

HOUSE COMMITTEE ON  
GENERAL GOVERNMENT AND REGULATORY REFORM  
SUBCOMMITTEE ON REGULATORY REFORM

March 27, 1995 Hearing Room 357  
1:15 PM Tapes 19 - 22

MEMBERS PRESENT:

Rep. Ken Strobeck, Chair  
Rep. Sharon Wylie, Vice-Chair  
Rep. Jerry Grisham  
Rep. Bryan Johnston (Arrival: 1:29 PM)  
Rep. Charles Starr

STAFF PRESENT:

Greg Moore, Committee Counsel  
Kay C. Shaw, Committee Assistant

MEASURES HEARD:

HB 2988 Work Session  
HB 3391 Public Hearing & Work Session  
HB 3392 Public Hearing & Work Session  
HB 3047 Public Hearing & Work Session  
HB 2862 Public Hearing & Work Session  
HB 3272 Public Hearing & Work Session  
HB 3402 Public Hearing & Work Session  
HB 2861 Public Hearing & Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 19, A

008 CHAIR STROBECK: Call the meeting to order at 1:19 PM. REP. JOHNSTON is ABSENT.

CHAIR STROBECK: Opens the work session on HB 2988.  
> Announcements.

HB 2988 - WORK SESSION

Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT P).

019 MOTION: REP. WYLIE moves that HB 2988 be sent to the Full Committee with a DO PASS recommendation.

CHAIR STROBECK: Calls for any objections.

VOTE: In a roll call vote, REPS. GRISHAM, STARR, WYLIE and CHAIR STROBECK vote AYE. REP. JOHNSTON is ABSENT.

CHAIR STROBECK: Declares the MOTION PASSED. REP. STARR will carry bill.

027 CHAIR STROBECK: Closes work session on HB 2988 and opens public hearing on House Bills 3391 and 3392.

HB 3391 and HB 3392 - PUBLIC HEARING

Witnesses: Joe Gilliam, Northwest Payphone Association (NWPA)  
Charles Jones, Telad, Inc.  
Nancy Weatherhead, US Intella West, Inc. and Northwest Payphone Association

Evert Brown, Telco West, Northwest Payphone Association  
David Booth, Public Utility Commission of Oregon (PUC)  
Paul R. Romain, Attorney (Portland)  
Gary Wilhelms, US WEST Communications  
Gary Bauer, Oregon Independent Association  
Rep. Jane Lokan (R - District 25)  
Rep. John Schoon (R - District 34)

030 GREG MOORE, Committee Counsel: Reviews the Preliminary Staff Measure Summary on HB 3391. Submits (EXHIBIT A).

042 GREG MOORE, Committee Counsel: Reviews the Preliminary Staff Measure Summary on HB 3392. Submits (EXHIBIT B).

076 JOE GILLIAM, Northwest Payphone Association (NWP): Testifies from prepared testimony in support of HB 3392. Submits (EXHIBIT C).  
> Explains NWP structure.  
> Describes payphone ownership -- 25% of Oregon payphones are independently

owned.  
> Points out issue of severe financial burden by long distance carriers on all payphone companies.  
> Explains "dial around" long distance service.  
> Talks about intent of HB 3392 to create a mechanism to compensate the payphone provider.  
> Provides marketing information regarding dial around services.

117 CHARLES JONES, Telad, Inc. and Board of Directors for Northwest Payphone Association: Testifies about a problem since 1989:  
> Provides organizational structure, service area and business product.  
> Explains the growing problem of providing service for an increasing number of calls on payphones and being paid for increasingly fewer calls.  
> Illustrates ownership of a freight company with a freight line running from San Diego to Seattle.

REP. JOHNSTON arrives as 1:29 pm.

178 MR. JONES: Continues testifying. Refers to color chart (Page 4) and explains document entitled "Call Traffic Breakdown by Call Type."

199 MR. JONES: Continues testifying.  
> Somebody is selling a service, collecting money and, in most cases somebody buying the service, has subcontracted it out and making a profit; however, our payphones are there with no access or way to collect the revenue.  
> Bills and overhead are paid with 40-50% of the revenue gained 3-4 years ago.  
> Market has changed the past three years and some significant money is going to pay somebody else or allow somebody else to make a profit.

