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RECENT OREGON CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to Oregon law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

DEPARTMENT OF REVENUE V. FARIS
345 OR. 97, 190 P.3D 364
OR., 2008. JULY 17, 2008

***101** The word "certify" is not statutorily defined. Thus, we look to the dictionary. *Webster's* first definition of the verb "certify" is the one that is relevant here:

"1: to attest esp. authoritatively or formally: a: CONFIRM * * * b: to present in formal communication, esp. in a document under hand or seal * * * c: to confirm or attest often by a document under hand or seal as being true, meeting a standard, or being as represented * * *[.]"

Webster's Third New Int'l Dictionary 367 (unabridged ed. 2002). The basic definitions in *Black's* are similar:

"1. To authenticate or certify in writing. 2. To attest as being true or meeting certain criteria." *Black's Law Dictionary* 241 (8th ed 2004).

…

***102** Although the legislature's intent is not immediately obvious from its use of the word "certified" alone, the remainder of the text at issue in ORS 305.265(2)(c) provides helpful context. That provision requires that the *department,* not an individual departmental agent, certify that the adjustments are made in good faith. The department is an entity that, through its agents, can take effective action, but as an entity it does not have the ability to hand sign a document. The legislature's choice to charge an entity, rather than an individual, with the responsibility to certify notices of deficiency lends support to the department's argument that the legislature did not intend to require certification by hand signature.

…

***104** Taxpayers urge us to proceed beyond the statutory text and context to the **legislative history** of ORS 305.265(2), and they argue that we will find support for their position in that examination. The Tax Court considered the statute's **legislative history** and explained:

"At an April 14, 1971, hearing, the department proposed that the entire certification requirement be removed because it wished to facilitate the use of computers in issuing assessments. *See* Tape Recording, Senate Committee on Taxation, HB 1324, Apr. 14, 1971, Tape 8 Side A (statement of

T.A. Lindstrom, Oregon Department of Revenue). The department wanted to eliminate any handwritten signature requirement because it kept the department 'from being able to utilize [its] computer in computing and sending out * * * notices' due to the fact that the NODs had to be returned 'to the auditor who made the audit' for signature. *Id.*

"The bill later returned to committee amid concerns about removing the entire certification requirement. *See* Minutes, Senate Committee on Taxation, May 7, 1971, 1. Assistant Attorney General Ted DeLooze and department representative Mike McCormack testified that the department did not object to having the department certify the notices, *but that they did 'want to eliminate the hand signing by the individual auditor.*' *Id.* The 'bill was so amended * * *.' "

Dept. of Rev. v. Faris, 19 OTR 178, 183-84 (2006) (emphasis added) (ellipses in original).

…

We conclude, from the text and context of ORS 305.265(2) alone, that the legislature did not intend to require a hand signature in order to certify a notice of deficiency. Taxpayers do not convince us that there is a need to consult **legislative history**, or that, if we were to do so, our conclusion would be different.

NAKASHIMA V. OREGON STATE BD. OF EDUC.
344 OR. 497, 185 P.3D 429
OR., 2008. MAY 08, 2008

In interpreting ORS 659.850, our goal is to determine the intent of the legislature that enacted it in 1975. *State v. Perry,* 336 Or. 49, 52, 77 P.3d 313 (2003). To accomplish that, we look first to the text of the statute itself. *See* ***509** *PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610-12, 859 P.2d 1143 (1993) (outlining methodology). As the Court of Appeals correctly observed, the statute textually embraces two forms of discrimination that are familiar concepts in ***437** state and federal discrimination law. *Montgomery,* 188 Or.App. at 68, 71 P.3d 94. The prohibition of an act that "unreasonably differentiates treatment" describes disparate treatment discrimination- *i.e.,* a policy or practice that affirmatively treats some persons less favorably than others based on certain protected criteria, such as race, sex, or religion.[FN12]

As the Court of Appeals correctly observed, the statute textually embraces two forms of discrimination that are familiar concepts in ***437** state and federal discrimination law. *Montgomery,* 188 Or.App. at 68, 71 P.3d 94. The prohibition of an act that "unreasonably differentiates treatment" describes disparate treatment discrimination- *i.e.,* a policy or practice that affirmatively treats some persons less favorably than others based on certain protected criteria, such as race, sex, or religion.[FN12] The prohibition of an act that is "fair in form but discriminatory in operation" describes disparate impact discrimination- *i.e.,* a facially neutral policy that adversely affects a group that shares certain protected characteristics, such as race, sex, or religion.[FN13] The distinctive "fair in form but discriminatory in operation" terminology that the legislature used is, word-for-word, the phrase coined by the United States Supreme Court in *Griggs v. Duke Power Co.,* 401 U.S. 424, 431, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971) (holding that Title VII of the Civil Rights Act of 1964 reaches not only overt discrimination but also practices that are "fair in form, but discriminatory in operation"). With that phrase, the Supreme Court judicially embraced, for the first time, the theory of discrimination that ***510** has since come to be known by the short-hand descriptions of "disparate impact" and "adverse impact" discrimination. [FN14] That landmark holding issued in 1971, just four years before ORS 659.850 was enacted. We therefore agree with the Court of Appeals that, by using that legal term-of-art phrasing, the legislature adopted the disparate impact theory of discrimination directly from *Griggs.*

…

Our disagreement with the Court of Appeals' analysis concerns its resort to Title VII case law.[FN15] That step in the ***511*** court's analysis is at first blush understandable, because *Griggs* involved a claim brought under Title VII, which addresses discrimination in employment.

…

But contrary to the Court of Appeals' conclusion and the assumptions of the parties, ORS 659.850 was not patterned on Title VII or on its provisions requiring reasonable accommodation of religion. The two statutory schemes are aimed at different concerns (employment discrimination in the private and public sectors, as opposed to discrimination in publicly funded educational activities at elementary through university levels). They share no significant textual parallels. ORS 659.850 and Title VII simply are not statutory analogues.[FN16] …Consequently, the legislature's reliance on *Griggs* for phrasing to describe disparate ***512*** impact discrimination provides no basis to conclude that the legislature had concepts of reasonable accommodation of religion in mind in enacting ORS 659.850.[FN18]

…

FN18. To verify that observation, we have examined the **legislative history**. It confirms that the Supreme Court's decision in *Griggs* was the source of the distinctive "fair in form" terminology that became part of the definitional subsection (legislators at some point referred to it as the "Powers" case, an apparent reference to the defendant Duke Power Company; other references included both "Powers" and "Griggs" in the case title). Tape Recording, Senate Floor Debates on HB 2131, May 7, 1975, Tape 16B, Side 2, at 592 *et seq.* (comments of Senator Fadeley); Tape Recording, House Floor Debates on HB 2131, May 8, 1975, Tape 20, Side 1, at 753 *et seq.* (comments of Representative Rieke). Neither the definitional subsection, nor ORS 659.850 more generally, was patterned on Title VII.

That does not mean, however, that federal law cannot aid us. It may. But the federal law to which we should look is *Griggs* itself. In borrowing from *Griggs* its judicially crafted legal phrasing to describe what was, at the time, a novel and developing theory of discrimination, the legislature embraced disparate impact as a cognizable theory of discrimination***439*** for purposes of ORS 659.850. *Griggs* is thus context for determining what the legislature understood disparate impact, as a theory of discrimination, to entail. *See Central Catholic Ed. Assn. v. Archdiocese of Portland,* 323 Or. 238, 251, 916 P.2d 303 (1996) (context for interpreting statutory terms includes the established meaning of legal terms of art). We therefore turn to a detailed examination of *Griggs* and its holding.

…

[4] We presume that our legislature, in adopting disparate impact as a theory of discrimination from *Griggs,* understood that theory as *Griggs* explained it. We also presume that the legislature was aware of any existing decisions of this court that considered or interpreted the disparate impact theory of discrimination as announced in *Griggs. See Joshi v. Providence Health System,* 342 Or. 152, 158, 149 P.3d 1164 (2006) (this court will presume that the legislature is aware of existing decisions of this court interpreting the legal meaning of terms that the legislature uses in an enactment). When the legislature enacted ORS 659.850, one such decision existed: *School District No. 1 v. Nilsen,* 271 Or. 461, 481-83, 534 P.2d 1135 (1975). [FN19] *Nilsen,* after quoting the same key ***515*** "fair in form but discriminatory in operation" passage from *Griggs* that we have quoted above, observed that the disparate impact test from *Griggs* is not an absolute one that prohibits any adverse effect on a protected class. *Nilsen,* 271 Or. at 481-82, 534 P.2d 1135. Rather, *Nilsen* described *Griggs's* disparate impact test as permitting neutral policies and practices that adversely affect a protected group if the policies or practices are "reasonably necessary" to job requirements. *Nilsen,* 271 Or. at 483, 534 P.2d 1135.

