

HOUSE COMMITTEE ON RULES AND PUBLIC AFFAIRS

April 29, 2003 Hearing Room E
1:00 PM Tapes 50 - 51

MEMBERS PRESENT: **Rep. Dan Doyle, Chair**
 Rep. Linda Flores, Vice-Chair
 Rep. Laurie Monnes Anderson, Vice Chair
 Rep. Vic Backlund
 Rep. Phil Barnhart
 Rep. Betsy L. Close
 Rep. Joanne Verger

STAFF PRESENT: **Cara Filsinger, Administrator**
 Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: **HB 3602 – Public Hearing and Work Session**
 SCR 5A – Public Hearing and Work Session
 SCR 4 – Public Hearing and Work Session
 SCR 3A – Public Hearing and Work Session
 HB 3586 - Public Hearing

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
Tape 50, A 004	Chair Doyle	Calls meeting to order at 1:06 p.m., announces order in which agenda items will be considered, and opens a public hearing on HB 3602.
<u>HB 3602 – PUBLIC HEARING</u>		
	Rep. Greg Macpherson	District 38. Testifies in support of HB 3602. Explains this is fine-tuning of the employment relationships. Many workers do not work in a conventional workplace and freelance. Those services are brokered by others. This bill attempts to make it clearer under state law that people who handle foreign translation services brokered through a third party are not the employee of that third party and there are no workers compensation obligations on the employer.
030	William Graeper	Chief Executive Officer, Certified Languages International. Testifies in support of HB 3602 (EXHIBIT A).
061	Rep. Barnhart	Asks what the basis was for the audit decision that these people were covered workers.
	Graeper	Responds that an administrative law judge found the bulk of the evidence presented by SAIF to be accurate and declared that SAIF was accurate in saying they were covered workers.
073	Mollie Peters	PTI Global. States they contract with translators around the world and consider them independent contractors. It has been successful and does not know why the state needs to classify contractors as employees.
093	Rep. Barnhart	Asks if these people are employees for IRS purposes.
	Peters	Responds no, nor are they for unemployment.
	Rep. Barnhart	Asks if they pay their own taxes.

104	Peters Meg Reinhold	Responds affirmatively. Senior Policy Adviser to the Director, Department of Consumer and Business Services (DCBS) and committee administrator for the Management-Labor Advisory Committee (MLAC), which advises the governor and the legislature on workers compensation issues. States that the governor has said that workers compensation legislation that has a primary impact on workers compensation and has not been looked at by MLAC will be subject to the governor's veto. States that the committee has not looked at the bill and does not have a meeting scheduled in the near future, but that doesn't mean they won't be able to look at this bill before it gets to the governor's desk.
134	Chair Doyle Reinhold	Asks if MLAC has a position on additional exceptions. Responds that another bill this session, HB 3622, also allowed for an exception to the workers compensation insurance requirement and (MLAC) did not vote on that bill because they did not have the support for it.
144	Chair Doyle Reinhold	Asks if there is any policy issue that (MLAC) has developed, or if they look at each on separately. Responds (MLAC) looks at each separately. (MLAC) sees workers compensation insurance as a valuable protection for employee and employer.
140	Rep. Close	Comments that the Business, Labor and Consumer Affairs Committee did pass another bill adding another exemption to the statute. Adds that MLAC had not taken a vote on the bill. Notes there are a lot of exemptions and this is not without precedence.
149	Chair Doyle Rep. Macpherson	Asks if Rep. Macpherson would like to have the bill voted out. Responds he would like to have the bill voted out and they will have further discussions about any concerns they may have.
170	Rep. Barnhart Rep. Macpherson	Asks if this exemption would include sign language interpreters. Notes an affirmative nod from Graeper that it would include sign language interpreters.
175	Chair Doyle	Closes the public hearing and opens a work session on HB 3602.
<u>HB 3602 – WORK SESSION</u>		
181	Rep. Flores	MOTION: Moves HB 3602 to the floor with a DO PASS recommendation.
184	Rep. Barnhart	Comments there are interpreters who work full time for hearing impaired people and wonders if the exemption might be over broad.
183	Rep. Monnes Anderson Rep. Verger	Comments this exemption seems to fit in with the others. Comments she has no problem with the bill.
211	Chair Doyle	VOTE: 7-0-1 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. MACPHERSON will lead discussion on the floor.
216	Chair Doyle	Closes the work session on HB 3602 and opens a public hearing on SCR 5.
<u>SCR 5 A– PUBLIC HEARING</u>		
204	Rep. Tom Butler	District 60. Testifies in support of SCR 5-A.

