

House Committee on Agency Reorganization and Reform April 30, 1991 -

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON AGENCY REORGANIZATION AND REFORM

April 30, 1991Hearing Room D 4:00 p.m.Tapes 69 - 70

MEMBERS PRESENT:Rep. Clarno, Chair Rep. Derfler Rep. Jones Rep. Clark

MEMBER EXCUSED: Rep. Brian Rep. Hugo, Vice-Chair

ABSENT MEMBER:Rep. Katz

STAFF PRESENT: Janet Adkins, Committee Administrator Scott Kaden, Committee Assistant

MEASURES CONSIDERED:HB 2892 - State Motor Pool, WS HB 3226 - Court Audio Records, PH HB 2896 - Memberships and Subscriptions, PH HB 2894 - Administrative Rules, PH and WS HB 3070 - Administrative Rules (Rep. Markham), PH and WS

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TAPE 69, SIDE A

008 CHAIRPERSON CLARNO: Calls the meeting to order at 4:10 - Opens public hearing on HB 3226 and invites Rep. Parks to the witness table.

(Tape 69, Side A) HB 3226 - COURT AUDIO RECORDS, PUBLIC HEARING  
Witness:Rep. Del Parks

013 JANET ADKINS, SUBSTITUTE COMMITTEE ADMINISTRATOR: Discusses the content

of the bill packet on HB 3226.

021 REP. DEL PARKS: This bill resulted from a meeting with the judges of my district. This suggestion of using an audio recording device instead of a court reporter was repeatedly recommended by these judges (see EXHIBIT A for further detail). - Many people wish to review the testimony to see if they have the basis for appeal. When you request the transcript (tapes from an audio recording device) it costs seven dollars and you get them immediately. If you have a court reporter, it costs \$200, with a wait for a period of time, causing you to file an

appeal without certainty of your appeal basis. - If this bill is codified, the state would save about \$3 million, and the service would be nearly as good.

107 REP. CLARK: There are things that a reporter can pick up that a machine cannot (nodding of a head for example). If the judge or the lawyer is constantly having to remind a witness to give an audible answer, given the drama of the courtroom, it could interrupt the testimony.

120 CHAIRPERSON CLARNO: Having done this job in Deschutes County circuit courts, I know that a log is kept for each microphone and each speaker. All comments are logged.

125 REP. CLARK: Don't you think you lose some element in terms of the dynamics of the courtroom if you don't have a court reporter there to pick up some of the things that go on that the machine would miss?

129 REP. PARKS: I suppose that you would, in certain circumstances. But the judge is always reminding people to speak up and answer audibly, anyway. Going to audio recording does put an extra responsibility on the judge, but you also have to understand that a court reporter does not catch all of the testimony. That often occurs during a trial where multiple people are speaking in loud voices. In this instance, tapes are actually more beneficial than having a court reporter.

142 CHAIRPERSON CLARNO: When you do this electronic recording, you are wearing a headphone to monitor sound quality. If you cannot hear the testimony, the recorder notifies the judge and the matter is corrected.

145 REP. DERFLER: If the court reporter is making the notations that Rep. Clark suggests, it is their interpretation and that doesn't necessarily mean it is correct. Audio recording would be more accurate, in my opinion, because the gestures are not up for interpretation.

148 REP. CLARK: It happens. That is all I can tell you. Witnesses nod or shake their heads in disagreement. It is not supposed to happen, but it does.

152 CHAIRPERSON CLARNO: But will the stenographer type that in?

153 REP. CLARK: Yes.

154 CHAIRPERSON CLARNO: If Rep. Derfler is finished with his point, I will recognize Rep. Jones.

155 REP. JONES: When the trial is being recorded electronically, don't you still have someone there managing the electronic system? Do you find that is a tremendous cost savings with court reporter expense versus this other recorder's expense? Are the court reporters free-lance, or are they state court reporters?