203 NANCY WEATHERHEAD, US Intela West, Inc. and Northwest Payphone Association: Testifies in support of HB 3392.  
> Has approximately 200 payphones and employs seven people.  
> Says each payphone is an independent business.  
> Explains financial information and user utilization.

243 MS. WEATHERHEAD: Continues testifying. Refers to and explains AT&T's statistics (see chart entitled "Marketing Decision Support System," Exhibit

C, page 3).

CHAIR STROBECK: Requests an explanation of the term "lada".

275 MS. WEATHERHEAD: "Lada" is an artificial boundary that is setup by the phone companies to distinguish which traffic can be handled by local companies (e.g., US West) and long distance carriers. Inside the "lada" is the local company. When a call is made from the "lada" to a point outside the "lada" that is an AT&T-type company call.

CHAIR STROBECK: Summarizes understanding of "lada".

MR. JONES: In Oregon, a long distance company would handle calls across state lines. It is still a long distance call from Portland to Eugene, but it is a long distance "lada" call that we are looking to be paid on which is under state control or under PUC.

314 MS. WEATHERHEAD: Continues testifying.

> "Lada" is a geographical area that sets the boundary for the traffic inside of which US West handles. If a point is between one "lada" and another, then it is a long distance carrier-type company that handles the call.

> Explains the distinction between local companies that handle long distance calls.

> Illustrates example: Portland to Eugene is a long distance phone call, but it is an intra-lada call and US West can handle the traffic. If the call is from Portland to Colorado, it is a long distance call that US West cannot carry -- the call is given away to AT&T, MCI or an inter-lada carrier -- because it is outside their boundary inside of which they can handle long distance traffic.

335 MR. GILLIAM: When someone picks up a phone and dials into another service, whether intra-lada or inter-lada, and doesn't have to put a quarter in the phone to do that and goes around the services provided by that phone, there is no compensation at that point for the use of the phone. Significant amount of costs associated with keeping phones at specific locations (e.g., daily upkeep, maintenance and vandalism); therefore, compensation is important.

MS. WEATHERHEAD: Describes damages and costs associated with payphone service.

385 EVERT BROWN, Telco West, Northwest Payphone Association: Testifies in support of HB 3392.

> Provides company background.

> Explains survey of calls from 1991-1994 and staffing.

> There is no revenue for debit card calls.

413 MR. GILLIAM: Passage of the bill would give PUC two options to correct the problem:

> Require all payphone owners to charge the rate equal to a local call, 25 cents for all toll calls.

> Require long distance carriers to reimburse the payphone owner the local rate for every call that transmits through to their service.

> FOR THE RECORD: Prefer the first option, because administratively, costwise and efficiencywise, after 25 cents is put in the payphone, there is no other cost.

TAPE 20, A

003 MR. GILLIAM: Continues testifying. Extreme paperwork and tracking for any long distance carrier to track how many calls are received from a particular phone. Consumer will ultimately pay increased costs. This bill

requires that the compensation be included in the rate.

REP. STROBECK: How do you get the location for phones?

MR. JONES: Majority of phone locations (70%) are "change outs from US West". Oregon is growing so fast; therefore, there are a lot of new phone locations (i.e., shopping malls, mini malls and service stations).

CHAIR STROBECK: Requests an explanation of the agreement for the phone location?

034 MR. JONES: Explains:

> US West paid small commissions prior to deregulation.

> Sign up bonuses to change back to US West.

> Payment of commission plus a percentage of revenue.

REP. STROBECK: Refers to testimony about FCC and federal charge. Requests explanation.

MR. GILLIAM: This issue has been considered by the federal government. Through the process with the FCC, there is a \$6 per phone compensation for "dial around" for interstate calls that would not be affected by this bill.

081 CHAIR STROBECK: Are there some dial around calls for which you are paid? What is the purpose of requesting this legislation? Could you choose to have 25 cents access for the use of the phone anyway or is that prohibited?

MR. JONES: Nobody has offered that. Some long distance carriers have plans that pay some small amount; however, it involves agreements with each carrier.

REP. STROBECK: Is there anything that prohibits from charging 25 cents to make a call even if it is a dial-around call? What is legislation required?