FN19. Nilsen was decided on April 1, 1975, just a few weeks before the legislature incorporated the wording from *Griggs* as part of the statutory definition of discrimination in subsection (1) of the statute. *See* 344 Or. at 512 n. 18, 185 P.3d at 438 n. 18 (discussing **legislative history**).

Griggs and *Nilsen* together provide guidance as to what our legislature intended in 1975 when it drafted ORS 659.850 to prohibit policies and practices that are "fair in form but discriminatory in operation

STATE V. LONERGAN
344 OR. 15, 176 P.3D 374
OR., 2008. JANUARY 25, 2008

In this case, the Court of Appeals attempted to distinguish *Metcalfe.* Applying the methodology from *PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610-12, 859 P.2d 1143 (1993), to the pivotal phrase in ORS 162.155(1)(a), "uses * * * physical force escaping from custody," the court first ***20** determined that its decision in *Metcalfe* did not preclude the state's construction of the statute, "given the statute's syntax, *viz.*, 'escaping,' which can reasonably be understood as connoting a process." *Lonergan,* 210 Or.App. at 162, 149 P.3d 1215. The court determined that both defendant's and the state's interpretations of the statute were plausible, given the statutory text and context. Finding nothing conclusive in the **legislative history**, the court therefore considered maxims of statutory construction, determining that the legislature's purpose in creating a graded scheme for escape was to increase the penalties for escape when "additional risk producing elements" are present, including ongoing, continuous conduct that extends at least during the immediate pursuit of the escapee. *Id.* at 165, 149 P.3d 1215. For that reason, the Court of Appeals concluded that the trial court had correctly denied defendant's motion for judgment of acquittal on the second-degree escape charge. *Id.*

To decide the question presented in this case, we consider the statutory text in its context. The crime at issue here is escape. "Escape" is defined, in part, as "the unlawful departure of a person from custody * * *." ORS 162.135(5). There are three degrees of escape. *See* ORS 162.145 (defining escape in the third degree); ORS 162.155 (defining escape in the second degree); ORS 162.165 (defining escape in the first degree). "Custody" is defined, in part, as "the imposition of actual or constructive restraint by a peace officer pursuant to ***21** an arrest * * *." ORS 162.135(4). Defendant was convicted of second-degree escape.

…

DISSENT

The **legislative history** confirms what the text says.[FN2] The 1971 legislature enacted the second-degree escape statute as part of a comprehensive revision of the state's criminal code. *See* Or. Laws 1971, ch. 743, § 191 (enacting second-degree escape statute); *State v. Garcia,* 288 Or. 413, 416, 605 P.2d 671 (1980) (describing process of adopting the 1971 criminal code). The persons who drafted the code explained that they relied on "the risk to others created by the escape" in determining which escapes warranted greater sanctions. Commentary to Criminal Law Revision Commission Proposed Oregon Criminal Code, Final Draft and Report §§ 190-192, 194-95 (July 1970) (emphasis omitted).[FN3] Specifically, they explained that the use of force while escaping increases the crime from third- to second-degree escape because "[t]he use of force in escapes obviously increases the hazards imposed on those obligated to resist such conduct." *Id.* at 195. A defendant's use of force to effect his or her escape (and the ensuing hazards imposed on those obligated to resist the ***26** escape) does not end the moment that he or she breaks away from an officer's grasp or crosses the threshold of the prison. Rather, it continues during the defendant's immediate flight from custody. *See Buchler v. Oregon Corrections Div.,* 316 Or. 499, 507, 853 P.2d 798 (1993) (recognizing that inmate could cause harm to persons outside the prison walls "during the stress of the actual escape from custody itself").

FN2. In my view, the text of the statute provides a complete answer to defendant's argument. Even if the text were unclear, the **legislative history** and general maxims of statutory construction lead to the same conclusion as the text.

FN3. The 1967 legislature created the Oregon Criminal Law Revision Commission to revise the state's criminal laws. *Garcia,* 288 Or. at 416, 605 P.2d 671. The Commission divided responsibility for drafting the revised criminal code among three subcommittees. Those subcommittees produced drafts of the code and submitted those drafts, together with commentaries on them, to the Commission, which produced a final draft of the proposed code and presented the final draft and commentary to the legislature. This court has looked to both the commentary and the discussions that preceded the adoption of the final draft as **legislative history** for the resulting laws. *See id.* at 416-20, 605 P.2d 671 (relying on those sources).

One other part of the **legislative history** bears mention because it specifically touches on the legislature's use of the word "escaping." When the full committee considered the proposed crime of first-degree escape,

"Representative Frost pointed out that the language in section 4 [defining first-degree escape] used different tenses when it said ' *uses or threatens* to use ... *in escaping* ...' Mr. Paillette advised that the intent was to refer to a situation where the escape was an accomplished fact. Chairman Yturri explained that Representative Frost's interpretation brought in the connotation of an inchoate crime when the draft said 'in escaping' whereas the draft was intended to mean that the person simultaneously 'used or threatened to use' force or a weapon during the course of an escape.

"There were a number of suggestions for resolving this problem. It was finally determined that the best method was to delete 'in' before 'escaping' in subsection (1) of section 3 [defining second-degree escape] and in subsections (1) and (2) of section 4 [defining first-degree escape]. Representative Frost so moved and the motion carried unanimously."

Minutes, Criminal Law Revision Commission, Mar. 18, 1970, 20 (ellipses and emphases in original).[FN4]

…

Although not dispositive, the **legislative history** is consistent with the plain meaning of the words that the legislature used. Even if the wording of the statute, coupled with the **legislative history**, left some doubt and it were necessary to resort to general principles of construction to decide this case, I agree with the Court of Appeals that the appropriate principle is to ask how the legislature would have decided this issue if it had considered it. *See Carlson v. Myers,* 327 Or. 213, 226, 959 P.2d 31 (1998) (stating that inquiry); *State v. Gulley,* 324 Or. 57, 66, 921 P.2d 396 (1996) (same). In pursuing that inquiry, we should interpret the statute consistently with the drafters' stated purpose-to punish and thus deter the use of force during escapes. *See State v. Lonergan,* 210 Or.App. 155, 164-65, 149 P.3d 1215 (2006) (following that course). As noted, the risk that a person will use force to effectuate an escape is not limited to the act of breaking away from the officer or getting beyond the prison walls. Rather, it extends to the person's immediate flight from custody. The majority's interpretation thwarts the legislature's purpose; the Court of Appeals' interpretation gives effect to it.

Interpreting the statute consistently with its text, history, and purpose, I would affirm the Court of Appeals decision and the trial court's judgment. There was evidence from which a reasonable trier of fact could find that defendant was in the course of immediate flight from the officer's grasp when he hit the officer to effectuate his escape. The trial court correctly denied defendant's motion for judgment of acquittal, and the Court of Appeals correctly affirmed the resulting judgment for second-degree escape. I respectfully dissent.

STATE V. WHEELER
343 OR. 652, 175 P.3D 438
OR., 2007. DECEMBER 28, 2007

In construing the Oregon Constitution, we seek to determine the meaning of the constitutional text by examining the wording of the constitutional provision at issue, the case law surrounding it,

and the historical circumstances leading to its adoption. *State v. Ciancanelli,* 339 Or. 282, 289, 121 P.3d 613 (2005); *Priest v. Pearce,* 314 Or. 411, 415-16, 840 P.2d 65 (1992).

"The purpose of our inquiry under the *Priest* methodology is 'to understand the wording [of the constitutional provision] in the light of the way that the wording would have been understood and used by those who created the provision * * * and to apply faithfully the principles embodied in the ***655** Oregon Constitution to modern circumstances as those circumstances arise.' "

Ciancanelli, 339 Or. at 289, 121 P.3d 613 (quoting *Smothers v. Gresham Transfer, Inc.,* 332 Or. 83, 90-91, 23 P.3d 333 (2001)).

A

We begin with the text of Article I, section 16, of the Oregon Constitution. That section provides:

…

Before turning to the specific wording, "all penalties shall be proportioned to the offense," we briefly examine the context of that wording. The issue in this case turns on the relationship between crimes and punishment, and the provisions in Article I, section 16, regarding excessive bail and the respective powers of the court and jury in a criminal trial have little bearing on that relationship.

