

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

April 1, 1991 Hearing Room E 8:30 a.m. Tapes 84 - 86 MEMBERS
PRESENT: Rep. Bill Markham, Chair Rep. Larry Sowa, Vice-Chair Rep.
Marie Bell Rep. Mary Alice Ford Rep. Tom Novick Rep. Carolyn Oakley Rep.
Lonnie Roberts MEMBER EXCUSED: None VISITING MEMBER: Sen. Wayne
Fawbush, District 28 Rep. Jim Edmundson, District 39 Rep. Greg Walden,
District 56 STAFF PRESENT: Randall Jones, Committee Administrator
Carolyn Cobb, Committee Assistant MEASURES CONSIDERED: HB 3238 -
Transfers Authority of Bureau of Labor and Industries to Regulate
Farm-worker Camps to Department of Insurance and Finance, PH, HB 2974 -
Repeals Certain Exemptions to Public Records Law, PH,

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 84, SIDE A

003 CHAIR MARKHAM: Calls the meeting to order at 8:36 a.m.

HB 3238 - TRANSFERS AUTHORITY OF BUREAU OF LABOR AND INDUSTRIES TO
REGULATE FARM-WORKER CAMPS TO DEPARTMENT OF INSURANCE AND FINANCE PUBLIC
HEARING Witnesses: Wayne Fawbush, State Senator, District 28 Greg
Walden, State Representative, District 56 Kevin Asai, Fruit
Grower-Shipper, Hood River Marilyn Coffel, Director of Intergovernmental
Relations, Bureau of Labor and House Committee on State and Federal
Affairs April 1, 1991 - Page 2

Industries Camille Hukari, Fruit Grower-Shipper, Hood River Mike
McCarthy, Grower, Hood River John McCulley, Tree Fruit Growers Thomas
Nelson, Fruit Grower-Shipper, Hood River John Pompei, Administrator,
Oregon Occupational Safety and Health Division (OR-OSHA) Paul Tiffany,
Administrator, Wage and Hour Division

012 GREG WALDEN, STATE REPRESENTATIVE, DISTRICT 56: Submits and
summarizes written testimony (EXHIBIT A) in support of the bill.

043 REP. ROBERTS: OR-OSHA is not involved in this issue at this time?

045 REP. WALDEN: No, but they do have jurisdiction for inspection of
farm worker housing at this time.

052 REP. ROBERTS: It is my understanding OR-OSHA is involved in work
and safety issues, and the Bureau of Labor and Industry is involved more
with workers' conditions.

058 REP. WALDEN: Prior to the 1989 session OR-OSHA had the
jurisdiction, and still has, for migrant housing. 063 REP. FORD: I
have concerns about lowering the standards that are in existence with
the 1989 legislation. The provisions contained on page 4, lines 4
through 7, I think opens it up and takes away the safety provisions that
we had. 075 REP. WALDEN: Gives example of Hood River grower who
provides housing, and was fined by OR-OSHA for a violation he had no
knowledge of since it was done by the farm worker tenant. 088 REP.
FORD: Can we somehow make the language so instead of saying no knowledge
of the owner, it exempts actions of the tenants? 093 JOHN MCCULLEY,

TREE FRUIT GROWERS: They cannot do this under their existing statutes. Because OR-OSHA regulates the work sites, the employer is always held accountable. That language would probably have to be taken out if this transfer to OR-OSHA is approved. 106 REP. NOVICK: Were people paying more than they did two years ago? 108 REP. WALDEN: OR-OSHA did not access the growers a fee to conduct the inspections, but the Bureau of Labor and Industries under 1989 SB 732 was allowed to access a fee. 113 MCCULLEY: Page 5, line 5 of the bill discusses the fee structure that is currently in place. -Describes fees the growers currently pay. 120 REP. WALDEN: One of the concerns that was expressed was that whereas OR-OSHA would treat a farm with several housing units as one operation, the Bureau of Labor and Industries

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accesses fees for each unit. The two agencies look at it differently.

