

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 15, 2005 Hearing Room 357

1:00 P.M. Tapes 34 - 36

MEMBERS PRESENT:      Rep. Rep. Wayne Krieger, Chair

Rep. Rep. Jeff Barker, Vice-Chair

Rep. Brian Boquist, Vice-Chair

Rep. Linda Flores

Rep. Greg Macpherson

GUEST MEMBERS:        Rep. Bill Garrard

Rep. George Gilman

Rep. Greg Smith

STAFF PRESENT:        Janet Adkins, Committee Administrator

Patrick Brennan, Committee Administrator

Cletus Moore, Committee Administrator

Joe O'Leary, Counsel

Bill Taylor, Counsel

Sandy Thiele-Cirka, Committee Administrator

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2101 – Work Session

SB 408B – Work Session

SB 1076A – Reconsideration and Work Session

SB 1037B – Public Hearing

SB 71A – Work Session

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
TAPE 34, A		
003	Chair Krieger	Calls the meeting to order at 1:15 p.m. Announces that SB 818B will be carried over as not all the amendments are available. Opens a work session on HB 2101.

HB 2101 – WORK SESSION

012	Bill Taylor	Counsel. Explains HB 2101 which creates the Office of Homeland Security. Refers to the -11 amendments ( <b>EXHIBIT A</b> ).
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- 017 Rep. Boquist Reviews the -11 amendments which create an Office of Homeland Security. Points out that a plan for the consolidation of communications facilities is needed by 2013. Discusses the State Interoperability Executive Council and the Oregon Homeland Security Council. Describes the overall organization of the new department.
- 084 Craig Campbell Governor's Senior Policy Advisor and State Homeland Security Advisor. Advises that HB 2101 places in statute the organization created by Executive Order.
- 093 Rep. Boquist **MOTION: Moves to ADOPT HB 2101-11 amendments dated 7/15/05.**
- VOTE: 5-0-0**
- 095 Chair Krieger **Hearing no objection, declares the motion CARRIED.**
- 097 Rep. Boquist **MOTION: Moves HB 2101 to the floor with a DO PASS AS AMENDED recommendation.**
- VOTE: 5-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 104 Chair Krieger **The motion CARRIES.**
- REP. BOQUIST will lead discussion on the floor.**
- 106 Chair Krieger Closes the work session on HB 2101 and opens a work session on SB 408B.

**SB 408B – WORK SESSION**

- 114 Cletus Moore Committee Administrator. Describes SB 408B which establishes legislative findings regarding public electric utility taxes; requires public utilities to file an annual tax report and to review the balance between what the utility has paid in taxes and what the consumer has paid. Refers to the -20 amendments (**EXHIBIT B**). *Note: Staff distributed copies of the -17 amendments (EXHIBIT C).*
- 125 Rep. Tom Butler House District 60. Refers to the -13, -15 and -16 amendments previously discussed. Offers that the -20 amendments are constitutional and follow a consolidated approach. Indicates that the -21 amendments (**EXHIBIT D**) ordered by Sen. Metsger lack symmetry. Recommends adoption of the -20 amendments. Advises that the Speaker has requested a letter removing the subsequent referral.
- 177 Pete Shepherd Deputy Attorney General. Explains the three differences between the -15 amendments and the -20 amendments.
- 239 Shepherd Refers to the examples contained in *DOJ Alternative (EXHIBIT E)*. Details how rates would be calculated.
- 280 Shepherd Continues explanation of the examples in **EXHIBIT E**. Points out that rates can go up or down.
- 316 Rep. Macpherson Asks about features in addition to charitable contributions that are not recovered in rates that would be taken into account in adjustment.
- 326 Paul Graham Department of Justice. Responds that it could be any investment that is not prudent or an investment that does not come "on line."
- 339 Rep. Macpherson Seeks clarification on effects on tax analysis.
- 349 Graham Responds with an example.

- 380 Rep. Macpherson Asks if in the analysis comparing the taxes collected in rates to what was actually paid, the deduction is allowed in the analysis.
- 393 Graham Replies, yes. Provides an example.

