

House Committee on Agency Reorganization and Reform April 16, 1991 -
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proceedings, please refer to the tapes.

HOUSE COMMITTEE ON AGENCY REORGANIZATION AND REFORM

April 16, 1991Hearing Room D 3:30 p.m.Tapes 58 - 60

MEMBERS PRESENT:Rep. Clarno, Chair Rep. Hugo, Vice-Chair Rep. Clark
Rep. Derfler Rep. Jones Rep. Katz Rep. Brian

STAFF PRESENT: Susan Browning, Committee Administrator Scott
Kaden, Committee Assistant

MEASURES CONSIDERED: HB 2890 - Publications Bill, WS HB 2892 - State
Motor Pool, WS HB 2885 - Jury Bill, PH HB 3542 - Jury Bill with Change
in Peremptory Challenges, PH

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proceedings, please refer to the tapes.

TAPE 58, SIDE A

013 CHAIRPERSON CLARNO: Calls the meeting to order at 4:05 p.m.. Susan,
would you please brief the members on the information before them?
Opens the work session.

(Tape 58, Side A) HB 2890 - PUBLICATIONS BILL, WORK SESSION
Witness:Susan Wilson

020 SUSAN BROWNING, COMMITTEE ADMINISTRATOR: Introduces the bill
packets (see EXHIBIT A).

032 REP. CLARK: Have we clarified the difference between the dash nine
and dash ten of HB 289 0?

033 BROWNING: dash ten is basically dash nine with the addition of the
provision for oversight by Legislative Administration Committee.

037 CHAIRPERSON CLARNO: Could you tell us again what line that
provision appears on?

039 BROWNING: Rep. Clark, on dash ten it is page two, line 30 and then on page three, line 2 and line 4. Those three segments are the only difference between dash nine and dash ten.

045 REP. JONES: Did the work group look at this issue of LAC oversight and decide to provide that option in dash ten?

048 REP. HUGO: Actually, Susan Wilson had quite a bit to do with that provision.

051 CHAIRPERSON CLARNO: Makes sure the Committee is aware they are operating in a work session. Invites Susan Wilson to the witness table.

053 BROWNING: The dash nine amendment is the direct result of the work group. The dash ten answers some of the concerns that some members had with regard to the role of the Legislative Administration Committee. dash ten includes the oversight option.

059 REP. HUGO: On the bottom of page two of the dash ten amendment, Legislative Administration Committee (LAC) is the committee referenced, correct?

062 SUSAN WILSON, ACTING ADMINISTRATOR OF LEGISLATIVE ADMINISTRATION COMMITTEE: "There is a committee and the administrative structure within Legislative Administration acts as sort of the conduit for the administrative aspects, yes."

065 REP. HUGO: When we were in your office, we were talking about having the agencies supply one copy to the Speaker of the House and the President of the Senate, five copies to the LAC, copies to the library distribution center, and whatever else was required. That would be the full extent of distribution.

070 WILSON: Correct. That is the distribution of reports. Dash ten speaks more to the adoption of the rules and the oversight of the activities of the Department of General Services.

072 REP. HUGO: This would allow you to go in and ask the Department of General Services to go into an agency. Is that correct?

074 WILSON: Apparently, LAC is in a consultive role in adopting the rules. Then, with the advice of the Committee, General Services would go about their reviews of the agencies. We really haven't discussed that part and it is still unclear.

080 REP. HUGO: I am not sure if that is what you want to do.

081 WILSON: It is a somewhat uncomfortable role to be playing. I think as long as there is some reporting requirement to the legislature, we will get the information that we need.

090 REP. HUGO: Given that, I would suggest that we work on dash nine amendments and put the dash ten away.

093 CHAIRPERSON CLARNO: Ms. Wilson, will you remain at the table while our Committee Administrator discusses the dash nine amendment?

096 BROWNING: Section 1 defines "report." Section 2 creates a policy statement. Line 18 of Section 2 is a new addition which spells out the public's right and interest in receiving information. Section 3 outlines

objectives for agencies to follow.

114 REP. KATZ: Since it says, "whenever possible," I would like to add the phrase "non-bleached paper." So instead of just reading "recycled paper," it would be "non-bleached and recycled, whenever possible."

120 BROWNING: Continues with discussion of dash nine amendment (see EXHIBIT A).

142 REP. CLARK: Why did it change from disclosing the printing information on the report itself to filing some form with the Department of General Services? When we originally talked about this issue, I thought we would have the information printed on the report itself.

149 CHAIRPERSON CLARNO: That is correct; that was your recommendation. Susan looked into the matter and found that it is not possible to know the exact cost before publishing to put on the mailing.

153 REP. CLARK: We might as well not do it if we are going to send an obscure report over to the Department of General Services. I wanted a full disclosure statement for John Q. Public when he was reading the report itself. If you don't know the exact cost, then make an estimated cost. No one will go to jail if the estimate is incorrect.