127 CHAIR MARKHAM: What is a camp endorsement under Section 10, subsection 1?

130 MCCULLEY: That is in addition to a farm labor contractor's license.

134 REP. WALDEN: We in no way want to lessen the regulation of farm labor contractors.

139 WAYNE FAWBUSH, STATE SENATOR, DISTRICT 28: Back in 1979 when OR-OSHA had the sole responsibility, they had a habit of inspecting a camp unannounced and writing up violations without ever talking to the camp operator, and then sending back fines. What we did then was to require they contact the operator and they could not fine for first-time frivolous violations. The whole intent behind having OR-OSHA do these inspections is that it is a work site inspection. OR-OSHA over the years has developed a fair degree of expertise in dealing with farm labor camps, then last session the bill was passed that inserted the Bureau of Labor and Industries into the operation. -Reads letter Bureau of Labor and Industries sent to several of the orchardists. -I have yet to see any positive results from this procedure over what we had when OR-OSHA had the primary responsibility for these camps. It is important that the Bureau of Labor and Industries continue to do the labor contracting issues. 248 REP. ROBERTS: Does this piece of legislation address the different areas of housing? 252 SEN. FAWBUSH: This particular one does not. If camps are within a couple of miles of each other, it ought to be considered a single camp. 263 REP. ROBERTS: I would appreciate some kind of language in this bill to make certain that no matter who is involved, it is clear in statute that you do not make one decision one day, and another if another agency comes in or the management changes. 279 SEN. FAWBUSH: I agree. There is obviously a fine line between the owner/operator of a camp maintaining a place that is safe and decent to live in, and the people who live there assuming some responsibility for the changes that they make. In the long term the thing we have to be more aware of than anything else is the fact that our labor force is changing. We need to continue to make efforts to provide adequate housing for farm laborers. The more you throw obstacles in the way of the farmer/operators, the more they are likely to throw the workers out on the economy. 320 REP. FORD: Has there been any discussion as to how many employees would be needed by OR-OSHA as compared to those now

employed by the Bureau of Labor and Industries? 340 SEN. FAWBUSH: The intent in Section 35 is to be sure that the records are transferred and we do not again have a duplication of operations. If the bill goes forward the matter of employees would be subject to negotiation. 352 REP. FORD: Where does the governor fit into this? 354 SEN. FAWBUSH: That is just an effort to find an arbitrator, and since she is over both of those

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agencies, she would be the likely one if it came to that.

358 REP. FORD: If Ways and Means makes a determination on budget and the governor does not like it, the bill says the governor's decision is final.

366 REP. WALDEN: When this legislation was launched in 1989, a letter went out to many of the growers from the Bureau of Labor and Industries saying that none of their camps qualified and they would all have to have a pre-occupancy inspection and be registered. The Bureau of Labor and Industries then admitted their error and had to send another letter saying they were wrong. It is my understanding the Bureau of Labor and Industries has, through the governor's budget, a proposed closing of all of their offices east of the mountains. 405 MCCULLEY: Submits and summarizes written testimony (EXHIBIT B) in support of the measure. -Southern Oregon growers have expressed their frustrations with the current arrangements. -There are some deplorable situations out there. We believe OR-OSHA has the ability to intervene in those situations. -We believe where OR-OSHA by statute is responsible for the health and safety of workers, it only makes sense that agency register operators of farm labor housing. -There are some amendments that need to be developed for this bill, and we would ask the committee to allow us to work with interested parties to develop an approach that will work. 476 CHAIR MARKHAM: Are you willing to be involved in putting appropriate amendments together?

TAPE 85, SIDE A

036 MCCULLEY: Yes, very much so.

038 REP. FORD: Why did the legislation which offered tax credits for farm worker housing turn out to be worthless?

041 MCCULLEY: In talking with some of the growers we understand the tax credit is most effective when there is a profit against which to write off the credit. To many growers not making a profit, the tax credit was not useful.

061 CAMILLE HUKARI, PRESIDENT, RODACAMAR FARMS, INC., HOOD RIVER: Submits and summarizes written testimony EXHIBIT C) in favor of the bill. 142 REP. NOVICK: Did you oppose the legislation in 1989?

144 HUKARI: Yes. We did work out amendments to it, but this particular part we were opposed to from the beginning.

149 TOM NELSON, MANAGER, HOOD RIVER GROWER-SHIPPER ASSOCIATION: Submits

and summarizes written testimony (EXHIBIT D) in support of the measure from growers who were unable to attend the hearing. -Submits and summarizes written testimony (EXHIBIT E) in support of the measure on behalf

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of the Hood River Grower-Shipper Association.

163 REP. ROBERTS: Am I to understand you did support the legislation in the last session?

165 NELSON: We did not support taking the responsibility from OR-OSHA and moving it to the Bureau of Labor and Industries.

173 MIKE MCCARTHY, GROWER, HOOD RIVER: Submits written statements from growers (EXHIBIT F) concerning their problems with Bureau of Labor and Industries.

254 KEVIN ASAI, ORCHARDIST, HOOD RIVER: Relates problems with Bureau of Labor and Industries in replacing old labor camp with a new one. Still has no registration form or certificate. Asks support of the bill.