…

The term "proportion" indicates a comparative relationship between at least two things. *See, e.g.,* 2 Noah Webster, *An American Dictionary of the English Language* 45 (1828) ("proportion" indicates a "comparative relation"). Here, the two things being related are "penalties" and "the offense," and the provision requires that the penalties for each particular offense be "proportioned"-that is, comparatively related-to that offense

…

It also is unclear, based solely on examining the text, what…

This court has interpreted Article I, section 16, in a number of decisions, which we discuss below. However, we never have reviewed in any detail the origins of the proportionality requirement in an effort to determine what the ***657** framers of the Oregon Constitution were concerned about, and therefore intended, when they adopted it, and we take the opportunity to do so now.

…

When the drafters of the Oregon Constitution took the proportionality requirement from the Indiana Constitution of 1851, they did not discuss the meaning of that provision or their reasons for using it. However, the proportionality requirement, in one form or another, has an ancient lineage, dating back to Magna Carta, and the legal requirement that the penalty for a crime be proportional to the offense can be traced from those early sources to the American colonial experience and then to state constitutions adopted in the nineteenth century, including Oregon's. Accordingly, we begin with a brief review of that history.

…

Blackstone's *Commentaries* were an important influence on reformers, including early state constitution writers, and provisions in a number of state constitutions written in the late eighteenth century reflect Blackstone's concern with proportionality in sentencing. The first American constitution to adopt a clause requiring proportionality

…

We turn to the Indiana Constitution, which draws our attention in part because many provisions of the Oregon Constitution were taken from it. The 1816 Indiana Constitution provided: "All penalties shall be proportioned to the nature of the offence." Ind. Const., Art. I, § 16 (1816). In the 1816 constitution, that provision was contained in a separate section from the provision that instructed that "[e]xcessive bail shall not be required; excessive fines shall not be ***665*** imposed; nor cruel and unusual punishments inflicted." Ind. Const., Art. I, § 15 (1816). In the revised Indiana Constitution of 1851, however, those two provisions were ****446*** merged to read: "Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offence." Ind. Const., Art. I, § 16 (1851).[FN6] Unfortunately, the debates on the Indiana Constitution shed little light on the contemporary meaning of the clause.[FN7]

…

FN7. Apparently the only reference to proportionality in sentencing was a rhetorical statement offered by one delegate in the course of arguing against the exclusion of blacks from Indiana (an issue also raised at the Oregon Constitutional Convention):"[I]f the bare fact of a person of color coming into our State, and demeaning himself in an orderly and peaceful manner, is an offense against society, of so heinous a character as to deserve confinement in the penitentiary, or in the county jail? Would not the punishment in such a case be altogether disproportioned to the nature of the offense?"

Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana 596-97 (1850).

Obviously, the framers of the Oregon Constitution borrowed the two sentences of Article I, section 16, with which we are concerned here, from the Indiana Constitution of 1851.

…

in Magna Carta and in Blackstone's argument in favor of punishments that were reasonably related to the severity of particular offenses, while the prohibition on cruel and unusual punishments was first articulated in the English Bill of Rights and focuses on prohibited methods of punishment. Those differences suggest that, when the drafters of the Oregon Constitution combined the two provisions with the word "but" in Article I, section 16, ***666*** they did not intend the proportionality provision to be an exception or qualification to the bar on cruel and unusual punishments. *See* 1 Noah Webster, *An American Dictionary of the English Language* 29 (1828) (giving "excepting" as one meaning of "but"). Rather, the sentence seems to use the word "but" as the equivalent of "and" and simply to combine in one sentence those two different rules for criminal penalties. *See id.* (giving, as another meaning of "but," "[m]ore; further; noting an addition to supply what is wanting to elucidate, or modify the sense of the preceding part of a sentence, or of a discourse, or to continue the discourse, or to exhibit a contrast"). In other words, the prohibition on cruel and unusual punishment and the requirement of proportionality appear to be independent constitutional commands, joined in one sentence because they both concern appropriate punishment for crimes.

The framers of the Oregon proportionality provision made one other change in the text of the Indiana provision, omitting the words "nature of," and thus requiring that penalties be "proportioned to the offense," rather than "proportioned to the *nature of* the offense." Although the framers left no record indicating why they made that change, the text of the Oregon provision at least suggests that the framers intended the proportionality inquiry to focus on the specific criminal "offense" at issue, rather than on a potentially more open-ended inquiry into the "nature" of the offense.

…

Other than suggesting the likelihood that the provenance of the provision was the 1851 Indiana Constitution, the records of the Oregon Constitutional Convention shed no light on the changes or the meaning of the constitutional text. *See Billings v. Gates,* 323 Or. 167, 178, 916 P.2d 291 (1996)

("Apparently, the Oregon Constitutional Convention passed the [cruel and unusual punishments] clause without recorded discussion."); W.C. Palmer, *The Sources of the Oregon Constitution,* 5 Or. L. Rev. 200, 201 (1926) (Article I, section 16, was taken from Article I, sections 16 and 19, of the Indiana Constitution of 1851); Charles Henry Carey, ed., *The Oregon Constitution and Proceedings and Debates of the Constitutional Convention of 1857* 468 (1926) (same). Recent research shows that the sentence in question, taken from the Indiana Constitution, remained the same throughout the convention, although the section disappeared at one point before reappearing in the final version of the draft constitution. Claudia Burton and Andrew Grade, *A* **Legislative History** *of the Oregon Constitution of 1857, Part I,* 37 Willamette L Rev 469, 521-26 (2001).

Nothing in the records of the constitutional convention indicates that, when the framers of the Oregon Constitution adopted the proportionality requirement, they had any different concerns than those which had led Blackstone and later the framers of state constitutions from Pennsylvania to Indiana to emphasize the need for proportionality in sentencing. We therefore assume that those same concerns animated the Oregon framers.

…

BAKER V. CITY OF LAKESIDE
343 OR. 70, 164 P.3D 259
OR., 2007. JUNE 28, 2007

The city contends that, in amending ORS 30.275 in 1981, the legislature intended to exempt OTCA claims from ORS 12.020. That conclusion follows, the city reasons, from the plain wording of ORS 30.275(9). The Court of Appeals twice has interpreted ORS 30.275(9) that way. *See O'Brien v. State of Oregon,* 104 Or.App. 1, 5, 799 P.2d 171 (1990), *rev. dismissed,* 312 Or. 672, 826 P.2d 633 (1992) (so interpreting ORS 30.275(9)); *Lawson v. Coos Co. Sch. Dist. # 13,* 94 Or.App. 387, 390, 765 P.2d 829 (1988) (same). The trial court followed those decisions in ruling in the city's favor, and the Court of Appeals affirmed the trial court's judgment on the strength of its earlier decisions. We allowed plaintiff's petition for review to consider this recurring issue.

The parties' dispute in this case turns on the meaning of a clause in ORS 30.275(9). We begin by setting out the text of that subsection and then turn to the meaning of the disputed clause. ORS 30.275(9) provides:

…

Grammatically, both interpretations are permissible.

…

*****263*** Considering the text and context of ORS 30.275(9), we conclude that they favor plaintiff's interpretation. We cannot completely discount the city's interpretation of that subsection, however. Because there are two plausible interpretations, we look to the **legislative history** to determine the legislature's intent. *See PGE v. Bureau of Labor and Industries,* 317 Or. 606, 611, 859 P.2d 1143 (1993) (explaining when courts may look to **legislative history**).

…

Before 1981, ORS 30.275(1) (1979) required every person who had a tort claim against a public body to give written notice to the public body within 180 days of the loss or injury. That subsection also required that "[n]otice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested." ORS 30.275(1) (1979). Finally, the subsection required strict adherence to its terms. *Id.* (providing that "[a] notice of claim * * * which is ****78*** presented in any other manner than provided in this sectio[n] is invalid").