165 REP. PARKS: I cannot really answer that. In my county, we only have four court reporters, and most do depositions. If court reporters choose to do other things (besides trials), I feel there is quite a bit of work there for them to do. - Our system is very similar to the system we have here in this hearing room.

180 REP. JONES: My question about free-lance reporters has something to do with the number of people we are talking about and whether we

follow the "golden handshake approach."

187 REP. PARKS: I would imagine every court reporter in the courts is a county employee. I believe they are full-time employees. - In Klamath County, there may be three people in the office who can run the recording equipment. That reduces problems caused by a court reporter who has a sudden illness or obligation which keeps them from the trial.

196 CHAIRPERSON CLARNO: In Jefferson, Deschutes and Crook Counties, the clerks are very versatile in their duties.

199 REP. PARKS: Actually the Chairperson probably knows more about this topic than the sponsor.

201 REP. JONES: We have just borrowed this bill for a hearing, correct?

202 CHAIRPERSON CLARNO: That is correct. That is one of the reasons why Rep. Parks didn't bring in his judges to testify, due to their residences in Southern and Eastern Oregon. - Thank you for sharing your testimony with us. We appreciate your bringing this bill to this committee. - Closes the public hearing on HB 3226 and opens the work session on HB 2892 (as a subcommittee). - Introduces Ray Phelps of the Speaker's Office.

(Tape 69, Side A) HB 2892 - STATE MOTOR POOL, WORK SESSION Witnesses:Ray Phelps, Speaker's Office

214 RAY PHELPS, CHIEF OF STAFF - SPEAKER'S OFFICE: This measure has been before this committee several times. Refers to and explains the dash eight amendments, dated April 30, 1991. - Suggests a further change at page two, line 19, subsection 3 (dash eight), delete the word "persons" and substitute "undergraduate students." - With regard to the rest of the bill, the definitions and language remain the same. - We recommend that you move this bill, as amended.

256 REP. JONES: In order to move this bill, I believe we need Rep. Clark in attendance.

258 CHAIRPERSON CLARNO: I realize this fact. I believe Ms. Adkins has some words for us first.

259 ADKINS: Explains and addresses the fiscal statement for HB 2892. The fiscal statement dated April 25th, applies to the dash eight amendments we have before us today. - The fiscal impact of the proposed amendments is indeterminant, but anticipated to be substantial.

270 CHAIRPERSON CLARNO: Legislative Fiscal has not been able to give us an estimation because of the evaluation process which needs to occur. - Opens work session on HB 2892 as a full committee.

287 MOTION:REP. CLARK moves to adopt the dash eight amendments dated 4/30/91 to HB 289 2, with the additional change to page two, line 19, substitution of "undergraduate student" for "persons."

294 VOTE:Hearing no objection, Chairperson Clarno so moves. Rep. Hugo and Rep. Brian are excused. Rep. Katz is absent.

295 MOTION:REP. JONES moves HB 2892, as amended, to the floor with a "do pass" recommendation.

299 REP. DERFLER: Does this need to go to Ways and Means?

301 CHAIRPERSON CLARNO: We have checked with Mr. Phelps and he is under the impression that the bill does not need to go to Ways and Means.

302 REP. CLARK: My understanding is that if they want it to go to Ways and Means, Legislative Fiscal must put a number on it.

305 VOTE: In a roll call, the motion carries with all members present voting AYE. Rep. Hugo and Rep. Brian are excused. Rep. Katz is absent. REP. JONES will carry the bill.

317 CHAIRPERSON CLARNO: Closes the work session on HB 2892. Opens public hearing on HB 2896.

(Tape 69, Side A) HB 2896 - MEMBERSHIPS AND SUBSCRIPTIONS, PUBLIC HEARING Witnesses: Layne Sawyer, State Archives Roger Bassett, Oregon State System of Higher Ed. Marjorie Lowe, Executive Department

331 ADKINS: Explains the bill and material contained in the bill packet.

371 CHAIRPERSON CLARNO: Thank you. Rep. Jones, do you have a comment?

372 REP. JONES: Would the statute we are looking at only affect those agencies under the direct responsibility of the Executive Department?