281 REP. FORD: I have never seen a letter from a state agency that was so poorly written. 302 MARILYN COFFEL, DIRECTOR OF INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR AND INDUSTRIES: Submits and summarizes written testimony (EXHIBIT G) in opposition to HB 3238. -I hope we may become involved in the technical aspects of the amendments Rep. Walden discussed. 409 REP. ROBERTS: Did the Bureau of Labor and Industries attempt to contact either Rep. Walden or Sen. Fawbush to explain that? 416 COFFEL: Yes, our legal policy advisor met with the Majority Leader on Friday to discuss this. 422 REP. ROBERTS: What we have heard as the folks came up here is they want the system simplified, and Ms. Coffel is saying it will be more complicated.

TAPE 84, SIDE B

017 CHAIR MARKHAM: Is your department against the thrust of this bill? You want to maintain the status quo?

019 COFFEL: Yes. Reviews why the 1989 legislation was passed and how it was implemented. -Some of the other contradictions in this bill would result in some real confusion. -There would still be a need for an interagency agreement. 055 REP. ROBERTS: What do you consider a flagrant violation? Cites examples given in previous testimony.

067 COFFEL: If they are being fined for those, it is not coming from the Bureau, that is strictly OR-OSHA's bailiwick. We do not have the authority to levy fines for health and safety violations. 074 REP. NOVICK: You mention there is no inter-agency agreement, I do see one in Section 14, page 6.

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079 COFFEL: That only relates to one narrow authority. The basic inter-agency agreement would be repealed under this bill. The section you are referring to is the Health Division. -Resumes written testimony. -We are concerned about the testimony of the growers and we want to respond to those complaints.

120 REP. FORD: Expresses concern about the composition of the instructions for completing the Bureau's application for certification (EXHIBIT H).

131 COFFEL: We would be glad to make any improvements if there is a lack of clarity in the language.

135 REP. ROBERTS: Has Bureau of Labor and Industries ever sat down with any group of the growers and tried to iron out the problems, or has this all been on the phone and through the mail?

140 COFFEL: Yes we have. I know our Deputy Commissioner held several meetings on a variety of issues.

143 PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION: The agency did put on a series of seminars right after the passage of SB 732 and we held approximately eight of them across the state.

148 REP. ROBERTS: What you did was an initial informational forum for the growers. That was not for them to air their problems.

152 TIFFANY: One time after the beginning of the season, I met with representatives of the growers to discuss some of the applications of the bill. We spent the greater part of an afternoon there dealing with some of the problems and some of the technical difficulties.

158 REP. ROBERTS: Was there give and take during the meeting?

161 TIFFANY: I learned a lot since I did a lot of listening. The complaints I am hearing are ones of process. Mr. Pick who is the supervisor of the farm labor unit in the Wage and Hour Division did interact quite often with the growers.

174 REP. ROBERTS: You tell me you make an effort and what I hear from the other side is continuing problems. These folks deserve some kind of a simplification of the system, while not losing the thrust of what we are trying to do for the workers.

184 COFFEL: I am not happy with what I heard. I definitely think we will be reviewing this form. I hope you will bear in mind we have had only one growing season to work on this issue.

196 REP. ROBERTS: When these things are brought before the legislature it is going to cause us to make some changes. The Labor Commissioner is elected, and I have always had more faith in someone who is elected to be responsive.

206 COFFEL: Yes, Commissioner Roberts does believe in that direct accountability and we will be

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checking into the concerns raised here today.

210 REP. BELL: I would like to hear your rationale for the newly imposed fees, considering we are begging people to build housing. In your assessment of the fees did you ever call in the housing agency and discuss housing per se as it relates to your responsibilities?

219 TIF FANY: Fees in the bill were enacted with the intent of funding the system. There was not any intention to incorporate into that any sort of housing concern. Because this is the first growing season there have been fewer than ten pre-occupancy inspections for which a fee was assessed.

239 REP. BELL: Were those inspections done previously without fee?

242 TIFFANY: There were no pre-occupancy inspections done by OR-OSHA, they simply had a list that indicated where the camps were.

244 REP. BELL: You included the Housing Agency as an advisory agency when you dealt with housing?

249 TIFFANY: The housing inspections were to be done by OR-OSHA. Under our agreement, we were to make inspections for all the other wage and hour aspects.

256 REP. BELL: Regardless of how this bill turns out, I would strongly urge you, if you have anything to do with housing, to be in touch with the Housing Agency. If a farmer employs workers all year around, are they required to be considered farm labor contractors?