245	Roger Martin Chair Doyle	Testifies in support of SCR 5-A. Closes the public hearing and opens a work session on SCR 5A.
<u>SCR 5-A – WORK SESSION</u>		
311	Rep. Flores	MOTION: Moves SCR 5A be sent to the floor with a BE ADOPTED recommendation.
327	Chair Doyle	VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. BUTLER will lead discussion on the floor.
334	Chair Doyle	Closes the work session on SCR 5-A and opens a public hearing on SCR 4.
<u>SCR 4 – PUBLIC HEARING</u>		
313	Sharon Hill	Portland. Testifies in support of SCR 4.
380	Chair Doyle	Closes the public hearing and opens work session on SCR 4.
<u>SCR 4 – WORK SESSION</u>		
388	Rep. Flores	MOTION: Moves SCR 4 be sent to the floor with a BE ADOPTED recommendation.
390	Chair Doyle	VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. MONNES ANDERSON will lead discussion on the floor.
397	Chair Doyle	Closes the work session on SCR 4 and opens a public hearing on SCR 3 A.
<u>SCR 3 A – PUBLIC HEARING</u>		
373	Jon Christenson	Staff to Sen. Margaret Carter. Testifies in support of SCR 3 A.
426	Chair Doyle	Closes the public hearing and opens a work session on SCR 3 A.
<u>SCR 3A – WORK SESSION</u>		
429	Rep. Flore	MOTION: Moves SCR 3A be sent to the floor with a BE ADOPTED recommendation.
435	Rep. Monnes Anderson	Comments that the women’s soccer team brought a lot of positive media for Oregon and she enjoyed following them.
442	Chair Doyle	VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. MONNES ANDERSON will lead discussion on the floor.
451	Chair Doyle	Closes the work session on SCR 3A.
TAPE 51, A		
008	Chair Doyle	Opens a public hearing on HB 3586.
<u>HB 3586 – PUBLIC HEARING</u>		
	Rep. Dave Hunt	District 40. Testifies in support of HB 3586 (EXHIBIT A). States he is not tied to the wording in the bill. Whatever the words, there needs to be a very high standard that if there is going to be a restriction of the free exercise of religion, any state agency or local government needs to meet a very high standard. The burden should not be on the individual, but should be on the government that is enforcing it.
055	Rep. Hunt	States that the committee will hear that the bill is not necessary,

that there is sufficient protection in the Constitution. States the Constitution does have a very strong standard protecting religious liberty. If one looks at the case from 1990 and other circumstances in Oregon, it is clear that we have a problem. It may be a problem with interpretation; and we need some corrective fix. The committee will also hear that the bill will be too costly. If one looks at the circumstances at the federal level between 1993 and 1997 when the Religious Freedom Restoration Act did apply to states, there was an average of three and one-half cases per state initiated and only one and one-half cases filed.

070 Rep. Hunts Notes states that have passed similar laws (**EXHIBIT B, page 3**) since 1997.

Rep. Hunt States that if there are significant costs now, we should ask if we have realized savings since 1990 after the U. S. Supreme Court case and if so, where are the savings.

080 Rep. Hunt Adds that there will be an argument that this is setting too high a burden on state and local governments to be able to meet. States he does not think this is too high a standard.

080 Rep. Bruce Starr District 15. Testifies in support of HB 3586. Comments that 12 states have passed the Religious Freedom Restoration Act. Out of those states none have seen an explosion in litigation against the state. The compelling interest test we used to have worked well for over 30 years. The consistent application of the compelling interest test in the courts evened the playing field giving people a fair chance against state regulations that violated their religious beliefs.

116 Sen. Frank Shields District 24. Testifies in support of HB 3586. Comments he has 31 years experience as a clergyman. Comments on case involving his church that provided a feeding program that was closed down temporarily by a city hearings officer. States that the hearings officer, when ruling on the community dinner, limited worship attendance at the church. The city council figured out the ruling was unconstitutional but it is an example of some of the things that can happen. This bill makes local and state officials stop and think twice before they shoot from the lip.

