

House Committee on Agency Reorganization and Reform April 23, 1991 -
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proceedings, please refer to the tapes.

HOUSE COMMITTEE ON AGENCY REORGANIZATION AND REFORM

April 23, 1991 Hearing Room D 4:00 p.m. Tapes 63 - 65

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

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

MEASURES CONSIDERED: HB 2891 - Out-of-state Travel, PH and WS HB 2892 -
State Motor Pool, PH and WS HB 2885 - Jury Bill, WS HB 3517 - Exchange
of Confidential Information within DHR, PH

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proceedings, please refer to the tapes.

TAPE 63, SIDE A

006 CHAIRPERSON CLARNO: Calls the meeting to order at 4:05 p.m.. Opens
the meeting as a subcommittee.

(Tape 63, Side A) HB 2891 - OUT-OF-STATE TRAVEL, PUBLIC HEARING AND WORK
SESSION Witnesses: Marjorie Lowe, Executive Department Ray Thorne, Oregon
State Treasury Ray Phelps, Speaker's Office

014 SUSAN BROWNING, COMMITTEE ADMINISTRATOR: Explains the packet of
amendments on HB 2891.

031 MARJORIE LOWE, BUDGET SUPERVISOR WITH THE EXECUTIVE DEPARTMENT,
BUDGET AND MANAGEMENT DIVISION: Reference to memo dated April 15, (see
EXHIBIT 1-A). Suggestions in this memo have been integrated, to some
degree, in dash three, dash four and possibly dash five. - Executive
Department is supportive of these amendments. Refers to the April 15
memo, Exhibit 1-A.

065 REP. KATZ: (Refers to Exhibit 1-A, item one.) Why did you
establish two persons as the limit for attending any one particular
conference?

066 LOWE: This gives us the authority to limit the number of people attending any one particular meeting and the ability to write rules to those kinds of specifications. In talking with the Away Travel agency, setting this limit would not inundate us with paperwork, yet would put in place a braking mechanism.

080 REP. KATZ: Does this cover the Lottery Commission? Are they considered a state agency?

082 LOWE: I am not certain about that. I know they are not subject to our budgetary control.

084 KATZ: So they would not be subject to this, or would they?

085 LOWE: Probably not. -Barbara Carranza has just informed me that this limitation would apply to the Lottery Commission because it covers agencies who have their travel paid by funds in the State Treasury.

093 CHAIRPERSON CLARNO: I think the amendments are looking better all the time, correct, Rep. Katz?

094 LOWE: Continues with an explanation of Exhibit 1-A.

115 CHAIRPERSON CLARNO: Opens a full committee for a public hearing on HB 289 1.

117 LOWE: Continues with her discussion.

123 CHAIRPERSON CLARNO: With regard to that section, I don't believe there is any difference between the dash four and the dash five amendments.

124 BROWNING: On dash four, there is not a separate c and d section. On line 21, it should read "requiring agencies to develop sharing mechanisms in transportation." Then there should not be a section d (that is a continuation of section c).

128 REP. KATZ: Could someone identify what you are trying to get at with section d of the dash four amendment?

128 CHAIRPERSON CLARNO: I think that is what Ms. Lowe is having trouble determining. Do you think section d is supposed to actually be part of section c?

132 LOWE: I believe it should be. There is an expectation that the reporting mechanisms allow for the sharing of the knowledge gained, not that we would have sharing mechanisms in transportation. The state-wide travel agency provides that sharing mechanism currently.

139 CHAIRPERSON CLARNO: Do you think you could rewrite that for the Committee after you complete your testimony?

140 LOWE: Certainly.

141 CHAIRPERSON CLARNO: Currently we are going through the dash four amendments. Dash five amendments are from Kathleen Beaufait, Legislative Counsel. She thought this would be a better way to write the amendments the work group came up with. She felt the amendments would be more effective, if they were in this form. Kathleen was

planning to testify today, but she cannot be here.

151 LOWE: Continues with her discussion of the amendments.

164 REP. KATZ: Are we "State Officers"? Would the legislative branch be covered by this amendment?

169 REP. HUGO: I believe ORS 292.230 refers to the Executive branch and not the Legislative branch.

170 REP. KATZ: That answers the question.

172 LOWE: In our administrative rule, it specifically states that this applies to all state agencies with funds in the State Treasury except the Legislative Assembly, the courts (their officers and committees), the Secretary of State, and the State Treasury.

176 BROWNING: Rep. Derfler and Rep. Brian, with the work group, put together the dash two amendment. Dash two is very similar to what Ms. Lowe has covered. Dash three allows the Executive Department to delegate letters of authorization/approval to any state agency. Dash four incorporates the work group's suggestions, up to the second suggestion (page two, line six). The Speaker's office wanted to add to this a section that would address the frequent flier mileage issue. Mr. Phelps is proposing this language on page two, of the dash four amendment. Dash five amendment is a variation of dash four.

193 CHAIRPERSON CLARNO: I think we should allow the Speaker's office to address the dash four amendment. The dash five amendment is the Speaker's amendment plus the recommendations from Ms. Beaufait.