162 REP. HUGO: If you want to curtail blatant waste in printing, tell the person who is doing the printing that all their actions will be on file. There will be a record of all printing requests. It will cause second thoughts and that will trigger "self-monitoring." - If the goal is to communicate to the public the approximate cost of printing, then this mechanism won't work and your suggestion would. In our work group, our goal was to reduce overall printing costs. This is a management tool to insure wise management.

189 REP. CLARK: I am not sure that we are in total disagreement here. You should know up front, everything except for subsection c (dash nine amendment).

193 REP. HUGO: I am not sure why that is there either.

196 REP. JONES: Are we more concerned about the public knowing how much a document costs, or are we more interested in insuring that the information is the kind the public wants and the public has a place for access to that information (instead of making many copies which end up in the trash). I am not sure printing the cost on each document will serve the purpose of trying to reduce printing volume and waste.

209 REP. HUGO: As a surreptitious manager, I would print 100,000 copies of something instead of 1,000. This would lower the cost per unit (which would be printed on the document) but the total cost to the state would be much more.

213 REP. KATZ: That is a good point. If you figured that out, the other bureaucrats will figure it out, too.

216 REP. CLARK: I just can't believe that a state agency will get or feel as much pressure to keep the costs down if they file a report with General Services, than if they knew that information would be provided on each copy of each report.

221 REP. JONES: But you have cut down the volume that they are allowed

in the first place. So you have already cut the cost of the printing. You have also described the type of document you want printed and have asked for it to be sent to only a select amount of locations.

234 REP. KATZ: Rep. Clark, how strongly do you feel about this?

235 REP. CLARK: We dealt with surrogacy contracts last night in Judiciary, and it doesn't evoke those kind of emotions in me. But, I am not sure why we are reluctant to give this sort of information directly to the public. I don't have a problem with filing a report with the Department.

250 REP. KATZ: What you really want is the elimination of Section F?

251 REP. HUGO: I can't see any use for F.

253 BROWNING: Section F was requested by General Services. They felt it would be a good way to compare what they are spending this year (on reports) versus last year.

259 REP. KATZ: Could we delete Section F?

260 CHAIRPERSON CLARNO: That doesn't solve your problem, does it?

261 REP. CLARK: No. I will make a motion to amend Section 5, to include information or estimates of printing on the actual documents.

267 CHAIRPERSON CLARNO: Do you want to work on that language, Rep. Clark?

268 REP. CLARK: Sure.

269 REP. JONES: Are you making a motion?

270 CHAIRPERSON CLARNO: No. He did not make a motion. He is contemplating that language and will submit it at a later date. Susan, would you continue with your overview?

274 BROWNING: Continues with overview (see Exhibit A).

306 REP. HUGO: Can you go over section 6, why are we doing that and why are we dating it just for the next biennium?

307 BROWNING: Section 6 (requires Director of General Services to report to the Legislature) allows the Legislature to hear back from General Services as to how this process is working. As I understood it, this report was to let the Legislature know how the process was being carried out. Do you have a concern about this limited reporting duration?

315 REP. HUGO: Yes. I would suggest putting a period after the word, "Senate" on line 7.

318 BROWNING: So we would delete the words, "for the 1991 - 1993 biennium"?

320 REP. HUGO: Yes. I have a problem with putting dates into statutes.

332 CHAIRPERSON CLARNO: Have we had testimony on the reporting requirement by the Executive Department regarding the classification

system?

333 BROWNING: Yes, we did. Mr. Art James was asked to come back with a copy of their latest report. He provided that copy to Rep. Katz.

337 REP. HUGO: On Section 5, when would the agency file a report? It says in a timely manner. Does that mean before the printing is done, or after it is printed?

342 BROWNING: As I understand it, it would be after it is printed.

346 REP. HUGO: So we would get the report after the fact, after it has been produced.

348 REP. DERFLER: How much will this cost? Do we have a fiscal impact on this?

351 BROWNING: The cost of doing the dash nine amendment would be negligible. It falls under what General Services already does, to some extent.

359 REP. DERFLER: So they are not going to need another three or four people?

361 BROWNING: No. They said they could do it with existing staff.

362 CHAIRPERSON CLARNO: In the original bill, we had a fiscal impact, correct?

363 BROWNING: There is a fiscal impact statement with the original HB 2890. It was equivalent to one committee administrator and one committee assistant.

367 CHAIRPERSON CLARNO: That was if we were going to have Legislative Administration cover the whole bill.

368 BROWNING: Correct. The original HB 2890 is quite a bit different from the bill we have before us.

372 REP. HUGO: I am trying to figure out how we can get a dollar figure on the report itself. I am thinking of a project cost instead of a per unit cost.

380 REP. CLARK: I have some language to suggest. On line 17, before the word "notice," insert the words "a cost." On line 19, after "manner," insert the words "shall also cause the cost notice to appear in a conspicuous place on the report." On line 23, (subsection C) change it to read "total actual printing and associated reproduction costs, or if such actual costs are not yet known, an estimation of such costs."