MR. JONES: Cites that law mandates open access to all those carriers. Unable to compete with US West on a site that "we charge and they don't." By law a charge of 25 cents could be affixed, but there would be inability to compete.

154 JOE GILLIAM, Northwest Payphone Association: Testifies from prepared testimony in support of HB 3391. Submits (EXHIBIT D).

> Says intent of bill is to create a level playing field for all payphone operators:

Prohibits rates for services to be offered at less than cost.

Prohibits Local Exchange Company (LEC) using revenues from other sources to

subsidize their payphones.

Requires payphone operations of LEC be conducted by an independent company

of the parent company.

184 CHARLES JONES, Telad, Inc. and Board of Directors for Northwest Payphone

Association: Testifies in support of HB 3391:

> Spent 2.5-3 years in Washington and \$25 Million as a group to achieve a solution and considerable time in Oregon to deal with the problem -- essentially very unsuccessful.

> Explains rate issues, including that a percentage of revenue for every call is paid to US West.

> Results in Washington State is that Washington State PUC has issued an order to compel US West to reduce costs to pay a set monthly fee.

> Problem is that US West pays none of the payphone operator's costs and US

West's payphones are operated with the same people who install and do interconnect work; however, payphone operators "should have to reach in our

pocket of the residential lines or the commercial lines to subsidize pay phones . . . it should be a deregulated, competitive business."

246 MR. JONES: Continues testifying. Long term solution is to force companies to either divest themselves of payphones, setup a separate subsidiary or some mandate of costs/revenue within the company that was open for public utilities inspect. PUC is not too sympathetic. Difficult to hook up to a competitor and have the competitor control from the day the

lines are installed what is paid.

273 NANCY WEATHERHEAD, US Intela West, Inc. and Northwest Payphone Association: Testifies in support of HB 3391.

> Independent payphone providers and each phone is a separate business with expenses.

> One expense is the phone bill; however, the rate on the bill is set by the biggest competitor and an independent payphone provider's bill is the very highest rate charged to any local exchange company.

> Desire to compete without the reputation of phones with the high rates --

competitor doesn't need a payphone, contract, technician, relationship with

the site provider, insurance, pay personal property tax, share in the monthly phone bill, pay the cost of compliance with the ADA, or share responsibility with the fraud calls.

331 MS. WEATHERHEAD: Continues testifying:

> Competitor collects extra money for each local phone call.

> Refers to a phone bill from United Phone dated February 6 in which 123 local calls from a payphone at 25 cents -- payphone provider's profit was 11 cents.

> Difficult to compete when expenses are set by the competitor.

356 MR. GILLIAM: Illustrates an example of competitor costs and the intent of the bill is to prohibit the competitor from offering the product at below cost.

388 CHAIR STROBECK: Refers to the example. It is within the local service area for the calls?

MS. WEATHERHEAD: Yes.

CHAIR STROBECK: Is that a metered rate?

MS. WEATHERHEAD: Metered rate (e.g., if somebody talks for more that "x" number of minutes, it costs the payphone provider more than 25 cents to allow that 25 cents local call.

CHAIR STROBECK: Couldn't you buy a line that is non-metered rate?

MR. WEATHERHEAD: Explains two options:

> Charge more than 25 cents for the local call; however, problem with the consumer paying more than 25 cents for a local call.

> Limit user time; however, a risk of phone damage.

TAPE 19, B

026 CHAIR STROBECK: Couldn't you buy a line without the metered feature?

MS. WEATHERHEAD: No. Each phone is bought from the phone company handling the area and each phone company has a public access line, which is the only type of line that a payphone is allowed to hook up to.

058 DAVID BOOTH, Program Manager, Telecommunication Rates, Public Utility Commission of Oregon (PUC): Testifies from prepared testimony about HB 3391. Submits (EXHIBIT G). Concerns are as follows:

> Requires PUC to regulate rates for all public pay telephone providers. PUC does not regulate rates for customer-owned pay telephones.

> Fiscal impact is approximately \$400,000 for the '95/'97 biennium.

> Presumption that pay telephone rate charges by telecommunication utilities are subsidized when in fact they are not.