196 BROWNING: Would you like me to address the dash five amendment? The work group did not discuss the frequent flier issue in depth. On the dash five amendments, page two, line six, it states the agency must keep a file of all out-of-state travel. This file would include frequent flier mileage for those individuals who do a lot of travel by air. On line 11, it states that frequent flier mileage is the property of the state and is not personal property.

208 REP. DERFLER: I don't know if you have checked with the airlines to see if it is possible to accumulate mileage that way. Usually it is not.

210 BROWNING: It is not possible to accumulate mileage by agency or company. It goes directly to the individual. But Legislative Counsel felt it was necessary to include this language, so that people are well aware of this fact.

228 CHAIRPERSON CLARNO: Mr. Phelps, we are discussing the dash five amendment. Our Committee Administrator has been covering the composition of each amendment.

236 REP. JONES: Let me clarify a point. Are dash four and dash five alike on page one?

238 BROWNING: Yes.

239 REP. JONES: Then we ought to be dealing with dash five all together.

240 CHAIRPERSON CLARNO: That is what we are trying to get to. Are there any other questions for the panel?

241 REP. HUGO: What is the current situation with regard to frequent flier mileage?

242 LOWE: Our current policy is that frequent flier mileage is the property of the state and that agency personnel ought to keep track of the miles travelled on behalf of the state and apply those miles to additional necessary travel. The obligation is on the employee. The airlines report those miles to the employee. The state travel agency, along with the state agency, can estimate the benefit earned by the employee. But we have no way of directly policing this matter.

257 REP. HUGO: Under the current policy, is it possible to receive these frequent flier bonuses and then use them for personal use? Would you have any way of knowing whether they do that or not?

260 LOWE: The only way we would be able to judge would be if an employee travels frequently, and uses the same airline, and that employee has not applied benefits earned to state travel.

268 REP KATZ: The answer is no.

269 REP. HUGO: Is it possible that a state employee could take his or her family on a vacation on frequent flier mileage, which accrued to the individual as a result of state travel.

272 LOWE: It is possible.

273 REP. HUGO: Is there any way you can monitor to determine whether that happens?

274 LOWE: The best way is through the state travel agency. If the employee frequently defers away from the least costly fare, that is an early warning that the person is trying to increase mileage benefit claims. That would give the administrator a reason to review the employee's travel habits and ask to examine his or her frequent flier benefit statements from the airline.

287 REP. HUGO: Is there any penalty that would accrue to an employee who used frequent flier mileage for his or her own benefit?

289 LOWE: It is our view that that it would be a violation of State's ethics laws. Employees are not to use their office for personal gain.

292 REP. HUGO: To your knowledge, has any employee ever been cited under that law?

293 LOWE: It was an issue in the Building Codes Agency audit during the last interim. Those employees were asked to pay back the state for the added benefits they had gained from upgrades, and other benefits. They were required to repay those to the state.

300 REP. HUGO: Have they made those payments back to the state?

301 LOWE: I was not personally involved with the issue, so I don't know if they have actually made the payments.

302 REP. HUGO: Thank you.

302 REP. DERFLER: I thought we had also asked agencies to look into using telecommunications, instead of travel, whenever possible. I don't see that in here.

305 BROWNING: Rep. Derfler, that is item (e.) on line one of page two.

306 REP. DERFLER: Thank you.

307 CHAIRPERSON CLARNO: Please make those amendments to dash five, as we discussed earlier. Have you already done that?

309 LOWE: Yes.

310 REP. KATZ: How many more people will you need to monitor this?

311 LOWE: We have concerns about tracking frequent flier mileage, especially when multiple airlines are involved. It is conceivable that some employees use ten or twelve different airlines and that might be cumbersome. We would prefer to keep the policing mechanisms of Away Travel to judge whether the employee is turning down the cheapest flight.

334 REP. JONES: Currently, your travel agency keeps track of the trips that are taken by employees. So you are not going to have to do all that work. The agency, I hope, will compile some of that information for you, correct?

341 LOWE: The travel agency does keep track of who travels where. They can estimate the number of miles that are accrued by those trips. Yes.

346 CHAIRPERSON CLARNO: Is Higher Education under Away Travel?

347 LOWE: They were the first to use Away Travel.

350 CHAIRPERSON CLARNO: Closes the public hearing and opens the work session on HB 289 1. - Introduces of Ray Thorne, State Treasury.

356 RAY THORNE, DIRECTOR OF BUSINESS SERVICES DIVISION - OREGON STATE TREASURY: Our concern has diminished with Ms. Lowe's explanation of who is covered by this bill. We were concerned that when the Treasurer wanted to travel, that he would have to go the Governor and get a sign-off. On March 14, 1991, we proposed an amendment to this bill that would exempt the State Treasury.

372 CHAIRPERSON CLARNO: That is currently in the dash five amendment?

373 THORNE: No, that is a separate amendment, by itself.

374 CHAIRPERSON CLARNO: I understand.

375 REP. KATZ: That is not in dash five.

376 CHAIRPERSON CLARNO: So you would like to have your amendment adopted.

377 THORNE: If I may, I would like to ask Ms. Lowe if the State Treasury is exempted as it reads today?

384 LOWE: I believe so.

386 CHAIRPERSON CLARNO: Rep. Hugo assures me that is correct. If you have a problem, then you can see Rep. Hugo.

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

389 CHAIRPERSON CLARNO: I am ready for a motion.

390 REP. JONES: Before I offer a motion, does Ms. Lowe have an amendment she would like to give us?

392 LOWE: Yes. On page one, line 21, (dash four) I would delete the words "in transportation" and insert instead "for". On line 23, delete "d." and make the next "R" lower-case. After "aspects," drop the words "of particular out-of-state travel."