**TAPE 35, A**

- 024 Rep. Macpherson Inquires if the utility is getting the benefit of the charitable contribution or an investment that did not come "on line."
- 027 Graham Answers correct.
- 029 Rep. Macpherson Asks about the full reach of the kinds of items not included in rates but would be part of the tax analysis.
- 030 Graham Replies charitable deductions, dry hole investments, or investments that came on line, parts of which were not prudent.
- 042 Rep. Macpherson Indicates that the greatest potential for sensitivity would be those circumstances in which the adjustment would increase rates. Inquires what circumstances would cause an increase in rates.
- 049 Shepherd Refers to the BlackCo Utility illustration in **EXHIBIT E**. States he can describe how SB 408 would operate but cannot provide an economic impact. Adds that the bill allows rates to go up as well as down.
- 070 Rep. Butler Discusses tax credits available to an affiliate.
- 094 Rep. Macpherson Wants to understand the mechanics of the boundaries, the percentage adjustment, and the limits it could go either way.
- 101 Graham Answers that regulators can use any method they want to set rates but they must provide reasonable opportunity to recoup expenses and a fair return on investments. Adds that test involves judgment.
- 134 Rep. Macpherson Comments there is now a rate proceeding based on an application by the utility that is considered by the PUC based on the fair rate of return analysis. Asks if the amendments create a two-bite process – the first one being the initial proceeding on rates, and then after tax adjustment either the utility or the customer can argue about whether there is a fair return.
- 145 Graham Responds that could happen. Continues that since there is an upper band and a lower band there is a possibility the commission could require a full look at rates to be sure the utility is not over-earning or earning so little there is a problem with confiscatory rates.
- 163 Rep. Butler Addresses where the -20 amendments exempt small utility companies from the process.
- 179 Shepherd Points to language that prohibits the commission from using the automatic adjustment clause to make adjustments to rates that are properly attributed to any other affiliate of the public utility or the parent of the utility.
- 212 Chair Krieger Comments on the amount of time spent in work groups and public hearings trying to find a position of right and justice. Believes that no matter what is done, it will probably end up in litigation.
- 232 Rep. Butler Refers to an Attorney General letter on the constitutional issues that states the positions are defensible. Believes there are problems with the -21 amendments. Requests adoption of the -20 amendments which are a product of the compromise work group.
- 315 Chair Krieger Comments there will likely be a conference committee on SB 408.

320 Rep. Boquist **MOTION: Moves to ADOPT SB 408B-20 amendments dated 7/11/05.**

325 Rep. Macpherson Offers he will support the -20 amendments and moving the bill. Expresses appreciation for the amount of work on the bill. Comments on taxes being collected from rate payers that are not being delivered to the taxing authority. Believes this solution is fraught with all kinds of problems and is concerned rate setting is becoming a two-step process. Concludes that SB 408 is a work in progress.

361 Chair Krieger Agrees.  
**VOTE: 5-0-0**

363 Chair Krieger **Hearing no objection, declares the motion CARRIED.**

366 Rep. Boquist **MOTION: Moves SB 408B to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the House Committee on Budget BE RESCINDED.**

370 Rep. Macpherson Inquires if the -17 amendments are included in the -20 amendments.

374 Chair Krieger Responds yes.

375 **VOTE: 5-0-0**  
**AYE: In a roll call vote, all members present vote Aye.**

386 Chair Krieger **The motion CARRIES.**  
**REP. BUTLER will lead discussion on the floor.**

395 Chair Krieger Closes the work session on SB 408B and opens a public hearing on SB 1076A.

**SB 1076A – PUBLIC HEARING**

401 Sandy Thiele-Cirka Committee Administrator. Explains that SB 1076A modifies the terms of office for members of the Oregon Health Policy Commission (OHPC) and removes the OHPC representatives from the Oregon Health Advisory Board; and directs the OHPC to study childhood obesity in Oregon and develop a comprehensive strategy to address the problem. Advises SB 1076A has a subsequent referral to the budget committee. Refers to the -A2 amendments (**EXHIBIT F**).

**TAPE 34, B**

002 Sen. Richard Devlin Senate District 19. Testifies in support of SB 1076A which is a housekeeping bill. Cites statistics of obese children in Oregon. Reads a prepared statement. Comments on the -A2 amendments which remove the portion of SB 1076A dealing with childhood obesity. Discusses research of other states.

