

House Committee on Agency Reorganization and Reform April 18, 1991 -
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statements made during this session. Only text enclosed in quotation
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

HOUSE COMMITTEE ON AGENCY REORGANIZATION AND REFORM

April 18, 1991 Hearing Room D 4:00 p.m. Tapes 61 - 62

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

MEMBER EXCUSED: Rep. Brian

VISITING MEMBER: Rep. Oakley

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

MEASURES CONSIDERED: HB 2891 - Out-of-State Travel, POSTPONED HB 2892 -
State Motor Pool Study, PH and WS HB 2747 - DHROffice of Program
Integrity, PH

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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 61, SIDE A

004 CHAIRPERSON CLARNO: Calls the meeting to order at 4:05 p.m.

(Tape 61, Side A) HB 2892 - STATE MOTOR POOL, PUBLIC HEARING AND WORK
SESSION Witnesses: Cameron Birnie, Department of General Services Ray
Phelps, Speaker's Office Robert Cameron, Department of General Services
Thomas Luther, Department of Transportation Steve Jacky, Department of
Forestry

014 SUSAN BROWNING, COMMITTEE ADMINISTRATOR: Explains HB 2892, dash
one, dash two, and dash three amendments (EXHIBIT A, B, AND C).

025 CHAIRPERSON CLARNO: Mr. Birnie, would you like to come forward and
explain the dash two amendment?

028 CAMERON BIRNIE, ADMINISTRATOR OF TRANSPORTATION & DISTRIBUTION -
DEPARTMENT OF GENERAL SERVICES: Explains the dash two amendment to HB
2892

(see Exhibit B).

048 CHAIRPERSON CLARNO: I am looking at the dash two amendments while you are referring to Sections C and D, and I am simply not following you.

049 BIRNIE: I am sorry. I am reading from an old document. I am referring to the final two parts, or items one and two.

053 CHAIRPERSON CLARNO: For those members who have just joined us, we are looking at the dash two amendment to HB 2892.

056 BIRNIE: Continues with explanation of dash two amendment. - This amendment has no fiscal impact, but would allow us to see consolidation opportunities which we feel might be overlooked in the dash three amendments. Dash two asks that we check the economies first, before continuing with the consolidation process.

068 REP. DERFLER: Would this be all state-owned vehicles or just those that you have control over? Would you do Highway Division, Agriculture, etc.?

072 BIRNIE: All state licensed vehicles. Currently, the statutes give the General Services Department the authority to control all passenger motor vehicles. Control is sort of a soft word because we do not "own" all these vehicles. - This would extend to all passenger vehicles.

079 REP. DERFLER: Just passenger vehicles?

080 BIRNIE: Yes.

082 CHAIRPERSON CLARNO: The date of 1995 in the dash three amendment, is that a timeline that your division can live with?

089 BIRNIE: Our transportation consultant recommended that consolidation of six hundred vehicles from 18 agencies, would take probably three biennia. The dash three amendments would entail many, many more vehicles than what we had initially planned. Our cash flow would not allow for this to occur. This is really an immense undertaking.

101 REP. DERFLER: Are you saying that 1995 is something that you couldn't do?

103 BIRNIE: 1995 is really out of the question. I don't think we have the capability of doing it, with our existing cash situation. We get our money from two sources: cash receipts from our customers who use our vehicles and the sales of retired vehicles. We don't plan on having any spare money.

108 REP. DERFLER: What date would you be satisfied with?

110 BIRNIE: I would probably have to caucus on that issue. Definitely some date beyond 1995. We initially had 1997 as a target date, but we still feel unsure with that date because we haven't completed the fiscal impact study.

116 REP. OAKLEY: With the talk of downsizing the number of cars, won't you have to buy fewer vehicles because of the potential over-supply that

you have today?

124 BIRNIE: As far as over-supply in our motor pool, the utilization for our 2,600 vehicles is quite high.

129 REP. OAKLEY: I am talking about the overall number of vehicles for the state, approximately 10,000 vehicles. I am looking at the total picture.

