

SENATE COMMITTEE ON
RULES AND ELECTIONS

Hearing Room
Tapes 70-71

MEMBERS PRESENT:

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

STAFF PRESENT:

Kristina McNitt, Committee Administrator
Gretchen Haber, Committee Assistant

MEASURES HEARD:

SB 692: Public Hearing and Work Session
SB 1102: Public Hearing and Work Session
SB 400: Public Hearing and Work Session
SB 927: Work Session
HB 2861: 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 70, A

003 CHAIR MILLER: Called the meeting to order at 9:50 a.m. Reviews agenda.

Opens PUBLIC HEARING on SB 692.

Witnesses: Pat Hearn

010 PAT HEARN, Executive Director, GOVERNMENT STANDARDS AND PRACTICES COMMISSION: No new testimony. Available for questions.

026 CHAIR MILLER: Discusses intention to increase the number of dollars spent from \$100 to \$250 and increase hours to 25.

032 SEN. SPRINGER: Asks how the House Rules Committee will approach this issue.

040 CHAIR MILLER: Hopes that they pay attention to the fact that he is the sponsor of the bill and ask for his opinion.

Closes PUBLIC HEARING on SB 692.

Opens WORK SESSION on SB 692.

MOTION: CHAIR MILLER: Moves to amend SB 692 on lines 16, 17 and 19 to reflect the change in hours (24 to 25) and dollar amounts (\$100 to \$250).

VOTE: CHAIR MILLER: Hearing no objection, the motion carries. All members present voting aye.

MEMBERS EXCUSED: SENATOR ADAMS

MOTION: CHAIR MILLER: Moves SB 692, as amended, to the floor with a DO PASS recommendation.

VOTE: CHAIR MILLER: Hearing no objection, the motion carries. All members present voting aye.

EXCUSED: SENATOR ADAMS. CARRIER: SENATOR MILLER

Closes WORK SESSION on SB 692
Opens PUBLIC HEARING on SB 1102

Witnesses: Pat Hearn
Rives Kistler
David Fidanque

080 PAT HEARN, Executive Director, GOVERNMENT STANDARDS AND PRACTICES COMMISSION: No new testimony. Lobby registration fee statute is currently

subject of a pending appeal at the Oregon Court of Appeals. Introduces Assistant Attorney General Kistler to give an update on status of appeal.

84 KISTLER, Assistant Attorney General: Clarifies two issues. Is this bill a good policy? The Department of Justice takes no position regarding whether or not the bill is good policy. Is the bill constitutional. That is currently under appeal. The Department of Justice believes it is constitutional.

089 CHAIR MILLER: Asks for the decision of the lower court.

090 KISTLER: That it is not (constitutional). We believe that is an error.

100 CHAIR MILLER: Asks for detail of the lower courts opinion.

94 KISTLER: Response regarding the lower court's opinion.
-- Says the bill simply states that which portion of the constitution that charging a fee violates. It does not explain why it reaches that issue.

108 CHAIR MILLER: Asks if anyone has challenged the registration itself vs. the registration fee.

102 KISTLER: Answers, "No, they never have."

113 SEN. PHILLIPS: Asks how much of the public's money has been spent on litigation in this matter.

115 KISTLER: Answers that it is not likely to be much.

118 HEARN: Answers that it is approximately \$12,000 so far.

124 DAVID FIDANQUE, Executive Director, American Civil Liberties Union: Repeated testifies on SB 1102.
-- Is the plaintiff in a case challenging lobby registration procedures.
-- Feels freedom to lobby is clearly protected in Article One, Section 26.
-- Legislature should join the courts in determining constitutionality.

152 SEN. SPRINGER: Asks the name of the trial judge presiding over the ACLU's court challenge.

154 FIDANQUE: Judge Paul Lipscomb.

Closes PUBLIC HEARING on SB 1102.
Opens WORK SESSION on SB 1102.

MOTION: CHAIR MILLER: Moves the committee send SB 1102 to the floor with a DO PASS recommendation.
VOTE: CHAIR MILLER: Hearing no objection, the motion carries.
EXCUSED: SENATOR ADAMS

Closes WORK SESSION on SB 1102

Opens PUBLIC HEARING on SB 400.

