

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

Hearing Room
Tapes - 5

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Mike Lehman, Vice-Chair
Rep. Ron Adams
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Bill Markham
Rep. Lonnie Roberts
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck
Rep. Sharon Wylie

STAFF PRESENT:

Greg Moore, Committee Counsel
Anne Tweedt, Committee Counsel
Annetta Mullins, Committee Assistant

MEASURES HEARD: HB 2118 Public Hearing

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 , A

004 CHAIR TIERNAN: Calls meeting to order at 2:00 p.m., announces that subcommittee memberships have changed (EXHIBIT A) , and reviews agendas for the next week on government efficiency.

061 OPENS PUBLIC HEARING ON HB 2118

066 GREG MOORE, Administrator, reviews the preliminary staff measure summary (EXHIBIT B).

079 REP. MARKHAM: Testifies in support of HB 2118. Some think there is more regulation than we need in Oregon. The question is whether we should

be more stringent on regulations than the federal government.

101 REP. WILEY: Administrative rules are often written to explain how to implement an initiative or an Oregon law. Would this prohibit implementation rules of our legislation or initiatives?

123 REP. MARKHAM: Federal laws probably say you must follow through. I would like to see a law in Oregon that says we can run the state. DEQ has written more stringent rules than the feds require.

130 REP. HAYDEN: Would you stipulate that "stringent" would be defined as any regulation that would cost the citizen more dollars or time to implement than a federal rule.

141 REP. MARKHAM: We have to be very careful of the word "stringent."

143 REP. HAYDEN: I am trying to define stringent to say if it caused the citizen more money or involved more time to fill out the forms than the federal law, it would be stringent.

147 REP. MARKHAM: I would assume that.

146 DAVE MOSS, Associated Oregon Industries, submits and summarizes a prepared statement in support of HB 2118 (EXHIBIT C).

190 MR. MOSS: Continues his prepared statement.

245 JIM WHITTY, Associated Oregon Industries: Submits and reads a prepared statement in support of HB 2118 (EXHIBIT D).

275 REP. ROBERTS: Asks clarifying question about whether an agency has threatened anyone.

MR. WHITTY: I don't believe there was a threat; there was a discussion about where the appropriate place is to do this.

290 MR. WHITTY: Continues with his prepared statement.

340 MR. WHITTY: Continues with his prepared statement.

377 CHAIR TIERNAN: Which agencies do you think would be most impacted if this bill passes?

380 MR. WHITTY: I believe the Department of Environmental Quality would be impacted the greatest.

385 MR. MOSS: I believe DEQ may have the most at stake on this bill, but any area of labor under regulations of BOLI. I would suspect workplace safety issues would rise quickly.

398 CHAIR TIERNAN: Would there be anything on the timber side?

400 MR. WHITTY: We would want to bring our timber people before you; it may have local and unique conditions.

439 REP. ROBERTS: Are you suggesting we delete Section 3?

443 MR. WHITTY: Yes.

TAPE 4, A

008 REP. LEHMAN: Looking at the retroactive provisions of this bill, do you have an idea how many regulations are out there that will be impacted by this?

012 REP. WHITTY: Lots.

013 REP. LEHMAN: Do you have a projection of the costs for state agencies to go back and review and rewrite the rules?

014 MR. WHITTY: No. The OARs for DEQ alone are several volumes.

017 CHAIR TIERNAN: A list was produced a couple of years ago and we will get copies.

019 MR. MOSS: I have a copy and will make it available.

021 REP. JOHNSTON: What would a rule-making process look like if this were adopted?

023 MR. WHITTY: HB 2175 of 1971, the Clean Air Act, had a provision such as this in it. There have been no court challenges; there have been some opinions that the language was violated. When you add up the benefit of challenging compared to the effort you have to spend, it is not worth it.

030 REP. JOHNSTON: Would it be better to design a resolution process into this that would allow stringency and uniqueness to be determined in the rule-making process.

041 MR. WHITTY: We get the attorney general involved in advisory committee meetings to determine whether the language exceeds the statute.

061 MR. MOSS: There are instances where compelling argument does not exist.

There are times when there is a good reason for Oregon being different from the federal standards. There are areas in DEQ and in environmental areas where we want something different than what the feds want and it could be more stringent. There may be some things in DEQ that may not have

the full rationale behind them. The committee could look at how to force out compelling reason for something being more stringent. You may have to add a couple of bells and whistles to make it work.

084 MR. WHITTY: The best example is the air quality attainment.

099 REP. WILEY: Would you interpret this broadly enough to be a backwards way of saying the state cannot enact laws more stringent than federal laws.