131 BIRNIE: We don't know about the utilization of those other agencies. The thought was that if we consolidate other fleets, we might be able to raise their utilization rates, reduce the number of cars, and increase overall utilization. I really don't know what the utilization is for those vehicles outside this "consolidation" pool. If the utilization rates are extremely low, then I feel we would stand to profit from consolidation. - Dash two amendments would encourage us, direct us to find out these utilization figures and report back to the Joint Audit Committee with our results.

146 CHAIRPERSON CLARNO: Mr. Phelps, would you please join Mr. Birnie at the witness table? Please address the dash one and dash three amendments, as suggested by the Speaker.

152 RAY PHELPS, CHIEF OF STAFF - SPEAKER'S OFFICE: Submits and summarizes dash one and dash three amendments (see Exhibit A and Exhibit C). - We want to establish clear definitions for who is to drive a state vehicle, and the appropriate usage of the state cars.

184 REP. CLARK: Student and inmate are two separate populations, correct?

185 PHELPS: Yes. I would imagine. - Returns to discussion of dash one amendment.

208 REP. HUGO: What is the penalty for violation of Section 7 of the dash one amendment? Is there a penalty?

210 PHELPS: There is not a new penalty prescribed, but I do not know about existing law.

213 REP. HUGO: I couldn't find one. Should there be a penalty? If a state employee is abusing equipment of the state, should there be some kind of penalty?

216 REP. DERFLER: Don't they usually charge you for the services if they are not authorized?

218 REP. HUGO: I don't know if there is a statute that would allow for that. That would be a thought, and we might want to do that.

219 PHELPS: If it is unauthorized use, the minimum would be the recovery of the monies consistent with that improper use. I have seen that done in other situations where persons have made unauthorized purchases. The real question is whether or not the person would be penalized in addition to the mere recovery of the expense, either by loss of employment or monetary fine.

236 REP. DERFLER: I think it would be fine to recover the cost of the unauthorized use. If you go beyond that, it might be rough on people who inadvertently misuse state property.

242 REP. HUGO: Does the motor pool ever find out that vehicles have been checked out and used improperly? What do you do in that case?

245 BIRNIE: I would like to ask the motor fleet manager to come forward and help me answer that question.

249 ROBERT CAMERON, MOTOR FLEET MANAGER FOR THE TRANSPORTATION & DISTRIBUTION DIVISION - DEPARTMENT OF GENERAL SERVICES: I am sorry I didn't hear your question. Could you please repeat your question?

251 REP. HUGO: Let us say that you determine that someone who has one of your cars out has been using it for a fishing trip, an inappropriate use. Do you have any recourse?

254 CAMERON: I contact the agency or agency administrator and let them know that car was misused. At that point, we usually have a meeting with the employee and the immediate boss and upper agency management. We have gone as far as asking the employee not to use the motor pool, at all, for a period of time. Just recently, that happened at Senior Services Division.

262 REP. HUGO: How often does that happen?

263 CAMERON: I have been with the motor pool almost two years, and that is the second time this has happened.

265 REP. HUGO: How do you discover that misuse?

266 CAMERON: Many ways; either through calls by fellow employees, or by personally observing the misuse. Usually, we get a telephone call from an anonymous source.

272 REP. HUGO: Does the motor pool try to recoup funds for the use of the car?

273 CAMERON: That would be up to the agency, but that would be our recommendation.

275 REP. HUGO: You don't bill the agency for misuse of the vehicle?

276 CAMERON: I do bill the agency for the use of that car, which stimulates them to go after that individual for the amount resulting from misuse.

278 REP. HUGO: Thank you.

280 CHAIRPERSON CLARNO: Mr. Phelps, have you addressed the dash three amendments?

281 PHELPS: May I comment on the dash two amendment?

282 CHAIRPERSON CLARNO: Yes. Please do so.

283 PHELPS: I had discussed earlier with your Administrator some cosmetic changes in the language. I believe on lines 4 and 5, it might be appropriate that reports shall be made to the committee. I think the record should show that those reports are to be made orally.