376 ADKINS: I think the memo from Sylvia Loftus (Legislative Researcher) says that this is all they can estimate at this time, because those items are budgeted for, and they are on the Executive Accounting System. - This was some material to start with, and is incomplete.

390 REP. JONES: Does the bill, as it is written, does affect all state agencies?

395 ADKINS: Yes.

398 CHAIRPERSON CLARNO: You were discussing the fiscal statement. The \$2.4 million dollar reduction can be explained by referring to the Sylvia Loftus memorandum.

408 ADKINS: The fiscal statement does say "the estimate understates expenditure reductions because it does not include some agencies such as the Department of Higher Education, Department of Transportation, Adult and Family Services," and so forth.

419 REP. JONES: Do we have people here to testify on this bill?

420 CHAIRPERSON CLARNO: Yes, we do. Calls Layne Sawyer to the witness table.

TAPE 70, SIDE A

007 LAYNE SAWYER, DEPUTY STATE ARCHIVIST: Submits and summarizes written testimony (see EXHIBIT B).

022 CHAIRPERSON CLARNO: What do you spend on subscriptions and dues?

024 SAWYER: A number of works are purchased on a subscription basis. The largest work is the Library of Congress subject headings and authority file.

026 CHAIRPERSON CLARNO: Do you have a dollar amount on what is spent?

027 SAWYER: It is an annual subscription and amounts to roughly \$300 per year, \$600 per biennium. We also have subscriptions to the basic law texts that are used by the reference staff.

030 CHAIRPERSON CLARNO: Do you have a total dollar amount that would be addressed by this bill?

031 SAWYER: I do not have a total dollar amount. I would imagine it would be around \$2,000 for the biennium.

034 REP. CLARK: I don't really understand what the State Archives does. It sounds like you are "libraryish." How are your "libraryish" functions central to what you do?

039 SAWYER: We have responsibility for housing the permanently valuable records of the State of Oregon. We have researchers who come to use the legislative records (minutes, exhibits and sound recordings). In addition to these materials, researchers consult the Oregon Revised Statutes, Oregon Administrative Rules, and other related law texts in a reference room setting.

045 REP. CLARK: I understand why you need a subscription to the law-related texts. I don't understand what you get from the Library of Congress and how that helps your agency.

050 SAWYER: The records that are transferred to us are arranged and described by our processing unit. In the course of cataloguing those records, they need to use standard subject headings that are assigned by the Library of Congress. The particular reference work is updated on a quarterly basis.

056 REP. CLARK: So it is a systematic approach that has been developed by the Library of Congress, employed by people all over the country.

057 SAWYER: It is a system that has been in place for the library profession for quite some time.

059 CHAIRPERSON CLARNO: Do you have people that pay dues and attend conferences, travelling out of state?

062 SAWYER: Yes, we do. We have several professional organizations that our staff belong to.

063 CHAIRPERSON CLARNO: Does that \$2,000 per biennium include those membership fees?

064 SAWYER: No.

065 CHAIRPERSON CLARNO: Do you have that information with you today?

066 SAWYER: I have a rough list of the professional organizations that we currently have memberships in. - Runs through the list of memberships.

073 CHAIRPERSON CLARNO: You don't have a total on that?

074 SAWYER: No.

075 REP. JONES: Do individuals pay their own dues to individual organizations that they decide to belong to?

077 SAWYER: In most instances that is the case. Some are organizational memberships as well (i.e. Association for Information and Image Management).

085 REP. JONES: Those individuals who belong as a benefit to their own professional development pay for their memberships?