As a result of those requirements, courts had dismissed OTCA claims against public bodies when the plaintiff sent timely notice by first-class rather than certified mail. *See* Minutes, Senate Committee on Justice, Senate Bill (SB) 86, Feb. 10, 1981, 8 (testimony of Jeffrey K. McCollum). Similarly, public bodies had denied claims for failure to comply with the notice provisions even when they had ample actual notice. *See* Testimony, Senate Committee on Justice, SB 86, Jan. 20, 1981, Ex. A (statement of Dan O'Leary). In one case, for instance, an injured person had given the insurance adjuster for a public body notice of an accident within days after it had occurred. *Id.* The injured person had filled out and returned a questionnaire regarding the accident and also had given the insurance company information from the person's doctor. *Id.* Although the injured person had had numerous conversations with the adjuster during the 180-day period, the insurance company denied the claim after the 180-day period had passed because the injured person had not complied with the strict notice requirements of ORS 30.275 (1979). *Id.*

To cure that problem, the Oregon State Bar sponsored a bill that would have repealed ORS 30.275 (1979) in its entirety. Bill File, Senate Committee on Justice, SB 86, Dec. 11, 1980, draft bill. As initially drafted, not only would SB 86 have repealed the requirement to give tort claim notice found in subsection (1) of ORS 30.275 (1979), but it also would have repealed the two-year statute of limitations for OTCA claims found in subsection (3) of ORS 30.275 (1979). Over the next several months, the proponents and opponents of the bill discussed two issues. First, they debated whether the 180-day tort claim notice served a valid public purpose and, if it did, whether permitting actual notice would avoid the problems that had prompted SB 86. Second, they observed that repealing the two-year statute of limitations in ORS 30.275(3) (1979) would result in multiple statutes of limitation applying to OTCA claims. For instance, one witness explained that, although many OTCA claims against public bodies still would be subject to the general two-year statute of limitations for negligence claims, more than half of ***79** the OTCA claims against public bodies arose out of property damage and would be subject to a six-year statute of limitations. *See* Minutes, Senate Committee on Justice, SB 86, Jan. 20, 1981, 19 (testimony of Bill Blair).

The majority of the debate in the Senate committee focused on the need (or lack of it) for the 180-day tort claim notice. There was little disagreement that SB 86, as initially drafted, went too far in eliminating the two-year statute of limitations for OTCA claims and thus exposing public bodies to different statutes of limitations. On March 25, 1981, Senator Kulongoski moved in a work session to send SB 86, as initially drafted, to the floor with a "do pass" recommendation. Minutes, Senate Committee on Justice, SB 86, Mar. 25, 1981, 3-4. Senator Wyers said that, if the committee "decided to conceptually adopt th[at] motion, there would still be one remaining question as to whether an additional reference [should] be added to make it very clear to everyone that the two-year statute of limitations in Chapter 30 ***264** would still apply." *Id.* at 4. Senators Fadeley and Kulongoski then engaged in the following colloquy:

"Senator Fadeley said that the bill [SB 86] apparently tries to make a six-year statute applicable for property damage and a three-year statute applicable for wrongful death actions of at least one sort by a personal representative.

"Senator Fadeley said that as he understood the motion it was not asking for the six-year statute and the three-year statute on wrongful death was not being asked for.

"Senator Kulongoski said that was correct.

"Senator Fadeley asked whether [Senator Kulongoski] was intending that the existing two-year statute on personal injury apply and that the two-year general statute for tort claims act still apply.

"Senator Kulongoski replied that was correct."

Id. (some capitalization omitted).[FN3]

FN3. The committee did not vote on Senator Kulongoski's motion to send the bill to the floor with a "do pass" recommendation, perhaps because of the issue that Senator Wyers had noted.

The committee held another hearing on the bill on April 8, 1981. At that hearing, Senator Fadeley again ***80** expressed his concern that SB 86, as initially proposed, would result in a six-

year statute of limitations for property damage claims against public bodies and a three-year statute of limitations in wrongful death actions. Minutes, Senate Committee on Justice, SB 86, April 8, 1981, 2. Legislative counsel explained that she had drafted an amendment to the bill. *Id.* Her amendment, if accepted, would delete subsection (1) of ORS 30.275 (1979), which required tort claim notice, but would retain subsection (3), as amended, which provided a two-year statute of limitations for OTCA claims. Senate Committee on Justice, SB 86, April 8, 1981, Ex. B. Senator Gardner "clarified that the effect [of the amendment] would be for all claims under the tort claims act, there would be a two-year statute of limitations and no special notice requirements." Minutes, Senate Committee on Justice, SB 86, April 8, 1981, 2. The committee voted to adopt the amendment and to send SB 86, as amended, to the floor with a "do pass" recommendation.[FN4] *Id.* at 3-4.

FN4. As amended, SB 86 provided, in part: "An action to recover damages from a public body or from an officer, employe[e] or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the date of the accident or occurrence out of which the claim for damages arose."

Bill File, Senate Committee on Justice, SB 86, April 14, 1981, A-Engrossed Senate Bill 86 (emphasis and bracketed material omitted).

On April 16, 1981, Senator Gardner moved on the Senate floor to refer SB 86 back to the Committee on Justice. *See* Tape Recording, Senate, SB 86, April 16, 1981, Tape 50, Side B. The ensuing debate focused entirely on the committee's decision to eliminate tort claim notice. The senators who favored retaining tort claim notice recognized the problems that the strict service requirements had generated but thought that permitting actual notice would alleviate those problems. *See id.* (remarks of Senators Smith, Gardner, *et al.*). They also reasoned that timely tort claim notice permitted public bodies to respond quickly to correct improper practices or dangerous conditions. *See id.* After extensive discussion, the Senate voted to refer the bill back to the committee. *See id.*

***81** On April 30, 1981, the Senate Committee on Justice held another hearing on the bill. At that hearing, a witness testifying on behalf of the City of Salem offered a proposed amendment to SB 86 that reflected a compromise "made and agreed upon by most of the proponents of SB 86." Minutes, Senate Committee on Justice, SB 86, April 30, 1981, 5 (testimony of Bill Blair). In addition to requiring tort claim notice and providing that timely actual notice to the public body would be sufficient, the proposed amendment provided:

"Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS Chapter 12 or other statute providing a limitation on the commencement of an action, any action for damages within the scope of ORS 30.260 to 30.300 ***265** shall be commenced within two years from the alleged injury."

Senate Committee on Justice, SB 86, April 30, 1981, Ex. G. The witness did not provide any explanation for the changes, and the committee voted to adopt the proposed amendment without further discussion.[FN5] Minutes, Senate Committee on Justice, SB 86, April 30, 1981, 5-6. The committee sent the amended bill to the full Senate, which approved it, as did the House.

FN5. Legislative counsel later made minor wording changes to the proposed amendment that are not relevant to the issue presented here.

The **legislative history** does not contain a specific explanation why the drafters of the April 30, 1981, amendment added the phrase, "Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action," to the two-year statute of limitations for OTCA claims. We draw, however, three conclusions regarding the legislature's intent both from the discussions leading up to the adoption of that wording and also from the specific changes in wording that the legislature made.

First, in all the committee hearings on SB 86, the legislators and the witnesses focused exclusively on two issues-tort claim notice and the need to preserve the two-year statute of limitations ***82*** for OTCA claims. What is now ORS 30.275(9) preserves the two-year statute of limitations for OTCA claims, and the **legislative history** that led up to its adoption provides no reason to think that that subsection-including the notwithstanding clause-addresses any subject other than limitations periods.

…

Finally, we note that the notwithstanding clause tracks the concern that Senator Fadeley had expressed throughout the discussion of SB 86. Senator Fadeley repeatedly had stated that…

Rather, the **legislative history** confirms that, in amending what is now ORS 30.275(9), the legislature focused ***83*** solely on the question of statutes of limitations. The history thus confirms that the phrase "providing a limitation on the commencement of an action" applies both to "any other provision of ORS chapter 12" and "other statute." [FN6]

FN6. We note that this is not a case in which we are attempting to infer intent from legislative inaction. *See Berry v. Branner,* 245 Or. 307, 311, 421 P.2d 996 (1966) (explaining the difficulty in inferring legislative intent from inaction). Nor is it a case in which the legislature was silent regarding the subsection at issue here. Rather, the committee and the witnesses explained at length that this subsection would specify the applicable limitations period for OTCA actions. We rely on that explanation in inferring that the wording adopted on April 30, 1981, addresses only periods of limitation.

266 Considering the text, context, and **legislative history** of ORS 30.275(9), we hold that the notwithstanding clause in ORS 30.275(9) applies only to those provisions of ORS chapter 12 and other statutes that provide a limitation on the commencement of an action. The notwithstanding clause does not bar application of ORS 12.020 to OTCA claims. Because plaintiff filed her complaint within two years of the accident and served the city within 60 days of filing her complaint, her complaint was timely under ORS 12.020(2). The city's motion for summary judgment should have been denied.