> FCC and PUC generally conclude that telecommunications utilities should not be required to create separate subsidiaries for their various services.

> Focus of the proposed bill is for PUC to determine if public pay telephone rates are too low; however, public complaints to PUC regarding payphones express concern about excessive rates.

100 REP. JOHNSTON: Would you agree with the earlier testimony that PUC has asked payphone providers to provide a service at their location for which they will not be compensated?

MR. BOOTH: No.

REP. JOHNSTON: In what way would you disagree with their statement?

MR. BOOTH: Responds:

> Payphone providers using their own phone as opposed to the utilities and providing the service have decided to enter the business. The circumstances of the business have relatively been unchanged for sometime.

> PUC has over time reduced the line rates payphone providers pay to the phone companies.

129 REP. JOHNSTON: Has dial around, as a condition of business practice, become worse in recent years for payphone providers?

MR. BOOTH: Says that issue is HB 3392. Observes that dial around or people using some other method to get around a pay phone has become more common, including cellular telephones. People avoid making any operator-assisted call for a payphone, because of unexpected charges.

145 CHAIR STROBECK: Is a flat rate v. a metered service available in every location?

MR. BOOTH: Flat rate service is only available for payphones if there is no measured service available in that exchange.

CHAIR STROBECK: Do payphone companies, line-affiliated companies, meter their own lines when calls are made?

MR. BOOTH: Refers to PUC looking at US West's filing for pay telephone services. PUC looked at the question "Does the charge that US West make for its local telephone calls from a pay telephone, cover all the . . . imputed cost of paying as if they were metering the service?" The determination was that their charges were covering that cost. They don't literally bill themselves -- unnecessary paperwork.

CHAIR STROBECK: Refers to Ms. Weatherhead's testimony about 11 cents as the difference between charge and collection. Would you think that was an atypical example or out of line?

MR. BOOTH: PUC doesn't look at the actual payphones of utilities. On average for US West's payphones the 25 cents covered the imputed cost of providing that service. Unable to evaluate whether or not it is an atypical example.

186 DAVID BOOTH, Program Manager, Telecommunication Rates, Public Utility Commission of Oregon: Testifies from prepared testimony about HB 3392. Submits (EXHIBIT F). Concerns are as follows:

> Requires PUC to regulate the rates for all public pay telephones in the state.

> Passage of HB 3391 would result in HB 3392 not having a significant fiscal impact; however, if HB 3391 fails, then HB 3392 would have approximately the same fiscal impact as HB 3391 or \$400,000 for the '95/'97

biennium. Also, telecommunications and public utilities would pay the additional cost since customer-owned pay telephone providers do not pay any fees to PUC.

> HB 3392 does not specify whether dial around compensation is for intrastate or interstate calls. FCC already provides dial around compensation for customer-owned pay telephone providers.

> HB 3392 provides dial around compensation for all public pay telephones, including pay telephones operated by the telecommunications utilities.

> Dial around compensation is not needed for the telecommunications utilities and utilities argued before FCC that they did not want dial around compensation.

232 MR. BOOTH: PUC has viewed private or customer-owned pay telephones as another type of premise equipment and PUC has not regulated those activities, except consumer issues require some notification/options for payphone customers.

267 CHAIR STROBECK: Has PUC done studies/audits to confirm major telephone companies have not in fact subsidized their payphone operations?

MR. BOOTH: Most recent effort was in conjunction with a US West filing. Comments about a variety of services. PUC's evaluation of that filing did involve scrutiny their costs of providing this service to ensure they were not providing the service below their own cost.

288 REP. JOHNSTON: Refers to PUC investigation of dial around compensation in 1984. Was that both intrastate and interstate?

MR. BOOTH: FCC had already ordered interstate dial around compensation by the time that investigation concluded. PUC looked strictly at the intrastate question.

REP. JOHNSTON: Was the determination volume related. What was the standard for the determination?

MR. BOOTH: PUC looked at a variety of factors. One factor was to recognize that the interstate jurisdiction was already providing substantial dial around compensation and an effort to create an intrastate version of that could not be justified.

