

SENATE COMMITTEE ON  
RULES AND ELECTIONS

Hearing Room 343  
4:30 p.m. Tapes 22-23

MEMBERS PRESENT:

Sen. Randy Miller, Chair  
Sen. Paul Phillips, Vice-Chair  
Sen. Brady Adams  
Sen. Shirley Gold

MEMBER EXCUSED:

Sen. Dick Springer

STAFF PRESENT:

Kristina McNitt, Committee Administrator  
Gretchen Haber, Committee Assistant

MEASURES HEARD:

Introduction of Committee Bills  
SJR12: Work Session  
SB 400: Public Hearing

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

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

TAPE 22, A

005 CHAIR: calls the meeting to order at 4:35 p.m.

011 Opens work session on SJR12.

027 CHAIR: Notes that there is a strong interest in reviewing legislative  
rules. Refers to -1 amendments (EXHIBIT A). Refers to SJR-12-4 amendments

(EXHIBIT B).

037 MOTION: SEN. PHILLIPS: Moves to adopt the -1 and -4 amendments, dated  
3-16-95.

040 SEN. GOLD: notes that her votes on the amendments do not reflect her  
final opinion on the measure.

050 VOTE: CHAIR MILLER: Hearing no objection the amendments are ADOPTED.  
SEN. SPRINGER is EXCUSED.

052 CHAIR: reviews -5 amendment (EXHIBIT C).

054 MOTION: SEN. PHILLIPS: Moves to adopt the -5 amendments, dated 3-16-95.

056 VOTE: CHAIR MILLER: Hearing no objection the amendments are ADOPTED. SEN. SPRINGER is EXCUSED.

058 SEN. GOLD: notes difference between a revision and an amendment of the constitution. Questions this as a potential problem for SJR12.

064 SEN. GOLD: suggests a consultation with Legislative Counsel and the Attorney General's Office. If the measure passes with this problem, it may open up potential litigation.

073 CHAIR: notes that Legislative Counsel has been working on the rules for some time, and prefers to assume that the issue would have already been raised, should there be a problem. Suggests the passage of SJR12 today, and will contact Legislative Counsel and the Attorney General's office to clarify the issue. It will be reopened should there be a constitutional question.

080 MOTION: SEN. PHILLIPS: Moves that SJR12, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

085 VOTE: In a roll call vote, SENS ADAMS, MILLER and PHILLIPS vote AYE. SEN. GOLD votes NO. SEN. SPRINGER is EXCUSED.

090 CHAIR MILLER: the motion carries.

100 CHAIR. MILLER will lead discussion on the Floor.

104 Closes work session on SJR12.

109 CHAIR: asks to review committee bills for possible introduction. Outlines the seven requests before the committee (EXHIBIT D).

114 CHAIR: reviews draft requests proposed. Recognizes that approval of bill introduction does not indicate a position for or against the measures.

118 MOTION: CHAIR MILLER: Moves the introduction of seven requests for bill INTRODUCTION.

119 VOTE: CHAIR MILLER: Hearing no objection, the requests are APPROVED for INTRODUCTION as committee bills.

120 Opens public hearing on SB 400.

125 CHAIR: SB 400, for the committee's understanding, is a bill that would simply request that the Secretary of State, whenever practicable, get auditing services performed by private sector auditors. It is the feeling, as the sponsor of this measure, that two things would be accomplished. First of all, I think there may be the opportunity for additional savings for paying for these audits, both short and long term. Secondly, in terms of credibility, something I know that this legislature is making every effort to restore. Frankly I think the public has more confidence in audits done by those who don't understand the politics, who don't have a particular aim, and who do not be seen as wanting to reach a particular

conclusion. Truly those who are independent may give the public more confidence in that audit. That is not to say those now being done are not credible. It is just that sometimes we must work with what is conceived.