413 REP. DERFLER: Don't they normally put these projects out for bid? Wouldn't they have a bid, thus the actual costs?

416 CINDY BECKER, ASSISTANT DIRECTOR - DEPARTMENT OF GENERAL SERVICES: Explains the bidding process. The final bid may be different from the initial bid. If you want us to put this on the report, it will cause us extra staff time. Our staff will have to input this information. Putting an estimate would not be a problem; but providing actual figures would be a problem.

445 REP. DERFLER: But the agency has an idea of what the cost will be. I wouldn't print something if I didn't know what it would cost.

448 REP. CLARK: That is why I included the estimated cost language.

450 BECKER: We have a lot of orders that are \$100 items and are not big ticket items. Many times an agency will have a good indication from past printing what a project will cost. In these instances, the agencies will not ask for a formal, written estimate.

457 REP. DERFLER: I am not sure that we are after the \$100 projects.

460 BROWNING: Reads the new language to reflect the language offered by Rep. Clark.

471 REP. JONES: Was that a motion?

473 REP. CLARK: No. She was just repeating the proposed language.

475 BECKER: One other item that we have concern about is the estimate which contradicts the actual costs. If these two figures are different, that really destroys the credibility of your estimate. If that happens repeatedly, I am not sure what you are going to end up with.

488 REP. CLARK: That would serve to increase the pressure to get accurate estimates. If I had a printer and consistently received printing projects back that were way off the estimate, I would probably find a new printer.

TAPE 59, SIDE A

045 REP. HUGO: Ms. Becker, have you seen the dash nine amendments?

046 BECKER: Yes.

047 REP. HUGO: You mentioned \$100 projects. Do those \$100 projects qualify as a "report," as defined in Section 9 of this amendment?

048 BECKER: The way this is defined, yes, they would.

049 REP. HUGO: I guess the question is, "What are we trying to do with this bill"? I thought we were trying to limit the publication of reports that just are not necessary. By requiring this documentation of report requests, I think you will deter the printing of some reports. That is the theory behind the dash nine amendments. Going beyond that, I am not really sure what is gained by putting a unit cost on each piece produced.

057 REP. CLARK: Maybe I am thinking about reports that I have seen in past years. The people who authorized those reports would have been more economical had they known that the cost would be included on the report. This is just a "hunch" that I have.

068 REP. JONES: We have asked them to be reviewed for the kind of material that will be used, i.e. paper, size and color. We will be using the library as a source of distribution to the public. Why don't we file the report with the library at the same time that we file the copy? Then if anybody wants the cost report, it is there. When they request the document, if they want to know the cost, the material can be

provided to them.

083 BECKER: The agencies are supposed to supply the libraries with these reports anyway. Another thing that is important to mention is the definition of "report." This definition is much more inclusive (basically everything with the exception of an inner agency memorandum).

091 REP. DERFLER: Should there be a limitation on this sort of thing? Do we want to address the \$10 or \$20 printing projects?

094 CHAIRPERSON CLARNO: That is a good point. Rep. Katz has commented in the past on publications that simply promote the agency. If we set too low a limitation, we may have problems. What is the feeling of the committee on this point?

101 REP. HUGO: I don't care if an agency promotes itself. The concern should be how much money they are spending to do so. I thought the theory of this project was to stop publication of unnecessary projects or to reduce the cost of those that are necessary. If the manager wants to puff or self-promote, fine. That manager will have to deal with the consequences and demonstrate the necessity. This definition of report does bother me a bit, and that is why I asked Ms. Becker about it. I wonder if every AG Opinion is a report?

116 WILSON: No. I don't think so. It is more of a correspondence because it addresses a specific request.

119 REP. KATZ: I think it would be o.k.

121 REP. CLARK: The first time I read the definition of "report," I had questions as well. I agree with Rep. Hugo as far as the purpose of this bill. I don't understand the reluctance of putting the costs on the bill.

134 REP. JONES: I may be the only "no" vote on this bill, but let us hear a motion.

135 CHAIRPERSON CLARNO: Do I have a motion?

136 MOTION:REP. CLARK moves to amend dash nine amendments to HB 2890 by adding the "cost notice" language (line 17, insert the word "cost" prior to the word "notice," line 19, we remove the "." and add "and shall also cause the cost notice to appear in a conspicuous place in the report," line 23, subsection C, after the word "total," add "actual printing and associated reproduction costs, or if such costs are not yet known, an estimate of such costs.")

148 CHAIRPERSON CLARNO: Is that correct language, Rep. Clark?

149 REP. CLARK: One slight modification to line 23. It should read "or if such actual costs are not yet known."

152 REP. DERFLER: If they put the estimate cost on, do they also have to include the actual cost as well?

154 REP. CLARK: I don't contemplate their coming back with the actual costs.

157 REP. DERFLER: So then it would just be an estimate?

158 REP. CLARK: If they know the actual printing costs, then they must include that on the publication. If they do not, then they make an estimate.