407 CHAIRPERSON CLARNO: Is the Committee agreeable to that?

408 REP. KATZ: "Mechanism" is an awkward word. What is it that you really mean to say?

410 LOWE: Perhaps "processes"? We want agencies to expect their employees to report back with information gathered as a result of travel.

418 REP. JONES: For lack of a better word, you used "mechanisms" - I think you have someone in the audience who might want to add to this discussion.

420 CHAIRPERSON CLARNO: Mr. Phelps, please proceed.

421 RAY PHELPS, CHIEF OF STAFF - SPEAKER'S OFFICE: Maybe we should drop "mechanism" and insert "to develop information sharing."

428 CHAIRPERSON CLARNO: Is that better?

430 REP. KATZ: Yes, that is much better.

430 MOTION: REP. JONES moves the dash five amendment, as amended, subject to review by Legislative Counsel.

439 CHAIRPERSON CLARNO: With regard to that motion, do you want to make the necessary changes in numbering?

441 REP. JONES: Yes, and make necessary changes in numbering.

442 VOTE: Hearing no objection, CHAIRPERSON CLARNO so moves.

452 MOTION: REP. JONES moves HB 2891, as amended, to the floor with a "do pass" recommendation.

457 VOTE: In a roll call vote, the motion carries with all members present voting AYE. Rep. Clark is excused. REP. BRIAN will carry the bill.

475 CHAIRPERSON CLARNO: Thanks the committee for their cooperation and closes the work session on HB 2891. Opens a public hearing on the next bill, HB 2892.

TAPE 64, SIDE A

(Tape 64, Side A) HB 2892 - STATE MOTOR POOL, PUBLIC HEARING AND WORK SESSION Witnesses: Roger Bassett, Department of Higher Education Ray Phelps, Speaker's Office Steve Jacky, Department of Forestry Thomas Luther, Department of Transportation Lynn Pinckney, Oregon Student Lobby

032 BROWNING: Explains the amendments on HB 2892. See EXHIBIT 1-B.

050 REP. HUGO: Questions or discussion on the dash four amendment? Susan, do we have an additional copy of the dash four amendment?

053 REP. JONES: Rep. Jones is having trouble finding her copy. I don't see one in any member's packet.

059 REP HUGO: While we locate those amendments, I will call Roger Basset to testify.

064 ROGER BASSETT, DIRECTOR OF GOVERNMENT RELATIONS - DEPARTMENT OF HIGHER EDUCATION: I had some points to make with relation to the issue of student vehicle use. Submits and summarizes a proposed amendment, see EXHIBIT C, line 19, (page one), line 16, (page two), line 17, (page three) and line 9, (page four).

135 REP. HUGO: Recaps the four ideas proposed by Mr. Bassett (see Exhibit C). You prefer a blanket authorization?

138 BASSETT: For those purposes, yes. Where there is an instructional purpose, we would prefer that the institution could specifically authorize students to travel in connection with that purpose.

145 REP. HUGO: Are there definitions of "instructional use," or "research activities" in your statutes right now? I am not sure that there is a definition for "public service."

149 BASSETT: Yes, I believe there are definitions for all three, but I am not sure they are operational definitions.

151 REP. HUGO: You might want to tie your exceptions to the Oregon Revised Statutes.

155 BASSETT: We do not intend to seek a blanket authorization. We want to allow that, in those cases where students are travelling with a specific instructional purpose, we wouldn't be required to put a staff member in the vehicle. We are not trying to open it up beyond that.

160 REP. HUGO: Discusses the second recommendation, page two, line 16 of Exhibit C.

162 BASSETT: Your summary is correct.

163 REP. HUGO: General Services will develop rules limiting "official state business." You are asking that those rules be drafted in consultation with the affected agencies?

168 BASSETT: That is correct. The definition of "agency personnel" should be set by you in this statute and not be subject to further interpretation.

171 REP. HUGO: There are some vehicles that are peculiar to the campuses themselves - security, housing, etc. Those vehicles would

remain on the campus. Would those be considered part of the Oregon State System of Higher Education or General Services?

175 BASSETT: I think the intent of our amendment would stipulate that they remain under the control of the institution. We are seeking to avoid having to go to another site to check out these types of vehicles.

183 REP. BRIAN: You are not just talking about on-campus vehicles. It is broader than that, isn't it?

189 BASSETT: The language refers specifically to some vehicles which are assigned to other agencies, but maintained by the Oregon State University motor pool. Except for that, I don't think that second part of language would be necessary.

195 REP. BRIAN: That section could be narrowed to be more clear. We should make it specific to those vehicles in question.

200 REP. HUGO: Repeats the language which exempts all State System of Higher Education vehicles. I think you really want to exempt those vehicles that are owned or operated by the State System that do these things or are assigned to these uses.

208 REP. BRIAN: I think you need to add some language to specifically accomplish what you desire.

211 REP. HUGO: "Vehicles owned by Oregon State System of Higher Education which are assigned to a particular institution for a particular use." That would limit the number of vehicles.