I agree policy decisions should not be created out of the bureaucracy. My reading of this tells me it sounds like if there is an initiative or legislative decision that sets a higher standard for Oregon, it would just sit there because there would be no rules to implement it.

120 MR. ROSS: The concern generally is when the rules go beyond the law and

in the process they go beyond the federal standards as well.

134 REP. STROBECK: Where do the costs fall when a business has to maintain two sets of book?

149 MR. ROSS: We will be surveying and will report back.

152 JACK ROBERTS, Commissioner, Bureau of Labor and Industries: Testifies in support of the intent of HB 2118. Distinctions should be made between state and federal law that are based on rule and those based on law. We need clear direction from the elected body that says what rules should be promulgated and what the expectations are.

> doesn't have a problem when the legislature enacts law that equals federal law.

> would prefer to look at the language as consistency. Should be able to take into account the things that are unique to Oregon and therefore rulemaking would reflect that.

> when the legislature enacts a law equivalent to a federal law, but extends the coverage to other areas, it is understood without further direction that we are to promulgate rules that are consistent with the federal laws unless there is a body of legislation to do otherwise.

> while the proposed bill contains language on stringency, would prefer to look at it as consistency. and where the legislature enacts legislation that is essentially equivalent to that at the federal level, agency heads recognize that as an intent to extend the whole body of law to that area unless there is direction otherwise.

> should have the ability to take into account those factors that are peculiar to Oregon as well as factors that are peculiar to the extension of

the law that Oregon may decide to have.

> endorses the concept that where we have the same statutory framework and where the legislature has, without substantial changes, enacted the federal

law to apply to state circumstances that the agencies have clear direction as to what that means.

REP. ADAMS arrives at 2:42 p.m.

223 CHAIR TIERNAN: If the feds moved the minimum wage to \$6 per hour and Oregon decided to go to \$6.50, that would not be affected by this piece of legislation. If the Oregon rules provided more than \$6.50 an hour and time and one-half, would that be a violation of this law if it were passed.

234 MR. ROBERTS: I don't think that would be a violation if the overtime statutes apply to that. Where this might kick in is if we have a federal law dealing with overtime and a state law dealing with overtime. The statutes themselves are sometimes different. When the statutes are the same, if we were to enact a rule that says we realize the federal regulations say this doesn't qualify for time and one-half, but we write regulations that say it does, that would be impacted. We have situations in prevailing wage and other areas where we have adopted rules that are different.

288 REP. JOHNSTON: Under Section 2 of the bill, if the legislature were to pass a law with the intention that Oregon minimum wage be set 25 percent higher than federal, could the agency pass a rule saying what the number would be; it would clearly exceed federal standards.

297 REP. ROBERTS: I hope we have the ability to write rules consistent with the legislation. I think that needs to be clarified because if this body decides a higher standard, the rules need to be consistent with the Oregon legislation.

364 REP. CYNTHIA WOOTEN: Testifies in opposition to HB 2118 (EXHIBIT F).

REP. WOOTEN: Continues testifying in opposition to HB 2118.

TAPE 3, B

078 REP. WOOTEN: Field hearings might be the appropriate way to proceed on this because cities and counties have an important role in determining how and what statutes will be implemented at the local level. One of the legal questions that has not been addressed is the capacity of home rule charter of cities and counties. That might be relative to the state not implementing statutes which the legislature passes.

090 REP. ROBERTS: If Section 3 were deleted, would it be more palatable to you?

REP. WOOTEN: One of the most glaring omissions from the bill is not only its thoughtlessness, but rather a process by which we can add back regulatory requirements assuming Section 2 should pass. Nobody has definitions for standards. There is no way in which the public can participate and we need to begin with the small democratic process in terms of compliance before we move forward to eliminate that. It would be a start but would not come close to solving the administrative problems.

107 CHAIR TIERNAN: The Oregon Health Plan and gun control laws do not apply. This bill says if we implement a law, the agency cannot go beyond a federal requirement in interpreting that law unless they have expressed direction from this legislature.

121 MR. WHITTY: Or unless the conditions in Oregon are unique.

132 REP. STARR: It is clarified in Section 3 when it says an agency may not develop a law or direction that is not allowed them by state statute that exceeds the federal standards. .

140 JIM WHITTY: I don't believe the bill will affect a state agency's ability to implement a state law.

155 RICHARD ANGSTROM, Oregon Concrete Aggregate and Producers Association:

We are here in support of the intent of the bill but agree some work needs to be done. This bill is asking the Oregon legislature to take back control of state government and make the decisions and tell the agencies what to do.

- > general legislation without guidelines are the ones with potential and commonality of exceeding federal standards
- > have had problems with the Little Davis Bacon Act
- > would also need to address the special uniqueness.

