

SENATE COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

May 31, 2005
1:00 P.M.

Hearing Room B
Tapes 76 - 79

MEMBERS PRESENT: Sen. Rick Metsger, Chair
Sen. Bruce Starr, Vice-Chair
Sen. Jason Atkinson
Sen. Ryan Deckert
Sen. Laurie Monnes Anderson

GUEST MEMBER: Sen. Vicki Walker

STAFF PRESENT: Theresa Van Winkle, Committee Administrator
James Goulding, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2017A – Public Hearing and Work Session
SB 408A – Work Session
HB 3273A – Public Hearing and Work Session
SB 572 – Work Session
SB 672 – 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 76, A		
003	Chair Metsger	Calls the committee to order at 1:05 p.m. Opens a public hearing on HB 2017A.
<u>HB 2017A – PUBLIC HEARING</u>		
013	Darrell Fuller	Oregon Automobile Dealers Associations. Presents written testimony in favor of HB 2017A (EXHIBIT A).
030	Chair Metsger	Closes public hearing on HB 2017A. Opens a work session on HB 2017A.
<u>HB 2017A – WORK SESSION</u>		
034	Sen. B. Starr	MOTION: Moves HB 2017A to the floor with a DO PASS recommendation.
036		VOTE: 3-0-2
	Chair Metsger	EXCUSED: 2 - Atkinson, Deckert
		Hearing no objection, declares the motion CARRIED.
		SEN. B. STARR will lead discussion on the floor.
039	Chair Metsger	Closes the work session on HB 2017A. Opens a work session on SB 408A.
<u>SB 408A – WORK SESSION</u>		
049	Chair Metsger	Explains the prior commentary on SB 408A. Reiterates the discussion of Portland General Electric (PGE) and the regulatory powers of the Oregon Public Utility Commission (PUC).
058	Dexter Johnson	Staff, Legislative Counsel. Discusses the provisions of the –A8

		amendment (EXHIBIT B).
083	Johnson	Discusses the sections of the amendment.
098	Chair Metsger	Asks Mr. Johnson to explain where the changes came about.
106	Johnson	Replies in detail to the changes from the previous –A7 amendment heard during the last meeting.
140	Johnson	Talks about the tax structure changes.
160	Johnson	Relates income taxes paid by a utility.
188	Chair Metsger	Observes that the previous language worked, but is now more clearly stated.
192	Johnson	References the clarifying changes made from the previous version. Points out that no retroactive rate making is going on.
230	Johnson	Discusses subsection 5 of the –A8 amendments.
249	Chair Metsger	Considers if the changes solve the depreciation issue.
255	Johnson	Observes putting into law current practices.
259	Chair Metsger	Points out rate setting and taxation scenarios.
263	Johnson	Concurs with his examples. Begins outlining subsection 6 of the amendment.
290	Chair Metsger	Summarizes the functioning of the automatic adjustment clause.
297	Sen. Vicki Walker	Senate District 7. Wonders if there is a definition for “material adverse affect”.
303	Johnson	Replies there is not an existing definition in statute.
307	Sen. Walker	Relates the difficulty of trying to define it in statute.
315	Johnson	Remarks on the definitions.
322	Chair Metsger	Asks if all the definitions were in the prior amendment.
327	Johnson	Provides that the definition of “tax” is new. Continues his explanation of the provisions in the measure.
340	Sen. Walker	Wonders why they couldn’t ask for the tax report to be filed immediately.
345	Johnson	States it would be a new report. Talks about the need for the PUC to have time to assess the situation.
367	Johnson	Concludes his description of the –A8 amendments.
387	Chair Metsger	Applauds Dexter Johnson’s long hours of work on this measure. Talks about the various approaches they have taken to address this problem. Notes the intense difficulty in creating any kind of consensus on a solution.
TAPE 77, A		
003	Chair Metsger	Notes the presence of a –A9 amendment authorized by Sen. Bruce Starr (EXHIBIT C). States they will discuss it later in the hearing. Asks Mr. Meek to testify.
007	Dan Meek	Attorney, Portland. Testifies in regard to the changes made in the –A8 amendment.
035	Meek	Observes various purchase scenarios of a utility.
063	Meek	Relates his interpretation of the sections of the measure.
077	Meek	Talks about the definition of “tax” provided in the –A8 amendment.
097	Chair Metsger	Offers the importance of Mr. Meek’s comments for the legislative record.
103	Meek	Relays he has no further comments at this time.
109	Melinda Davison	Industrial Customers of Northwest Utilities. Voices her support for the measure as amended by the –A8 amendments. Explains why she feels this is a good solution to the problem.
133	Chair Metsger	Asks for her view on the –A9 amendment.
136	Davison	Relates strong disagreement to the –A9 amendments. Voices the stark contrast between the –A8 and –A9 amendments.

