

HOUSE COMMITTEE ON ELECTION AND RULES

June 27, 2005 Hearing Room E

1:00 P.M. Tapes 68 - 69

MEMBERS PRESENT: Rep. Derrick Kitts, Chair

Rep. Paul Holvey, Vice-Chair

Rep. Kim Thatcher, Vice-Chair

Rep. Billy Dalto

Rep. Debi Farr

Rep. Mitch Greenlick

Rep. Steve March

STAFF PRESENT: Cletus Moore, Committee Administrator

Annetta Mullins, Committee Assistant

MEASURES/ISSUES HEARD:

SB 1008 A – Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 68, A		
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003	Chair Kitts	Calls the meeting to order at 1:14 p.m. and opens a public hearing on SB 1008 A. Announces the committee has the SB 1008-A22 (EXHIBIT A) , SB 1008-A23 (EXHIBIT B) , SB 1008-A24 (EXHIBIT C) and SB 1008-A13 (EXHIBIT D) amendments.
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SB 1008 A – PUBLIC HEARING

023	Ben Fain	Aloha resident. Comments he became aware of SB 1008 A and strongly supports the formation of a PUD to administer the operations of Portland General Electric (PGE). States that PGE territory covers about 4,000 square miles and 51 cities. States he feels this is not a partisan issue or just a City of Portland issue. It affects a large portion of the state economy. Feels that the Governor, the Senate President and Speaker of the House should support this bill and that we need a strong state Department of Energy.
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059	Chair Kitts	Requests comments on the SB 1008-A22 amendments (EXHIBIT A) .
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	Kate Richardson	Chief of Staff, State Treasurer. Introduces Cynthia Byrnes, Department of Justice Counsel for the State Treasurer. States a number of the amendments were in consultation with the Treasurer's office and Byrnes will speak for their office.
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066	Cynthia Byrnes	Attorney General's office. States the way the bill is now structure, she thinks the bonds would be similar to bonds issued by a local government. They would not be the obligations of the State of Oregon. They would be a form of revenue bonds which would be paid solely from revenues of the Oregon public power entity. The statutes under which the bonds would be issued are mostly the statutes that are applicable to local government type bonds. The State Treasurer's office would not be involved in the same capacity that he is now involved with regular State of Oregon bonds. There is a format where the entity could seek assistance if they wanted to but they would mostly be on their own in using their borrowing authority. Explains that the banking arrangements would continue to be private.
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080	Rep. March	Clarifies that the language in the –A22 amendments replace the bill and that any bonds issued by Oregon Community Power (OCP) would not be general obligation bonds of the state—the state would not be obligated to pay them.
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	Byrnes	Agrees with Rep. March.
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088	Joe McNaught	Office of the Attorney General. Offers to answer questions with respect to Section 23 in the –A22 amendments. States that Section 23 is a new section intended to deal with the constitutional problem; the Oregon Constitution prohibits the state from holding stock. Cites <u>Sprague v. Straub</u> . States if equity is acquired, or it is necessary to acquire equity in PGE, the stock or physical assets acquired under Section 20 would be held in trust for the benefit of the consumers of OCP. Second, similar to the situation with the Public Employees Retirement Fund and the Industrial Accident Fund, the state would declare it has no proprietary interest in that fund and would disclaim any right to reclaim any contributions that may be made to OCP under some other sections of the Act, basically the start-up costs. And, it basically states that OCP will not receive any funds from the state other than funds that might come from providing electrical services to the state as those would be provided to any other customer. If the Treasurer was ever involved in any bond financing or long financing for OCP, those non-recourse financings would not be subject to this prohibition.
131	Rep. Holvey	Asks if OCP would be able to transfer equity to another entity, if it were to acquire the assets of PGE, other than selling stock.
	McNaught	Responds the idea would be that if OCP were to acquire the assets of PGE, it would end up holding that stock or any of the assets that came with the stock in trust for the benefit of the ratepayers. It would be establishing something in the nature of a perpetual trust and unless and until the legislature makes some future changes with regard to the operation of OCP, OCP could not be doing anything with regard to the stock other than something that is consistent with this trust relationship. States that he cannot say they would never dispose of the stock or retire the stock or do anything else, but whatever they would do with the stock would have to be consistent with this trust relationship and trust obligation.
170	Chair Kitts	Asks if there are questions on the SB 1008-A23 amendments (EXHIBIT B) .
178	Dexter Johnson	Legislative Counsel Office. Explains the -A23 amendments. The amendments suspend the operation of OCP until the Governor decides to convene a first board. The amendments also modify the process by which members of the board are appointed. Also, the acquisition, the direction to acquire either an electric company or assets of an electric utility, are not a directive in the -A23 amendments. It says OCP “may” enter into negotiations and if negotiations are successful, may acquire not just PGE, but any electric utility or electric utility assets. The amendment is not PGE oriented, unlike the bill itself.