141 Rep. Close Comments she wants to see people's religious beliefs protected also. States her concern with the bill is that it seems to be limiting the free exercise of religion and wants to ask about Section (2)(a) which says it can be done if there is a compelling government interest. States she would like to see the term narrowed to what a compelling government interest is.

164 Sen. Starr States this bill would raise the bar that state government would have to meet.

175 Rep. Close Responds that she appreciates that the bill sets a higher standard, and asked if there is a way of defining compelling government interest to make it narrow enough to not include everything.

Rep. Starr Responds there is a definition in case law and if the term needs to be further defined, they will work on it.

190 Rep. Monnes Anderson Asks if they have seen the letter from the office of the governor (**EXHIBIT C**) that indicates they believe the bill would be extremely burdensome for the state.

Rep. Hunt Responds he has not seen the letter.

105	Rep. Monnes Anderson	Reads list of agencies and programs that could be affected in second paragraph on page 2 of the letter from the governor's office (EXHIBIT C) .
	Rep. Hunt	Responds that if he were working for a state agency, he believes it would be simpler to be able to restrict people's behavior in a way that did not necessarily take into account their religious exercise. States there is an exception in the bill that says unless the public body establishes by clear and convincing evidence that application of the burden to the person is essential to fulfill a government interest. Explains that the bill would require that they meet the higher standards. Gives example of a guard in a prison.
233	Rep. Starr	Responds that the reality is that in the states that have enacted this they have not seen an explosion in cases.
263	Rep. Hunt Chair Doyle	States this bill is restoring the standard prior to 1990. Enters into the record the letter from MardiLyn Saathoff, General Counsel to Governor Kulongoski (EXHIBIT C) .
269	David Fidanque	American Civil Liberties Union of Oregon (ACLU). Testifies in opposition to HB 3586 because they believe it is unnecessary. Reviews the legal case of 1990, <i>Employment Division v. Smith</i> .
363	Fidanque	States that the decision of the U. S. Supreme Court was criticized by everyone outside the Supreme Court. Since then Congress has looked at every aspect of the impact of that decision and the impact on religions and government at all levels. Congress passed the Religious Freedom Restoration Act and the U. S. Supreme Court held it unconstitutional. Congress held more hearings and decided in 2000 that a general restoration of the standard that had been in place prior to <i>Smith</i> was unwise. It limited the scope of the new federal law to land use proceedings, zoning decisions, and other types of land use decisions, and protecting the rights of people who are institutionalized. It decided not to impose the standard on criminal laws and many other kinds of government and business regulations.
	Fidanque	If this bill is approved you will have two sets of rules in every law passed—one for the general public and a free pass for anyone else who contends that it violates their religious views. It would be providing a huge exception to every law on the books and in the future.
423	Fidanque	States that the Oregon Constitution has very strong protections for the free exercise of religion. Quotes Article I, Section 2 and Section 3. The language is very broad and has not come up in a lot of different cases but they believe it would and has provided a great deal of protection for religious institutions and individuals, but has not been interpreted to be as broad as this bill which they believe will cause mischief and keep lawyers busy for years to come.
404	Steven K. Green	Professor, Willamette University. States he opposes the bill but believes there are some things that can be done to fix it (EXHIBIT D) .
TAPE 50, B 028	Rep. Close	Comments on the land use situation in Eugene where a cross had to be removed. States she believes we do have a problem in