Witnesses: Phil Keisling, Secretary of State
Manny Martinez
Robert Thomas

193 PHIL KEISLING, SECRETARY OF STATE: Testifies in favor of SB 400.
-- Indicates the year will end with a \$600,000 savings
-- Savings are achieved after the absorption of the Klamath Falls School District Audit

217 SEN. PHILLIPS: Asks who afforded the costs of the Klamath Falls district audit.

219 KEISLING: Answers that the district was not charged to the school district, because it was an extraordinary audit. Indicates that the Audits Division may determine what cost percentage to charge for audits by statute.

239 SEN. PHILLIPS: Reads from material provided to him by Secretary of State, which indicates that audit recipients must be charged 100% of costs.

245 KEISLING: Explains that the division may alter charges when the audit is deemed extraordinary.

266 CHAIR MILLER: Asks what the reasoning was behind the decision to absorb the costs of the Klamath Falls School District.

270 KEISLING: Answers that schools spend state dollars frequently.

275 CHAIR MILLER: Asks if the state would pay for audits provided to any Oregon school district.

280 KEISLING: Answers no. Indicates that the Klamath Falls School District was an extraordinary audit. Notes the exemplary record of the Audits Division.

300 CHAIR MILLER: Asks if charge determinations are made at the beginning or at the end of the audit.

305 KEISLING: Answers that it was made during the audit. Elaborates.

344 SEN. PHILLIPS: Refers to a letter by Attorney General Ted Kulongowski, indicating that the costs of audits should be charged to the audit recipients.

366 KEISLING: Answers that the Attorney General's letter refers to general procedure, while the Klamath Falls audit was an extraordinary one.

390 SEN. PHILLIPS: Asks if Keisling's opinion has changed regarding the Audit Division's authority to conduct performance audits.

TAPE 71-A

002 KEISLING: Answers that some performance audits fall within the Division's authority, and some do not. Discusses.

019 SEN. PHILLIPS: Asks if we are meeting our goals to audit each board and commission within three years.

031 KEISLING: Answers that several years ago, the office was not meeting that goal. Today, the Audit's Division is close to achieving the goal.

039 SEN. PHILLIPS: Asks for a list of audits that are required to be performed by the Audit's Division.

051 -- Asks which audits are approved by the Joint Legislative Audits Committee.

053 KEISLING: Answers. Discusses process for input from the committee members.

068 SEN. PHILLIPS: Asks if the Klamath Falls audit was under legislative review.

072 KEISLING: Answers that the Division had the constitutional authority to perform the audit, and brought the audit to the attention of the Legislative Audits Committee.

074 SEN. PHILLIPS: Asks about fuels audit.

076 KEISLING: The fuels audit was also within our constitutional authority to do. The Legislative Audit Committee chose not to have a hearing on it.

095 CHAIR MILLER: Asks if the fuels audit was done at the direction of the legislature. Asks if it was a fiscal audit.

100 KEISLING: Answers that the audit was initiated and performed by his office, and that the Legislative Audits Committee was informed.

115 CHAIR MILLER: Refers to an Attorney General's position which indicates that audits performed to evaluate the management of state agencies may not be performed by the Audits Division.

120 KEISLING: Answers that other opinions suggest that such audits are appropriate, when they determine the efficiency of the agency. Explain that the common theme in the opinions is the authority for the Division to perform fiscal audits.

176 CHAIR MILLER: States that the intent of the measure is to have private auditors used whenever practicable.

177 KEISLING: Responds that cost is not the only consideration.

260 CHAIR MILLER: Asks if the Division collects from each agency, regardless of if an audit is performed.

262 KEISLING: Answers yes. Elaborates.

286 SEN. SPRINGER: Asks to what extent the Governor can request an audit.

300 KEISLING: Says the Governor has no direct power to compel the office to perform an audit, but that often the Governor's requests are heeded.

The Committee recessed due to a Call of the Senate.
The Committee reconvened.