066 Rep. Billy Dalto House District 21. Testifies in support of SB 1076A. Believes there are some constitutional problems with the bill. Indicates the study could be done without legislative mandate. Urges the committee to move SB 1076A with the -A2 amendments to the floor.

090 Rep. Flores Asks Sen. Devlin if his fact gathering was done as a member of the Oregon Health Policy Commission or by his staff.

095 Sen. Devlin Answers both. Discusses the childhood obesity issue. Explains how the Commission works.

135 Rep. Flores

Inquires if the work done during the last interim was by an official work group, an interim committee or individually.

- 139 Sen. Devlin Responds all. Continues that work has begun and will continue.
- 143 Chair Krieger Asks if a directive is needed. Believes a letter is just as effective.
- 154 Rep. Dalto Replies that the OHPC is comprised of an excellent group of people. Doesn't think they need a special charge and doesn't think legislation is needed. Asserts that the obesity problem is paramount and discussions have begun.
- 168 Rep. Garrard Advises that he served on the Commission and supports Rep. Dalto's comments.
- 182 Gretchen Morley Director, OHPC. Testifies and submits written testimony in support of SB 1076A (**EXHIBIT G**).
- 191 Katy King Intergovernmental Relations Liaison for Health Services, Department of Human Services. Testifies in support of SB 1076A.
- 195 Chair Krieger Closes the public hearing and opens a work session on SB 1076A.

#### **SB 1076A – WORK SESSION**

- 197 **Rep. Boquist** **MOTION: Moves to ADOPT SB 1076A-2 amendments dated 7/15/05.**
- VOTE: 5-0-0**
- 202 **Chair Krieger** **Hearing no objection, declares the motion CARRIED.**
- 203 **Rep. Boquist** **MOTION: Moves SB 1076A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- 211 **Chair Krieger** **The motion CARRIES.**
- REP. DALTO will lead discussion on the floor.**
- 217 Chair Krieger Closes the work session on SB 1076A and opens a public hearing on SB 1037B. Asks that the testimony be limited as not all the amendments are ready.

#### **SB 1037B – PUBLIC HEARING**

- 224 Patrick Brennan Committee Administrator. Explains SB 1037B formalizes the process for Ballot Measure 37 (BM 37) claims and the judicial review process for those claims; specifies that the new claims process and judicial review process apply only to claims filed on or after the effective date of the measure; and authorizes Tract of Record dwellings under certain circumstances. Advises there is no revenue impact, but there is a fiscal impact. Refers to written testimony from the League of Women Voters (**EXHIBIT H**). Distributes the -B19 amendments (**EXHIBIT I**).
- 241 Lane Shetterly Director, Department of Land Conservation and Development. Comments on his involvement with BM 37 and a work group on SB 1037. Highlights critical issues. Discusses the authority to waive state statute. Cites statistics on claims filed to date. Comments on the need to clarify the roles of state and local governments in waiving their respective regulations and the need to clarify the claims process.
- 352 Shetterly Concludes that transferability is another key issue.
- 399 Kay Guess Resident, Portland, Oregon. Testifies and submits written testimony on SB 1037B (**EXHIBIT J**). Reads from written testimony urging transferability.

**TAPE 35, B**

- 050 Dave Hunnicutt Oregonians in Action. Testifies in opposition of SB 1037B. States it is not a consensus bill and contains a number of problems. Continues that under BM 37 a property owner is not now required to process claims with local government. Cites the costs in various cities and counties to process claims. States that people of modest means are unable to afford the process.
- 120 Hunnicutt Comments on the removal of claims along the Oregon coast. States the problems with the September 2006 deadline for filing all retroactive claims. Reiterates that transferability is important and vital to SB 1037B. Informs that amendments in Legislative Counsel to address these issues should be ready soon.
- 164 Rep. Macpherson Asks about the term “ripeness” used in Mr. Hunnicutt’s testimony.
- 167 Hunnicutt Responds that it is used in the takings context in Article I, Section 18 of the 5th Amendment to the Constitution. Defines how a claim is “ripened.” Continues that SB 1037B requires use of the local government’s claims process before filing with circuit court.
- 205 Rep. Macpherson Clarifies that the “ripeness” issue is the right to proceed directly to circuit court without going through an administrative proceeding with the local government.
- 203 Hunnicutt Answers exactly.
- 206 Chair Krieger Closes the public hearing on SB 1037B and opens a work session on SB 71A which authorizes the use of lottery bonds for transportation projects. *Note: The -A11 amendments were distributed by staff (EXHIBIT K).*