330 COUNSEL MOORE: In light of the cost of regulating dial around, what would happen if there was simply a mechanism, a statute that said "Northwest Pay Phone, if you have a dial around call that's made on your phone, you have a right to collect 25 cents from the provider on each call . . . if they don't pay, you have a right to attorney's fees"? Why is it necessary to regulate that? Why doesn't the payphone provider simply bill the long-distance company for that?

342 MR. BOOTH: What you are suggesting is there may be other ways that customer-owned payphone providers could get compensation?

COUNSEL MOORE: What if it is not voluntary, but statutory, and dial around privileges is provided from a private pay booth, you are entitled to 25 cents per call and the payphone operator sends a bill to the long-distance carrier?

MR. BOOTH: Are you suggesting that the local payphone providers would deduct 25 cents for each call from their bill?

COUNSEL MOORE: That is practically how it would work.

MR. BOOTH: A net type of arrangement? Plausible, if the legislature felt it was necessary to require those entities to behave a particular fashion.

403 PAUL R. ROMAIN, Attorney (Portland), represents MCI Telecommunications Corporation: Testifies from prepared testimony in opposition to HB\_3392. Submits (EXHIBIT\_G). Testifies:

- > There are five lada's in the State of Oregon.
- > MCI is a long distance company that pays access charges to a local exchange company.
- > HB 3392 requires that public payphone operators receive additional compensation from long distance carriers (e.g., MCI) when customers use dial around 800 calling cards for long distance calling.

TAPE 20, B

008 MR. ROMAIN: Continues testifying:  
> HB 3392 is a response to PUC's order finding that "additional dial-around

compensation for COPT [coin-operated pay telephone] owners is not in the public interest." UM 585 (June 6, 1994).

- > Coin-operated pay telephones owned by private businesses accounted for 24.7% of the payphone locations in Oregon at the end of 1993.

- > FCC currently provides that all COPTs receive \$6 per line per month from a fund established by the long distance carriers.

038 MR. ROMAIN: Continues testifying:  
> HB 3392 would require compensation on "end-user 800" numbers which connect consumers to commercial business at no cost to the consumer.

> Consumer is who will be injured if an additional Oregon compensation charge is imposed.

MR. ROMAIN: Continues testifying. Refers to Business Week article, dated February 15, 1993 (page 3).

070 MR. ROMAIN: Continues testifying. Reads from PUC order dated October 1994. When people get into business, the government is not in a position to guarantee a profit in every business.

114 CHAIR STROBECK: Do you think the caller has any obligation to pay for use of the instrument if they are accessing a long distance service?

MR. ROMAIN: Initial reaction is "no." What you are basically saying to payphone providers is that we will insulate you from innovations in the marketplace.

135 GARY WILHELMS, US WEST Communications: Testifies about HB 3392.  
FOR THE RECORD: US West's position is not against HB 3392; however, need more information about the compensation aspect before taking a firm position.  
> Opines the payphone provider should be compensated for usage by end-user.  
> Believes bill is not inconsistent with FCC rules.  
> Says US West has approval for a "sort of" dial-around compensation in the

State of Utah.

159 MR. WILHELMS: Two-fold concerns:  
> Don't want to be involved in the billing of dial-around compensation.  
> Rates should not be set in the legislature -- should be set by PUC.

MR. WILHELMS: US West is trying to move industry in a direction of alternative forms of regulation or deregulation. Opines that if US West is regulated so should the competitors be regulated.

171 CHAIR STROBECK: Does US West prefer the coin at the phone instrument instead of billing?

MR. WILHELMS: Don't want to be mandated to bill for somebody else.

193 GARY WILHELMS, US WEST Communications: Testifies about HB 339:  
> Doubt there are any facts to substantiate there is any cross subsidy flowing. US WEST is not cross subsidizing -- pay phones cover costs.  
> US West's coin telephone service is classified as an "essential service" by PUC; it is fully regulated and competitors are not regulated. There is a difference between services provided by US West and private payphone providers.  
> Facts don't substantiate that competitors are disadvantaged.  
> FOR THE RECORD: US West opposes HB 3391.

224 GARY BAUER, Oregon Independent Association (OIA). Testifies in opposition to HB 3391: > Reiterates that OIA offers services as regulated entities and as result OIA does not have the freedom to decide whether to exit certain markets/areas.  
> Competitive providers have done well in securing high-volume/high-profit areas.  
> Concerned about requirement in HB 3391 that requires a subsidiary -- does not seem cost effective to "shift that off to a subsidiary operation." Additionally, a regulated activity is not put in a subsidiary operation.