DISSENT

But it is at that point in its discussion that the majority commits an analytical error: without explanation, it labels the city's proposed statutory interpretation as "[g]rammatically * * * permissible." 343 Or. at 74, 164 P.3d 261. As a consequence of that label, the majority concludes that ORS 30.275(9) is ambiguous, requiring the court to explore **legislative history**.

The majority's conclusion, in my view, is not correct. This court does not examine statutory grammar in isolation. Rather, we must determine legislative intent by considering initially the entirety of statutory text and context. As noted, a proper examination of those aspects of ORS 30.275(9), and not only its grammar, demonstrates that the city's proffered ***85*** statutory interpretation is not reasonable, *i.e.,* is *not,* in context, "grammatically * * * permissible."

The majority nonetheless embarks on a discussion of **legislative history**. Stated ***267*** more precisely, the majority embarks on a discussion of *other aspects* of the **legislative history** of ORS 30.275(9), such as whether a two-year period of limitations should apply and whether the statute should require the delivery of a tort claim notice. Notably, the majority acknowledges that it has discovered no explanation, by any legislator or anyone else, regarding the meaning of the introductory clauses of ORS 30.275(9). Nevertheless, the majority transforms that silence in the legislative record into affirmative evidence of the legislature's intent that removes all reasonable doubt about what the legislature meant to accomplish.

… As noted, I conclude that ORS 30.275(9) is not ambiguous, and I draw that conclusion from an examination of statutory text and context. I would not resort to **legislative history** because no statutory ambiguity justifies that step.

STATE V. SANDOVAL
342 OR. 506, 156 P.3D 60
OR., 2007. MARCH 29, 2007

Our initial task is to determine, from the text and context of the foregoing statutes, whether the legislature intended to limit the availability of the right to use deadly physical force for self-defense to those circumstances in which the person had no opportunity to retreat (or, as the special instruction had it, "no reasonable opportunity to escape to avoid the affray and * * * no other means of avoiding or declining the combat"). *See ***511** PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610, 859 P.2d 1143 (1993) (describing analytical method for construing statutes). If, after that initial examination, the legislature's intent with respect to the existence of a duty to retreat still is unclear, we may proceed to an examination of **legislative history**. *Id.* at 611-12, 859 P.2d 1143.

On a purely textual level, ORS 161.219 contains no specific reference to "retreat," "escape," or "other means of avoiding" a deadly confrontation.

JOHNSON V. SAIF CORP.
343 Or. 139, 164 P.3d 278
Or., 2007. July 26, 2007

SAIF properly points out that the state may choose to conduct its business through different kinds of entities, including departments, agencies, boards, or corporations of various kinds, and the fact that the legislature chose to use the "corporate" form in creating SAIF does not mean that SAIF is not an arm of the state. We agree that the mere fact that SAIF was created as a public corporation rather than as a typical state agency does not necessarily mean, as plaintiff argues, that SAIF is not an arm of the state for Eleventh Amendment purposes. However, the legislature's choice of form for the entity that it creates *does* provide some indication of its view of the "nature" of that entity and, when viewed in the context of the powers of the entity and its exemption from statutes otherwise applicable to state agencies, supports our conclusion. It is undisputed that the 1979 Legislative Assembly intended to change the character of SAIF by making it less like a state agency and more like a private insurance carrier. As the Court of Appeals concluded after reviewing the **legislative history** of the 1979 statutory changes, "the legislature intended SAIF to have a business purpose and function apart from traditional governmental business and to have political and fiscal independence." *Johnson I,* 202 Or.App. at 291-92, 122 P.3d 66.

HAMILTON V. PAYNTER
342 OR. 48, 149 P.3D 131
OR., 2006. DECEMBER 07, 2006

The question here involves the correct interpretation of ORS 12.155, and we begin with the text of that statute.

…

In our view, however, that sentence is entirely consistent with the broad definition of "person" found in ORS 174.100. The plain text of ORS 12.155 simply requires any "person who makes an advance payment," whether an ****54*** insurer or not, to use the DCBS's form. The sentence that mandates use of a DCBS form does not "require[]" a narrower definition of the word "person." ORS 174.100.

…

Defendants note that the **legislative history** of ORS 12.155 quoted in *Duncan*-the testimony of the Insurance Commissioner in favor of the act-speaks of only advance payments by insurers. *See* 276 Or. at 637, 556 P.2d 105 (setting out testimony) (quoted above, 342 Or. at 54 n. 4, 149 P.3d at

----n. 4). But the statutory text shows that, even if the legislature had a particular problem in mind, it chose to use a broader solution. As this court previously has observed,

"Statutes ordinarily are drafted in order to address some known or identifiable problem, but the chosen solution may not always be narrowly confined to the precise problem. The legislature may and often does choose broader language that applies to a wider range of circumstances than the precise problem that triggered legislative attention. * * * When the express terms of a statute indicate such broader coverage, it is not necessary to show that this was its conscious purpose." …

In sum, *Duncan* did not hold that ORS 12.155 applies to only insurers, and the court's discussion in *Duncan* of **legislative history** does not justify the narrow reading of the text for which defendants argue. *Duncan* does not control the outcome of this case.

LIBERTY V. STATE, DEPT. OF TRANSP.
342 OR. 11, 148 P.3D 909
OR., 2006. NOVEMBER 24, 2006

Court of Appeals affirmed. The court first determined that immunity under ORS 105.682 is available only if (1) the landowner permits any person to use the land for recreational purposes, without charge, and (2) the injury has "arisen out of the use of that land for such 'recreational purposes.' " ***911** *Liberty* at 614-15, 116 P.3d 902. Next, the court noted that the statute does not *define* "recreational purposes," but rather sets out, in ORS 105.672(5), a ***16** nonexclusive list of activities that the term "includes"-a list that does not include the use of land to gain access to other land for recreational purposes on the latter property. *Id.* at 615, 116 P.3d 902. The court then examined the meaning of the words "recreational" and "purpose" and found that "purpose," according to *Webster's Third New Int'l Dictionary,* is " 'an aim or end,' " or " 'an object, effect or result aimed at, intended or attained.' " *Id.* at 616, 116 P.3d 902 (quoting *Webster's Third New Int'l Dictionary* 1847 (unabridged ed (2002))). "Recreational" means simply " 'of or relating to recreation,' " and "recreation" is defined as " 'the act of recreating or the state of being recreated.' " *Id.* (quoting *Webster's* at 1899). From those definitions, the court concluded that it "seems reasonably plausible that, when a person enters land for the purpose of gaining access to another parcel for recreational purposes, the access itself has a recreational purpose in that the end, object, result, or goal of the entry is recreation." *Id.* at 616, 116 P.3d 902.

The Court of Appeals also examined the **legislative history** of ORS 105.682 and determined that what limited evidence existed supported its interpretation of the statute. The legislature enacted the predecessor to ORS 105.682 in 1963. During the hearings on the bill to enact that earlier statute, a representative from the Oregon Farm Bureau testified that "his organization supported the bill because, among other things, 'in many cases an individual must *cross private land in order to get to public lands;* and the potential suit is always there. Such a bill [creating immunity] would relieve the landowner's mind if he allowed this.' " *Liberty,* 200 Or.App. at 617, 116 P.3d 902 (quoting Minutes, House Committee on Fish and Game, HB 1696, Apr 10, 1963, 2) (emphasis added by Court of Appeals). The court noted that no actual legislator had commented on that issue, but found that the quote indicated that legislators were aware that at least one member of the public viewed the act as providing immunity to lands used to gain access to public recreational lands. *Id.* at 617-18, 116 P.3d 902. The court also observed that the immunity statute had been amended on several occasions, but asserted that the **legislative history** of those amendments did not suggest that the legislature intended to alter the "basic thrust" of the statute. ***17** *Id.* at 618, 116 P.3d 902. Accordingly, the court held that ORS 105.682 protected defendant from liability for plaintiffs' injuries. *Id.* at 619, 116 P.3d 902.[FN1]

…

Because the scope of the immunity that ORS 105.682 grants to landowners is a matter of statutory construction, we begin with the text of the statute.

…

Defendant argues that its interpretation of the statute is supported by the dictionary definitions of the statutory terms. The definition of "purpose" includes "an object to be attained" and a "result aimed at." *Webster's* at 1847 (unabridged ed 2002). The definition of "recreational" is something "relating to recreation." *Id.* at 1899. Therefore, according to defendant, "a person uses a parcel of land for a purpose related to recreation when the person uses that parcel of land with the end, aim, object or goal of reaching an adjacent parcel of land where he plans to engage in [recreation.]"

