

SENATE COMMITTEE ON LABOR

May 10, 1991 Hearing Room 50 03:00 p.m. Tapes 99 - 102
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,
VICE-CHAIR SEN. BOB KINTIGH SEN. BOB SHOEMAKER MEMBER EXCUSED: SEN.
PETER BROCKMAN STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL
ROBERTA WHITE, COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 1206 PH SB
547 PH & WS SB 825 PH SB 1036 PH SB 1174 PH SB 1190 PH

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TAPE 99, SIDE A 001 CHAIR KERANS calls the meeting to order at 3 p.m. and opens the public hearing on SB 120 6.

SB 1206 - AUTHORIZES COMMISSIONER OF BUREAU OF LABOR AND INDUSTRIES TO CHARGE FEES FOR ISSUANCE OF EMPLOYMENT CERTIFICATES FOR MINORS PUBLIC HEARING

WITNESSES: Marilyn Coffel, Bureau of Labor and Industries Paul Tiffany, Bureau of Labor and Industries Mike McCallum, Oregon Restaurant Association Bill Cross, Oregon Restaurant Association Joe Gilliam, National Federation of Independent Business

The Legislative Fiscal Impact on SB 1206 is hereby made a part of these minutes (EXHIBIT A).

020 MARILYN COFFEL, Director of Intergovernmental Relations, Bureau of Labor and Industries submits a prepared statement and work permit forms (EXHIBIT B) and reads her statement in support of SB 1206. Senate Commhtee on Labor May 10, 1991 - Page 2

110 Issues discussed: > Functions of Wage and Hour Division in approving and issuing certificates and violations by employer. > Restricted activities by minors in the work place. > Special rules apply to agriculture; no permit is required unless the minor is operating powerdriven farm machinery.

258 MIKE McCALLUM, Director of Government Relations, Oregon Restaurant Association: We are here today to opposed SB 1206 in its printed form. We think the work permit system itself needs substantial revisions; we have enclosed amendments (EXHIBIT C) that would make those revisions. He reads his prepared statement explaining the proposal contained in the proposed amendments (EXHIBIT D).

335 BILL CROSS, Executive Vice President, Oregon Restaurant Association: I have had the opportunity for the last six months to serve on the Bureau of Labor and Industries special task force on minors which has been looking at the problems of minors who work. As the result of some studies that the Bureau of Labor and Industries (BOLI) did, information collected from other states, and in hearings we held around the state, it became quite clear that in those situations where there is a formalized work experience program, i. e. where the school is working with the employer, the counselor checks in with the employer, they are watching the student's performance and seeing if there is any adverse impact from the work, the employers have preferred that kind of situation. Employers typically seem concerned about trying to rework

students' schedules for and extra-curricular activities. The task force was concerned about the inflexibility of imposing restrictions on hours across the board for all 16 and 17 year olds, much like we have for 14 and 15 year olds because of the individual needs of different students and or their capabilities. As a result of that, the task force at looked the proposal Mr. McCallum has just described which is based on the States of Washington and Pennsylvania and other states that have this type of three-signature or threepart process for work authorization. Based on the success in those states we felt that it might be appropriate for this state to look at it. The task force adopted the concept. Unfortunately the task force has not finalized its report nor did it look at some of the administrative details.

389 We are extremely concerned that we don't lose this opportunity. The school administrators indicated at a hearing on a bill Senator Kerans introduced to experiment on a model basis with that approach that they are very interested in participating. They are very willing to look at this proposal and they think it should be a requirement of all schools. We believe the employers would welcome the opportunity. It would require them to notify the school of any sign)ficant changes in hours or conditions of employment so the counselors could monitor the impact on school performance.

418 SENATOR SHOEMAKER: Could you address the reasons why you don't think any of the fees are appropriate other than the fee proposed in your amendment? 420 MR. McCALLUM: The bill as printed has a fee indicated for a minor's work permit. The work authorization form that we are proposing would be employer distributed and would not entail a cost to the minor. We think there is sign)ficant administrative savings that could be experienced by BOLI as a result of removing that work permit system as a state-generated form

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directly to the individual.