087 SAWYER: Yes, that is correct.

088 CHAIRPERSON CLARNO: Are there any other questions? When we have our next work session on this bill, Ms. Sawyer, could you provide us with those figures that I have asked for? We have to make some tough decisions and prioritize. - Introduces Roger Bassett.

098 ROGER BASSETT, DIRECTOR OF GOVERNMENT RELATIONS - DEPARTMENT OF HIGHER EDUCATION: Expresses concern over the bill and voices opposition to the bill. - Accreditation organizations are vital to the success of our institutions. This bill would prevent us from being members in these organizations. - Scholarly publications are another issue of concern. This is, in fact, part of the compensation package for our faculty members.

133 REP. CLARK: The State System pays for an individual professor's subscriptions to publications. Is there any limit to that?

136 BASSETT: I am not sure of the actual operating procedures. I will have to report back to you on that issue. I think the straight answer would be "no, there are not any limits on it, other than common sense."

131 REP. DERFLER: Would you be able to come up with some language that you feel would address the concerns that you have? We have started here by instituting a ban on memberships and subscriptions. I am sure that you have items that are essential, and I am sure that there are abuses as well.

154 BASSETT: We will do that, and we will do it in the spirit in which this committee is reviewing the bill.

158 CHAIRPERSON CLARNO: We have some amendments offered on this bill. We may or may not accept these amendments, but we must get a handle on some of these items. If you come to us with exemptions or justifications, we need to have figures on what you do spend and how you spend it. We have got to know these items. We need expenditures and justification for those expenditures.

185 REP. CLARK: Another question would concern when agencies pick up membership fees and subscriptions for individuals. Do professors get their national association memberships paid for by the State? It is a tough issue to tackle - who should pick up this expense. That is why I think the Chair's question on aggregate figures would be helpful. If on the average you are spending \$200 per year per faculty member, you might want to reconsider how you spend that money and possibly set up a

voucher system.

213 REP. DERFLER: You might want to consider collecting some co-payments for these memberships and subscriptions.

215 CHAIRPERSON CLARNO: We have 93 agencies expending \$2 million dollars on dues and subscriptions. We have to know if this is a valid expenditure.

217 DERFLER: If a person was willing to pay for half the fee themselves, that might be one way to validate the necessity of such an expenditure.

219 BASSETT: I will be glad to get that information for the committee. I appreciate the way Rep. Clark asked the question. It is a judgment call whether the instructional purpose benefits sufficiently from the membership that we should insure that membership exists.

233 REP. CLARK: There is a difference between the University of Oregon Law School subscribing to the Harvard Law Review versus a professor belonging to a professional association.

237 BASSETT: I appreciate how you state your concern. If we were down to the State's last dollar, I would spend that dollar on the child rather than the subscription or faculty professional development.

247 CHAIRPERSON CLARNO: When I think broadly, it is not fair for me to attack you, just because you have come forth voluntarily to discuss this matter. Thank you for your testimony. - Calls Marjorie Lowe to the witness table.

255 MARJORIE LOWE, BUDGET SUPERVISOR WITH THE EXECUTIVE DEPARTMENT, BUDGET AND MANAGEMENT DIVISION: Submits and summarizes written testimony (see EXHIBIT E). - The Executive Department does have an administrative rule regulating memberships and dues (Exhibit E).

300 CHAIRPERSON CLARNO: According to this administrative rule, the scrutiny of expenditures might occur after the money has been spent, so to speak.

301 LOWE: Correct. Or it may happen as an analyst reviews the expenditure detail for an agency during the budget development process for the Governor's Recommended Budget. Employee development and recruitment is a line-item category of expenditure. Agencies are told to be ready to provide detail as requested, to support their requests for appropriations. This is a category that has received a great deal of scrutiny by Ways and Means during this session.

314 REP. CLARK: What does Ways and Means typically doing on this issue? Are they asking for justification for expenditures?

328 LOWE: Generally, the State does not want to pay for general types of periodicals (Time magazine for example). Many times, the Ways and Means Committee makes statements in the most general terms, addressing administrative expenses.