> another class of rules are enacted in accordance with general statutes where the legislature has given clear state direction to the state agencies
203 > must recognize special uniqueness

231 LYDIA TAYLOR, Department of Environmental Quality: Submits and reads a prepared statement (EXHIBIT E).

270 CHAIR TIERNAN: Do you have control over the federal nerve gas in Eastern Oregon?

281 MS. TAYLOR: DEQ will be approving disposal of the nerve gas at the Umatilla Army Depot and has a process that provides for citizen involvement and will have oversight of an air permit should they decide to burn that nerve gas.

285 CHAIR TIERNAN: Is that in conjunction with the EPA?

285 MS. TAYLOR: It is in conjunction with the Army that has jurisdiction over disposal of nerve gas.

343 REP. JOHNSON: The witness was speaking about a situation where the federal government had not spoken. I was working under the premise that this bill would not apply to that situation.

307 CHAIR TIERNAN: If the feds have not spoken and it is unique, under the bill, the way I interpret it, we would be free to regulate in that area.

346 MS. TAYLOR: Continues reading her statement on page 2.

TAPE 4, B

021 MS. TAYLOR: Continues her testimony.

025 REP. HAYDEN: Would you say discharge rules are more stringent?

034 MS. TAYLOR: Believes the rule is more stringent

062 REP. ROSS: What kind of process would you use if this legislation were to pass?

067 MS. TAYLOR: We use currently a process to say whether there is a situation in Oregon that justifies being more stringent than the federal government; this is sort of like the one we use now. We answer 11 questions. If you answer those 11 questions, you are pretty hard pressed to have avoided answering that correctly.

079 REP. LEHMAN: Rep. Johnson asked if there is no federal regulation in place, does the state still have to meet the unique quality to enact any regulation?

082 CHAIR TIERNAN: If there is no federal regulation in place, but there is a state law on the book and the administrative agency is going to implement regulations, they would have to stay within the confines of the state law. Because there is no federal regulation, it could not be in violation of the federal regulation.

Other regulated areas discussed:

- 115 > tax credits
- 146 > groundwater standards
- 150 > drinking water standards
- 166 > municipal dump sites

222 GEORGE SEVERSON, State fire Marshall: Concern with bill as written is that any rule created by a federal agency could supersede any rule adopted by state agencies.

272 IRV FLETCHER, OREGON AFL-CIO: Some of my concerns have been cleared up.

Oregon OSHA, although maybe not more stringent, is enforced much better than the federal OSHA. We are concerned about the Wage and Hour Law and Child Labor Law and those enforcements.

327 DON SCHELLENBERG, OREGON FARM BUREAU: Speaks in support of HB 2118 and proposes to amend HB 2118 in line 8, after rule, insert "or administer or enforce such in a more stringent manner". I think the agencies that will be impacted will be those agencies which contract with the federal government to administer their laws.

395 Rep. Ross asked a question of DEQ about the procedure for defining unique and they said they ask a series of questions. The law says the only

thing they have to look at is whether or not it achieves the intent of federal rule or law, not whether or not the people of Oregon are different or like it different. If it doesn't, then they have the authority to go beyond. If it does achieve the intent, they don't have any authority no matter what the people of Oregon think.

393 REP. LEHMAN: I assume some of the complaints you have about regulatory rules have been there for a number of years.

426 MR. SCHELLENBERG: The rules have been on the books. They are more stringent than the federal rules.

TAPE 5, A

020 TERRY WITT, Oregonians for Food and Shelter: Testifies in support of HB 2118. While DEQ is commended for their 11 questions on stringency, this

bill impacts more than DEQ. Have seen over the years a significant trend in state regulations to move toward local regulations. In Section 2, it should be established that the rules be based on sound verifiable data.

072 REP. JOHNSTON: Could you envision a situation where it might be appropriate and desirable by industry to enact a standard more stringent than the federal?

081 MR. WITT: I think there are some areas that have been identified in the state where remediation is necessary. I think there could be areas in law that would require standards in excess of federal law, but it needs to be done on a case-by-case basis and with full knowledge of what the federal laws are for those local people that would be governed.

101 CHAIR TIERNAN: Declares meeting adjourned at 4::00 p.m.

Submitted by, Reviewed by,

Annetta Mullins Greg Moore
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

- A - Organization, Subcommittee member list revised, staff, 1 p
- B - HB 2118, Preliminary Staff Measure Summary, staff, 1 p
- C - HB 2118, prepared statement, Dave Moss, 2 pp
- D - HB 2118, prepared statement, Jim Whitty, 5 pp
- E - HB 2118, prepared statement, Lydia Taylor, 5 pp
- F - HB 2118, prepared statement, Rep. Cynthia Wooten, 3 pp