TAPE 100, SIDE A

033 SENATOR SHOEMAKER: In lines 21 and 22 of the amendment (EXHIBIT C) you have a requirement that the minor's parent or guardian give approval. Would you want to exempt emancipated minors from either of those requirements?

035 MR. McCALLUM: I believe that as the Wage and Hour Commission would look at rules surrounding this work authorization form, they would need to look at emancipated people, or at least set up a way that they could be exempted from the process. It might be a good idea to have it in the statutes.

041 SENATOR KINTIGH: What would happen during the summer when school is out?

042 MR. McCALLUM: This is intended to be for school time only. If school is not in session, that portion would be exempted from the work authorization form. However, when that student goes back to school, his authorization form would be changed and the employer would be required

to get a new form filled out. It is not in the amendment. I think it would be a part of the rules that could be worked out through the Wage and Hour Commission.

054 JOE GILLIAM, National Federation of Independent Business: We oppose SB 1206 as written. After having looked over the amendments, and having heard the discussion, we support what the Restaurant Association is trying to do. I have had a few discussions with Mr. McCallum and his board on how this program would work. We are supportive of their amendments. We see that as a way of decreasing the financial and administrative burden to BOLI. It would increase paper work for the employers, but it fosters parental and educational involvement in the process. 073 CHAIR KERANS: In the interest of time, I will ask BOLI to provide a written response to the OAR amendments by Tuesday afternoon. 078 CHAIR KERANS closes the public hearing on SB 1206 and opens the public hearing on SB 547.

(Tape 100, Side A) SB 547 - INCREASES LIMITATION ON NUMBER OF ELECTIONS RELATED TO SUCCESSIVE PUBLIC EMPLOYEE REPRESENTATION - PUBLIC HEARING AND WORK SESSION

WITNESSES: Senator Larry Hill Robert Ellis, Oregon School Employees Association Henry Drummonds, Professor, Lewis and Clark Law School

089 SENATOR HILL submits a prepared statement in support of SB 547 (EXHIBIT E) and explains that his testimony lays out an explanation of a confusing issue. The concept and history of the contract bar aren't simple. He reads excerpts from his prepared statement (EXHIBIT E).

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131 ROBERT ELLIS, Director of Field Operations, Oregon School Employees Association submits and reads a prepared statement in support of SB 547 (EXHIBIT F). 165 HENRY DRUMMONDS, Professor of employment law, Lewis and Clark College: I am testifying for myself at the request of Senator Hill. I was the lawyer that represented the rival union. This is a fairly moderate change and does conform to the federal labor law. It basically involves a tradeoff. The tradeoff is that you have less employee free choice. The employees are not allowed to throw the union out or to change unions every two years under this bill as they currently can. They would have that right every three years if this bill passes. That is a negative. On the plus side it does promote more stability in labor relations. From my experience in representing various public sector labor unions for about 18 years before becoming a professor, many, if not most, public sector labor contracts are three year contracts. In my opinion, it isn't good policy to have prevalent practice of three-year contracts and allow a fight over union representation in the third year of the contract. The present system does encourage raids. My second reason for supporting this bill is because of the climate created by Ballot Measure 5. I think it is a further argument for conforming our law to the federal law and promoting more stability in labor relations. In general, the employment law is too complicated and I would be in favor of conforming state law to the federal law where ever we can and have a simpler legal system. I balanced all these things out and concluded that there are more arguments in favor of the bill than against it. 201 CHAIR KERANS: I

feel a consensus brewing and would like to ask the other witnesses in favor of the bill if they would rather testify or have the committee go into work session on the bill? 208 RICHARD SCHWARTZ, Executive Director, Oregon Federation of Teachers, Education and Health Professionals: We agree with the testimony of the previous witnesses. Of our 18 locals, we have 15 in the public sector and seven of them are in three-year agreements. The seven locals cover approximately 45,000 public sector employees. 222 RICHARD ELLINGBOE, Lane ESD: The three witnesses are union representatives. I represent management and I concur with the position of the three union representatives. 231 SENATOR SHOEMAKER: The current law says, ". . . in any appropriate bargaining unit within which the preceding 12-month period an election was held..." I would suggest that we change it {ORS 243.692 (1)} to say, "No election shall be conducted pursuant to the statute in any appropriate bargaining unit if an election was held during the preceding 12-month period nor during the term of any lawful collective bargaining agreement."