In our view, the words that the legislature used in ORS 105.682 demonstrate its intent to grant immunity to ***19*** only the owner of the land that itself is "use[d] * * * for recreational purposes," and that "recreational purposes" does not include crossing one person's land to gain access**…**

In interpreting a statute, we examine the text of the statute within its context. Here, an important part of the context of ORS 105.682 is another provision in the immunity law, ORS 105.688(1)(a), which *does* grant immunity if the injury occurs on land that is "adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605 [.]" In that related statute, the legislature expressly *extended* the immunity conferred by ORS 105.682 to adjacent or contiguous land that is used to gain access to waters where the injured party intended to recreate. The fact that the legislature enacted ORS 105.688(1)(a) to provide immunity for injuries on land that is adjacent or contiguous to water-water that persons travel to for recreational purposes-strongly suggests that the legislature believed that ORS 105.682(1) otherwise did *not* extend to land that was "adjacent or contiguous" to places where persons go for recreational purposes. If the legislature similarly had intended to extend immunity to land-often, adjacent or contiguous land-that is used for *access to other land* where the person intended to ***913*** recreate, it would have done so. It did not do so, and we decline to insert into the statute that which the legislature has omitted. ORS 174.010.

…

By providing in ORS 105.672(5) that the term " '[r]ecreational purposes' includes, but is not limited to, outdoor activities such as hunting, fishing [and other specified activities]," the legislature made it clear that its list of "outdoor activities" that could be "recreational purposes" was not exhaustive. When the legislature uses "nonspecific or general phrases" as well as a list of items, this court, under the principle of *ejusdem generis,* construes the statute "as referring only to other items of the same kind." *Vannatta v. Keisling,* 324 Or. 514, 533, 931 P.2d 770 (1997) (stating and applying principle). *See also Lewis v. CIGNA Ins. Co.,* 339 Or. 342, 350-51, 121 P.3d 1128 (2005) (under *ejusdem generis* rule, court examines "basic characteristics" of enumerated items when construing more general words). With that principle in mind, we consider whether there is a characteristic trait among the "outdoor activities" listed in ORS 105.672(5) that also is shared by the act of crossing land to get to other land.

…

For that reason, applying the *ejusdem generis* rule, crossing land to obtain access to other land is not an outdoor activity that comes within the definition of "recreational purposes" in ORS 105.672(5).[FN3]

…

FN3. Defendant argues that the **legislative history** of the 1963 version of the immunity statute supports its position because one witness testified that the statute would provide immunity from liability for injuries that occur on land that a person crossed to gain access to other land for recreational purposes. *See Liberty,* 200 Or.App. at 617-18, 116 P.3d 902 (describing that **legislative history**). We do not give substantial weight to that **legislative history**, in light of our analysis of the text and context of ORS 105.682, set forth above. Moreover, the immunity statutes were substantially rewritten in 1971 and again in 1995, and provisions that are central to our interpretation of the statute here-including the definition of "recreational purposes" in ORS 105.672(5) and the provision extending immunity to land that is adjacent or contiguous to bodies of water, ORS 105.688(1)(a)-do not appear in the 1963 version of the statute.

Returning to the primary issue, determining the meaning of a statute is a question of law, "ultimately for the court." *Springfield Education Assn. v. School Dist.,* 290 Or. 217, 224, 621 P.2d 547 (1980). "When an agency's interpretation or application of a provision of law is at issue, the reviewing court's standard of review depends upon whether the phrase at issue is an exact term, an inexact term, or a delegative term." *Coast Security Mortgage Corp. v. Real Estate Agency,* 331 Or. 348, 353, 15 P.3d 29 (2000). Exact terms "impart relatively precise meaning[s]," and "[t]heir applicability in any particular case depends upon agency factfinding." *Springfield Education Assn.,* 290 Or. at 223-24, 621 P.2d 547. An appellate court "reviews agency application of exact terms for substantial evidence." *Coast Security Mortgage Corp.,* 331 Or. at 354, 15 P.3d 29 (internal quotation marks omitted). Inexact terms express a complete legislative meaning but with less precision. *Id.* at 354, 15 P.3d 29. An appellate court must review an agency's interpretation of inexact terms to ensure that it is consistent with the legislature's intent. *Id.* "Delegative terms express incomplete legislative meaning that the agency is authorized to complete." *Id.* (internal quotation marks omitted). An appellate court reviews an agency's interpretation of delegative terms to ensure that the interpretation is "within the range of discretion allowed by the more general policy of the statute." *Id.*

…

Here, ORS 342.905(6) defines neither term, and both terms are open to multiple interpretations. *See id.* at 354, 15 P.3d 29 (examining whether term is defined in another part of statute and whether term is open to various interpretations to determine if it is delegative); *cf. J.R. Simplot Co. v. Dept. of Agriculture,* 340 Or. 188, 197, 131 P.3d 162 (2006) (concluding that term was not delegative because surrounding text limited meaning of term). In addition, the term "unreasonable" is among the examples of delegative terms this court has noted previously. *See Springfield Education Assn.,* 290 Or. at 228, 621 P.2d 547 (describing the terms "good cause," "fair," "unfair," "undue," and "unreasonable," as delegative). We conclude that the terms "unreasonable" and "clearly an excessive remedy" express incomplete legislative meaning that the FDAB is authorized to complete; therefore, they are delegative.

…

When interpreting a statute, this court must give effect to the legislature's intent. *PGE,* 317 Or. at 610, 859 P.2d 1143. To do so, we begin our analysis by considering the text and context of the statute in question. *Id.* at 610-11, 859 P.2d 1143. We give "words of common usage their plain, natural, and ordinary meaning[s]," and we give words that have well-defined legal meanings those meanings. *Norden v. Water Resources Dept.,* 329 Or. 641, 645, 996 P.2d 958 (2000). As part of that first level of analysis, this court considers its prior interpretations of the statute. *State v. Toevs,* 327 Or. 525, 532, 964 P.2d 1007 (1998). If the statute's meaning is clear from an analysis of its text and context, we proceed no further.[FN6] *PGE,* 317 Or. at 611, 859 P.2d 1143.

FN6. We note that ORS 174.020(3) provides:"A court may limit its consideration of **legislative history** to the information that the parties provide to the court. A court shall give the weight to the **legislative history** that the court considers to be appropriate."

…

We begin with the term "unreasonable." ORS 342.905(6) provides no definition of that term, and nothing indicates that the legislature intended it to have a special legal meaning. Thus, we look to its common dictionary definition.

In interpreting a statute, the court's task is to discern the intent of the legislature. ORS 174.020; *****1146*** *State v. Person,* 316 Or. 585, 590, 853 P.2d 813 (1993); *Teeny v. Haertl Constructors, Inc.,* 314 Or. 688, 694, 842 P.2d 788 (1992). To do that, the court examines both the text and context of the statute. *State v. Person, supra,* 316 Or. at 590, 853 P.2d 813; *Southern Pacific Trans. Co. v. Dept. of Rev.,* 316 Or. 495, 498, 852 P.2d 197 (1993). That is the first level of our analysis.

In this first level of analysis, the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent. *State v. Person, supra,* 316 Or. at 590, 853 P.2d 813; ****611*** *State ex rel. Juv. Dept. v. Ashley,* 312 Or. 169, 174, 818 P.2d 1270 (1991). In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning. *See State v. Langley,* 314 Or. 247, 256, 839 P.2d 692 (1992) (illustrating rule); *Perez v. State Farm Mutual Ins. Co.,* 289 Or. 295, 299, 613 P.2d 32 (1980) (same).

Also at the first level of analysis, the court considers the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes. *Southern Pacific Trans. Co. v. Dept. of Rev., supra,* 316 Or. at 498, 852 P.2d 197; *Sanders v. Oregon Pacific States Ins. Co.,* 314 Or. 521, 527, 840 P.2d 87 (1992). Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP & L,* 302 Or. 256, 269, 729 P.2d 552 (1986), and that use of the same term throughout a statute indicates that the term has the same meaning throughout the statute, *Oregon Racing Com. v. Multnomah Kennel Club,* 242 Or. 572, 586, 411 P.2d 63 (1966).

If the legislature's intent is clear from the above-described inquiry into text and context, further inquiry is unnecessary.