365 REP. CLARK: If we ask for a specific dollar amount (i.e. for publications), you wouldn't be able to pull that figure out?

368 LOWE: Agencies usually group these requests under the heading of

employee recruitment and development. That would cover memberships, subscriptions, training, relocation expenses, and the placing of advertisements in publications for recruitment purposes. Some agencies do it in greater detail. For example, they may list dues and subscriptions.

381 REP. CLARK: I think the provision which addresses agency versus individual subscriptions is important. That is a good idea on memberships. Multiple people within the same agency might be asking for a membership on an individual basis where it might be more economical to have an association membership.

395 LOWE: That is true. Most national organizations do have organizational memberships, and there are economies of scale.

403 CHAIRPERSON CLARNO: Could you visit some of the agencies and come to us with some additional detail. Do these memberships benefit the agency? Benefit the mission of the agency? What is the definition of "benefit," as used in your administrative rule?

430 REP. CLARK: Are the Treasurer and Justice Departments outside your budgetary review?

436 LOWE: The Judicial Department is a separate branch of government and is not subject to our review. Neither is the Secretary of State or Treasurer (they are constitutional officers). The Department of Justice, the AG, and his staff, are subject to our rules.

443 REP. CLARK: If a lawyer at the Department of Justice wants to belong to the American Bar Association, does the department have to pay for that?

449 LOWE: I have talked with numerous officials on this topic. I could share that information with the Committee today, or hold off until the work session at a latter date. On the bar association dues, those are paid by the Department of Justice.

457 REP. CLARK: No I did not say the Oregon State Bar. I said the American Bar Association, which is an optional professional association which sort of puts a feather in the cap. I don't question the necessity for the Oregon State Bar membership. That is a necessity. The American Bar Association really does not provide any vital service; it is just added prestige. - The second question would be whether the Treasurer's Office has individual subscriptions (for its staff) to the Wall Street Journal paid for by the State. Those are just two items that I pull out of the air which would be good examples of items that need to be investigated. - I picked on Republicans instead of Democrats so that no one can throw darts at me.

483 REP. DERFLER: I think we ought to take a look at some of the professional organizations. If you went to the Highway Department and found that the engineers belong to two, three or four professional organizations, I feel those should be limited in number.

TAPE 69, SIDE B

031 LOWE: In talking to many of the agencies, they do limit the number they will pay for each employee. Usually they limit it to a single membership.



033 REP. DERFLER: To one membership?

034 LOWE: Yes. That might be the State Management Association or a professional association affiliated with their particular occupation.

035 REP. DERFLER: That is interesting to know because it appears that Mr. Bassett was not aware of that fact.

036 LOWE: Again, the practice varies by agency. The State is not consistent across state government, with regard to dues required to practice an occupation. In DHR, we will pay for a psychologist to be a member of the Oregon and American Psychological Associations. But, we will not pay for their registration fees to the Board of Psychologist Examiners. That is considered to be a basic requirement for their occupation. The State does not reimburse for that.

048 CHAIRPERSON CLARNO: I appreciate your testimony. - Closes public hearing on HB 2896 and opens a public hearing on HB 2894 and HB 3070.

(Tape 69, Side B) HB 2894 and HB 3070 - ADMINISTRATIVE RULES, PUBLIC HEARING Witnesses: Jim Whitty, Associated Oregon Industries Carole Irwin-Leal, Secretary of State's Office

056 ADKINS: Explains the bill and bill packets before the Committee. - The information in the bill packets for HB 2894 also applies to HB 3070. It was not reproduced for that bill for conservation reasons.

073 CHAIRPERSON CLARNO: Was Rep. Markham going to testify on HB 3070?

075 ADKINS: I am not certain.

- Inaudible comment by a member of the audience. Mr. Whitty approaches the witness table.