214 REP. BRIAN: The change on page three of Exhibit C limits the interpretation of official state business. Back on page one, the proposed changes talk about instructional research or public service activity. Should that read, "which is official state business"? Or are those three areas (instruction, research and public service activity) not subject to the language on page three?

226 BASSETT: I had not spotted that possible complication. What we want, on line 19 (page one) is to create a limited exception to the general rule that no undergraduate student can use a vehicle without supervision under any circumstances. It is possible that the definition of "official state business," on the top of the next page, should be similarly defined. -"Official state business" is difficult to tie down.

250 REP. BRIAN: Would you say that the type of travel, listed on page one, is "official business"? Or are you saying that these activities could be sanctioned although they are not "official state business"?

254 BASSETT: Yes, you are prohibiting the use of vehicles for other than official business as a general rule. So this would be a modification of that general rule. This is not an expanded one.

260 REP. BRIAN: On line 19, the "instructional research or public service activity," would that include political or religious activity, which could be very instructional?

264 BASSETT: We are looking for a definition that would not include that. If this is not the definition, then we should continue working on a definition until it does the job.

266 REP. BRIAN: Your intent is to clarify a policy excluding political and religious activity.

268 BASSETT: Correct.

269 CHAIRPERSON CLARNO: What is a rough estimate of student mileage? What will be the inconvenience of this language?

275 BASSETT: I do not have a number. My sense is that it is not a lot of people. Our spirit in suggesting the amendments is that it is similarly not a lot of risk. For students that are involved with sites away from the campus, it is an inconvenience.

283 CHAIRPERSON CLARNO: How many students are we talking about when speak of research conducted at a non-campus site? Are we looking at a van full of students?

285 BASSETT: Typically it is one or two students with some research gear in a station wagon.

287 REP. DERFLER: Wouldn't most of them have access to transportation if they chose to do that? Wouldn't most of them be able to get a car and pay mileage in those instances that happen occasionally?

291 BASSETT: It is a reasonable assumption that they would, but you have to keep in mind the research materials that are involved in these types of activities. This is just an option, not a mandate.

302 REP. JONES: Will some of your researchers be part-time instructors? I question the "public service activity" language. I understand why you only want to send one person instead of two, but I want this to be very narrowly defined. I want it very clear that these vehicles are for instructional or research purposes.

314 BASSETT: Public service is narrowly defined. This would include the Agriculture Experiment Stations, the OSU Extension Service, and some of OHSU's clinics. Those are the areas that we were thinking of when we drafted this language.

333 CHAIRPERSON CLARNO: Mr. Phelps, would you join Mr. Bassett at the witness table.

344 PHELPS: Why don't I wait until everybody is finished with their testimony and then I can respond to all your questions.

346 CHAIRPERSON CLARNO: That would be fine.

353 CHAIRPERSON CLARNO: If you have written testimony, you may submit that. I would appreciate your keeping your comments brief due to our time restraints.

358 STEVE JACKY, ASSISTANT STATE FORESTER FOR ADMINISTRATIVE SERVICES - DEPARTMENT OF FORESTRY: Submits and summarizes written testimony (EXHIBIT D).

-Reference is made to page four, of Exhibit D. 3/4 ton (and less) vehicles are valued at \$1.6 million. Approximately 20% of that is vested with the General Fund. The remaining \$1.2 million are dedicated funds for which General Services would have to reimburse the department (if they take over the vehicles). It will be an expensive endeavor. We

own 534 vehicles, including utility trailers, farm tractors, and everything else. The additional vehicles are vehicles that we insure that belong to private forest protective associations. We use those vehicles under a lease-type agreement. - We are very concerned about the section 3 amendment. We are also concerned about our use of inmates on project fires. We would lose quite a lot of our ability to use the inmate populations.

446 THOMAS LUTHER, MANAGER OF EQUIPMENT AND SERVICES UNIT, HIGHWAY DIVISION - DEPARTMENT OF TRANSPORTATION: Submits and summarizes written testimony (see EXHIBIT E and EXHIBIT F). - Discusses concerns with dash three amendment. We have a well-managed fleet. - Suggests changing dash three amendment to reflect my amendment, numbered five. This language reflects the recommendations of the Booz Allan study, which says leave us alone.

TAPE 63, SIDE B

034 CHAIRPERSON CLARNO: Thank you for your testimony and patience.

035 BROWNING: Section 8 and Section 9 of the dash four amendment concern the agencies represented by Mr. Luther and Mr. Jacky.

039 REP. BRIAN: How many vehicles are in the ODOT motor pool?

040 LUTHER: We have 4,765 pieces of equipment, which range from trailers, to dump trucks, to graders, to cars.

043 REP. BRIAN: How about passenger vehicles?

044 LUTHER: The definition of passenger vehicle causes us concern. We have 1,280 pieces of equipment that are one ton and smaller.

046 CHAIRPERSON CLARNO: I am sorry, could you repeat that figure?

047 LUTHER: 1,280 pieces of equipment fall under that category. These are cars, sedans, station buses, and one ton (and smaller) pickups.