If, but only if, the intent of the legislature is not clear from the text and context inquiry, the court will then move to the second level, which is to consider legislative history to ****612*** inform the court's inquiry into legislative intent. *State ex rel. Juv. Dept. v. Ashley, supra,* 312 Or. at 174-75, 818 P.2d 1270. *Compare State v. Trenary,* 316 Or. 172, 178 n. 5, 850 P.2d 356 (1993) ("Although we need not resort to legislative history, it confirms our conclusion."). When the court reaches legislative history, it considers it along with text and context to determine whether all of those together make the legislative intent clear. *State ex rel. Juv. Dept. v. Ashley, supra,* 312 Or. at 174-80, 818 P.2d 1270. If the legislative intent is clear, then the court's inquiry into legislative intent and the meaning of the statute is at an end and the court interprets the statute to have the meaning so determined.

If, after consideration of text, context, and legislative history, the intent of the legislature remains unclear, then the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty. *See State ex rel. Juv. Dept. v. Ashley, supra,* 312 Or. at 192 & n. 19, 818 P.2d 1270 (Unis, J., dissenting) (asserting that maxims of statutory*****1147*** construction come last in the analysis). Although some of those maxims of statutory construction may be statutory, *see, e.g.,* ORS 174.030 (natural rights), others more commonly may be found in case law. Those include, for example, the maxim that, where no legislative history exists, the court will

attempt to determine how the legislature would have intended the statute to be applied had it considered the issue. *Security State Bank v. Luebke,* 303 Or. 418, 423, 737 P.2d 586 (1987).[FN4]

FN4. The same structure outlined above applies, not only to statutes enacted by the legislature, but also to the interpretation of laws and constitutional amendments adopted by initiative or referendum, as well as to the interpretation of regulations. *See Roseburg School District v. City of Roseburg,* 316 Or. 374, 378-79 & n. 5, 851 P.2d 595 (1993) (constitutional initiative, drawing the express comparison to interpretation of statutes and regulations); *Perlenfein and Perlenfein,* 316 Or. 16, 20, 848 P.2d 604 (1993) (interpreting a regulation).

…

We conclude that the text and context of ORS 659.360(3) unambiguously allows an employee to use accrued leave, paid or unpaid, during the parental leave, even if the employee has not met the conditions of leave eligibility contained in an existing collective bargaining agreement.

ROBERTS V. SAIF CORP.
341 OR. 48, 136 P.3D 1105
OR., 2006. JUNE 15, 2006

In analyzing that question, we begin with the text of that phrase and its context. As used in this context, the word "primarily" means "first of all: fundamentally, principally * * *." *Webster's Third New Int'l Dictionary* 1800 (unabridged ed 2002). As the legislature's use of the word "primarily" implies, a worker may engage in a recreational or social activity for reasons other than personal pleasure, and the board's task is to determine whether the worker's personal pleasure was the principal or fundamental reason for engaging in the activity. As the text also implies, in carrying out that task, the board should consider whether the worker was engaged in the activity primarily for the worker's personal pleasure or for work-related reasons.

…

A review of the **legislative history** confirms that that was the legislature's intent. In 1986, an interim House Task Force proposed, among other changes to the workers' compensation law, a provision that would reverse a Court of Appeals decision, *Beneficiaries of McBroom v. Chamber of Commerce,* 77 Or.App. 700, 713 P.2d 1095, *rev. den'd,* 301 Or. 240, 720 P.2d 1279 (1986). *See, e.g.,* Testimony, House Task Force on Occupational Disease, Oct. 8, 1986, Ex G (statement of Ken Johnson) (stating that reason for provision). In *McBroom,* a salesperson attending a work-related conference in Los Angeles died, while intoxicated, in a hot tub. 77 Or.App. at 702, 713 P.2d 1095. In deciding whether his widow had a compensable workers' compensation claim, the Court of Appeals began from the proposition that "traveling employees are considered to be within the scope of employment while away from home" and that injuries suffered during the course of those travels ordinarily will be compensable. *Id.* at 703, 713 P.2d 1095 (internal quotation marks and citations omitted). The court recognized, however, that the injury would not be compensable if the worker injured himself while engaged in "a distinct departure on a personal errand." *Id.* (internal quotation marks and citation omitted). Because the ****1108*** Court of Appeals concluded that that ****54*** exception did not apply, it held that the death was compensable. *Id.* at 704, 713 P.2d 1095.

In seeking to reverse that ruling, the task force drafted a bill that would have added the following provision to the workers' compensation statutes: An injury will not be compensable if the worker "incurred [it] while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities for the worker's personal pleasure." House Task Force on Occupational Disease, Oct. 8, 1986, Ex A (Sept. 9, 1986 draft bill).

Some members of the task force expressed concern over the breadth of the proposed exclusion. Representative Hooley observed that the exclusion could mean that "taking a recreational walk would disqualify certain work related claims automatically." Minutes, House Task Force on Occupational Disease, Oct. 8, 1986, 30. Representative Kotulski stated that he shared

Representative Hooley's concern and suggested adding the phrase "and not in any way connected with employment activities" after the word "pleasure." *Id.* Alternatively, Representative Kotulski suggested limiting the scope of the exclusion to recreational or social activities that the employer had not encouraged, while another representative proposed limiting the exclusion to recreational or social activities that lacked a "demonstrable relationship" with the employer's interests. *Id.*

Ultimately, the task force could not agree on a solution to the problem and submitted, during the next legislative session, a draft bill that contained the same wording that had caused its members concerns. *Id.; see* House Committee on Labor, HB 2271, Bill File (Nov. 11, 1986 draft bill) (retaining same wording). At a hearing on that bill, a staff person for the House Labor Committee noted the task force's concern over the breadth of the proposed wording. Minutes, House Committee on Labor, HB 2271, Mar. 25, 1987, 4. One committee member explained that the committee was not trying to prevent injuries from being compensable if the employer had benefitted from the recreational or social activity. Tape Recording, House Committee on Labor, HB 2271, Mar. 25, 1987, Tape 69, Side B. A witness suggested adding the phrase "and of no benefit to the employer" after the word ***55** "pleasure" to make that intent clear. *Id.* (statement of Jim Edmunson). However, Representative Kotulski objected that, "[i]f we added that, I think that we'd be opening up the whole hot tub case again." *Id.* After discussing the question, the committee decided not to amend that section of the bill, but the chair explained that the committee intended that the exclusion would apply to only those recreational and social activities "that *clearly* do not benefit the employer." *Id.* (statement of Representative Shiprack) (emphasis added).

The issue arose again when the bill reached the Senate Labor Committee. Senator Hill, the chair of the committee, proposed resolving it by adding the word "solely" before the phrase "for the worker's personal pleasure." Senator Hill explained his reasons for proposing the amendment:

"My feeling on offering this amendment is to indicate that we're not talking about something that the worker may be engaged in which is actually a part or within the scope of employment. For instance, a working lunch in which the worker is eating and may find pleasure in the experience of eating salmon, or something, and may choke on a salmon bone and therefore incur a compensable injury. * * * What we're trying to get at are those recreational or social activities that are not part, that are not part of the work, that are performed solely for the worker's personal pleasure. And that would help clarify that."

Tape Recording, Senate Committee on Labor, HB 2271, June 8, 1987, Tape 201, Side A (statement of Senator Hill). The committee approved the amendment, and the legislature enacted the bill as amended.

In 1990, the legislature returned to the issue and substituted the word "primarily" for "solely" in ORS 656.005(7)(b)(B) (1987), *amended by* Or Laws 1990, ch 2, § 3. A proponent of that amendment testified that it

"basically just cleans up something in the '87 legislature that you may recall, the hot ***1109** tub case. It really just kind of cleans up the language, making that provision that was already enacted a little more meaningful."

Tape Recording, Special Committee on Workers' Compensation, SB 1197, May 3, 1990, Tape 7, Side B (statement of ***56** Constance Wold). Although another witness opposed the amendment, the committee adopted it without further discussion, and the legislature enacted the bill.

As the **legislative history** confirms, the legislature intended that the board should determine both the degree to which a recreational or social activity serves the employer's work-related interests and the degree to which the worker engaged in the activity for the worker's personal pleasure. Only if the worker's personal pleasure was the fundamental or principal reason, in relation to work-related reasons, for engaging in the activity will the resulting injury be noncompensable.