159 REP. DERFLER: And that is the end of it?

160 REP. CLARK: Yes. Unless two years later, someone actually goes back and compares the actual costs with the estimates. It is the end of the process.

163 REP. DERFLER: The agency is the one who makes the estimate?

165 REP. CLARK: Yes, because the agency is doing the cost notice to the Department of General Services.

166 BECKER: No, that is not correct. The Printing Division would make the estimate.

168 REP. CLARK: The Printing Division would make the estimate, but the agency is the one who is putting out the cost notice. The agency will fill out a cost notice and send it to the Department of General Services.

172 BECKER: Correct. They would call the Printing Division and we would give them an estimate. They then would put that on their document.

173 CHAIRPERSON CLARNO: Are there any other questions? Scott, please call the roll call.

175 VOTE: In a roll call vote, the motion carries, with Representative Jones voting NAY. Representative Brian was excused.

182 CHAIRPERSON CLARNO: Do I have a motion for the dash nine amendments?

183 MOTION: REP. HUGO moves that page 3, line 7 that a period be placed after the word "Senate," and the rest of that sentence be deleted.

188 CHAIRPERSON CLARNO: Also, on page 2 line 5, Rep. Katz would like us to insert after the word "inch," "non-bleached."

191 REP. JONES: Whose motion is that?

192 CHAIRPERSON CLARNO: Rep. Hugo, would you like to add that language to your motion?

193 REP. HUGO: No.

194 CHAIRPERSON CLARNO: When she returns to the meeting, we will ask Rep. Katz if she would like to add that language. Was the committee under agreement to omit Section 5, Subsection F?

198 REP. JONES: Has Rep. Hugo made a motion? I think we had better take that first, correct?

199 VOTE: Hearing no objection, Chairperson Clarno so moves as requested by Rep. Hugo. Rep. Brian and Katz are excused.

210 REP. JONES: I am concerned with regard to Subsection F. Sometimes we have great ideas but get bogged down in the bureaucracy when we try

to act upon them. This section says "previous years and bienniums." I don't know how far we want the agencies to research.

219 BROWNING: The Printing Division had a concern with that as well. They recommended striking line 29, inserting the word "most recent" before word "report."

227 REP. DERFLER: Could I ask General Services a question since that was their suggestion? Was that your suggestion?

229 BECKER: Yes, it was. Section 6 asks the Director to report on cost savings. We need to know the previous reports cost in order to report on cost savings.

240 REP. JONES: Do you not have that information?

241 BECKER: We have that information. It would be easier for the agency to pull out one printing order than for us to go through all the files for all the orders. They may have changed the title or something else which would cause difficulties for us.

247 REP. JONES: Especially if it concerns the most recent report.

251 REP. DERFLER: I have a problem with General Services doing part of the report and then the agencies doing part of the report. Is that going to be confusing?

257 BECKER: The agency asks us for an estimate, and we give them the estimate. They would put that on the report and send it to the Printing Division.

267 REP. JONES: The agency is the only one who fills out the whole report. Some of the information that they are not aware of will need to be obtained from General Services.

270 REP. HUGO: How much does unbleached paper cost as opposed to regular paper?

272 BECKER: It really depends on the availability. I'm not sure.

276 CHAIRPERSON CLARNO: Any further discussion? Anything on Section 5, Subsection F?

277 REP. HUGO: I think we should change "bienniums" to "biennia," or at least ask Legislative Counsel if that was the spelling they intended.

281 BROWNING: Members, would you also like to change the amendment as suggested by the Printing Division, so that "most recent report" is included?

283 MOTION: REP. JONES moves to amend lines 27 and 28 of page 2 of dash nine amendment, as discussed.

288 REP. HUGO: Does that include changing "bienniums" to "biennia"?

289 REP. JONES: Yes.

290 VOTE:Hearing no objection, Chairperson Clarno so moves. Rep. Katz and Brian are excused.

291 WILSON: Could I get some clarification on that last amendment? On line 28, is line 29 and "bienniums" still in there? So bienniums comes out of line 29, but you are changing it on line 28?

297 CHAIRPERSON CLARNO: On line 28, we are changing the word "bienniums" to "biennia." On line 29, we are deleting "during the previous years or biennium."

303 MOTION:REP. HUGO moves to amend HB 2890 to include the non-bleached paper language, "whenever possible."

309 CHAIRPERSON CLARNO: Any question on this issue?

311 WILSON: We have certainly tried to use non-bleached at the Legislature whenever possible. Availability is a real problem. Cost is another factor.

314 CHAIRPERSON CLARNO: Are we not making it impossible when we attach the words "whenever possible"?

315 WILSON: I think it should read, "whenever possible."

317 REP. JONES: Whenever possible may be more expensive. We are not trying to increase the cost.

319 BECKER: Largely, it is an availability issue.

320 REP HUGO: As opposed to cost?

321 BECKER: Well, the market and the cost are obviously going to be related. Right now, the availability is not there. Clearly, if you leave the "whenever possible" language, that leaves the door open.