048 REP. BRIAN: How about what we would normally consider an automobile?

049 LUTHER: I believe we have 330 cars.

050 CHAIRPERSON CLARNO: Of the 1,280 vehicles, 330 of those are cars?

051 LUTHER: Yes. But keep in mind, Rep. Brian, those cars are used in transportation, but also in support of our construction and maintenance programs. They don't necessarily get off the highway, but they are on construction and maintenance sites and do carry gear. Many of them are equipped with special equipment.

058 CHAIRPERSON CLARNO: Thank you for coming back and providing testimony.

059 REP. BRIAN: In previous DGS testimony, apparently they had asked all state motor pools to report on permanently garaged vehicles or vehicles that are routinely taken home. There was no report from ODOT. Could you respond to that now?

065 LUTHER: I am not certain that I am the best person to address that.

I do know that we have a brand new directive in the Department of Transportation that speaks to that issue. I don't believe that we have any, or if so, very few, vehicles are permanently garaged.

071 REP. BRIAN: The Director doesn't take a car home at night?

073 LUTHER: I believe there are very few cars taken home. If people take a vehicle home, it is because they are coming back very late or leaving very early in the morning. I don't see that as a problem for us.

075 REP. JONES: You said most of your cars are located here in Salem? Do you have other yards? If so, do you not have vehicles there that are also passenger vehicles?

079 LUTHER: We have vehicles scattered all over the place. Perhaps our single greatest fleet of passenger cars is here in Salem.

081 REP. JONES: I see. But you do have passenger cars elsewhere.

082 LUTHER: Yes.

083 REP. JONES: You do not have garaging exemptions, except in limited circumstances? For example, people are not garaging state cars in remote areas of the state?

084 LUTHER: To the best of my knowledge, that does not occur. - Please keep in mind, when we have adverse weather conditions, many people are in their vehicles longer than just one eight-hour shift.

085 REP. JONES: We want them out there when conditions beckon them to be there.

089 CHAIRPERSON CLARNO: Thanks again for your testimony. Introduces Lynn Pinckney.

094 LYNN PINCKNEY, OREGON STUDENT LOBBY: I want to comment on the student use of vehicles. We are saddened by the recent fatality and are concerned about misuse of state vehicles. - We have concern for the dash one amendments and the restriction with regard to political activity. We hate to see a blanket restriction. - Dash four amendments, requiring activities sponsored by an accredited educational institution, is also inappropriate. We have monthly meetings and we cannot afford to pay a state employee to accompany us to the meetings. - We would like some exceptions to be made to this bill, especially when particular activities are found to meet specific educational goals. - We support the State System of Higher Education amendments.

136 REP. BRIAN: From what I have read in the papers, it appears that in many cases, when students were travelling to a political event, they were actually renting the vehicle from the State System. Is that correct?

140 PINCKNEY: That is my understanding, with regard to the San Francisco conference. But I do not have direct knowledge of that.

143 REP. BRIAN: I wasn't trying to get at any specific event, but in general, does that apply? If you have a group who wants to attend an event that they feel has an instructional value, would they rent that vehicle or simply be allowed to use it?

149 PINCKNEY: I don't know if they would be able to use private funds to do that. I can describe a more common situation that might be described as a rental. After a student association comes before an incidental fee committee, establishes itself as an activity on the campus, and meets the approval of the State Board, it may use its incidental fee funds to use a state vehicle for the club activity or purpose. That is often referred to as renting, but it is, in fact, using state funds (incidental fees) that have been allocated to the organization. It looks like a rental, but the association is actually using state funds that have been allocated to them.

163 REP. BRIAN: Could students chip in \$10 and rent a car to go to a political rally in Seattle?

165 PINCKNEY: I am not aware of that occurring. To my knowledge, the rental occurs when they go through this transfer of funds.

169 CHAIRPERSON CLARNO: Closes the work session on HB 2892.

(Tape 63, Side B) HB 2885 - CIVIL JURY BILL, WORK SESSION
Witnesses: Charlie Williamson, Oregon Trial Lawyers Assoc.
Kingsley Click, Judicial Department

176 CHAIRPERSON CLARNO: Opens work session on HB 2885.

179 BROWNING: Explains the bill packet and summarizes the amendments.

198 REP. HUGO: What were the second amendments?

198 BROWNING: The second amendment was suggested by Judge Mosgrove. It is the option for paying for a larger twelve person jury.

200 CHAIRPERSON CLARNO: The first amendments were suggested by Chief Justice Peterson?

201 BROWNING: Yes. HB 2885 keeps the peremptory challenge at three per side.

206 CHAIRPERSON CLARNO: Asks Charlie Williamson and Kingsley Click to approach the witness table.

215 REP. HUGO: Mr. Williamson, could you tell me your position on the issue of peremptory challenges? Do you want four peremptory challenges?

220 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: No, we just wanted it to stay the same (three challenges).

221 REP. HUGO: So this bill, as it sits, is fine with the Trial Lawyers Association?

222 WILLIAMSON: We don't oppose this bill, but I do not want to say that we are for this bill either.

223 CHAIRPERSON CLARNO: But you are comfortable with the issue of peremptory challenges and the fact that we are maintaining three challenges?

224 WILLIAMSON: Correct. Rep. Brian asked if we would want four challenges. I asked several members of our association, and they said

that three challenges would be o.k.