295 CHAIRPERSON CLARNO: I didn't hear you completely. Are you putting

that on record or are you proposing an amendment?

296 PHELPS: I think the record ought to indicate orally and you can use the word "orally" in this amendment as well. "Reports shall be orally made . . ."

301 CHAIRPERSON CLARNO: Generally, the Committee has been very careful not to ask for written reports, with glossy, three-color paper. - Did you already comment on the dash three amendments?

306 PHELPS: No, I have not, but I will if you wish. Explains the dash three amendment (Exhibit C). - I would like to have line 2 reflect the fact that a facility does not need to exist. I want to retain the option of contracting in those remote areas of Oregon. The present language would suggest that was not possible.

331 REP. DERFLER: Mr. Phelps, General Services says the date of 1995 is not possible. Would it be acceptable to change that date?

338 PHELPS: The plan or agreement for this consolidation has already, to some degree, been written. The Booz Allen report outlines this consolidation. I think June of 1995 is a target date, but there might be a need for additional monies. But this would just be for "front-ending." That money would be retrieved, in the ending balance. Yes, there will be difficulties, but I think we must be aggressive in this endeavor.

366 REP. HUGO: How much money are we talking about and are we talking about general fund money?

367 PHELPS: "I would think so. But in effect, you are providing that money anyway because all of this is on charge-back."

370 REP. HUGO: I would like to know how much we are talking about here.

374 PHELPS: Well, there are all sorts of ways to buy capital equipment. One way is not to buy it all back at one hundred percent.

376 REP. HUGO: What do the statutes specify that we have to buy from the agencies?

378 CHAIRPERSON CLARNO: Mr. Birnie, could you help us with this?

379 BIRNIE: We are obligated by statute to pay back agencies for the vehicles that we get from them. There are certain exceptions to this. We would have to review exactly how those vehicles were purchased, before we would know for sure what we would owe.

389 REP. HUGO: Maybe part of your financing plan would be a review of that statute to see if it is necessary. I seems like we are taking money from one pot and putting it into another pot.

391 BIRNIE: We have received Attorney General guidance on exactly what that language means.

394 CHAIRPERSON CLARNO: Mr. Cameron, would you like to comment?

395 CAMERON: Mr. Birnie is referring to the federal payback. You are right, we do not pay back the agency General Fund dollars. It is taking the money out of one pocket and putting it in another. Once we take the

vehicle over and the vehicle has a value of at least \$1,000, the federal government does want compensation.

405 PHELPS: How does that pay back occur? Is it immediate or is it over a period of time?

410 CHAIRPERSON CLARNO: Mr. Phelps, you mentioned a report that recommended taking this action. Was there a timeline in that report?

412 PHELPS: I don't remember. The Booz Allen report is a pretty good outline and it does ask for prompt action. I am sure it can be improved, but I don't think we really need additional studies.

423 CHAIRPERSON CLARNO: Could you go over your suggestion for line 2 of the dash three amendments?

426 PHELPS: On line 2, I would remove the word "establish" and insert "shall insure that facilities are available to maintain." The grammar may not be quite right, but the idea is there.

438 CHAIRPERSON CLARNO: Mr. Birnie, do you have any problems with that language?

439 BIRNIE: With that specific section, no.

440 CHAIRPERSON CLARNO: You still have a problem with the date.

441 BIRNIE: I have problems with the date and the enormity of the challenge.

445 CHAIRPERSON CLARNO: Are you overwhelmed by the challenge?

446 BIRNIE: Yes.

448 REP. JONES: When we give Mr. Birnie such a task, we must insure he has the tools to do this. We have a responsibility to give them the tools to do handle this challenge.

456 CHAIRPERSON CLARNO: Does the Committee have questions on these amendments?

462 REP. CLARK: On page 2 of the dash one amendment, regarding the prohibition of travel to political or religious gatherings, has there been a problem with people transported to religious gatherings?