339 MOTION:Noting objection, REP. HUGO withdraws his earlier motion.

341 REP. JONES: Are you ready for a motion?

342 CHAIRPERSON CLARNO: Certainly.

343 MOTION:REP. JONES moves to adopt the dash nine amendments to HB 2890, as amended in committee.

348 VOTE:Hearing no objection, Chairperson Clarno so moves. Rep. Brian and Katz are excused.

352 BROWNING: Does the Committee wish to address the dash seven amendments regarding the Executive Department?

353 CHAIRPERSON CLARNO: Rep. Katz is not in attendance today, and she was the person who was concerned about this amendment. Does the committee have suggestions?

359 REP. JONES: Do we want to hold up the bill?

361 MOTION:REP. HUGO moves to adopt the dash seven amendments to HB 2890, subject to review by Legislative Counsel.

365 CHAIRPERSON CLARNO: Ms. Browning, could you explain the dash seven amendment to the Committee? We did have testimony on this amendment, correct?

368 BROWNING: The dash seven amendment was the one presented by Art James, Executive Department Personnel Division. Looking at the original HB 2890, Mr. James felt this report had also outlived its usefulness and should have been included in the bill. This amendment would delete the requirement that the Executive Department report to the Legislative Compensation and Classification Committee.

384 REP. JONES: I believe Rep. Katz was comfortable with this amendment after she realized which report they were referring to. As I recall, I don't think she had any objection to this amendment.

394 CHAIRPERSON CLARNO: Rep. Clark, did you have any further questions?

395 REP. CLARK: No.

396 VOTE: Hearing no objection, Chairperson Clarno so moves. Rep. Katz and Brian are excused.

398 MOTION: REP. HUGO moves HB 2890, as amended, to the floor with a "do pass" recommendation.

404 VOTE: - In a roll call vote, the motion carries with all members present voting AYE. Rep. Katz and Brian are excused. REP. KATZ will carry the bill. - See Tape 58, Side B (433) for Rep. Brian's vote on HB 2890.

430 CHAIRPERSON CLARNO: Asks witnesses if HB 2891 could be postponed until Thursday. Hearing no objection, the Chair opens a work session on HB 2892.

(Tape 59, Side A) HB 2892 - STATE MOTOR POOL, WORK SESSION
Witnesses: Cameron Birnie, Department of General Services Ray Phelps,
Speaker's Office

449 BROWNING: Explains the bill packet on HB 2892. See Exhibit A for dash one and dash two amendments.

TAPE 58, SIDE B

028 REP. DERFLER: I would like to know more information about the Joint Legislative Audit Committee. Who is on that committee?

029 CHAIRPERSON CLARNO: I am on that committee. Our first meeting will be next week, and then I will be able to tell you the makeup of the committee.

031 REP. JONES: They are meeting during the interim. Appointed last session, this committee is in its infancy. It has been meeting during the interim, directing the audits which have been conducted.

034 BROWNING: They have not yet met this year. The committee is staffed by Legislative Fiscal and is composed of the Speaker, the President of the Senate, and the Chair of Ways and Means (one of the co-chairs). They do meet during the interim.

038 REP. DERFLER: Thank you.

039 CHAIRPERSON CLARNO: I would like to call up Cam Birnie and Ray Phelps to testify on the amendments to this bill.

051 CAMERON BIRNIE, ADMINISTRATOR OF TRANSPORTATION & DISTRIBUTION - DEPARTMENT OF GENERAL SERVICES: Submits and summarizes dash one amendment to HB 2892. In the information provided last work session, we basically invited an interim study due to reasons of improved efficiency and lower operational costs. We feel it would be wise to study the consolidation of other fleets. We are currently in the consolidation process, but we would like to do additional consolidations after proper study. This is a short amendment, but it deals with items that are far-reaching.

077 CHAIRPERSON CLARNO: Are there any comments or questions of the Committee? I cannot remember your previous testimony, but I have been reading a New Jersey study on their motor pool. In some instances, New Jersey found that they had more mechanics than bays. Are you looking at those items? Are there too many mechanics, etc.?

085 BIRNIE: That was one of the key notes to consolidation. Throughout the consolidation, we attempted to keep the number of mechanics at a constant number, even though we increased the number of cars due to consolidation. We did this by buying cars smarter, selling them earlier, and getting longer warranties. We currently buy cars that have seven year, 70,000 mile warranties. We are at a target replacement rate of 65,000 miles. All our time on our target vehicles will be under warranty which will amount to less mechanic hours. That is why we have been able to keep the mechanic numbers down. We see that as our major efficiency in the mechanic work force.