228 REP. HUGO: Thank you. I am glad that you have put that on the record for us.

229 BROWNING: Ms. Click has pointed out another provision that HB 3542 has, that HB 2885 does not. She may want to discuss that with the Committee at greater length. On page two, line fifteen of the bill, of HB 3542, it does provide a little more flexibility to the courts during the process of voir dire.

239 CHAIRPERSON CLARNO: Where could we add that language to the bill before us, HB 2885?

241 BROWNING: The wording under discussion is "unless otherwise provided by court rule." That provision did not come up in discussion at our last public hearing.

247 CHAIRPERSON CLARNO: Kingsley, could you please comment on this matter.

258 KINGSLEY CLICK, DEPUTY STATE COURT ADMINISTRATOR - JUDICIAL DEPARTMENT: In HB 3542, we inserted this language to allow certain counties to continue their experimentation with peremptory challenges. Some counties have been experimenting with the "struck jury" procedure, slightly different than the standard that we apply.

282 REP. CLARK: Could we put that language in HB 2885, without addressing the peremptory challenge issue?

287 CLICK: It wouldn't be an easy procedure. It probably wouldn't be easily meshed with the bill or amendments before you.

291 REP. CLARK: We can still do this. The language you are suggesting to use is a separate issue from whether we decide to reduce the number of peremptory challenges.

294 CLICK: Yes, it is.

295 REP. CLARK: So we could easily put that in HB 2885.

296 REP. HUGO: Do you have HB 3542 before you?

297 CLICK: Yes, I do.

298 REP. HUGO: Is there any problems with picking up lines 14 - 28 inclusive (of HB 3542) as an amendment to HB 2885?

299 CLICK: No, that would not change the peremptory challenges. I don't see a problem there.

302 WILLIAMSON: I have a little concern, and I didn't understand the purpose that language served. This would seem to give the court carte blanche to write a rule to change everything, not just to do what Ms. Click indicated.

312 REP. HUGO: Has a court ever been challenged with regard to these activities?

314 CLICK: To my knowledge, they have not. As I indicated to Ms.

Browning, this may be bringing up an issue that may be further than you want to go with this bill.

319 REP. CLARK: There is probably another bill in Judiciary relating to circuit court juries. Should we have that discussion upstairs in Judiciary? That might be a better place for this issue.

330 CLICK: That is a really good idea, and I will look at the jury bills in the Judiciary Committee.

336 REP. JONES: Is there anything in the way this bill is written, and amended, that will prevent what you want to do in Judiciary?

340 CLICK: No.

341 CHAIRPERSON CLARNO: In other words, by adopting HB 2885 we are not preventing you from pursuing this matter.

343 CLARK: Correct. The issue is the same whether we have twelve or six person juries.

346 CHAIRPERSON CLARNO: I am open to motions with regard to dash one, dash two, and dash three amendments.

347 MOTION: REP. HUGO moves to adopt dash one LC amendments to HB 2885.

349 CHAIRPERSON CLARNO: Are there any questions on this motion?

350 REP. BRIAN: Dash one is probably not needed if we do not adopt dash two, correct?

355 CHAIRPERSON CLARNO: Chief Justice Peterson suggested that amendment to allow a judge to stipulate another number to insure a quality jury for the duration of the trial.

362 REP. BRIAN: And we do that here in Oregon?

363 REP. HUGO: With this law we can do so.

364 CHAIRPERSON CLARNO: We don't restrict them to just six, we restrict them to not less than six.

369 REP. JONES: From what I recall, this flexibility is needed in case a juror drops out, in the middle of the trial. That is what was indicated to this Committee.

374 CHAIRPERSON CLARNO: Are you not comfortable with the dash one amendment, Rep. Brian?

376 REP. BRIAN: No. Dash one with that explanation is all right with me.

377 CHAIRPERSON CLARNO: Any other discussion on adoption of the dash one amendment?

380 WILLIAMSON: I am not sure how a party would know how many jurors you will have before you get to court. When you get to court, do you decide then how many jurors you will have? It would be nice to know that you will have six jurors unless you agree to otherwise.

388 REP. BRIAN: Does ORCP 57 cover that issue?

389 WILLIAMSON: I don't think so.

390 CHAIRPERSON CLARNO: I see your concern in this matter. Would you like to comment further?

400 WILLIAMSON: For the trial lawyers, the ideal would be eight jurors with six needed for a verdict. I don't know if people would stipulate to that. I guess there needs to be some sort of certainty in the system.

406 REP. CLARK: The more I think about this issue, the more I question whether it is workable. Let us say that a judge and the two parties agree on a nine person jury, what is required to obtain a verdict?

410 WILLIAMSON: It says three-quarters, in section g(2.).

415 REP. CLARK: What if you had 8 jurors or 10 jurors? Then you would need 7.5 for a verdict.

418 WILLIAMSON: I would imagine you would need 8.

419 REP. JONES: At least three-quarters, is that the way you want it to read? That would put it at the higher of the two numbers.

422 REP. HUGO: If you want another problem, read the next sentence in Section 1, the section about stipulating the numbers of the jury.

435 CLICK: Maybe it should say, "a trial jury in the circuit court is a body of six persons." Then in the next line, "The party may stipulate a jury shall consist of any number less than twelve." That would seem to achieve your goals.