083 CHAIRPERSON CLARNO: Before you start, let me say that we have 7,367 administrative rules in 1990. This is one of the reasons for examining this issue.

080 JIM WHITTY, LEGISLATIVE COUNSEL FOR ASSOCIATED OREGON INDUSTRIES: Submits and summarizes written testimony (see EXHIBIT F).

135 CHAIRPERSON CLARNO: Does the Committee have any questions? Because of the attendance of the Committee, we might need to have you return to the Committee and repeat your testimony on this bill. - Do you have any comments on HB 2894?

140 WHITTY: I think it is a good bill, and it is consistent with the bill I have just discussed (HB 307 0). We support this bill.

142 CHAIRPERSON CLARNO: Calls the next witness, Carole A. Irwin-Leal.

148 CAROLE A. IRWIN-LEAL, PUBLIC RECORDS MANAGER - SECRETARY OF STATE: Submits and summarizes exhibits (EXHIBIT G). Speaks in favor of HB 2894.

160 CHAIRPERSON CLARNO: When you say general authority, what do you mean exactly?

161 IRWIN-LEAL: That particular agency has given its directors the

authority for adopting administrative rules. In examining some agencies, the same statutory authority was used for all their administrative rule filings. What we would like to see is not only the wording currently in the bill, but additional language as well. Instead of saying "adoption of the rule" (line 18 of HB 289 4), we would prefer the bill to say "adoption of each rule". So each rule that is adopted, amended, or repealed by any state agency would have the statutory authority specifically listed for it.

179 CHAIRPERSON CLARNO: The agency is supposed to state the proper statutory authority, but they don't always do so.

181 IRWIN-LEAL: In all instances, they do give statutory authority. However, in many instances, it is a general authority rather than a specific authority.

186 CHAIRPERSON CLARNO: When you say general authority, what do you mean exactly? Could you clarify what you mean?

187 ADKINS: There is rule-making authority stated, at the beginning of a lot of statutes.

189 IRWIN-LEAL: That is correct. In most statutes, the authority is stated in a very general way. We would like to see specific rule-making authority.

198 CHAIRPERSON CLARNO: So we are going from very general authority to more specific authority. That would save time for the Secretary of State's office, Legislative Counsel, etc.

200 IRWIN-LEAL: That is correct. In addition, we would like to enhance the compilation of administrative rules by including a cross reference of all rules to Oregon Statute. We believe this will make the compilation much more usable to the public.

207 CHAIRPERSON CLARNO: Do you have any additional language, other than the language you offered for line 18 of HB 2894?

209 IRWIN-LEAL: In each instance where that wording appears in the bill (line 18 language referenced earlier), I would like to see that substitution.

213 ADKINS: Was the cross-reference suggestion an amendment to this bill, as well?

216 IRWIN-LEAL: That is not a part of this bill, but part of our overall plans. This bill will help us achieve that goal.

220 CHAIRPERSON CLARNO: You don't think you need any additional language in this bill?

221 IRWIN-LEAL: I think this will adequately help us.

222 REP. DERFLER: Could you tell us specifically what this bill would do if it was passed?

223 IRWIN-LEAL: If passed, this bill will specifically identify to the public what authority state agencies have to adopt administrative rules, specific administrative rules instead of giving the agency a general authority which may be questionable.

231 REP. DERFLER: Would that make the administrative rules more accurate? Is that what you are trying to accomplish with this bill?

233 IRWIN-LEAL: I don't believe it will have any direct affect on the accuracy of the administrative rules. I believe it will allow the public to research administrative rules and law, and to know that statutory authority actually exists without seeking legal counsel.

240 REP. DERFLER: But what will we accomplish with that?

242 IRWIN-LEAL: We will improve the public's ability to know the administrative rules and laws that affect them and how these rules directly relate.

247 CHAIRPERSON CLARNO: This would be a huge help to Legislative Counsel. If the agency quotes just the general statute, then Legislative Counsel has to determine if the agency specifically has this authority somewhere in its rules. This will save many hours of Legislative Counsel's staff time.