476 PHELPS: I don't know.

478 BIRNIE: My boss has received advice from the Attorney General on this matter. They thought it might be wise to include religious gatherings into this language. They thought that would be wise.

TAPE 62, SIDE A

037 REP. JONES: If the Governor or any other state official wanted to go to a Mayor's prayer breakfast, would that be a religious gathering?

042 REP. CLARK: Or a funeral?

044 PHELPS: Not having the benefit of talking to the Attorney General, my answer would probably be yes.

046 REP. CLARK: I don't know if that is necessarily inappropriate. I just spotted this issue and thought that I would raise it.

049 CHAIRPERSON CLARNO: Under Section 1 and Section 2 on page 2 of dash one (Exhibit A), I would say if our Governor was to attend a funeral, that certainly would be admissible under this section of the amendment.

057 REP. JONES: But if you continue reading Section 2, it says the "department shall not authorize or allow the use of any state-owned and licensed motor vehicle to: (a.) transport persons to an event where they advocate political or religious viewpoints, or (b.) attend political or religious functions or gatherings." That is quite specific.

059 REP. CLARK: I think that language sets up a condition. The agency can state in writing how a particular activity will advance the lawful policy of the agency. If the agency does that, then the agency can go ahead and transport them. That raises another question, though. How many times does a state agency official go some place to advocate something that is arguably a political viewpoint?

074 REP. DERFLER: You could hardly go to a place without arguing a political viewpoint.

075 REP. CLARK: For example, Mr. Concannon goes some place to discuss the future of one of his agencies or programs. That is, at least arguably, voicing a political viewpoint.

077 CHAIRPERSON CLARNO: Are you saying that is what you consider expressing a political viewpoint?

078 REP. CLARK: Yes, and we don't want to have to issue a notice every time a state agency has to travel to advocate for their agency. Maybe partisan politics is a better phrase.

082 PHELPS: I did not answer one of your questions correctly, and I want to set the record straight. When you asked with respect to the Governor and another elected official, I believe a distinction has been made many, many times between an elected official and a paid state employee. I was wrong with my response. If an elected official was going to a funeral, I don't think this would restrict that participation. It would be the state employee who would be subject to this.

097 CHAIRPERSON CLARNO: I would like to clarify a point. If we were to turn this paragraph around, and start with line 15 (page 2, dash one amendment) and then hope up to line 12 to finish the paragraph, wouldn't we be o.k.?

105 REP. CLARK: I think so, if he writes this notice. I don't want the net to be too broad. If we want to get at partisan political gatherings, then we should narrow the focus. We don't want this to apply to every state agency employee.

121 REP. DERFLER: Could we perhaps include language relating to the election process?

126 PHELPS: I will chat with a few people on this issue and come back to your next meeting on Tuesday. I will try to modify or better define the political and religious elements. I will be ready to discuss this

next Tuesday, one way or another.

131 REP. DERFLER: Also check on religious occasions, as well as political occasions.

132 PHELPS: Yes, sir.

133 CHAIRPERSON CLARNO: We are trying to address this issue so that we can avoid future accidents and tragedies. I want the committee to be comfortable with this language, and I would appreciate your work on this issue. If we can get this done by next Tuesday, that would be great.

145 PHELPS: I will be prepared next Tuesday, regardless. If the bill is appropriate in all other respects, then I think Ways and Means won't have a problem dealing with the motor pool's budget.

147 CHAIRPERSON CLARNO: Thank you for your help.

148 BIRNIE: I have two suggestions relating to the dash one amendment (page 2). Line 16, after the word "to," we would jump directly to the beginning of line 19. Then we would have a new subsection (3) which would read "In no event, shall a state agency use a state owned motor vehicle to," and then skip up to line 17 and continue with that language.

165 REP. DERFLER: On page 3 of the dash one amendment, line 7,8 and 9 where it says the definitions will be narrowly interpreted.