443 REP. HUGO: That would make more sense to me. That would make it possible to have a jury with less than twelve, but not less than six.

446 CLICK: In other words, it would be six unless they stipulated to something higher.

453 WILLIAMSON: Sometimes jurors get sick after they retire to decide the case. In that case, the parties can stipulate that a jury of five can render a verdict.

455 CLICK: So that wouldn't be inconsistent to say "any number less than 12."

458 WILLIAMSON: You may want them to stipulate to twelve, though.

461 CHAIRPERSON CLARNO: So you suggest restoring the number "twelve" on line 7, and striking the word "six."

471 REP. BRIAN: Line 7 has additional problems where it comments about a finding of a stated majority because we have said that number might float.

483 CHAIRPERSON CLARNO: Rep. Clark, do you have some wording that you might want to add to this discussion?

485 REP. CLARK: I think we may want to stick to the original bill. The

more complicated we get, the more problems we will confront.

488 MOTION: REP. HUGO withdraws his earlier motion.

490 CHAIRPERSON CLARNO: Rep. Hugo has withdrawn his motion on the dash one amendment.

498 REP. CLARK: I think we ought not move the dash one amendment.

499 CHAIRPERSON CLARNO: Do you suggest that we retain the wording as it exists?

TAPE 64, SIDE B

041 REP. CLARK: Yes. The bill as printed.

042 REP. HUGO: What about if, at line 7, we say the parties may stipulate?

045 REP. JONES: That would take care of the case where a juror gets ill and has to drop out.

047 REP. CLARK: I think the simplest change we can make to existing law, is to take out "twelve" and insert "six." If that is what we want to do, maybe we ought to limit it to that.

049 MOTION: REP. HUGO moves HB 2885 to the floor with a "do pass recommendation" as printed.

052 REP. HUGO: As to dash two and dash three amendments, with all due respect to Judge Mosgrove and Rep. Johnson, I don't think we really want to get involved in the act of buying different levels of justice. I think Rep. Clark is exactly correct with regard to his comments on the dash one amendment.

057 REP. JONES: I think it is marvelous that we have just come to agreement on what we started with in the beginning. Let us take a vote before we decide otherwise.

060 VOTE: In a roll call vote, the motion carries with all members present voting AYE. Rep. Derfler and Rep. Katz are excused. REP. CLARK will carry the bill.

067 CHAIRPERSON CLARNO: Closes the work session on HB 2885. Opens a public hearing on HB 3517.

(Tape 64, Side B) HB 3517 - CONFIDENTIALITY RULES, PUBLIC HEARING
Witness: Janice Yaden, Department of Human Resources

074 BROWNING: Explains the contents of the bill packets.

092 JANICE YADEN, ASSISTANT TO DIRECTOR KEVIN CONCANNON, DEPARTMENT OF HUMAN RESOURCES: Describes confidentiality as an irritant to the delivery of service, but not a politically attractive issue to tackle. Expresses appreciation to the Committee for identifying this issue as being important. - We thought we could bring you a magical cure. But as we got involved in this issue, the hope for a magical cure disappeared, and we found this issue to much more complex than we had expected. - Submits and summarizes written materials (see EXHIBIT G). - Refers to the Executive Summary of Exhibit G, page one.

187 REP. CLARK: I have been working on a hypothetical with regard to the indigent defense system. If the courts want to access the welfare records for purposes of income verification, would they be able to do that under current law?

194 YADEN: Are they guided by state or federal statutes?

196 REP. CLARK: I am talking about the state courts.

197 YADEN: I suspect they could not get access to that information. Most of our programs have a specification that says we cannot share information unless it is for the administration of the program. But there are a few exceptions to that for specified federal agencies only.

201 REP. CLARK: That is what I thought.

209 REP. JONES: Ms. Yaden, did you look at how other states handle this mammoth task?

211 YADEN: We did indeed.

211 REP. JONES: If we have the most accessible services with the least verification, there ought to be models out there to glean ideas as to how we can fix this problem.

214 YADEN: We did a quick survey of five or six other states. We found that it was very different from state to state. Colorado decided that they were all one agency serving the same people, so they share all information.

221 REP. CLARK: That is the legal concept. You are an agent of the state. Same state, simply a different arm.

223 YADEN: In Kentucky, I found a very broad standard. They say anybody in any state agency can share information. I called, asking them how their statute works. They informed me that it works poorly. Apparently, the language at the end of the bill contains a big exception which says that sharing may occur to the extent that state and federal law do not prohibit such sharing. - In fact, their statute sets up a false hope. That is the reason why we do not support the passage of HB 3517. If you pass this law, you have a law which demands that agencies share, but you still have the 130 other statutes which prevent sharing information. I have learned that specific statutes take precedence over general statutes. Therefore, we would have to amend all 130 statutes to have any effect.

244 REP. CLARK: Or pass a statute that overrides that preemption that says "notwithstanding any other provision of Oregon law."

247 YADEN: It is my understanding that we can not. We would not know if such a statute was binding until a dispute arose, the issue went to court, and the statute was addressed.

255 REP. CLARK: I think what you referred to before (the specific controls the general) operates when you have two statutes that are passed simultaneously, or are silent on the issue. If you have a specific override that is broad enough, I think that is a possibility. I don't think that would be good policy, because there are times when you want confidentiality retained.