259 REP. DERFLER: What do you mean by authority?

260 CHAIRPERSON CLARNO: The specific statute that says they have the authority to make rules about fish or whatever the topic may be.

262 REP. DERFLER:. So is it an interpretation of the legislative bill that was passed? Is that what we are saying?

263 CHAIRPERSON CLARNO: The statute that enabled them to make that specific administrative rule. Right now, it is my understanding that the citation is very general.

269 IRWIN-LEAL: There is an additional effect. In many instances, administrative rules interpret statute. The particular statutory authority might be the very statute which they are attempting to interpret by administrative rule.

275 REP. DERFLER: So when an agency adopts administrative rules, they have to make reference to the statutory law that was passed by the Legislature?

278 IRWIN-LEAL: That is correct. That would be the effect of this bill.

279 REP. DERFLER: So the intent would be to make the administrative rule more accurate with the intent of the legislation.

281 IRWIN-LEAL: That is correct. This bill has the support of many state agencies. Many people want a match-up of the statutes to the administrative rules. Many feel strongly about this particular item. It has been brought up to us many, many times.

300 REP. DERFLER: The problem that you are having is you don't have a way of proving whether that was actual legislative intent when an agency promulgates an administrative rule.

306 IRWIN-LEAL: There may be some question as to whether the interpretation of that statute has been correctly carried out int the adoption of the administrative rule.

309 REP. DERFLER: By doing this, the agency would have to refer to a particular part of the statute, where it specifically states the authority.

313 CHAIRPERSON CLARNO: Let us say I could order something out of the Sears catalog on page 10. That is the general administrative rule that I have. Let us say that, I also have authority to order Item A on page 10. But I knew that it would be easier if I just cited page 10, rather than Item A on page 10. Is that correct?

322 IRWIN-LEAL: That is correct.

323 REP. DERFLER: How would this have helped us with that last bill, HB 119 7? How would this have changed what was done previously.

328 IRWIN-LEAL: I am not sure that I can answer that.

330 REP. DERFLER: What will we accomplish if we pass this bill?

335 IRWIN-LEAL: We will provide avenues to connect the administrative rules to the statute.

338 CHAIRPERSON CLARNO: Better than you have had the authority to do in the past. Is that correct?

340 IRWIN-LEAL: Exactly.

341 REP. DERFLER: Would it make administrative more accurate, or would it make them interpret the statutes more accurately? I am still trying to see the purpose. What is going to change if we pass the bill?

345 IRWIN-LEAL: It will provide a connection between the administrative rules and the statutes. Those who work with these legal texts will be able to more accurately identify whether or not the administrative rules have met the intent of the statutes under the authority given.

355 REP. DERFLER: And if they don't, do we have any recourse?

357 IRWIN-LEAL: Currently, Legislative Counsel reviews administrative rules for the statutory authority and constitutionality. They notify agencies when their administrative rules do not meet statutory authority.

363 REP. DERFLER: Now we are getting to it. Legislative Counsel can go back to those who write the rules and say, "hey, you are not writing the rules correctly."

367 IRWIN-LEAL: That is correct. However, at this time, Legislative Counsel only has the authority to notify the agency. They may not require the agencies to change those rules.

371 REP. DERFLER: So the agency doesn't have to make an improvement or change?

373 IRWIN-LEAL: That is correct.

374 REP. DERFLER: So we really haven't accomplished anything, if we pass this bill?

375 IRWIN-LEAL: I can't answer that. I am not sure what it will accomplish.

378 CHAIRPERSON CLARNO: Could you help us with this matter? Tell us what you have found out as a result of your research.

385 SYLVIA LOFTUS, LEGISLATIVE RESEARCHER - LEGISLATIVE ASSEMBLY: At the bottom of the stream, are the citizens who are affected by what we do here. When an agency uses a general authority to justify a rule, rather than a specific authority, it denies to deny the individual (who has been affected adversely by the rule) accurate information as to how the Legislature intended the statute to impact citizens.