245 GARY BAUER, Oregon Independent Association: Testifies about HB 3392.  
FOR THE RECORD: No position on the bill; however, there are questions (e.g., language about sharing compensation and how the bills would operate).  
> Key point is that local exchange carriers continue to be regulated while competitors are not regulated.

CHAIR STROBECK: Closes public hearing on HB 3391 and HB 3392. Opens



public hearing on HB 3047, HB 2862 and HB 3272.

HB 3047, HB 2862 and HB 3272 - PUBLIC HEARING

Witnesses:       Rep. Jane Lokan  
                  Rep. John Schoon

267       GREG MOORE, Committee Counsel:  Reviews the Preliminary Staff Measure Summary on HB 3047.  Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT H).

273       GREG MOORE, Committee Counsel:  Reviews the Preliminary Staff Measure Summary on HB 2862.  Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT I).

278       GREG MOORE, Committee Counsel:  Reviews the Preliminary Staff Measure Summary on HB 3272.  Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT J).

292       REP. JANE LOKAN (R - District 25):  Testifies from prepared testimony in support of HB\_3047.  Submits (EXHIBIT K).  
          > HB 3047 specifies a format for state budgeting preparation.  
          > HB 3047 requires agencies to focus on core programs and priorities to meet stated missions/objectives.  Concept maybe called zero-based budgeting, program-based budgeting or decision-unit budgeting.  
          > Explains common practice of state agencies has been to use a concept called current-service.  
          > Current service level budgeting does not accomplish goal of taxpayer relief.

325       REP. JOHN SCHOON (R - District 34).  Testifies in support of HB 2862.  
          > Explains experience on Ways & Means Committee regarding pay increases awarded through the merit system.  
          > Reviews similar problems during the last session and that Executive Department asked for authority to spend dollars across the board for the appropriations.

398       REP. SCHOON  Continues testifying.  Intent of the bill is to require that the Governor's report be more clear in what is suggested.  Refers to Page 2 of the bill, Lines 8-18.  Merit system was installed as the salary system in order to give fairness to employees and give management the ability to manage the pay system.

TAPE 21, A

003       REP. SCHOON:  Continues testifying  
          > Describes that over time the merit system has become an automatic increase and has no relevance to pay increases.  
          > Intent of the merit system is intended to reward employees for doing a good job and to give them pay increases.  
          > Explains budget item increases over the prior biennium, inflationary figures and total increase in cost of salaries/benefits for all state employees in one lump sum.

033       REP. SCHOON:  Describes the process in Ways & Means Committee.  Opines it would be beneficial to state, employees, and legislature that information be presented in an understandable way.

049       CHAIR STROBECK:  The phrase "current service level" should imply what exists now, not what exists now plus automatic increases.

063       CHAIR STROBECK:  Requests Committee Counsel take the provisions of HB 3272 and HB\_3047 and draft amendments to incorporate into one bill.

          CHAIR STROBECK:  Closes public hearing on HB 3047, HB 2862 and HB 3272.  Opens public hearing on HB 3402 and HB 2861.

HB 3402 and HB 2861 - PUBLIC HEARING

Witnesses:       Rep. John Schoon (R - District 34)

Rep. Barbara Ross (D - District 35)  
Rep. Jane Lokan (R - District 25)  
Manny Martinez (Salem)  
Dr. Matt Gruber, Medical Fairness and Practice Organization

076 GREG MOORE, Committee Counsel: Reviews the Preliminary Staff Measure Summaries on HB 3402 and HB 2861. The Preliminary Staff Measure Summary for HB 3402 (EXHIBIT L) and Preliminary Staff Measure Summary for HB 2861 (EXHIBIT M) are hereby made a part of these Minutes.

107 REP. JOHN SCHOON (R - District 34): Testifies in support of HB 2861. Intent of the bill is to authorize the Secretary of State to conduct performance audits and program audits.