With that we open the public hearing and welcome Mr. Martinez. Mr. Martinez:

144 MANNY MARTINEZ, testifies in favor of SB 400. Presents written testimony (EXHIBIT E). I retired on Feb., 1994, from the Secretary of State Division of Audits. I'm here today to testify in favor of SB 400. It is a bill to establish less government. Let me indicate that the division of audits, prior to 1993 routinely conducts audits of state agencies as mandated by ORS 297.210. Therefore truly financial related audits and especially investigations are not new for that office. Incidentally, these audits were conducted by approximately half of the staff who is presently in the Division of Audits.

155 MARTINEZ: However, after 1993, the Division opted to concentrate in the statewide audit as a result of the Single Audit Act of 1984. This approach caused the Division to depart from the conducting of audits as required by ORS 297.210, which in my belief, is a violation of the law. However the statewide audit is necessary for the state if federal money is to be obtained funding certain programs.. This audit is very costly. This information should be used either to or to not delay this legislation or the taxpayers. Therefore this audit should be contracted out and Division resources should be used to comply with ORS 297.210.

168 MARTINEZ: Let me also indicate that three or four years ago, the Division of Audits has engaged in performance audits. For that reason, payroll expenses aggregate in approximately \$400,000 per year, plus benefits, has been added to the Division. The number and classification of these staff are as follows: two Deputy Directors, four Audit Administrators, two Senior Auditors, and two other staff classified as Auditors. This staff is spending a great portion of their time conducting what is called surveys. Which is, to go to the state agencies to find out something to audit. When nothing is found, then the auditors pull out not before running a bill. This bill at times are paid by the agency where the audit or survey act occurred, and at times are not. The performance audit should be contracted out, controlled by the legislature.

200 MARTINEZ: The performance audit is a bipartisan function. To have it under the Secretary of State, a partisan office, is to open the door to be used for personal, political gains. This is definitely not in the best interest of the tax payers or the state.

203 MARTINEZ: I would like to indicate that there are four Attorney General opinions expressing that the Secretary of State does not have the authority to perform performance audits. I would like to cite a couple of audits performed by the Division in the past year. Both were done showing big costs.

208 MARTINEZ: Number one. Klamath County School District. Cost: \$168,963.97. Not including the costs of the trip of approximately seven people on October 10, 1994 to Klamath Falls to present the audit. In May of 1994,

the Division of Audits conducted an audit of the Municipal Corp. Klamath County School District at a cost previously indicated as an astronomical cost. The school district has not been charged nor is there any intention to charge.

217 MARTINEZ: This violates ORS 297.245 paragraph five. I would like to indicate that the February 16 of 1995, just a month ago, opinion number 8235 by the Attorney General was issued with regards to the auditing of school districts. This opinion especially and clearly states that the financial cost must be born by the audited school district.

226 MARTINEZ: #2. Motor fuel cost, was another audit. Cost: \$134,734.54.

This audit was charged to the Dept. of Agriculture. Another astronomical cost: however, the department was billed only \$38,804.00. They paid \$30,083.82. The difference between the cost summary and the amount paid is \$104,650.72. In both audits, the average cost are consistent with the average cost of audits charged and paid for by other state agencies. This is the normal rate utilized by the division. In both audits there is an aggregate amount of \$273,615.00 outstanding and so far unrecovered. How this money is going to be collected: the Secretary of State's office and the Audits Division owes an explanation to the taxpayers.

242 MARTINEZ: However, in the case of motor fuel I was told that this money would be recovered from future assessments done for the dept. I contacted the Dept. of Agriculture about the issue and was told that nothing had been said for them indicating they will be charged later. In the case of Klamath Falls, I was told that the bill would be charged to training. It is hard to believe that the Division of Audits with staff of over twenty years of experience, could hardly need that much training in conducting audits. On June 28, 1994, the Division of Audits Director, Don Waggoner, testified under oath that the cost of audits for municipal corporations are not recovered because they would be part of the cost to other agencies. Apparently, other state agencies pay for the audits to other agencies. The summary is that taxpayers in Marion, Multnomah and other counties are paying for audit services provided to Klamath County.