169 BIRNIE: The only other suggestion that we have relates to the bold print language on Page 2, lines 27, 28, and 29. We suggest that language be dropped because we cannot understand the intent or meaning.

174 CHAIRPERSON CLARNO: Is that something that happened in the drafting process?

175 PHELPS: Yes.

176 CHAIRPERSON CLARNO: Does the Committee have a problem or concern with the suggestions of Mr. Birnie?

178 REP. CLARK: Could you repeat those suggestions, if you would?

180 BIRNIE: Re-explains the suggestions.

185 CHAIRPERSON CLARNO: You're referring to lines 27 - 29, page 2 of the dash one amendment?

186 BIRNIE: Correct.

187 CHAIRPERSON CLARNO: I think Rep. Clark was referring to the suggestions you made just prior to the suggestion concerning lines 27 - 29, page 3.

188 REP. CLARK: Right.

189 CHAIRPERSON CLARNO: Could you go through that one more time, please?

190 BIRNIE: Certainly. Re-explains the suggestions to the amendment.

206 REP. CLARK: I am still troubled by the breadth of the word "political."

207 BIRNIE: I acknowledge that. The "political" and "religious" will be attended to elsewhere.

210 REP. JONES: Currently, are we allowed to transport other than state employees in state vehicles?

214 BIRNIE: Currently, if it is approved by the employee's supervisors, employees are allowed to take dependents, in certain instances, and the immediate family. I can read directly from our rules if you wish.

221 REP. JONES: I am not trying to raise an issue that might not be pertinent to what we are trying to do. But it might help us with the administration of the entire policy of who can and cannot ride in a state vehicle. You can answer at a later date.

225 CHAIRPERSON CLARNO: On dash two and dash three amendments, we do not have a section number, since Legislative Counsel left that open for added flexibility. Mr. Birnie, if you could get together with Mr. Phelps on this issue, I would appreciate it. - Is that agreeable, Mr. Phelps?

236 PHELPS: Yes, Madame Chair.

240 REP. DERFLER: Perhaps Mr. Phelps could also address the date (1995) in dash three in order to take care of General Service's concerns.

242 CHAIRPERSON CLARNO: Are there any other questions of the Committee? - Asks Steve Jacky and Tom Luther to come back to the Committee for the next work session due to time restraints. Mr. Jacky and Mr. Luther submit written testimony (see EXHIBIT D AND EXHIBIT E). -Closes the public hearing on HB 2892 and opens a public hearing on HB 274 7.

(Tape 62, Side A) HB 2747 - DHROFFICE OF PROGRAM INTEGRITY, PUBLIC HEARING Witnesses:Rep. Sam Dominy Peter Petry, AFS Investigator Norman Cobb, AFS Investigator

268 BROWNING: Explains the bill packet for HB 2747.

281 REP. SAM DOMINY: Introduces himself and his guests, Peter Petry and Norman Cobb. Explains the bill. Refers to the memorandum authored by Paul Sheets.

294 BROWNING: I apologize Rep. Dominy. I was not clear that the members of the Committee were to have that information. I will make sure the members get that information.

296 REP. DOMINY: Returns to his explanation of the bill. Discusses the duties of the fraud investigation unit. There is a conflict of interest in that the person who "hires" this unit, is exactly the person being investigated for possible fraud.

315 CHAIRPERSON CLARNO: I appreciate the patience you have demonstrated. Please go ahead with your testimony.

334 PETER PETRY, AFS INVESTIGATOR: We came here to get the job done and so we don't mind the delay. Our unit has been running continuously

since 1964. In 1984, our unit was split up and since that time we have been close to extinction, even though we were funded. I understand that now we will be reorganized. This bill was filed some time ago and since the filing, there has been a task force formed to address these issues. This task force met for nine months and came up with a recommendation which asked for the unit not to be placed in DHR.