216	Chair Kitts	In line 10 on page 1 of SB 1008 A, Section 4 says OCP may be activated only upon action by the Governor to appoint a board of directors of OCP and convening of the meeting of the first board. Asks if the City of Portland were to acquire PGE, the provision in the bill that directs Portland to turn over or at some point in time turn it over to OCP would only take place if the Governor activated OCP.
	Johnson	Responds that under the –A23 amendments nothing happens until the Governor activates OCP.
234	Peter Cogswell	Deputy Chief of Staff, Governor’s office, and Energy Adviser. Explains that the –A23 amendments arose out of a conversation he had with Dexter and trying to think through what some different options might be in terms of how to trigger OCP to actually acquire a utility. States he has looked at the amendments briefly and still needs to talk to Dexter and others.
270	Chair Kitts	States that in Section 20 of the -A22 amendments, it says OCP shall enter into negotiations with PGE or persons that have authority to negotiate the disposition of PGE for the electric utility assets of the PGE company. Asks if there is a conflict.
	Johnson	Responds affirmatively. Comments the committee has a number of amendments under consideration and the committee can adopt any or all of them but there will have to be some blending, perhaps beyond what is normally done.
290	Chair Kitts	Comments that the -A24 amendments deal with payments and separate issues. The -A23 amendments are from the Governor’s office which may need some work. Reads Section 20 (2) and states the bill goes beyond the scope of what he would perceive as a PGE acquisition. Asks Johnson for his opinion.
	Johnson	States that the -A23 amendments are not PGE specific; the -A22 amendments are. The –A22 amendments require OCP to begin negotiations with PGE or Enron, whichever is the appropriate party. It does not actually require they acquire; it is only if negotiations are successful. In the –A23 amendments there is merely a direction that they may do this, not that they are required to begin negotiations.
320	Chair Kitts	States, in theory, If this committee were to adopt the –A23 amendments, the governor could anytime, now or 10 years from now, activate. Asks if that is correct.

326	Johnson	Responds that as the –A23 amendments are drafted, yes.
	Chair Kitts	Asks if this allows any governor to begin the process when he/she so chooses.
335	Johnson	Responds affirmatively.
	Chair Kitts	Comments that the –A23 amendments would conflict with the –A22 amendments because the –A22 amendments say OCP “shall”. This is assuming that upon passage of the bill, OCP is actually a viable option not requiring the Governor’s trigger to be pulled, and also mandating that they shall enter into negotiations with PGE or persons that have authority to negotiate. Asks if it has to be one amendment or the other.
322	Johnson	Responds that conceptually the -A22 and -A23 amendments stand for different things. The –A22, although they replace the entire contents of SB 1008 A, are mainly directed at the financing for how OCP would pay for an acquisition and they address the changes the Treasurer is interested in. The –A23 amendments change how OCP is actually activated and the mandatory part that they go out and negotiate. States the committee could adopt both amendments in concept and there would be a blended amendment that the committee would need to look at before passing the bill out of committee.
349	Chair Kitts	Comments that he does not have a good grasp of all the amendments at this time and would like to have conversations to understand them. Asks if the committee would be opposed to adjourning this committee now and scheduling for tomorrow.
407	Rep. Greenlick	Asks if the committee will have time to get the blended amendments.
	Chair Kitts	Responds that until the committee more thoroughly understands the amendments that are being proposed, there is no direction on the amendments.
419	Rep. March	Comments he thinks the committee has two sets of technical amendments: the Department of Revenue amendments, SB 1008-A24 amendments deal with how the in lieu taxes are assessed and collected. States the –A22 amendments are also technical amendments relating to the financing of the process and clarifying that the state is not on the hook for general obligation bonds. The philosophical amendment is the –A23 that deals with how the process is activated and whether we make it narrow or broad. States

the committee needs to talk about the policy issue—is it broader than just PGE and how do we activate it.

447 Rep. Greenlick Comments that also may lead to whether the committee would like the LC draft to break the –A22 amendments into two components—one relating to the acquisition and one relating to the scope.

459 Chair Kitts Recess the meeting at 1:43 p.m. until 3:00 p.m.

TAPE 69, A

001 Chair Kitts Reconvenes the meeting at 3:07 p.m. and advises members he has met with the Governor’s staff, Sen. Deckert and some of the stakeholders to address some of the concerns that have been brought forward. At this point, all sides are concerned with the language versus the intent of the language. Believes everyone is fine with the –A24. The –A22 and –A23 amendments need work. Comments that the Governor is not in today. States the committee will meet again on Wednesday at 1:00 p.m. to clear up the concerns. Adds that the committee will also discuss the –A13 amendments.

022 Chair Kitts Closes the public hearing on SB 1008 A and adjourns the meeting at 3:09 p.m.

EXHIBIT SUMMARY

- A. SB 1008, -A22 amendments, State Treasurer, 47 pp
- B. SB 1008, -A23 amendments, Governor Kulongoski, 4 pp
- C. SB 1008, -A24 amendments, Department of Revenue, 2 pp
- D. SB 1008, -A13 amendments, staff, 3 pp