**SB 71A – WORK SESSION**

- 225 Rep. Greg Smith House District 57. Reads the language in the -A12 amendments (EXHIBIT L) into the record.
- 251 Rep. McPherson Comments that the language seems rather specific for an amendment to a bill that is statewide to fund a wide range of transportation projects. Asks for the rationale.
- 257 Rep. Smith Responds that the amendments are being introduced as a tool to encourage further discussion among four local government entities and the Port of Portland on how best to utilize the Reynolds Aluminum property.
- 264 Rep. Macpherson Refers to prior testimony on a contract for purchase by the Port of Portland for that property, so acquisition is under way. Comments that this appears to prevent that from proceeding.
- 277 Rep. Smith Replies that four jurisdictions have opposed that action and want to continue working with the landowner to see if there is a better use for the property than is being proposed.
- 284 Rep. Macpherson Asks how this relates to the broader need to relieve congestion of rail in Portland.
- 291 Rep. Smith Answers that the focus is to encourage communication between local governments and the landowner.
- 311 Rep. George Gilman House District 55. Testifies that the -A11 amendments merely take the Rail Advisory Committee out of SB 71A.
- 338 Rep. Macpherson Seeks clarification about the Rail Advisory Committee.

347 Janet Adkins Committee Administrator. Points to the language in the A-engrossed bill which would be deleted with the -A11 amendments.

376 Rep. Macpherson Asks Rep. Gilman if he intends to also delete the "public transit" language.

379 Rep. Gilman Answers that the -A7 amendments already removed the transit language.

383 Rep. Macpherson Requests background on the rail advisory committees.

401 Kelly Taylor Rail Division Administrator, Oregon Department of Transportation. Explains that a rail advisory committee that encompasses both passenger and freight rail issues can be established administratively so it doesn't need to be in statute.

**TAPE 36, A**

004 Chair Krieger Asks if both the -A7 amendments and -A11 amendments are needed.

009 Adkins Understands that the -A11 amendments also remove transit projects from the program.

015 Rep. Gilman Agrees then that the -A7 amendments are not needed.

017 Chair Krieger Advises that more work will be done in Budget.

019 Rep. Macpherson Asks if the -A7 amendments have been included in the bill. Appears that the -A11 amendments remove transit and rail advisory and address the Troutdale project.

027 Adkins States that the -A11 amendments have all the provisions in the -A7 amendments. Explains the other amendments that were discussed but not adopted. Continues that the -A11 and -A12 amendments are not compatible.

037 Rep. Boquist Asks if the -A11 amendments should be moved into the bill, and then the -A12 amendments.

043 Adkins Answers that both have language about the Port of Portland but a decision is needed on which Section 7 is wanted.

049 Rep. Macpherson Agrees. Thinks that statute should remain broad. Urges a conceptual amendment to the -A11 amendments to remove Section 7 and leave the -A12 amendments alone.