256 SEN. HILL: I would like to leave the statute as it is.

258 MOTION: SENATOR HILL moves that SB 547 be sent to the Floor with a DO PASS recommendation. 261 VOTE: CHAIR KERANS, hearing no objection, declares the motion CARRIED. . These minutes contain serials which paraphrase nnt/or ~ atatemods made during this session. Only text cnclosot in quot tion marks report a speaker's exact words. For complete contents of the proceetings, please refer to the tapes. Senate Committee on Labor May10,1991-Page5

Senator Brockman is EXCUSED.

(Tape 100, Side A) SB 825 - ESTABLISHES UNFAIR LABOR PRACTICE FOR PUBLIC EMPLOYER TO SEEK IN COLLECTIVE BARGAINING TO PENALIZE EMPLOYEES REPRESENTED BY EXCLUSIVE REPRESENTATIVE IN LEGISLATIVE MATTERS RELATING TO EMPLOYMENT RELATIONS PUBLIC HEARING

WITNESSES: Randy Leonard, Portland Fire Fighters Liana Colombo, City of Portland

272 RANDY LEONARD, President, Portland Fire Fighters Association and Lieutenant with the Portland Fire Bureau: SB 825 arises out of a provision in the collective bargaining agreement between the City of Portland and the Portland Fire Fighters Association. Since there have been contracts between our union and the City of Portland since the early 70'S, there has been an Article V that simply states if the Portland Fire Fighters Association endorses or sponsors any legislation that has an impact on the payroll costs of the City, those costs will be deducted from our wages. That has the effect of preventing not only the association, but members of the association from speaking in favor of legislation that may have some merit and are designed to benefit our members. But if the legislation should pass and have an impact on payroll costs of the City, those costs are deducted from our wages.

315 CHAIR KERANS: If the Portland Fire Fighters testify for or against a bill, what does the City do?

320 MR. LEONARD: We can and have supported legislation. We don't endorse or sponsor any legislation that could have a cost associated with it that would increase the payroll costs to the City of Portland.

365 CHAIR KERANS: Why did you sign this agreement in the first place?

367 MR. LEONARD: In collective bargaining, there are a myriad of issues at any one time. The most important are wages, hours and conditions of employment. When you reach some settlement on the issues as we have since I have been president six years ago and we take the adamant position as we did on having that article out, the City's consistent position has been if they try to implement it, the union can go to court and seek to have the article thrown out.

Issues discussed: > Whether displaying a bumper sticker by individual fire fighter violates Article V. > Activities by city officials affecting fire fighters working conditions and benefits do not have a prohibition.

TAPE 99, SIDE B

066 LIANA COLOMBO, Deputy City Attorney, City of Portland: This is a bill limited to the City of Portland. Unfortunately, when Mr. Leonard drafted this bill he chose to amend the public employee collective bargaining law. This bill proposes to add a new unfair labor practice. You won't find this unfair labor practice in the private sector law. If this were enacted, our law - There minur contain matericl r paraphoe and/or rummanze etatededa ~ during dlic ro~on. Only text eaelmod iD quotation madce report & epeater's exact worde. For complete eontentc of the proccedi ge, pleare refer to the tapec. Senate Committee on Labor May 10, 1991 - Page C

would be different. I think it creates some confusion when you start fiddling around with things like this. As far as I know this is not in any public sector collective bargaining law either anywhere in the country.

099 The language in the bill almost mirrors word for word our collective bargaining agreement (EXHIBIT G) and is extremely narrow. All our contract provision says is that during the life of the agreement, if there are legislative issues specifically endorsed or sponsored by the union that result in action by the Legislature which result in a new economic or benefit improvement causing increased payroll costs to the City beyond those stipulated at the time of mutual contract ratification, the cost will be charged against the applicable salary agreement whenever the changes become effective.

113 This is a unique contract provision. As far as I can tell we have not invoked this provision, but it has kept everything honest. We haven't noticed that there has been any lack of participation by the unions in coming to the Legislature and seeking changes.