265 MARTINEZ: Therefore I support SB 400 and are here to ask for audits to be contracted out. I'd like that when audits are performed, that qualified auditors are hired. The Secretary of State is not a training ground for auditors at the expense of taxpayers. The Division of Audits should be scrutinized in detail. They are accountable to the legislature.

277 CHAIR: there are four Attorney General opinions expressing that the Secretary of State does not have the constitutional authority to conduct performance audits? When was the last one?

287 MARTINEZ: I believe it was in 1989. I have extensive correspondence with the Secretary of State here. I was under those impressions, and have asked for another Attorney General opinion on the subject. I've so far received none. Also, there was a letter dated in 1991, I believe in relation to the Dept. of Corrections, wherein they inquired if they could hire an outside auditor and the Attorney General says yes.

303 CHAIR: you summarized in the Klamath County case and in the motor fuel case that there were funds associated with the cost of the audit and yet the billing is nowhere close to the represented costs, and that the funds have come in are nowhere near the cost. What do you suspect the difference

is here?

315 MARTINEZ: I was told that the Division has now, as of the '83 legislature, an assessment plan. They are able to charge an estimated amount of money to the state agencies. They will pay the money whether services are received or not. I question the legality of this practice.

320 CHAIR: I was not present during the last interim, but I understand that you say the Dept. of Agriculture with respect to the motor fuel was not one that necessarily people could support.

323 MARTINEZ: that's correct. It was a performance audit. It was charged to the Dept. of Agriculture. They may be charged again; I don't know. In fact, next year they will see an audit cost reduction down to \$20,000 or so. I want to know who will pay for this..

335 SEN. PHILLIPS: have these issues been raised with the Secretary of State?

342 MARTINEZ: yes.

345 SEN. PHILLIPS: he has responded to you?

346 MARTINEZ: In a certain way -- I am not satisfied with the response.

347 SEN. PHILLIPS: First of all, I like the concept of the bill. It's one that could raise some other serious issues. You wouldn't be offended or surprised if we asked some of these questions to the Secretary of State and the Audits Division then?

348 MARTINEZ: of course not.

349 CHAIR: notes need for explanation on the issues raised by Mr. Martinez.

Is anyone else interested in testifying on SB 400? If not, then

350 Closes public hearing on SB 400.

352 Opens work session on SB 400.

355 SEN. GOLD: I think, before we act, that we ought to have someone from the Secretary of State's Office. Do you all think so?

360 CHAIR: it would be nice, and I'm sure they are able to read like most people, when we post our hearings. I wish they would have come. I think we have some indication that they are able to contract out presently. This simply would upgrade the status quo. They were specifically invited.

379 DON WAGGONER Director of Audits Division, State Auditor for the State of Oregon. Chairman Miller: We were notified yesterday afternoon at about 5:25 p.m. that this hearing would take place. I was not invited to testify but I would be happy to do so if you desire.

390 CHAIR: we'd be delighted to have you. Do you have any comments on the bill?

392 WAGGONER: well, I really don't have any comments on the bill. We

already administratively are doing what the bill proposes. We've contracted with several private CPA audits for different kinds of audits. The Dept. of Education is one. I'm relatively new to the Audits Division; I've been here a little over two years. There was almost no contracting out

before I arrived. Some of the dates about the single audit. I believe Mr.

Martinez had wrong. The Single Audit Act was not in 1993, it was in 1983. 1984 was the first year of the single act auditing effort. Since I've been

here we've reduced the amount of hours we've spent on the single audit.

410 WAGGONER: In terms of the bill, the only comment I think I would have is this: I have discussed it with my lawyer, who thinks that perhaps it is

unconstitutional. That is a question that I do not know and I am not a lawyer. As far as the spirit of the bill, we are already doing what the spirit of the bill calls for.

Tape 23-A

004 SEN. PHILLIPS: if the bill is unconstitutional, then how are you already doing it?

005 WAGGONER: it's not that the act of contracting with private contractors

for audits is not constitutional. Again, I'm not a lawyer and I would much prefer the Attorney General's office to explain this to the committee. As a lay person, it's my understanding that a law that is directive to the constitutional officer may not be constitutional.