		Oregon.
	Green	States that the cross situation was a public display on public property. Adds that he thinks the law may serve a purpose if there was substantial evidence showing the state of the law is not satisfying the needs and not protecting the interests.
049	Rep. Close	States that 25 percent of the states are passing this law.
055	Rep. Barnhart	Asks if the provisions of the Oregon Constitution that Fidanque referred to don't apply to this discussion as well as what the federal government may have done.
	Green	States that the Oregon Constitution is much broader, more specific than the First Amendment to the U. S. Constitution. States that Oregon courts have traditionally followed the lead of interpreting the constitutional provisions as the U. S. Supreme Court has. States that <i>Employment Division</i> case in 1990 was litigated under the federal standards, not the state standards. The Oregon Supreme Court was ruling on a federal constitutional interpretation. States that he would invite ACLU, which has some of these cases, and other organizations to bring the cases in state court and establish the state law and state constitutional law.
073	Rep. Barnhart	Asks if there are cases in Oregon where the <i>Smith</i> standard has been adopted.
	Green	States Oregon has not seen that many cases. When the <i>Employment Division v. Smith</i> , was remanded, the state courts went along with the U. S. Supreme Court's standard, a federal standard. The Oregon Supreme Court applied a lesser standard than the higher compelling interest standard.
088	Rep. Barnhart	Asks if they plan to talk about the meaning of the term compelling government interest.
	Green	Comments that he believes they are applying the wrong standard. It applies to everything. We are talking about laws of general applicability. It applies strict scrutiny. Not only is it a high standard, it is inequitable.
	Rep. Monnes Anderson	Comments on religious sect in Clackamas County and the judge determining the children's deaths could have been prevented.
141	Green	Asks how this law would apply to that. Responds that this law would apply a very high standard and would also apply to criminal laws. One would need to show there is a compelling reason for the enforcement of the law against these people because they have a religious belief that motivates their actions. Believes the state could most times find a compelling interest in the protection of children.
	Chair Doyle	Asks Green to wrap up his testimony due to time constraints and the number of witnesses signed up to testify.
159	Green	States that irrespective of what he is asking the committee to do to come up with a different standard, one needs to understand that this language is inaccurate as reflecting what the Supreme Court held between 1963 and 1990.
188	Jeff Van Valkenburg	Assistant Attorney General, Oregon Department of Justice (DOJ). Testifies in opposition to HB 3586. Submits letter from Attorney General Hardy Myers, and the agency's fiscal statement (EXHIBIT E) .
	Van Valkenburg	Explains the significant impacts are because of the language in the bill.

223	Van Valkenburg Van Valkenburg Van Valkenburg	Lists provisions of the bill that DOJ objects to. Comments on the burden of proof by the state. Comments on Religious Land Use and Institutionalization Persons Act of 2000 (RLUIPE) challenges.
316	Chair Doyle	Asks if the current challenges are in federal court.
319	Van Valkenburg	Responds that RLUIPA expressly covers state and local inmates, other institutionalized persons including mental hospital patients and confined juveniles. The Department of Corrections in Oregon and every other state are required to meet, under the federal law, the compelling state interest least restrictive means test. Under the federal law, they can obtain damages for violation of their rights, although there is a restriction if there is no physical injury to the inmate under the Prison Litigation Reform Act.
337	Van Valkenburg	Comments on the fiscal impact statement (EXHIBIT E, page 17). States this has the principle effect of government permissibly advancing religious beliefs.
398	Rep. Backlund	Asks if there have been savings to the DOC since the 1999 decision.
401	Van Valkenburg	Explains sequence of cases and states that the hot issues in prisons is should the inmate be allowed to conduct, lead, and facilitate their own religious service or group worship in a closed prison environment. States they successfully defended that case under a similar compelling state interest least restrictive means test. States he does not know if there have been savings.
421	Rep. Backlund	States he would question the fiscal statement because very few cases have been recorded.
	Van Valkenburg	Responds that this bill affects any governmental action that is asserted to burden religion in any way. Comments on recent land use cases.
493	Rep. Barnhart Van Valkenburg	Comments that 12 other states have little experience. States he has never seen a bill with this kind of loading of burden on state and local governments because this goes beyond what federal law ever was.
TAPE 51, B		
035	Rep. Barnhart	Asks if the bill were amended along the lines suggested by Green, changing the standards requiring a substantial burden requiring a significant or important government interest, rather than a compelling government interest, whether their fiscal would change.
045	Van Valkenburg	States it would change their fiscal, to the extent it would be a lowering of the standard and the expectation of less litigation in all areas of government.
059	Barnhart	Asks if the law would be significantly different and whether it would meet the balance test if it were changed as suggested by Green.
065	Van Valkenburg	Responds that he cannot speak with authority about the level of protection the state Constitution is providing because his experience is on the federal side.
080	Chair Doyle	Comments on witnesses yet to testify. Enters into the record statement from Seth Karpinski, City of Eugene, in opposition to HB 3586 (EXHIBIT F).
095	Greg Hamilton	Seven day Adventist Church. Testifies in support of HB 3586

152 Greg Sneller **(EXHIBIT G).** Pastor, Calvary Baptist Church, Salem. Testifies in support of HB 3586. States he is concerned about freedom and the right of the houses of worship and places to determine the ministries directions in which they feel called and not have the majority of a city council judge what places of worship do.

