB 2203 and opens a public hearing on HB 2205.

**HB 2205 – PUBLIC HEARING**

262            Sam Sears                      Counsel. Explains that HB 2205 allows a state agency to provide the services of an employee as a mediator or facilitator to another agency or to the federal government. Continues that HB 2205 will save the agencies the expense of hiring private contractors to provide these services and expand the pool of mediators available to state agencies.

277            Ronelle Shankle            Department of Justice (DOJ). Testifies that there are minor amendments pending to except the Employee Relations Board's statute.

292            Mike Niemeyer            DOJ. Testifies and submits written testimony in support of HB 2205 **(EXHIBIT H)**. Explains that HB 2205 expands an existing program and is modeled after a federal program.

312            Frances Petersen            Board Chair, Shared Neutrals. Testifies in support of HB 2205. Explains their membership which includes a variety of federal, state, county and city agencies. Describes their services.

360            Chair Ackerman            Closes the public hearing and opens a work session on HB 2205.

**HB 2205 – WORK SESSION**

367            Rep. Flores                      **MOTION: Moves HB 2205 to the full committee with a DO PASS recommendation.**

**VOTE: 4-0-1**

**EXCUSED: 1 - Garrard**

**AYE:            In a roll call vote, all members present vote Aye.**

372            Chair Ackerman            **The motion CARRIES.**

**REP. FLORES will lead discussion in the full committee.**



376            Chair Ackerman            Announces that amendments may be presented to the full committee. Closes the work session on HB 2205 and opens a public hearing on HB 2228.

**TAPE 71, B**

**HB 2228 – PUBLIC HEARING**

003            Sam Sears            Counsel. Explains HB 2228 which specifies the form of bond or letter of credit that is required of a mail agent and authorizes the Attorney General to bring an action against a mail agent to recover damages due to a person. Describes current law.

011            Ross Laybourn            Department of Justice. Testifies in support of HB 2228. Explains that his office enforces the Oregon Charitable Solicitations Act. Describes the process used by out-of-state solicitors. Refers to ORS chapter 646 which sets out the responsibilities for mail agents.

047            Laybourn            Continues that HB 2228 improves existing law. Explains that current statute requires a \$10,000 bond but does not contain certain language on bonds found throughout other statutes.

061            Laybourn            Refers to language that allows the Attorney General to seek restitution on behalf of injured victims for any mail agent who creates a loss to donors or consumers.

078            Chair Ackerman            Closes the public hearing and opens a work session on HB 2228.

**HB 2228 – WORK SESSION**

080            Rep. Wirth            **MOTION: Moves HB 2228 to the full committee with a DO PASS recommendation.**

**VOTE: 4-0-0**

**AYE:            In a roll call vote, all members present vote Aye.**

088            Chair Ackerman            **The motion CARRIES.**

**REP. WIRTH will lead discussion on the floor.**

090            Chair Ackerman            Closes the work session on HB 2228 and adjourns the meeting at 10:12 a.m.

**EXHIBIT SUMMARY**

- A. HB 2912, written testimony, Dorothy Karman, 6 pp
- B. HB 2912, written testimony, Andrea Meyer, 2 pp
- C. HB 2912, written testimony of Pete Kasting, Harry Auerbach, 14 pp
- D. HB 2912, written testimony, Christy Monson, 2 pp
- E. HB 3124, -1 amendments, staff, 98 pp
- F. HB 3124, -2 amendments, staff, 1 p
- G. HB 2203, written testimony, Mike Niemeyer, 1 p
- H. HB 2205, written testimony, Mike Niemeyer, 3 pp