064 Rep. Boquist Explains why he doesn't agree.

073 Rep. Macpherson Agrees that the -A11 and -A12 amendments amend the bill twice.

079 Chair Krieger Asks if the -A7 amendments are needed.

080 Rep. Gilman Answers yes.

084 Rep. Boquist Disagrees.

086 Adkins Reiterates that the -A11 amendments contain all the provisions in the -A7 amendments.

**091 Rep. Boquist MOTION: Moves to ADOPT SB 71A-11 amendments dated 7/11/05.**

094 Rep. Barker Doesn't support.

095 Rep. Macpherson Doesn't support.

- 096 Chair Krieger Notes the objections.
- VOTE: 3-2-0**
- AYE: 3 - Boquist, Flores, Krieger**
- NAY: 2 - Barker, Macpherson**
- 097 Chair Krieger Declares the motion CARRIED.
- 098 Rep. Boquist **MOTION: Moves to ADOPT SB 71A-12 amendments dated 7/15/05.**
- 100 Rep. Macpherson Doesn't support.
- 101 Rep. Barker Doesn't support.
- 102 Chair Krieger Notes the objections.
- VOTE: 3-2-0**
- AYE: 3 - Boquist, Flores, Krieger**
- NAY: 2 - Barker, Macpherson**
- 103 Chair Krieger Declares the motion CARRIED.
- 104 Rep. Boquist **MOTION: Moves SB 71A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- 107 Rep. Macpherson Opposes the motion. Explains that a good bill is being made worse by the various amendments. States that the allocation formula does not give the Transportation Commission sufficient flexibility to be sure the money is targeted for the benefit for all Oregonians.
- 119 Adkins Seeks clarification that the committee wants the Section 7 in the -A12 amendments and not the Section 7 in the -A11 amendments.
- 124 Rep. Boquist Clarifies that the -A11 amendments were adopted first which become part of the original bill, and then the -A12 amendments which replace the Section 7 in the previous amendment.
- 135 **VOTE: 3-2-0**
- AYE: 3 - Boquist, Flores, Krieger**
- NAY: 2 - Barker, Macpherson**
- 141 Chair Krieger The motion CARRIES.

The following written material is submitted for the record without public testimony:

- Bruce Agnew Policy Director, Cascadia Center at Discovery Institute. Submits written testimony in support of SB 71A (**EXHIBIT M**).
- 143 Chair Krieger Closes the work session on SB 71A and opens a work session on HB 2101.

**HB 2101 - WORK SESSION**

- 148 Rep. Boquist **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on HB 2101.**
- VOTE: 5-0-0**
- AYE: All members present vote Aye.**

- 152 Chair Krieger The motion CARRIES.
- 154 Rep. Boquist **MOTION: Moves to RECONSIDER the vote by which HB 2101 was moved to the floor with a DO PASS AS AMENDED recommendation.**
- VOTE: 5-0-0
- AYE: All members present vote Aye.
- 162 Chair Krieger The motion CARRIES.
- 164 Rep. Boquist **MOTION: Moves HB 2101 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- VOTE: 5-0-0
- AYE: All members present vote Aye.
- 169 Chair Krieger The motion CARRIES.
- 170 Chair Krieger Closes the work session on HB 2101 and opens a work session on SB 1076A.

**SB 1076A – RECONSIDERATION AND WORK SESSION**

- 179 Rep. Boquist **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 1076A.**
- VOTE: 5-0-0
- AYE: All members present vote Aye.
- 181 Chair Krieger The motion CARRIES.
- 189 Rep. Boquist **MOTION: Moves to RECONSIDER the vote by which SB 1076A was moved to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- VOTE: 5-0-0
- AYE: All members present vote Aye.
- 194 Chair Krieger The motion CARRIES.
- 197 Rep. Boquist **MOTION: Moves SB 1076A to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the House Committee on Budget BE RESCINDED.**
- VOTE: 5-0-0
- AYE: All members present vote Aye.
- 200 Chair Krieger The motion CARRIES.
- REP. DALTO will lead discussion on the floor.
- 202 Chair Krieger Closes the work session on SB 1076A.
- 209 Chair Krieger Announces that SB 591 will be carried over until July 18.
- 213 Chair Krieger Adjourns the meeting at 3:20 p.m.

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**EXHIBIT SUMMARY**

- A. HB 2101, -11 amendments, staff, 46 pp
- B. SB 408, -B20 amendments, staff, 11 pp
- C. SB 408, -B17 amendments, staff, 1 p
- D. SB 408, -B21 amendments, staff, 9 pp
- E. SB 408, DOJ alternative, Pete Shepherd, 2 pp
- F. SB 1076, -A2 amendments, staff, 1 p
- G. SB 1076, written testimony, Gretchen Morley, 2 pp
- H. SB 1037, written testimony by Margaret Noel, staff, 1 p
- I. SB 1037, -B19 amendments, staff, 1 p
- J. SB 1037, written testimony, Kay Guess, 1 p
- K. SB 71, -A11 amendments, staff, 3 pp
- L. SB 71, -A12 amendments, Rep. Greg Smith, 1 p
- M. SB 71, written testimony, Bruce Agnew, 1 p