137 REP. SCHOON: Continues testifying:  
> Financial audit reviews the agency to ensure accountability for moneys.  
> Performance audit reviews an agency as to whether they are doing the job efficiently or improvements are needed.  
> Program audit reviews an agency as to whether the mission is what they were empowered in the original law to do and also whether it is being duplicated elsewhere in state government.  
> Secretary of State desires statutory authority to perform performance audits.  
> Concurs with two proposed amendments by the Secretary of State's office in HB 3402.

175 REP. BARBARA ROSS (D - District 35): Testifies in support of the legislation to clarify the Secretary of State's responsibility. Refers to one of the Secretary of State's amendments. When do you think the audit should be made by contract v. in-house and what is your intention on that?

REP. SCHOON: In HB 3402 the language says that it will be done through private contracting "when practical," but not necessarily required in all circumstances.

196 REP. ROSS: Was it your intention to have some of the performance audits contracted out and do you have an instances when that would be desirable?

REP. SCHOON: Opines that is beyond the scope of the bill. No objection to adding more detail to the bill so long as the basic structure is preserved.

REP. ROSS: Do you anticipate a big budget increase in order to perform this function or do you want them to be able to perform it within the amount of funds currently allocated for them?

REP. SCHOON: Secretary of State and staff have not mentioned they will need a budget increase; however, they are requesting more auditors to do a better job of auditing. Net increase in personnel, however, is dropping. Responsible service from the Secretary of State's office in the past and suggests Secretary of State continue to do the auditing.

REP. ROSS: Rep. Schoon, did you have much experience at the time the legislature did have an oversight audit function about three sessions ago when they allocated about \$400,000 to themselves and then audited several programs? Did that work out very well -- do you recall?

REP. SCHOON: Legislature isn't doing it any longer. Unable to respond -- wasn't on the committee and did not hear any feedback from it. Guess it wasn't too fruitful. Some of the impetus for this bill stems from the legislature's desire to maintain better oversight over administrative rules and this bill does that without the constitutional problem.

REP. ROSS: Comments about working at Department of Human Resources during that time. Legislative Fiscal began with some very ambitious plans and investigated some agencies, but the reports were not very strong due to inexperience in the work -- Secretary of State's staff though is thorough, follows through and makes strong recommendations about lowering costs.

281 REP. JANE LOKAN (R - District 35): Testifies in support of HB 3402. Submits (EXHIBIT N).

> Supports Rep. Schoon's testimony and Secretary of State's proposed additional language.

> HB 3402 requires the Secretary of State's office to contract with independent accountants for performance audits of state agencies. Supports

adding "as practicable" for independent accountants.

> Opines strong performance auditing program of government services is essential and use of private-sector accountants would bring a balance to evaluations of public agency performance.

> Secretary of State's auditing staff has identified 39 performance audits.

> Suggests private-sector task force to do those 39 performance audits.

330 REP. LOKAN: Continues testifying:

> Task force benefits (i.e., curtail costs, bring expertise, unbiased/businesslike approach).

> Gives example of \$5 Billion in potential savings for the 1992-93 biennium

in the State of Texas' "breaking the mold" performance review.

CHAIR STROBECK: Does this bill include language for the private-sector task force suggestion?

REP. LOKAN: No. It has not yet been added as an amendment.

CHAIR STROBECK: Did the Secretary of State talk about a doable number of audits?

REP. LOKAN: No; however, Secretary of State's office realize they are unable to do them all.

403 REP. ROSS: In your view, what kind of circumstances would an audit by a private firm be preferable to an in-house audit?

REP. LOKAN: Opines a private firm brings a fresh perspective to many audits.

TAPE 22, A

003 REP. ROSS: Is there anything in HB 3402 that precludes the Secretary of State from using a task force approach?

REP. LOKAN: Opines that it really doesn't preclude it; just doesn't speak to it specifically.

REP. ROSS: We wouldn't need an amendment for the Secretary of State to utilize that technique?

REP. LOKAN: Will look at that aspect more closely to see if that aspect could "just be understood."

011 MANNY MARTINEZ (Salem): Testifies in opposition to HB 2861 in conjunction with HB 3402. Submits (EXHIBIT N).

> Retired February, 1994 from the Secretary of State, Division of Audits, after over 20 years of service.