371 REP. DERFLER: Who was it that suggested they didn't want another unit to supervise?

372 PETRY: "The Administrator of the Department of Human Resources."

373 REP. DERFLER: And that would be?

374 PETRY: Mr. Kevin Concannon. That was my understanding.

375 REP. DERFLER: It was his suggestion, in essence, that he didn't want to control your agency?

376 PETRY: It came to us that Mr. Concannon did not want another small unit to supervise. He didn't need another one.

379 REP. DERFLER: Was that directly from him?

380 PETRY: We were told that in a report back to the task force via AFS management and we accepted it as fact because they had been meeting with Mr. Concannon. - Looking at the bill, we would like to suggest a few amendments to the bill. We think it would be best to establish this unit by law, so that different administrators cannot exercise control over this unit, as in the past. These statements are not to reflect Mr. Minnich, because he is doing a good job cleaning up some of the problems we currently have. - We would like to change "peace officers" to "limited peace officer powers." We need to limit those powers, for we do not need to carry guns or handcuffs.

404 CHAIRPERSON CLARNO: What line of the bill are you referring to?

405 PETRY: Line 20, where it says peace officer. We need the following peace office powers: (1) the ability to serve warrants (including search warrants), (2) the ability to issue citations, and lastly (3) the unit should remain in AFS under the direction of the Administrator, or his assistant.

460 REP. DOMINY: I don't know if I provided the Committee with a copy of the report from the United Council on Welfare and Fraud, dated December 1, 1987, which lists what we get back for every dollar spent on investigation. I don't know what those numbers are today, but in 1987 Oregon ranked 29th. That is good, but it could be better.

475 CHAIRPERSON CLARNO: Mr. Cobb, could you please make your statement?

477 NORMAN COBB, AFS INVESTIGATOR: I would like to second the comments previously stated. You should have a copy of the material I wished to testify on, so I will not restate that material. - Virtually all of our peers would have liked to have been here today, but in all candor, they couldn't afford to take the time away from their duties to travel to Salem.

TAPE 61, SIDE B

032 CHAIRPERSON CLARNO: I appreciate that. Rep. Clark, do you have a comment?

033 REP. CLARK: I would like to flag a problem with concern to limiting the powers of the peace officer. I would ask that we get some input from Attorney General's office and possibly Legislative Counsel. I think we should know what other state officials have these limited police powers. It may be perfectly appropriate for the investigators to have these powers. Yet, on the other hand, I can think of many explosive things that occur when search warrants are served. When you knock on the door, the party doesn't know what the search warrant is about. The service of a search warrant can be a fairly tricky business at times.

046 REP. DOMINY: Both of these individuals would like to speak to that issue.

047 PETRY: Normally our search warrants are not like that. If we were going to search a home for people, we would ask for assistance from local law enforcement. Secondly, in order to get this search warrant, we must go through the same process as regular officers. - We will not be under the Peace and Firefighters' Retirement Act. I would like that to show on the record, as a footnote.

056 CHAIRPERSON CLARNO: As we get further along with this bill, Rep. Dominy, we might have you check with Legislative Counsel as to the correct wording on that matter. - I thank you for your testimony. I apologize to Ken Johnson for not allowing him to testify, but we are extremely short on time. We will reschedule this matter, and hopefully we will be able to get Mr. Johnson in at that time. - I apologize to Mr. Merced and Mr. Cockrell as well.

068 CHAIRPERSON CLARNO: We are not going to play golf. - Closes the public hearing on HB 2747 and postpones the public hearing on HB 2891 to next week. Makes an additional announcement on Rep. Miller's comments on the civil jury bill. - Adjourns the committee meeting.

EXHIBIT LOG

Exhibit A - Ray Phelps - 3 pages Exhibit B - Cameron Birnie - 1 page
Exhibit C - Ray Phelps - 1 page Exhibit D - Thomas Luther - 3 pages
Exhibit E - Steve Jacky - 4 pages

Submitted by:

Reviewed by:

Scott Kaden

Susan M. Browning