315 MANNY MARTINEZ, Keizer, Oregon: Testifies in favor of SB 400. Presents written testimony (EXHIBIT A).

-- States the Secretary of States office has a constitutional authority to audit fiscal affairs of state agencies and other public bodies, however, the constitution does not authorize conducting such audits at _____ (?) costs, nor has it given authority to charge the state agencies for services not provided or waive charges for services rendered.

-- Provides historical background on performance audits conducted by the Audits Division.

368 -- Refers to illustration demonstrating how some agencies pay for audit services incurred by other agencies (EXHIBIT B). Calls for detailed

information on all audits performed and charges assessed to each agency.

TAPE 70-B

005 MARTINEZ: Refers to list of audit costs (EXHIBIT C). States that the lists were provided to him by the Secretary of State's office.
032 -- Indicates that the Division historically has difficulty controlling costs.

058 -- Refers to present law (EXHIBIT D) requiring the Division to charge for audits performed.

067 CHAIR MILLER: Indicates that the intention of the legislation is to have all audits performed by the private sector, and that the burden would be on the Secretary of State's office to demonstrate reasons why a private auditor was not used, should that be the situation. Asks Mr. Martinez if he believes if this were the ambition of the Secretary of State's office, would the majority of audits be handled by the private sector.

077 MARTINEZ: I do not believe so. I believe SB 400 should be more strict.

078 CHAIR MILLER: Could the private sector handle audits currently being done by the Secretary of State's office?

080 MARTINEZ: Responds in the affirmative, noting some states where all audits are done by private industry.

094 ROBERT THOMAS, CPA, Portland, Oregon: Testifies on SB 400.

-- Testifies that the professional literature provides a definition of performance audits

-- Reads definitions

-- Discusses differences between fiscal audits and performance audits

149 -- Continues testimony.

Closes PUBLIC HEARING on SB 400.

Opens WORK SESSION on SB 400.

MOTION: CHAIR MILLER: Moves SB 400 to the floor with a DO PASS recommendation.

VOTE: CHAIR MILLER: Hearing no objections, the motion carries. All members present voting aye.

EXCUSED: SENATORS PHILLIPS AND GOLD

Opens PUBLIC HEARING on HB 2861

Witnesses: Manny Martinez
Robert Thomas
Chris Rucker

177 MANNY MARTINEZ, Keizer, Oregon: Testifies in favor of HB 2861. Presents written testimony (EXHIBIT E).

213 CHAIR MILLER: Discusses intent of HB 2861.

220 MARTINEZ: States that the legislature should hire and supervise private auditors, rather than the Audits Division.

275 -- Continues testimony reading from Exhibit E.

330 -- Continues testimony reading from Exhibit E.

365 SEN. SPRINGER: Asks what we mean (line 8 of the bill) when we talk about the basis of risk assessment.

375 ROBERT THOMAS, CPA, Portland, Oregon: Says he believes the drafters of HB 2861 had in mind, SAS 55, State on Audit and Standards promulgation AICPA, American Institute of Public Accountants. Discusses categories of risk commonly under consideration.

TAPE 71-B

005 SEN. SPRINGER: Asks if Mr. Thomas has discussed these definitions with the sponsor of the legislation.

007 THOMAS: Answers, no.
-- Asks them to consider whether or not the Audit's Division has the knowledge of the organizations to be audited.

020 SEN. SPRINGER: Requests Mr. Thomas for a summarization of terms in writing.

042 CHRIS RUCKER, Executive Director, Blind Enterprises of Oregon:
Testifies on HB 2861.
-- Is concerned with conduct by the Secretary of State's office
-- Believes the Audit's Division does not have the authority to conduct performance audits
-- Blind Enterprises refuted the audit performed on it's organization by the Audit's Division
-- Feels the lack of clarity provides advantage for the Secretary of State's office

Closes PUBLIC HEARING on HB 2861.
Opens WORK SESSION on SB 927.