190 SENATOR SHOEMAKER: They wouldn't be able to endorse Legislation on substantial changes to health insurance policies.

192 MS. COLOMBO: They can endorse anything they want. There is no limitation. We have worked out how to handle extreme health care costs. We have an escalator for health care costs in our contract. The City will pay up to x amount of dollars for health care. Employees will pay anything beyond that. Currently the x is full cost. We negotiated what benefits are covered under the health care plan. If the union now comes to the Legislature and endorses something that would allow something more, the deal is no longer good. 225 SENATOR SHOEMAKER: The City, however, would be able to come down and oppose the legislation. What if legislation would reduce the cost of the health care and benefits?

229 MS. COLOMBO: I assume that if we lowered their benefit during the life of the contract, the union would sue us for violating the contract.

313 CHAIR KERANS closes the public hearing on SB 825 and opens the public hearing on SB 1036.

(Tape 99, Side B) SB 1036 - REQUIRES STATE BOARD OF HIGHER EDUCATION TO DESIGNATE PERSON TO APPROVE PAYROLL AND DISBURSE FUNDS FOR EMPLOYEES OF BOARD WHO WORK AT OR FOR OREGON HEALTH SCIENCES UNIVERSITY HOSPITAL - PUBLIC HEARING

WITNESSES: Tanya Collier, Oregon Nurses Association Weldon Ihrig, Higher Education, OHSU Jim Walker, Higher Education, OHSU Mary Botkin, AFSCME

The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT H).

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321 TANYA COLLIER, Labor Relations Representative, Oregon Nurses Association, submits and reads a prepared statement in support of SB 1036 (EXHIBIT I).

TAPE 100, SIDE B

MS. COLLIER continues with her prepared statement. 043 BRIAN DeLASHMUTT, Oregon Nurses Association: In the overpayment situation, if they come back to the nurse and ask the nurse to repay, the nurse may not, depending on the amount and over what period of time, be able to make arrangements to repay. A case four years ago involved excess pay of \$4,000 over several years. The nurse indicated she didn't have the money and attempted to make arrangements to repay, which was not acceptable to the State. The State then turned the case over to the Attorney General's office and he then sued the nurse on behalf of the State to recover the money. The Attorney General's office is frustrated with the system, too.

061 SENATOR HILL: We have a fiscal impact statement (EXHIBIT H) that says the cost is \$100,000 General Fund. You point out that OHSU told the Ways and Means Committee they could save \$1.8 million if they could have direct on-line information. 066 MS. COLLIER: I received that information from Mr. Walker, Financial Officer, Oregon Health Sciences University. 078 WELDON IHRIG, Vice Chancellor for Finance Administration, Higher Education: We are installing new information systems and felt that the payroll and financial systems are basically 20 years old and need to be changed. We won't dispute the fact that the systems have to be changed. The systems have now been defined with the new payroll as of January of this year and we are moving forward with outside help to implement them. Since the systems have been defined, we have worked with the hospital and they will be the first installers at the hospital site with their personnel and data processing people. It will be about three years before the Higher Education system gets to that element in the installation. They will be running the payroll and personnel processing for the hospital people within the overall framework as defined by the state system. When we have our financial system ready to interface, we can move the two together and operate as a total system. It will eliminate the dual operations that are now

happening. 113 SENATOR HILL: What is the time frame for putting the system in place? 115 SENATOR KERANS: Will there be a savings or will it be a cost? 127 JIM WALKER, Oregon Health Sciences University: It is a savings overall. Since Measure 5 came about we are looking at different ways to cut costs. We did propose that if we could have an hourly based payroll that could be done on a bi-weekly basis, over the biennium we could save \$1.8 million. I received a phone call a couple of hours ago from the Legislative Fiscal Office asking what would be the incremental cost to implement this. I think that is where the \$100,000 comes from.

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We feel the latest we would be able to implement the system would be October 1992 or earlier. The money is in the budget so far.

169 MR. IHRIG: Our goal is to have one piece of software that meets the needs of an on-line environment for all eight institutions and the hospital. While this system will be stat ted by the hospital, eventually the software will serve the whole state system. Our concern is that if this legislation passes it may require us to keep two pieces of software and keep them updated rather than a single system.