100 CHAIRPERSON CLARNO: Any questions on the proposed amendments?

112 RAY PHELPS, SPEAKER'S OFFICE CHIEF OF STAFF: Submits and summarizes the

proposed dash two amendments. The objective is to have one manager for all of the ground transportation equipment in the State of Oregon. There are unique circumstances, either locale or operation, which might dictate a special type of operation. - Speaker Campbell was impressed with the Booz, Allan and Hamilton report. This report recognized that General Services does indeed run a good fleet, while other fleet operations might not be at that level. This report begs for consolidation. General Services has shown in the past that consolidation is effective. - We need a stronger policy with respect to vehicle usage. We should have a policy statement as to who, specifically, can or cannot drive a car. Recent events dramatize the tragedies that we have at hand. This is not a reaction to those events. It has been a consistent position of the Speaker's office. We have asked General Services to address the issues of who may drive a car and under what conditions. - We need to address those individuals who have permanently assigned vehicles and keep those vehicles at their residences.

198 CHAIRPERSON CLARNO: We appreciate your comments. Rep. Brian just gave us a handout.

199 REP. BRIAN: This is a transcript of an Associated Press report that was put out late last night and subsequently carried by Channel Two news. This story brings to light the issue of garaging exemptions, something this committee discussed the last time we had representatives of the state motor pool before us. Apparently, there are some things

the motor pool people are unaware of with regard to Department heads and their garaging exemptions. We were told one thing, but this story contradicts those statements. I doubt that Corrections is alone in this misapplication or misinterpretation of the law. I would like some response on what we can do to make sure that all of our agencies are following the law on the books.

223 BIRNIE: We look at this from three fronts. We are examining this policy, and more amendments will be forthcoming. Senate Bill 31 (which has passed the full Senate) addresses ORS 283.395 which currently states that no person shall drive a state vehicle for private purposes. Lastly, we are working with Corrections. We see personal use, with relationship to ORS 283.395, as being distinct from the garaging exemption issue. Garaging exemptions are legitimate if they serve the business of the agency better. The officials from Corrections did not claim their actions were justified due to garaging exemptions. They claimed it was part of their employment arrangement.

257 CHAIRPERSON CLARNO: Are Corrections vehicles under General Services?

259 BIRNIE: Some are, and some are not. Corrections vehicles are slated for consolidation into our motor pool.

261 CHAIRPERSON CLARNO: Let me ask you about SB 31. Where is it now?

262 BIRNIE: It passed the Senate unanimously and is in the House. I believe it has been assigned to State and Federal Affairs.

268 CHAIRPERSON CLARNO: Maybe we can borrow SB 31. We might have some items to add to it. The relating clause is pretty narrow so might just leave that alone. We will have another work session on this bill next Thursday.

288 REP. JONES: With regard to dash one and dash two amendments, is there anything here that would prohibit contracting for mechanical work in remote areas where it is under the management of General Services?

294 BIRNIE: Not at all. We currently do that.

295 REP. JONES: I would think that is a cost-effective way of doing business. I just want to make sure nothing prohibited you from doing that.

297 CHAIRPERSON CLARNO: As I understand, you will develop a policy regarding vehicle use and those persons who can drive.

301 PHELPS: Would the committee like to see that new policy language with regard to authorized drivers and the definition of state business at the next meeting?

305 CHAIRPERSON CLARNO: Yes. I know the Chair would.

307 PHELPS: Who can drive and when they can drive really are the keys to the issue. They drive the policy of the motor pool. 311 REP. JONES: Currently, do we require any drivers' safety training from our drivers before we allow them to drive state cars?

317 BIRNIE: General Services only requires a valid driver's license and the agency permission. We do require training for General Services

drivers, and some other agencies do it for their own drivers. But currently, we do not have a blanket safety program for all General Services motor pool users.

328 REP. JONES: What you are saying is that some departments may not have the requirement that training be shown before they can utilize the motor pool. Could you bring us records of your drivers for the next meeting?

330 BIRNIE: I don't have that with me but I can bring it back, along with our risk manager.

332 REP. DERFLER: We really need to look at the policy of this issue. Some of the time you are going to incur more cost than what you save. I know the Agriculture Department really need their exemptions. We need to make sure the changes that we make are not going to lead to additional costs.

342 PHELPS: I don't know about the issue of physical location. Maybe we need to discuss whether the rules of taxable income apply for the perk of having a state car. Are there taxes due on the use of these cars? Frankly, I don't have the answer on that issue.

358 CHAIRPERSON CLARNO: We do have an old statute on the books - ORS 283 .395. "Driving state-owned vehicles for private purposes is prohibited." Continues with the reading of this statute. I do agree with Rep. Derfler's comments, though. We must remember the situation we have in Eastern Oregon.

375 REP. BRIAN: With regard to dash 2 amendments, have we discussed the date of 1995?

379 PHELPS: That has not been discussed. It was originally proposed to be 1997. General Services believe there is a cost element involved. The quicker we take on this consolidation, the higher the costs. 1997 just seems too far away; 1995 seems like a reasonable compromise. As we try to do things quicker, there is a cost element.

392 REP. BRIAN: General Services can respond to this question next Thursday. Please let us know what you feel is the best date.

394 BIRNIE: We don't see a red stop light facing us here, but we do see some yellow lights with regard to fiscal impact which might be substantial for this consolidation. We have been operating on a rather rapid pace, we think. This consolidation is governed by our cash flow more than anything else.