> Does not oppose performance audits; however, opposes the authority given by this bill to the Secretary of State to conduct such audits.

> Explains the three considerations in performance audits: need, use and cost.

> Secretary of State does not have the constitutional authority to conduct performance audits. Cites four Attorney General Opinions determining that the Secretary of State audit authority is limited to the fiscal accountability of the state funds:

Atty. Gen. Opinion No. 8211 - 12/01/79

Atty. Gen. Opinion No. 8154 - 07/02/84

Atty. Gen. Opinion No. 8166 - 03/06/85

Atty. Gen. Opinion No. 8211 - 12/01/89

> Quotes from Department of Justice's letter to the Oregon Department of

Corrections dated March 22, 1992.

> Requests an inquiry about the Secretary of State's authority to conduct performance audits.

047 > Explains who needs performance audits (Page 2).

> Explains who uses performance audits.

> Explains financial audits (Page 3).

070 > Explains performance audits.

> Provides economy and efficiency considerations.

> Describes content for program audits.

093 > Explains cost of performance audits (Page 4).

> Raises questions.

> Summarizes that all "'performance audits' shall be contracted out, in a bipartisan fashion under the legislators, utilized in a proper manner on behalf of the taxpayers." (See Page 5).

> Explains legislative history about performance audits.

138 REP. ROSS: You think all performance audits should be contracted out? Are you saying that Legislative Fiscal should be the entity to contract for

those?

MR. MARTINEZ: Right, under legislative bipartisan supervision and control.

REP. ROSS: How would you anticipate the agencies to be audited should be selected?

MR. MARTINEZ: A task force should determine what programs the legislature desires to be audited and when.

REP ROSS: Are you saying a task force of legislators?

MR. MARTINEZ: Yes.

146 DR. MATT GRUBER, Secretary, Medical Fairness and Practice Organization.

Testifies in support of performance audits:

> One-year study of the Board of Medical Examiners.

> Explains discussions with the Secretary of State's office about performance audits and collection of financial audits of the Board of Medical Examiners for past 10 years.

> Says the Board of Medical Examiners is not controlled by either the legislature or the Executive Office. Legislature's affect is only in the budget.

> Provides problems with audits:

No penalties.

No indication of real response.

No checking whether employee staffing is adequate or appropriate.

218 > Talks about the diversion program authorized by the 1989 Legislature and setup by the Board.

> Comments about the confidentiality aspect of audit data.

> Opines that performance audits are necessary and an audit for the Board of Medical Examiners would cost the licensees about \$10 more a year.

262 CHAIR STROBECK: Requests Committee Counsel for appropriate fiscal reports on bills discussed. Adjourns the meeting at 3:56 pm.

Submitted by, Reviewed by,

Kay C. Shaw Gregory G. Moore  
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Preliminary Staff Measure Summary on HB 3391 -- Staff -- 2 Pages

B - Preliminary Staff Measure Summary on HB 3392 -- Staff -- 2 Pages

C - Prepared Testimony on HB 3392 -- Joe Gilliam -- 4 Pages  
D - Prepared Testimony on HB 3391 -- Joe Gilliam -- 2 Pages  
E - Prepared Testimony on HB 3391 -- David Booth -- 2 Pages  
F - Prepared Testimony on HB 3392 -- David Booth -- 2 Pages  
G - Prepared Testimony on HB 3392 -- Paul R. Romain -- 3 Pages  
H - Preliminary Staff Measure Summary on HB 3047 -- Staff -- 2 Pages  
I - Preliminary Staff Measure Summary on HB 2862 -- Staff -- 2 Pages  
J - Preliminary Staff Measure Summary on HB 3272 -- Staff -- 1 Page  
K - Prepared Testimony on HB 3047 -- Rep. Jane Lokan -- 1 Page  
L - Preliminary Staff Measure Summary on HB 3402 -- 2 Pages  
M - Preliminary Staff Measure Summary on HB 2861 -- 2 Pages  
N - Prepared Testimony on HB 3402 - Rep. Jane Lokan -- 1 Page  
O - Prepared Testimony on HB 2761 and HB 3402 -- Manny Martinez -- 5 Pages  
P - Preliminary Staff Measure Summary on HB 2988 -- Staff -- 2 Pages