195 Bruce Fitzwater Christian Science Church. Testifies in support of HB 3586 **(EXHIBIT H).**

240 Chair Doyle Enters into the record testimony in opposition to HB 3586 from Jeffrey Rogers, City of Portland **(EXHIBIT I)** and Christy Monson, League of Oregon Cities **(EXHIBIT J).**

220 Paul Cosgrove Attorney for the Oregon-Idaho Conference of the United Methodist Church. Comments that *Smith* was one of the worst decisions by the Oregon Supreme Court on religious freedom issues and was unfortunately upheld by the U. S. Supreme Court. States that Oregon has a stricter standard for free speech than the U. S. Constitution. The state standard for religious freedom has dropped down to the federal level. There has been an erosion of religious freedoms since 1990. This bill with the appropriate amendments that will be proposed by Bob Castagna returns us to the same place we were from 1963 to 1990. Supports the bill with amendments to address the fiscal impact issues and to conform to the language used in the federal bill.

300 Bob Castagna Oregon Catholic Conference. Comments that he has reviewed the letter from the general counsel office of the governor **(EXHIBIT C)**, and reviewed the language of the bill with the office of general counsel of the United States Conference of Catholic Bishops in Washington, D.C. They are suggesting amending the bill to insert a definition of “demonstrates” to reduce the government’s burden of evidence. In line 12, insert “substantially” before “burden” to reduce the burden on government. In lines 13 and 14, delete “establishes by clear and convincing evidence” and insert “demonstrates.” In line 15, instead of “essential to fulfilling” insert “In furtherance of a” and in line 20 after “body” insert “substantially”. States that the bill with those proposed amendments would attempt to be conformed to the language of the federal statute. The attempt is to return the protection of religion to the standard that existed prior to the Supreme Court decision in *Smith* in 1990. Comments on efforts of government to restrict religious activities in Oregon.

390 Rep. Close Comments on autopsy that was opposed by the mother and asked what the compelling interest was.

398 Cosgrove Responds that compelling interest is the same kind of test used in free speech cases. Gives example and states it is the same test used for race discrimination.

421 Chair Doyle Asks Castagna to respond to the previous testimony that the bill is not necessary.

Castagna Comments that advice from the General Counsel of the United States Conference of Catholic Bishops is to pursue this type of legislation at the state level.

434 Cosgrove States that if we are trying to get back to pre-1990, the Oregon Constitution is not enough.

Rep. Monnes Asks what impact this bill would have in view of terrorism.
Anderson

	Cosgrove	Responds that the primary responsibility for military affairs rests with the federal government. The federal government is currently subject to these standards and they have had no problem carrying out the safety responsibilities.
472	Chair Doyle	Advises Rep. Hunt that the amendments proposed by Castagna may be worthy of consideration and requests that he work with the other interests. .
484	Chair Doyle	Closes the public hearing on HB 3586 and informs members that Rep. Flores has requested that she be allowed to vote on passage of HB 2378 that was passed last Thursday.
<u>HB 2378 – WORK SESSION</u>		
494	Rep. Doyle	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. FLORES to BE RECORDED as voting AYE on motion to move HB 2378 to the floor with a DO PASS recommendation.
495		VOTE: 7-0-0
	Chair Doyle	AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. SHETTERLY will lead discussion on the floor.
499	Chair Doyle	Adjourns meeting at 3:02 p.m.

EXHIBIT SUMMARY

- A – HB 3602, prepared statement, Bill Graeper, 1 p**
- B – HB 3586, prepared statement, Rep. Hunt, 4 pp**
- C – HB 3586, letter, Governor’s office, 2 pp**
- D – HB 3586, prepared statement, Steven Green, 3 pp**
- E – HB 3586, letter, prepared statement, Jeff Van Valkenburg, 17 pp**
- F – HB 3586, prepared statement, Seth Karpinski, 2 pp**
- G – HB 3586, prepared statement, Greg Hamilton, 2 pp**
- H – HB 3586, prepared statement, Bruce Fitzwater, 3 pp**
- I – HB 3586, prepared statement, Jeffrey Rogers, 4 pp**
- J – HB 3586, prepared statement, Christy Monson, 1 p**