416 CHAIRPERSON CLARNO: I would appreciate your meeting with Susan about this issue. Maybe we can get something put together for our meeting this Thursday. I appreciate your testimony and input. - With that, I will close the work session on HB 2892.

432 MOTION:REP. HUGO moves to suspend the rules in order for Rep. Brian to register his vote on HB 2890.

433 VOTE:Hearing no objection, Chairperson Clarno so moves. Rep. Katz is excused. - Rep. Brian votes AYE on the previous motion to move HB 2890, as amended, to the floor with a "do pass" recommendation.

(Tape 58, Side A) HB 2885 and HB 3542 - CIVIL JURY BILLS, PUBLIC

HEARINGS Witnesses: Fred Merrill, Council on Court Procedures Ron Norton,
Oregon State Bar Charlie Williamson, Oregon Trial Lawyers Association

455 FRED MERRILL, EXECUTIVE DIRECTOR OF THE COUNCIL ON COURT PROCEDURES:
Submits and summarizes written testimony (see EXHIBIT B).

TAPE 59, SIDE B

049 REP. CLARK: Could you put your comments in context with the federal courts? Federal courts do have six person juries and we are not trying to make this change without previous experience. - I have always been supportive of the Council on Court Procedures. This issue seems not to be a technical question, rather a substantive question that is more appropriate for the Legislature.

064 MERRILL: On the question of technical versus substantive, that is a determination that you will have to make. This is a fundamental question about the functioning of the civil process system. It is covered in the present Oregon Rules of Civil Procedure that were promulgated by our Council. - As far as the federal system goes, much of the material I cite addresses the question of federal jury size. I think the question of broad representation is still a vital point. - One of the values of the jury system is the involvement of citizens in the justice process. Jurors who participate can better appreciate our system. When we reduce the jury from twelve to six, we are cutting in half the number of people who are exposed to the process.

108 REP. BRIAN: What would the Council do with this subject?

110 MERRILL: The Council has twenty-three members. There are 12 attorneys, 11 judges and 1 layperson. If this was put forward, they would appoint a subcommittee to study the issue and draft different approaches. The choice of 12 person juries, for a fee, is an interesting concept.

- With all the practicing attorneys and judges, we generate a lot of ideas.

131 REP. BRIAN: I guess that is my definition of a process but not a study. Just briefly, how much research is out there that would empirically lead us to a conclusion on accuracy of judgments?

141 MERRILL: The study part of the Council is my role. I help assemble the information, and I would do this in much greater detail. From what I saw, I admit, I can find you a study which will support nearly any conclusion you would like to draw.

151 REP. CLARK: Would you feel any different if this bill was in front of the Judiciary Committee?

154 MERRILL: No. The Council was set up to provide this kind of studied expertise. If, in your judgment, this is something that should be handled in the political process, then so be it. The Council feels it can play a role in this issue.

168 BROWNING: Explains the packet of information in front of the members. Mr. Marceau's letter to the Committee is included in the bill packet.

179 CHAIRPERSON CLARNO: There are also two letters from the law firm of Miller, Nash. - Introduces Mr. Ron Norton.

183 RON NORTON, OREGON STATE BAR - PRACTICE AND PROCEDURES COMMITTEE: Identifies himself as a civil attorney and a representative of the Oregon State Bar. Explains unanimous opposition to HB 2885 and HB 3542. We recommend the Council on Court Procedures study this issue during the interim and make a recommendation to the 1993 Legislature.

205 REP. CLARK: Nobody from the legal community appears to like this bill. Would two years of study get us anything besides a report that says "please do not do this"?

211 NORTON: The one thing it might do is to provide data about whether this would be beneficial or clearly non-beneficial. Other than that, I am not sure what two years of study would accomplish.

216 REP. CLARK: You don't really expect a two-year study to come back with support for this bill, do you?

217 NORTON: It is hard to say.

218 REP. CLARK: The best that could happen would be to have a split in opinion within the legal community, which leaves the issue right back in the Legislature's lap.

220 NORTON: I think the message right now is that nobody wants this bill, period. Chief Justice Peterson might be in favor of this bill, so I won't say nobody. The fall-back position is that we should study this some more before we take measures to impose this on everyone.

229 CHAIRPERSON CLARNO: For the record, I don't think Chief Justice was pushing the bill. He came and testified at my request because I am a sponsor of one of these bills, and I wanted to hear his expertise.

251 NORTON: I certainly do not want to put words in the Chief Justice's mouth. The State Court Administrator has estimated the savings of this bill at \$715,000 per year. Our committee asked for a clarification on that figure, and we got the figure of \$175,000 per year. Apparently, the numbers had been transposed. - An alternative proposal is the additional cost for a 12 person jury, if so desired.

274 REP. BRIAN: I will have to think about that proposal since it makes me a bit uneasy. I don't want to make it an issue of who can afford the twelve person jury.