404 REP. DERFLER: So it would be easier for individuals to challenge administrative rules?

405 LOFTUS: In a sense, it does make challenges easier. Once again, it saves a lot of time for Legislative Counsel.

414 REP. DERFLER: If this bill were to pass, would you say that it would make those who write administrative rules more careful with how they write the rules, so that those rules would not be challenged?

417 LOFTUS: I think if there were some good challenges, it would probably have that effect.

422 IRWIN-LEAL: Our experience is that agencies will attempt to correct their administrative rules when it is pointed out that they are inaccurate.

427 REP. DERFLER: If this is going to make a difference, then I will support the bill. If it is not going to make a difference, it will not accomplish anything.

431 CHAIRPERSON CLARNO: When we have a work session, I will see that we get someone here from Legislative Counsel to explain their concern with administrative rules. I think they feel that there is an awfully lot of abuse.

440 REP. DERFLER: I think there is a lot of abuse. I am just wondering if this bill will make a change.

442 CHAIRPERSON CLARNO: Legislative Counsel helped us draft this piece of legislation, so hopefully, it will make a difference.

444 REP. JONES: I think the unspoken question is "Does this bill go far enough"? Does this bill really do enough to ensure there isn't abuse? Maybe we should tighten the reins even more. Hopefully, Legislative Counsel can give us some help.

TAPE 70, SIDE B

025 CHAIRPERSON CLARNO: We will definitely hear from Legislative Counsel at next work session.

026 WHITTY: I feel this bill will allow private citizens to identify problems within the administrative rules. With this bill, more unsophisticated types (non-attorneys) can compare the administrative rule with the statute early in the process, before the lawyers are

involved.

039 REP. DERFLER:. Explains the frustration of an earlier bill which addressed administrative rule issues.

046 WHITTY: This is not a panacea. It aids but does not correct the situation.

047 REP. DERFLER: Could we get the agencies to write the rules according to proper legislative intent?

048 WHITTY: "That is the age-old question."

048 REP. JONES: I have learned, over the years, that if you want it done a certain way, you put it in the statute the way you want it! You cannot allow for "wriggle room." At times, that is very difficult.

059 CHAIRPERSON CLARNO: Rep. Katz has mentioned this before, but maybe we should have an impact statement on administrative rules before they are written.

062 REP. JONES: You mean a fiscal impact statement?

063 CHAIRPERSON CLARNO: Well, we have the hearings and et cetera, why not?

064 REP. DERFLER: It is my experience that the agencies do it the way they want to do it. They have public hearings and listen to testimony, and then they do it the way they originally wanted to do it. It is difficult to get them to change.

068 CHAIRPERSON CLARNO: That is what we hear from our constituents.

069 IRWIN-LEAL: The Secretary of State's Office has established an Administrative Rules Advisory Committee so that we can look at the rule-making process. We hope to try to pick up on some of the problems that are evident with the process.

078 REP. DERFLER: In our particular bill, we even had a labor management group that was to be consulted. The administrative rules were still written the way they wanted them, even though in direct opposition to the recommendations of the labor management group.

080 CHAIRPERSON CLARNO: Rep. Derfler, I welcome any amendments you might have to offer to this bill. - Closes the public hearing on HB 2894 and HB 3070, adjourns the meeting, (5:45 p.m.).

EXHIBIT LOG Exhibit A - Rep. Del Parks - 6 pages Exhibit B - House Agency Reorganization and Reform - 4 pages Exhibit C - Layne Sawyer - 1 page Exhibit D - Carol F. Fleming - 3 pages Exhibit E - Marjorie Lowe - 1 page Exhibit F - Jim Whitty - 2 pages Exhibit G - Carole Irwin-Leal - 6 pages

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