269 CHAIRPERSON CLARNO: This is what we got into when staff began looking at statutes on publishing.

277 YADEN: That is why we moved away from asking for a general blanket-type statute. Instead, we moved to areas where we were really having problems. That is Kentucky's direction.

288 REP. JONES: The other piece is addressing when the agency really needs to know this material.

297 YADEN: Absolutely. That was very carefully pointed out in the state of Kentucky. They make people jump through hoops to prove that they really need to know the information. Just because you are from the State Police, doesn't mean you necessarily get access to the information. "It is on a need-to-know basis."

300 REP. JONES: I think that is important for the client's benefit.

302 YADEN: Yes.

303 CHAIRPERSON CLARNO: That is a point that you made on your last report on children.

307 YADEN: Right. I think as I progress through this presentation, those points will be brought out. There is certain information that the case workers need to know in order to make solid decision. - Returns to the Executive Summary, page 8 of Exhibit D (Definition of the Problem). Refers to page 10, Exhibit G (Study Findings).

346 REP. CLARK: When things get very complicated, we always err on the side of keeping material confidential.

347 YADEN: That is correct and is a finding of the study.

348 REP. CLARK: When in doubt, don't get ourselves sued!

349 YADEN: Returns to page 10, Exhibit G (Client releases).

360 CHAIRPERSON CLARNO: Did you find that release forms were mandated by the federal government?

361 YADEN: Some are mandated in a general sense.

364 CHAIRPERSON CLARNO: So we should use a generic form?

366 YADEN: I don't think we have a problem with that. I think we can do that. - Interagency agreements are used quite often (see page 11, Exhibit G).

388 REP. CLARK: Rep. Brian has just pointed out Appendix B, a memorandum of understanding. This is very well laid out. These are the same people who brought us the Juvenile Corrections Act, for hearing. The people in Central Oregon are doing an excellent job in coordinating their efforts for the benefits of the children. There are huge amounts of trust over there.

405 CHAIRPERSON CLARNO: I meet with those folks once a month, and I am very impressed with their work. I just assumed they were conducting business like this all over the state.

409 YADEN: It is definitely a model. We could improve on them slightly. A lot of staff have found ways to get around the rules and there is a lot of inconsistency in practice, from agency to agency, program to program. Many workers are afraid of being censured and so err on the side of being overly confidential. - Reference to other states, page 14 of Exhibit G. - Region X office really feels Oregon is doing what they should be doing.

454 REP. JONES: Who are you referring to when you say "they"?

455 YADEN: The feds. in the Region 10 office. - Refers to page 16, Exhibit G (Making it Easier to Share).

496 REP. CLARK: There is a fundamental difference between a client in the Corrections Department and a client anywhere else, constitutionally. A client in Corrections has fewer rights and privileges than a client otherwise.

TAPE 65, SIDE A

036 YADEN: Right. Corrections said that confidentiality is not a big issue for them because of the circumstances.

040 CHAIRPERSON CLARNO: I can't help but think of the clients who complained about their 5 or six case workers. To a lot of people, confidentiality is not a real big problem. Duplication and all the problems that come with it are the real issues they are concerned with.

045 YADEN: They should be able to sign off on their confidentiality. There should be a "common face sheet to the intake forms." Then the client could make information available to other agencies by granting us permission. But our group decided that providing information without the client's consent, should be treated on a case-by-case basis. - Within DHR, you will not find a consensus.

065 YADEN: On Thursday, we could start with the recommendations of this report (page 16, Exhibit G). - I think I have completed the necessary background.

067 CHAIRPERSON CLARNO: I would appreciate your coming back next Thursday, especially for the benefit of Rep. Katz. - Thank you, Ms. Yaden, for all your work.

071 REP. BRIAN: In case I am not here next Thursday, I would really urge that you make one slight change in the proposed amendments, section 2 (d) (see EXHIBIT H). I would suggest that you change that language to target specific proposals for legislative action.

080 YADEN: I think that would be a great idea, but you have three agencies that will never agree on a proposal.

087 REP. BRIAN: Dropping a two-inch thick study on us will do zero good.

088 YADEN: My proposal is that we be able to outline the issue for you and suggest some options. We cannot offer a solution, but we can give you some possibilities.

092 CHAIRPERSON CLARNO: That is what Rep. Brian is referring to. We do not want a two-inch report.

093 YADEN: This is the only report that you will see, and it is more of a compilation.

094 CHAIRPERSON CLARNO: Thank you for your time, testimony, and work. Closes the hearing and adjourns the meeting (6:04 p.m.).

EXHIBIT LOG

Exhibit 1A - Marjorie Lowe - 2 pages Exhibit 1B - Ray Phelps - 4 pages
Exhibit 2A - Barbara Carranza - 2 pages Exhibit 2B - Susan Browning - 2
pages Exhibit C - Roger Bassett - 5 pages Exhibit D - Steve Jacky - 4
pages Exhibit E - Thomas Luther - 3 pages Exhibit F - Transportation
Department - 1 page Exhibit G - Janice Yaden - 44 pages Exhibit H -
Susan Browning - 1 page

Submitted by:

Reviewed by:

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Susan M. Browning