284 CHAIRPERSON CLARNO: Regardless of who is the prevailing party, if they chose to have the twelve person jury, they are going to pay for it. You feel most people who could use that option are those who could afford to pay for it, win or lose.

292 REP. BRIAN: Correct.

308 REP. HUGO: I think that is an interesting constitutional question. Can you have the choice of one size of jury precluded because you cannot afford the costs associated with the larger jury? I find it odd that the Bar Association would offer that as an alternative.

312 NORTON: It was discussed as a possible alternative. If the real

purpose is to save money, maybe this is alternative that could be considered. It has been argued that this bill would improve the group dynamics of a jury, really down-playing the cost savings. This seems to represent a significant change of emphasis. I understand that Chief Justice Peterson was concerned with the option of buying a larger jury, because it would permit people to buy a better quality of justice. That suggests to us that the Chief Justice isn't so sure that you get as good of quality of justice with six people as you do with twelve.

334 CHAIRPERSON CLARNO: When I asked Chief Justice Peterson about the option that Judge Mosgrove had suggested, I think I definitely caught him off-guard because he hadn't heard of the proposal and thus he hesitated before responding. I don't remember him saying what you have just said, that it might lead to better justice.

348 NORTON: I was told that he said it might permit people to buy a better quality of justice. That is what I was told.

350 REP. BRIAN: That could be taken two different ways.

360 CHAIRPERSON CLARNO: The one that cannot afford it thinks the person who can afford it might be getting better justice.

362 REP. BRIAN: In certain cases, the defendant has the option of a trial by judge or jury. If we extend this out, there is a proposal that says the judge will make the decision unless you want to buy the twelve jurors. Now we are getting down the continuum a few steps further.

372 CHAIRPERSON CLARNO: Depending on the judge, some of us might feel that we did not get justice.

373 REP. DERFLER: I don't know if the affordability issue is a good argument, since attorneys charge \$150 per hour. You are talking about only another \$150 per day for a twelve person jury

381 REP. CLARK: At some point, I think you infringe on the constitutional right of a trial by jury. I don't think you can go as far as Rep. Brian was hypothesizing. I realize he wasn't serious about his suggestions.

387 REP. BRIAN: That is correct.

388 CHAIRPERSON CLARNO: I would like to give Mr. Williamson an opportunity to speak before we adjourn at 6:00 p.m.. Mr. Norton, could you please conclude your remarks.

392 NORTON: To summarize, our committee voted unanimously to oppose this bill.

399 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Introduces himself. We do not oppose or support these bills. We have members who feel very strongly on both sides of the issue. Many people do worry about the representation of minorities on the six person jury. Some people worry about the erosion of the jury system, which we are very much committed to preserving. - If you do decide to go to a six person jury, we strongly suggest that you keep the three peremptory challenges. It is an unwritten rule, that attorneys always save their last challenge for the unexpected. When you have three peremptory challenges, you are really talking about two. - We also would oppose the buying of a twelve person jury.

478 CHAIRPERSON CLARNO: Judge Rossman commented on how the people feel after they serve on a six person jury. He said they are more excited about serving because they are more involved in the process.

TAPE 60, SIDE A

030 WILLIAMSON: We did originally take a position against these bills. Terrance Hall, a former clerk of Judge Rossman, came to our group and talked to us about this issue. He echoed the comments you have just shared with us.

039 REP. BRIAN: When you go from twelve to six, the peremptory challenges appear to become even more important. Would it ever be beneficial to increase the peremptory challenges to four?

045 WILLIAMSON: I don't know the answer to that. I don't think people are looking to get the jurors they want, they are trying to avoid bad jurors, prejudiced jurors.

053 CHAIRPERSON CLARNO: Discusses the bill packet and the study on the various jury sizes for other states. If you missed some of the testimony, you might want to consult your bill packet.

058 REP. CLARK: I have a question for the Chair. Would you be receptive to loaning this bill to the Judiciary Committee for one hearing?

062 CHAIRPERSON CLARNO: Yes. I have just informed Susan that you wish to borrow this bill, and she will look into the details.

063 REP. CLARK: I am just looking at the Judiciary Committee, and we have a lot of practitioners of law.

066 CHAIRPERSON CLARNO: Rep. Johnson has submitted amendments and he would like to testify on this bill.

067 REP. CLARK: I think the Judiciary Committee might offer some helpful perspective.

068 CHAIRPERSON CLARNO: I think that we should focus our attention on HB 288 5 which does not change the number of peremptory challenges. -Are there further questions or comments?

074 BROWNING: Would the Committee like me to talk to the Judiciary Committee about their borrowing this bill?

075 CHAIRPERSON CLARNO: Yes. We will send Rep. Miller a note and ask him if he would like to borrow HB 2885. - With that, this committee meeting is adjourned (6:00 p.m.).

EXHIBIT LOB Exhibit A - Susan Browning - 2 pages Exhibit B - Fredric Merrill - 2 pages

Submitted by:

Reviewed by:

Scott Kaden

Susan M. Browning