012 SEN. PHILLIPS: But we write laws all the time directing all constitutional officers on a variety of things. That kind of broad brushed

answer would mean that any of the constitutional officers wouldn't have to follow any of the laws in the state. That's an absurd conclusion even by a

lay person. But let me ask: are you aware of the four Attorney General opinions that were referenced? Were they brought to your attention previously?

015 WAGGONER: I'm aware of several Attorney General opinions with regards to our authority to conduct performance audits. We've also had discussions

with the Joint Legislative Audit Committee at great length regarding performance audits and our conduct of them.

020 SEN. PHILLIPS: do you have Attorney General opinions that question your ability to perform performance audits? Yes or No?

023 WAGGONER: yes

023 SEN. PHILLIPS: and they, then, raise the specter that you don't have the authority to conduct performance audits?

023 WAGGONER: yes.

023 SEN. PHILLIPS: and yet, you are going straight against Attorney General's opinions to go ahead and conduct performance audits?

025 WAGGONER: no, we are not.

025 SEN. PHILLIPS: well, you told me you are performing performance audits

today, and have been doing so. Then how could you tell me, on one hand, that you have four Attorney General opinions that say you can't do this, and then on the other hand, you tell me you're doing it, but you aren't doing it in conflict. I don't think those necessarily are compatible answers.

030 WAGGONER: I didn't say we are doing performance audits. Mr. Martinez did. If you'd like me to comment on performance audits, I'd be happy to.

031 SEN. PHILLIPS: are you or are you not doing performance audits?

031 WAGGONER: yes, we are. The Joint Legislative Audits Committee has statutory authority to direct the Audits Division to perform performance audits.

034 SEN. PHILLIPS: but you are conducting performance audits, right?

035 WAGGONER: we have conducted performance audits, yes.

035 SEN. PHILLIPS: OK, and you have four Attorney General opinions that state that you cannot, that you possibly do not have the constitutional authority to perform performance audits. Is that correct?

036 WAGGONER: no. I would not say that's correct.

037 SEN. PHILLIPS: well, that's what you said earlier.

037 WAGGONER: no, I did not. You're taking my words out of context.

038 SEN. PHILLIPS: then what did you say earlier?

038 WAGGONER: you asked me, are there Attorney General opinions that say you can't do performance audits? There is one where the question was asked: Does the Audits Division have the authority to do performance audits, and the answer was no. One Attorney General's opinion.

041 SEN. PHILLIPS: and when was that?

041 WAGGONER: I don't recall the exact date; I'd be happy to get it to you. I'd be happy to get you a copy of the opinion.

042 SEN. PHILLIPS: is it the most recent one? Have there been subsequent Attorney General opinions that have raised doubts about that?

044 WAGGONER: in my opinion, subsequent opinions have raised doubt.

046 SEN. PHILLIPS: so it wasn't the last one.

046 WAGGONER: that would be my opinion as best as I recall.

047 SEN. PHILLIPS: I'm having just a little difficulty, when on one hand as a lay person, you say your opinion of the bill, and on the other hand you're giving me a lay person's opinion of an Attorney General's opinion, where at least one Attorney General has raised a doubt. Maybe it's my questions are confusing, and maybe I don't understand it, but your answers, suffice it to say, are confusing also.

052 WAGGONER: well, I apologize for confusing the answer. Can I help? Maybe you could ask another question.

053 SEN. PHILLIPS: yes. Have you talked with Mr. Keisling about this?

055 WAGGONER: I'm sorry, Sen. Phillips. About performance audits?

055 SEN. PHILLIPS: a good follow up. Now I'll start paying attention. I'd like to know specifically, have you talked to the Secretary of State about SB 400? And if so, what was his answer, and when did you speak to him?

057 WAGGONER: no, I have not spoken to Mr. Keisling directly about SB 400.

059 SEN. PHILLIPS: have you talked with him about performance audits within the last 48 hours, and his position vis -a-vis these types of actions?