088 KRISTINA McNITT, Committee Administrator: States that the -4 amendments (EXHIBIT F) developed by a group of people:
1) Allows individual citizens to utilize the card lock system; and
2) Alters ten mile barrier to seven miles.

120 SEN. SPRINGER: Asks who was involved in the drafting of the amendments.

122 CHAIR MILLER: Answers that Rep. Lundquist was involved, among others.

140 SEN. SPRINGER: Isn't aware of discussion surrounding a compromise.

143 CHAIR MILLER: Discusses amendments.

MOTION: CHAIR MILLER: Moves to adopt the -4 amendments to SB 927.
VOTE: CHAIR MILLER: Hearing no objection, motion carries. All members present voting aye. (Later in the hearing, Senator Springer requested he be

recorded as voting no)
EXCUSED: SENATOR GOLD

MOTION: CHAIR MILLER: Moves SB 927 as amended to the floor with a DO PASS recommendation.

162 SEN. PHILLIPS: Requests to hear from members of the audience.

172 JOHN McCULLY, Agricultural Cooperative Council of Oregon: Explains that the discussion has related to narrowing the scope of the measure to narrow in on communities with particular problems accessing gasoline.
186 -- Says he is aware of three communities in Oregon that would be affected.

211 CHAIR MILLER: Discusses additional communities with access troubles.

216 MARK NELSON, Public Affairs Council, Southland Cooperation: Would not object to the -4 amendments.

230 SEN. SPRINGER: Wishes to be recorded as a "no" vote on the -4 amendment.

233 CHAIR MILLER: Repeats his motion to pass SB 927 to the floor as amended with a do pass recommendation.
-- Requests roll call vote:

VOTE: GRETCHEN HABER, Committee Assistant:
SENATORS: ADAMS aye
PHILLIPS aye
SPRINGER no
Mr. CHAIR aye
EXCUSED: SENATOR GOLD
MOTION CARRIES.

Closes WORK SESSION on SB 927.
Opens PUBLIC HEARING on HB 2861.

240 BRIAN GOLD, Legislative Assistant for Rep. Lokan: Presents testifies in favor of HB 2861 on behalf of Representative Lokan. Presents written testimony (EXHIBIT G).

269 CHAIR MILLER: Requests that Brian ask the sponsor of this measure: first, if it is wise public policy to vest authority "in an area where maybe we haven't been overwhelmed with competence."

and, "whether or not this really expanding the opportunity to do something that hasn't been done particularly well, is good policy"; also, if the sponsor might entertain some review of this assessment authority that has been granted in the '93 session to assess all of the agencies to participate in audits that they may never receive...seems to create a large pile of money...that was used in questionable ways."

296 GOLD: Indicates that Rep. Lokan is interested in allowing more access to audit results during budget discussion.

300 CHAIR MILLER: Says he knows that Rep. Lokan is also, at least an unabashed supporter of private sector auditing. Says it would be interesting to see how this bill and SB 400 would blend, should they both pass.

Closed PUBLIC HEARING on HB 2861.

316 The Committee adjourned.

Submitted by:

Reviewed by:

Gretchen Haber
Committee Assistant

Kristina McNitt
Committee Administrator

Assisted by:
Dar' Woodrum
Committee Assistant

EXHIBIT LOG:

- A -- Testimony on SB 400 -- Manny Martinez -- 2 pages
- B -- Section of ORS 297.230 -- Manny Martinez -- 3 page
- C -- Budget Variance Report -- Manny Martinez -- 6 pages
- D -- Audit's Division Assesment Estimate -- Manny Martinez -- 3 pages
- E -- Testimony on HB 2861 -- Manny Martinez -- 5 pages
- F -- Amendments to SB 927 -- Staff -- 4 pages
- G -- Testimony on HB 2861 -- B. Gold -- 1 page

Also submitted for the record:

H -- Portion of the Constitution re: Duties of Secretary of State Audit's
Div. -- 1 page
I -- Protection from Fire -- 1 page
J -- Beef council blasts costs of state audit -- 1 page
K -- Audit Risk Summary -- 1 page
L -- Summary of AG Opinions related to Performance Audits -- 3 pages