218 MARY BOTKIN, AFSCME: This was introduced two years ago. Phil Lemmon assured us this problem would be rectified. You cannot structure a hospital pay program based on 12 equal monthly payments.

235 CHAIR KERANS closes the public hearing on SB 1036 and opens the public hearing on SB 1174.

(Tape 100, Side B) SB 1174 - ESTABLISHES ZERO TOLERANCE POLICY TOWARD SPECIFIED DISCRIMINATORY BEHAVIOR IN STATE WORKPLACE AND IN ACADEMIC ENVIRONMENT - PUBLIC HEARING

WITNESSES: Calvin Henry, Oregon Assembly for Black Affairs Mike Clark, Office of State Treasurer Eunice Lovi, Commission on Black Affairs Andrew Houston, Chair, African-American Black Justice Committee of Oregon Haline Rahsaan, citizen Eunice Goetz, Commission on Hispanic Affairs Cynthia Phillips, student Portland Community College Tammi Sommerson, Affirmative Action Office, Executive Department

The Legislative Fiscal Analysis is hereby made a part of these minutes (EXHIBIT J).

261 CALVIN HENRY, a state employee and President, Oregon Assembly for Black Affairs submits and reads a prepared statement in support of SB 1174 (EXHIBIT K). 366 MIKE CLARK a state employee and Secretary of the Oregon Assembly for Black Affairs, submits and reads a prepared statement in support of SB 1174 (EXHIBIT L). 409SENATOR HILL: Is there a statute or something in rules that we could look to? 413MR. HENRY: There is a definition in statute. MR. CLARK: I believe it is in BOLI's statutes.

TAPE 101, SIDE A

008 EUNICE LOVI, Management Assist Intern for the Oregon Commission on

Black Affairs, submits and reads a prepared statement in support of SB 1174 (EXHIBIT M).

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056 ANDREW HOUSTON, Chair, African-American Black Justice Committee of Oregon, submits and reads a prepared statement in support of SB 1174 (EXHIBIT N). 077SENATOR HILL: I have found a definition of discrimination in the law and a statute prohibiting discrimination in education {ORS 659.150 (1)}. There is a definition of unlawful practice in the enforcement of civil rights statutes {ORS 659.010 (15)}.

088 MR. HENRY: There is a clearer definition and we will report that back to the committee. 090 SENATOR HILL: If we are establishing a

policy which makes executives accountable, it is similar to enforcement of work place safety rules. It is assigning responsibility to the leadership of the agency and it is their job to make sure it is a safe work place and they are responsible if things go wrong. Why should we treat the work place differently and leave the employer or supervisor the responsibility to make sure that it is a fair work place as well as a safe work place? There is precedence for this in the safety laws.

105 HALINE RAHSAAN, a constituent: If what Mr. Houstonjust said about Oregon being the most racist state in the union, that in itself should lead us to pass this bill without further deliberation. I can testify as being a party put on the spot for raising issues about employment opportunities. I am a faculty member at Portland Community College and have been employed there for the last 15 years. A year ago I raised a question with administration about having more African Americans and other people of color on faculty as well as in administration. At that time we had a faculty of about 600 and less than 10 African-Americans faculty members. In administration we had less than four. Raising these issues caused me to come under fire including receiving threatening and dangerous phone calls at my place of work, letters and my family was threatened. We had to have the assistance of the police as well as FBI protection. 130 Some of the testimony we have heard certainly leads one to believe that the top administrators shape the attitude and atmosphere for anything that happens internally. I felt, and I feel now, that the atmosphere was laid for the kinds of things that happened to me. I think by passing SB 1174 it will go a long way in eliminating some of the problems I and other people of color have experienced.

146 EUNICE GOETZ, Executive Director, Commission on Hispanic Affairs: We and others did request SB 514 which was similar to this. This bill is much stronger and therefore we are deferring to this bill. We do support it. There are people behind what is often considered rhetoric. These experiences can be extremely oppressive which is worse than a life sentence because there is no way out. I hope someday the Legislature can give the Bureau of Labor enough resources to deal with the complaints they receive. When I tell someone it will take a year for their complaint to be processed, they almost always choose not to send their complaint to BOLI. Very few go on to BOLI because of that.