060 WAGGONER: no, I have not.

060 SEN. PHILLIPS: have you talked to him about the four Attorney General positions? The one of which you admit to me raises doubt about performance audits, and the other three which are just sitting out there?

064 WAGGONER: I haven't talked to him about those Attorney General's opinions.

065 SEN. PHILLIPS: has he gone back for other Attorney General's opinion to clarify the confusion, or does he feel comfortable with the answer that he has the authority to do performance audits?.

067 WAGGONER: Senator Phillips, with all due respect, I feel that these questions are more appropriately addressed to Secretary Keisling. I shouldn't be answering for him.

068 SEN. PHILLIPS: I would agree with you on that. Please provide the four Attorney General opinions and the letter of advisory as soon as you can get to it?

072 WAGGONER: sure, I'd be happy to.

072 SEN. PHILLIPS: I'd appreciate that. And would you also give to me a list of performance audits, just a list, that your office has performed in the last few years, and the cost of those items to perform, and who has born the cost of those items, and who authorized those, whether it was the Joint Legislative Committee on Audits or the Secretary of State, or the Secretaries of State before Secretary Keisling?

079 WAGGONER: I'd be happy to do that; it may take longer than simply getting the Attorney General's opinions.

080 SEN. PHILLIPS: I would hope so. Thank you, Mr. Chair.

082 SEN. ADAMS: if I could follow up a little bit: on page two of the testimony, there was an indication that there was an Attorney General's opinion dated Feb. 16, 1995 -- opinion #8234. Have you seen this opinion? It has a quote that the cost of the audit must be born by the school district.

087 WAGGONER: I believe I know the opinion that you're referring to, and yes I have. I asked for that opinion.

089 SEN. ADAMS: have you billed the Klamath County School District for that



audit?

090 WAGGONER: no, we have not.

091 SEN. ADAMS: at the present time, do you intend to do so?

092 WAGGONER: at the present time we do not intend to. I've discussed this with our lawyers and they've felt that our course of action is appropriate.

094 SEN. ADAMS: your attorney's opinions? Who are your attorneys? Are your attorneys from the Attorney General's office?

094 WAGGONER: yes.

095 SEN. ADAMS: so we have the Attorney General with one staff member saying you must, and then your Attorney General saying no you do not? Is that correct?

097 WAGGONER: no I don't think so.

097 SEN. ADAMS: could you help me understand that?

098 WAGGONER: yes, I'd like to. We're trying to deal with a very complex issue in ten second soundbites. It's not that easy. Even though the Attorney General opinion clearly states that the district will pay the cost for the audit, if we go out and do an audit, there are other statutes that allow costs to be dealt with in different ways for extraordinary audits. For example, in Klamath Falls they had already had a CPA audit. The audit we did was an extraordinary audit. It was an investigation. It's been determined by our office that we wouldn't bill for that audit.

106 SEN. ADAMS: do you have a written opinion from your Attorney General's staff member as to that effect then?

108 WAGGONER: well, it wouldn't be an opinion, but we do have writings from him. A letter of advice.

110 SEN. ADAMS: A letter of advice? Is it possible that I could get copies of both those letters for my information?

112 WAGGONER: sure.

112 SEN. ADAMS: assuming there isn't a constitutional problem, which again I tend to concur with Senator Phillips that there is not, can I take it that, since in spirit you were doing this already, that you have no objection to SB 400?

115 WAGGONER: our position is neutral.

117 CHAIR: Mr. Waggoner, when you make the decision not to bill the Klamath Falls folks, you essentially, who pays for it? Do we all get that privilege?

121 WAGGONER: well, the taxpayers pay for all of the audit work that we do, I would say.

122 CHAIR: so, if you don't bill the person that really receives the

benefits from the audit directly, then we all get to feel good because you conducted it? Is that the way it works?