STATE V. MAKUCH

340 OR. 658, 136 P.3D 35
OR., 2006. JUNE 02, 2006

In interpreting ORS 9.695(2), we use the now-familiar methodology for statutory construction in which we seek the intent of the legislature by examining the statutory text in context.[FN6]

FN6. In 2001, the legislature amended ORS 174.020 to permit parties to offer **legislative history** to aid the courts in interpreting a statute. Or. Laws 2001, ch. 438, § 1. However, those amendments apply only to "actions commenced on or after" June 18, 2001. *Id.* at §§ 2, 3. Defendants were indicted in 1998, so ORS 174.020, as amended, does not apply.

STATE V. MURRAY
340 OR. 599, 136 P.3D 10
OR., 2006. MAY 25, 2006

This case turns entirely on whether a rational finder of fact could conclude, from the evidence just outlined, that defendant had "take[n]" Linderman "from one place to another." That inquiry necessarily involves an issue of statutory interpretation that invokes this court's familiar methodology of examining the words of a statute, read in relevant context, and, if no clear interpretation emerges from that exercise, resorting to extrinsic aids such as **legislative history** to determine the intent of the legislature. *See generally PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610-12, 859 P.2d 1143 (1993) (describing that methodology).

The question of what is included in the concept of "taking" a person "from one place to another" is, at bottom, an exercise in metaphysics. The words "from" and "to" create no problem here, because they clearly describe the idea of movement, *i.e.,* of a change of position. And "another" simply replicates "place"- *i.e.,* the statutory phrase fairly may be paraphrased as a matter of standard English to require that a person be moved "from place to place." Thus, in the final analysis, this case comes down to the question of how one is to define the term "place" for the purposes of ORS 163.225(1)(a).

…

The criminal code, of which ORS 163.225 is a part, contains ***604*** no definition of "place." Absent a special definition, we ordinarily would resort to dictionary definitions, assuming that the legislature meant to use a word of common usage in its ordinary sense. *See PGE,* 317 Or. at 611, 859 P.2d 1143 (noting that words of common usage typically should be given their plain, natural, ****13*** and ordinary meaning). But resort to a dictionary gets us nowhere here. "Place" is defined, in *Webster's Third New Int'l Dictionary* 1727 (unabridged ed. 2002), as "an indefinite region or expanse." Such a definition hardly can be said to clarify the issue. (There are many other definitions, but none comes as close as the foregoing to addressing the problem before us.) We therefore turn to the **legislative history** of the kidnapping statutes, to find some guidance as to legislative intent.

In *State v. Garcia,* 288 Or. 413, 605 P.2d 671 (1980), this court undertook a comprehensive examination of the **legislative history** of the kidnapping statutes.[FN4] We set out the court's analysis and some of its conclusions at length, because we find them to be well supported in the history of the statute:

…

"The 1971 legislature adopted the present kidnapping statutes as part of the complete revision of the Oregon Criminal Code. * * * Carefully kept records of the proceedings of the [Oregon Criminal Law Revision] Commission [, the body that created the new code,] and of its subcommittees were preserved and, accordingly, provide a rich source for determination of the drafters' intent. The Commission's first draft of the kidnapping sections was adopted from the Model Penal Code and contained the following commentary:

…

" * * * *The minutes reveal that the drafters intended to prevent conviction and sentencing for kidnapping when the detention was merely incidental to a rape or robbery.* The difficulty facing the drafters, however, was to provide the flexibility to cover diverse kidnapping fact situations, yet rationally restrict prosecutorial discretion to punish.

"The [wording] of the proposed kidnapping statutes was revised three times. The commentary following each revision included the above-quoted passage. This passage was also included in the tentative and final draft commentaries, but the drafters added the following paragraph:

" 'The proposed draft solves this problem [of excluding abductions which are incidental to or an integral part of the commission of an independent crime] by strictly limiting kidnapping in the first degree to only those instances where the actor's purpose in abducting falls within subsection (1) of [ORS 163.235 (the statute defining Kidnapping in the First Degree)].'

TRENDWEST RESORTS, INC. V. DEPARTMENT OF REVENUE
340 OR. 413, 134 P.3D 932
OR., 2006. APRIL 27, 2006

There is no ambiguity in the statutory wording respecting the facts of this case. The building at issue was constructed after the former building was demolished. The present building is not, under any reasonable definition of the word, an "addition." It is, instead, a new building. Taxpayer's contrary argument does nothing to advance our inquiry, and we reject it without further discussion.

…

FN3. Taxpayer suggests that the meaning for which it contends is consistent with the **legislative history** of ORS 307.330, which (according to taxpayer) shows that the legislature was concerned with providing relief from the disincentive to economic activity that arises when property is subjected to taxation before it produces income. We do not deem it necessary to consult **legislative history** to resolve this problem, inasmuch as the text of the statute seems clear to us. However, we nonetheless have examined the **legislative history** that taxpayer has proffered to us. Aside from a clear legislative intent to encourage construction by making an ad valorem tax exemption available under certain carefully defined circumstances, we find the **legislative history** to be ambiguous and unhelpful. Certainly, it does nothing to negate our reading of the statutory text itself, read in context.

MABON V. WILSON
340 OR. 385, 133 P.3D 899
OR., 2006. APRIL 13, 2006

The answer in this case turns on the interpretation of the meaning and scope of the two emphasized clauses in ORS 30.510. *****901*** Those clauses state that an action may be maintained "upon the information of the district attorney, or upon the relation of a private party." The first clause makes it appear that only the district attorney may bring a proceeding under ORS 30.510 and that, as a consequence, Mabon's case properly was dismissed. However, the second clause casts doubt on the foregoing interpretation because of its reference to such actions being brought "on the relation of a private party." Mabon is a private party; does the second clause authorize him to bring the present action? That is a question of statutory interpretation that, at least initially, requires examination of the words of the statute, the context in which those words appear (including the history of the evolution of the statutory wording over time), and the case law construing those words. *See generally PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610-12, 859 P.2d 1143 (1993) (describing template for construing statutes); *see also State v. Perry,* 336 Or. 49, 55, 77 P.3d 313 (2003) (noting that historical background of statutes provides further context).

***390** In addition to the express words of ORS 30.510, quoted above, we find two contextual statutes, ORS 30.530 and ORS 30.610, that aid our analysis. We set out those statutes here, in order to facilitate our examination of the text of ORS 30.510(1).

…

In our view, the contextual clues provided by the words of those statutes point in the same direction. First of all, ORS 30.530 makes it clear that the district attorney has control over the proceedings brought under ORS 30.510, even to the extent of being entitled to name the person whom the district attorney believes should be granted the office presently held by the defendant. There is no suggestion that the legislature intended to give any private party a similar right to advocate for a claimant to the office or any voice in determining whether the district attorney should or should not address the issue.

***391** Second, we find the directive in ORS 30.610 that all actions of the kind involved in this case "shall be commenced and prosecuted by the district attorney" to be a strong indicator that it is the district attorney who must bring such proceedings.

…

****902** In summary, and in spite of the ambiguity of ORS 30.510 when one considers certain of the words of that statute in isolation, we are satisfied that the statutory scheme as a whole contemplates that the district attorney must participate in cases like the present one. That said, we nonetheless look to the history of the statute to determine whether that history undercuts in any way our preliminary assessment of the meaning of the wording of ORS 30.510. And, finally, we examine the case law decided under ORS 30.510 and its predecessors, in order to determine whether this court in the past has interpreted the statute in some other way.

We turn first to the statutory history. ORS 30.510 and its contextual statutes are a statutory substitute for the ancient writ of *quo warranto* ("by what warrant?") under which, since at least the thirteenth century, English kings could inquire as to the right of their subjects to hold and exercise certain profitable franchises. *See, e.g.,* Sir Frederick Pollock and Frederic William Maitland, I *The History of English Law* 572 (2nd ed. 1898) (describing use of writ by Edward I to rein in what he perceived to be abuses of seignorial authority). The writ never has been used in its common-law form in Oregon, however. Instead, the territorial legislature enacted a statutory version of the writ, together with directions as to ***392** who could seek to utilize it, in 1853. That statute provided, in part:

…

Except for the reordering of certain phrases and the substitution of the title "district attorney" for "prosecuting attorney," the statute's words (and the wording of the predecessors to ORS 30.530 and ORS 30.610) remain essentially the same as they were in 1853. Certainly, there is no basis in the few adjustments that have been made to the wording for concluding that the statutes have any meaning substantially different from the meaning that they had in 1853.