271 TIFFANY: I think you are referring to a situation where there could be two scenarios. If the grower were to actively engage in obtaining work for his workers and received a fee for that, that is contracting and he would have to have a license. If that grower should say he does not care who they go to work for even though they continue to live in my housing, then there is no contractor requirement.

293 REP. BELL: What are your plans to address the phone calls that go unanswered?

304 TIFFANY: This is the first time I have heard of it, and I will look into it.

308 JACK POMPEI, ADMINISTRATOR, OREGON OSHA: OR-OSHA works very well with Bureau of Labor and Industries under our inter-agency agreement. -The violations of migrant housing and field sanitation rules are under the jurisdiction of OROSHA. No other state agency is involved. -When a worker makes changes to the housing, the grower is still liable. They should have supervisors in the camps. This part of the bill is illegal under federal OSHA law. I have to enforce federal OSHA law through the state OSHA system. -The only involvement in this bill that OR-OSHA would have is the return of the registration at no cost.

363 REP. ROBERTS: What was the point about the federal OSHA laws?

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381 POMPEI: Rep. Ford was concerned about a section of this bill that says we would not cite or penalize first time violations. If we followed that, we would be in violation of the federal laws.

394 REP. ROBERTS: We have put a lot of pressure on the growers out there to respect the privacy of the workers. How can you hold the grower accountable if a worker on their own initiative starts reworking the wiring?

404 POMPEI: What most of the good agri-business people are doing are maintaining supervisors within the camps to make sure the facilities are livable and things are not changed. Bureau of Labor and Industries and OR-OSHA go into a camp prior to occupancy and we give them a pre-occupancy consultation. What often happens is we go back in six months and find it has 220 people there, we are then in a citation mode. I know it is an area the growers do not like, but that is the federal mandate.

TAPE 85, SIDE B

020 REP. ROBERTS: Are these consultations a two-way street or are you just going in and directing them?

022 POMPEI: I have to listen to the complaints and work to ease the situation.

028 REP. FORD: Why did Bureau of Labor and Industries receive this duty in the first place?

033 POMPEI: I think there was an orchestrated attempt two years ago to transfer migrant housing and field sanitation jurisdiction to the Bureau of Labor. That could not be done under the federal OSHA laws. The part that could be transferred is the registration part, and that was the only one that was transferred.

051 REP. FORD: I can remember some testimony that there was not prompt or effective inspections. But you say you have always had a problem with the growers because they think you are too tough.

056 POMPEI: My tenure began in 1987. We have developed a whole section of agricultural health and safety rules. We have brought in bi-lingual compliance people and managers. What you have is this inter-agency agreement with the Bureau of Labor and the Health Division. From 1988 on, we have made a drastic change. We were an absolutely non-effective enforcement agency prior to 1987. 076 REP. ROBERTS: How is OR-OSHA funded?

078 POMPEI: We have approximately one third of our funds from the federal Department of Labor which we match with worker compensation premiums. The rest of our funding comes from the workers' compensation reserve fund. We have no general fund money.

090 REP. ROBERTS: Are you here supporting or opposing this bill?

093 POMPEI: I am here to do the job, whatever this legislative body decides.

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104 CHAIR MARKHAM: Could you get involved with Mr. McCulley and the Labor people and get this resolved?

107 POMPEI: We went over this bill and told them that there are a lot of parts that are still under the jurisdiction of the Bureau of Labor that we have no business being involved in.

112 CHAIR MARKHAM: I have been notified the Oregon School Boards Association takes no position on this bill. The Oregon Farm Bureau favors the bill, the Oregon Legal Services opposes the bill, and the Wasco County Farm Bureau favors the bill.

. . . HB 2974 - REPEALS CERTAIN EXEMPTIONS TO PUBLIC RECORDS LAW EFFECTIVE JANUARY 1, 1994 - PUBLIC HEARING Witnesses: Jim Edmundson, State Representative, District 39 Frank Brawner, Oregon Bankers Association Judson Randall, Chairman, Freedom of Information Committee, Oregon Newspaper Publishers Association Les Zaitz, Publisher, Keizer Times and South Salem Times Newspapers

125 JIM EDMUNDSON, STATE REPRESENTATIVE, DISTRICT 39: In 1973 the Oregon Legislature enacted the Oregon Public Records law and the Oregon Public Meetings law. Since 1973 the monument of public records has been chipped away until it is now just a pebble of its former self. This assembly has enacted hundreds of exceptions to the Public Records law. There are thirty-eight listed exceptions to the Public Records law that exist in the law itself. 161 REP. FORD: Wants to make sure the Committee Administrator will obtain a list of the exceptions.