124 WAGGONER: Senator Miller, that's your choice, about feeling good.

126 CHAIR: I appreciate your demeanor, Mr. Waggoner.

128 SEN. PHILLIPS: I would ask that you hold this bill, so that Mr. Keisling can review the tapes to make sure that he doesn't think that I was outrageous in my line of questioning, so that he can come in and answer the questions, since he's the officer in charge, so that he can review the demeanor of his staff that comes before a committee. He can choose either to discuss that with me in private or in this. I would concur that this is an opportunity to move forward to help the Audits Division and to help the state, but it is clear that perhaps we should talk to the Secretary of State about this.

136 CHAIR: I think that would be helpful, Senator Phillips. In fact there may be a case that this bill wasn't strong enough because if we are not necessarily billing people for charges that they have incurred I'm sure that would be of interest to the taxpayers at large. One other question on that audit, in fact, any of these performance audits. Can you describe for me how it is Klamath Falls was selected for the audit? You said it was extraordinary. Who comes in and says, Mr. Waggoner, we need to go down there and check this out?.

146 WAGGONER: sure, I'd be happy to. Chair Miller, Klamath Falls was audited after allegations of improprieties were brought to the attention of our agency by citizens and school board members..

146 CHAIR: if someone talks about irregularities in a district, then you guys saddle up the horses and audit the situation? How did you determine that the charges were meritorious?

154 WAGGONER: we asked for them to submit evidence to our office so that we may examine their findings.

156 CHAIR: were they especially unique charges?

156 WAGGONER: well, I'd say they were unusual if not specially unique, and the evidence brought to us indicated there was merit to the allegations.

159 CHAIR: and your subsequent findings verified that the allegations had substance?

161 WAGGONER: yes, our audit report would bear that out. I'd be happy to give you a copy.

165 SEN. PHILLIPS: I have one in my office.

165 CHAIR are there other such invitations?

169 WAGGONER: state agencies will invite us to audit, from time to time. I don't recall any audits during my two year tenure of any local government audits.

170 SEN. ADAMS: are there other non state agencies similar to the Klamath County school district where you've provided audit services and not been

reimbursed?

172 WAGGONER: I cannot think of any.

175 SEN. ADAMS: please review your records for the last five years and provide me with that information. If we are providing audits for non state

agencies and the general taxpayers are paying on behalf of other public agencies, I would be interested because we are having a pretty tough time balancing the budget and I'd kind of like to know, is this an exception, or

a policy we have. If so, we need to look at that policy.

179 CHAIR: I would add to that list, not just the non state agencies, but the Dept. of Agriculture. There seems to be a difference between the amount listed as cost and the amount listed as paid.

197 WAGGONER: It's not unaccounted for.

197 CHAIR: has it been fully collected?

197 WAGGONER: no, it has not been fully collected. We are charging the Dept. of Agriculture the same way we charge all the state agencies we audit. We have a funding mechanism that is like a retainer fee. We estimate in advance what the costs of the audit will be. The agencies pay that to us on a quarterly basis. Each biennium, when we get to a budget cycle, we estimate the cost for the next biennium based on a six year moving average of actual experience with cost.

206 CHAIR: I appreciate that. Welcome, Sen. Springer. I thank Mr. Waggoner for his testimony.

211 Closes work session on SB 400.

212 Reopens work session on SJR12.

217 SEN. SPRINGER: have not yet received answers from the former Attorney General regarding questions. Was there testimony today from that office?

215 SEN. GOLD: gathered that Chair Miller would go to Legislative Counsel and the Attorney General's Office for an answer..

224 CHAIR: will pursue the issue. Doesn't intend to have it be defective.

241 SEN. SPRINGER: Requests to be recorded as a NO VOTE on SJR12.

247 CHAIR: adjourns meeting at 5:25 p.m.

Submitted by,

Reviewed by,

Gretchen Haber  
Committee Assistant

Kristina McNitt  
Committee Administrator

EXHIBIT SUMMARY:

- A - Amendment SJR12-1 - staff - 1 page
- B - Amendment SJR12-4 - staff - 1 page
- C - Amendment SJR12-5 - staff - 1 page
- D - Committee Bills for Introduction - staff - 1 page
- E - Testimony on SB 400 - M. Martinez - 4 pages