179 SENATOR HILL: Would it be more appropriate to allow private civil action as a remedy?

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182 MS. TALBOTT: That is in existing law.

184 MS. GOETZ: The problem with private right of action is often people can't afford an attorney.

186 SENATOR HILL: The policy here is different. It is zero tolerance in the state work places. It also makes racial discrimination the responsibility of the leadership of the organizations. These would be new angles and opportunities to achieve a remedy.

207 MS. GOETZ: I feel it is the responsibility of the state to set the tone for the private sector. This gives the Affirmative Action office some clout.

212 CYNTHIA PHILLIPS, student, Portland Community College, representing herself, other students and staff members: I tried to get more people to come down because I feel SB 1174 is so essential. There is such blatant racism going on within the campus at Portland Community College that it saddens me and that is why I am here. She relays stories about incidents at Portland Community College. 315 TAMMI SOMMERSON, Legislative Assistant to Jeannette Pai, Affirmative Action Officer for the Governor, submits and summarizes portions of a prepared statement for Ms. Pai in support of SB 1174 (EXHIBIT 0). 343 CHAIR KERANS: Our committee counsel will contact your office. 348 CHAIR KERANS closes the public hearing on SB 1174 and opens the public hearing on SB 1190.

(Tape 101, Side A) SB 1190 - ADDS EMPLOYEES OF MASS TRANSIT AND TRANSPORTATION DISTRICTS TO THOSE PUBLIC EMPLOYEES PROHIBITED FROM STRIKING - PUBLIC HEARING

WITNESSES: Wallace Feist, Amalgamated Transit Union Dick Feeney, Tri-Met Mary Griswold, Salem Mass Transit

362 WALLACE FEIST, Secretary-Treasurer, Amalgamated Transit Union: The collective bargaining process changes. We come before the Legislative Assembly asking that we be placed in the interest arbitration classifications outlined under the statutes. Some people perceive public transportation as a convenience; it is a matter of necessity. In addition, the transit agencies supply a tremendous environmental impact on the communities. We are the sponsors of this bill and we ask that you support it.

TAPE 102, SIDE A 014 DICK FEENEY, Director of Government Affairs, Tri Met, submits and paraphrases portions of a prepared statement in opposition to SB 1190 (EXHIBIT P. 036 SENATOR SHOEMAKER: Why are you opposed to binding arbitration?

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036 MR. FEENEY: Our understanding of binding arbitration is that the arbitrator has offers in front of him, makes a decision and dictates a settlement. In our case that is dictating to a public body how the public's money will be spent by someone who is not responsible in a financial sense to that public jurisdiction. We believe that is the

responsibility of the public jurisdiction. 049 MARY GRISWOLD, Personnel Manager, Salem Transit District, submits and reads a prepared statement on behalf of the board in opposition to SB 1190 (EXHIBIT Q).

081 CHAIR KERANS closes the public hearing on SB 1190 and declares the meeting adjourned at 5:35.

Transcribed and Reviewed by: submitted by: Annetta Mullins Annette
Talbot Assistant Committee Counsel

EXHIBIT SUMMARY

A - SB 1206, Legislative Fiscal Analysis, staff B - SB 1206, prepared statement, Marilyn Coffel C - SB 1206, SB 1206-1 amendments, Mike McCallum D - SB 1206, prepared statement, Mike McCallum E - SB 547, prepared statement, Senator Larry Hill F - SB 547, prepared statement, Bob Ellis G - SB 825, City of Portland/Portland Fire Fighters Association labor contract, Liana Colombo H - SB 1036, Legislative Fiscal Analysis, staff I - SB 1036, prepared statement, Tanya Collier J - SB 1174, Legislative Fiscal Analysis, staff K - SB 1174, prepared statement, Calvin Henry L - SB 1174, prepared statement, Mike Clark M - SB 1174, prepared statement, Eunice Lovi N - SB 1174, prepared statement, Andrew Houston O - SB 1174, prepared statement, Tammi Sommerson P - SB 1190, prepared statement, Dick Feeney Q - SB 1190, prepared statement, Mary Griswold

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