164 REP. EDMUNDSON: You will hear some testimony on some amendments I find very reasonable. As the bill is proposed, it would repeal in three years, all exceptions to the Public Records Law. The bill establishes a public records advisory council headed by the Secretary of State, consisting of seven members, to review and investigate all exceptions and come back to the legislature with recommendations. There are legitimate confidential records, but there are other records we exempt that are strange. We now need to re-examine the public records policy.

207 CHAIR MARKHAM: Is there any chance it might go the other way through this commission? 209 REP. EDMUNDSON: It maybe.

213 JUDSON RANDALL, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: Submits and summarizes written testimony (EXHIBIT 1) in support of the measure. -If the section killing all the exemptions on January 1, 1994 was removed from the bill, it would not hamper my support of the measure.

256 CHAIR MARKHAM: Some exemptions are knocked out in 1994 before the commission works?

259 REP. EDMUNDSON: The bill would knock out the listed exceptions and require the council

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to review those and decide which should be retained. They are to look at the other exceptions and recommend which are to be repealed.

266 RANDALL: Some of the exemptions that were in the original law and some that have been passed since are good ones.

273 LES ZAITZ, PUBLISHER, KEIZER TIMES AND SOUTH SALEM TIMES NEWSPAPERS: This bill merits support because it restores the public's right to access to government documents. It cleans up a lot of ambiguity that now exists in the statutes. Revision such as this would sharpen the direction to government employees who are charged with complying with and interpreting the Public Records Law. This state has a long history of supporting openness in government. We have seen too many examples in Oregon and across the country where secrecy has become the mistress of corruption and the guardian of incompetence. -Relates reliance on government records in investigation of Van Dynn Chocolate Co. -Bill wipes the slate clean and allows the public, the government and the press to work together to bring some reason back into the Public Records Law.

346 REP. NOVICK: I have had occasion to look through the public records law. Likes the idea of a sunset provision.

363 REP. EDMUNDSON: Would like to work with the committee or a subcommittee on the bill.

376 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: We support the bill from the standpoint of a study, but we oppose the bill as long as Sections 27 and 28 are included. -Bank call reports include listings of non-performing loans and loan loss reserves. -In the 1985 session a process was provide by which the records of a failed bank would become available after review by the Banking Board. -We think the right to financial privacy is as valid as the right of a client of an attorney to have privilege maintained. -Expresses the desire to work with the committee and the sponsors of the bill if they just wish to have a study. -Would like to have financial institutions represented on the Public Records Advisory Council.

TAPE 86, SIDE A

016 REP. ROBERTS: I am a little confused if we are talking about a court proceeding, they have that power already.

022 REP. EDMUNDSON: My intent was not to point to any particular exemption. Rather than pick and choose among the exemptions we need to look at the policy in the broad sense. I would have no objection to amending the bill.

030 REP. ROBERTS: If you repeal this, before you could do anything the records would be open to the public.

031 REP. EDMUNDSON: The repeal is January 1, 1994. To the extent we have removed that sunset provision, it removes the pressure to act.

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039 CHAIR MARKHAM: Would you be adverse to having someone associated with the banking industry be involved? 040 REP. EDMUNDSON: No, I intended to have a business representative on the Council. 044 CHAIR MARKHAM: Names Rep. Edmundson, Rep. Roberts and Rep. Oakley to a subcommittee to work on the measure. 047 REP. EORD: If the bill is going out we could save a lot of time and money if we would have someone from staff or an intern determine which records are constitutionally protected, and which ones are federally mandated or protected. 057 BRAWNER: I think it would be totally unfair if records of state chartered institutions are available, when records of nationally chartered institutions are not. 064 CHAIR MARKHAM: Do the credit unions have the same problems you do? 066 BRAWNER: They are not specifically included in HB 2974.

Submitted by:
Assistant

Reviewed by: Carolyn Cobb
Administrator

Randall Jones

EXHIBIT LOG: A - Testimony on HB 3238 - Greg Walden - 1 page B - Testimony on HB 3238 - John McCulley - 2 pages C - Testimony on HB 3238 - Camille Hukari - 11 pages D - Testimony on HB 3238 - Tom Nelson - 2 pages E - Testimony on HB 3238 - Tom Nelson - 1 page F - Testimony on HB 3238 - Mike McCarthy - 4 pages G - Testimony on HB 3238 - Marilyn Coffel - 6 pages H - Testimony on HB 3238 - Rep. Mary Alice Ford - 2 pages I - Testimony on HB 2974 - Judson Randall - 4 pages

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