160	Davison	Feels the –A9 would create a true-up out of all utility costs.
185	Sen. Atkinson	Offers this would be a fundamental change in utility regulation. Requests clarification of her previous comment of “politically sustainable”.
193	Davison	Notes the political component of citizens voicing objection to rate and tax practices.
200	Sen. Walker	Considers if there is any other language in the –A8 amendment that needs refinement.
203	Davison	Feels there are some minor details that could be cleaned up.
210	Chair Metsger	Reiterates that she supports –A8 the amendments as they are. Wonders if her industrial customers will be better off under this measure.
219	Davison	Offers the “loop hole” will be fixed and benefits will be passed on to ratepayers.
233	Teresa Miller	PGE. Feels the –A9 addresses the tax issue in a fairer way than the –A8. Explains the tax structure differences. Notes PGE does not support the –A8 amendments.
254	Randy Dahlgren	PGE. Offers his observation that there are strong ties between revenues, costs, and income taxes paid. Feels the –A9 amendments better reflect those ties.
265	Gary Bauer	Northwest Natural. Voices opposition to the –A8 amendments. States that tax liabilities are influenced by other costs.
280	Chair Metsger	Asks about the current mechanism to enable the PUC to adjust rates based on costs.
290	Dahlgren	Talks about the mechanism to adjust costs.
312	Chair Metsger	Relays the public view on taxes and rates. Offers taxes should be treated differently than others costs.
337	Bauer	Shares Sen. Metsger’s frustration on the income tax issue. Offers that income taxes are part of a larger formula and not itemized.
356	Miller	Points out a lot of these problems originated with PGE’s ownership by Enron. Offers that PGE will soon be deconsolidated from Enron and subject to paying state taxes.
365	Chair Metsger	Voices that they can’t predict what will occur with PGE. Feels some rules need to be in place to protect the public interest.
375	Sen. Atkinson	Wishes to understand the concept of “fairness” previously offered.
390	Dahlgren	Relates the situation to filing personal income taxes after an unanticipated expenditure.
392	Sen. Atkinson	Clarifies that he wants to understand it from a business standpoint.
396	Dahlgren	Notes the unforeseen expenses and taxability of a utility business.
412	Sen. Atkinson	Wonders if under the –A8 amendments a publicly regulated company could increase costs to decrease tax liability.
TAPE 76, B		
012	Dahlgren	Observes the company responsible for extra costs, would need tax benefits. Replies he is unsure of the financial benefit.
020	Sen. Atkinson	Asks that with the –A8 amendments, could a company drive up expenses to lower tax liability.
024	Bauer	States that a company could do that but it would not make financial sense. Points out the tax rate would be set by revenue earned.
035	Sen. Walker	Considers how much PGE ratepayers contribute for taxes Enron

		doesn't even have to pay.
038	Miller	Replies that she doesn't know the figure offhand.
039	Sen. Walker	Notes it is a considerable amount of money. Wonders about their objection to the automatic adjustment clause.
045	Miller	Notes the change in language to the -A8, and that they no longer object to that portion of the amendment.
047	Sen. Walker	Contends that the main issue is collecting for taxes that aren't owed.
053	Sen. B. Starr	Describes the contentions of the measure. Wishes for an explanation of why the -A8 amendments aren't "fair" and the -A9 are.
072	Dahlgren	Outlines the changes of revenues and costs affected. Feels the -A8s aren't fair to utilities or customers.
081	Sen. B. Starr	Feels this problem is resolved in the -A8.
085	Dahlgren	Discusses the potential economic effects on rates. Expresses that the -A9 amendments take revenue changes into account.
098	Sen. B. Starr	Points out under the -A9 amendments the customers would not have to pay higher rates for both increased utility costs and increased tax rates.
103	Dahlgren	Concurs.
105	Sen. Deckert	Outlines that he hasn't heard the full explanation of this argument. Feels the customers are being clear on their wishes.
135	Dahlgren	Replies the entity that incurs the costs should get the appropriate taxation based on those costs.
140	Sen. Deckert	Replies he is grappling with the tax issue in regards to rate setting.
148	Miller	States that taxes are derived from costs and revenues. Feels that taxes can't be examined separately.
157	Bauer	Expound upon previous statements and changes in costs.
172	Sen. Monnes Anderson	Brings up the shareholder issue. Considers the correlation between shareholders and taxes.
193	Dahlgren	Defines balancing expense levels with the recovery of debt and equity financing.
221	Sen. Monnes Anderson	Observes the costs not included in rates.
227	Dahlgren	States there is a component in rate setting related to shareholders.
230	Chair Metsger	Asks Ms. Fisher and Mr. Eisdorfer to come forward and comment on the -A8 and -A9 amendments.
238	Anne Fisher	Building Owners and Manager's Association of Portland. Talks about the problem of rate collection not paid to any governmental entity. Details the rate setting scenario.
290	Fisher	Supports the -A8 amendments, notes some potential tweaks that could be implemented from the -A9 amendments.
330	Fisher	Voices her proposed changes to the -A8 amendments.
370	Fisher	Talks about how the PUC would have greater ability to regulate the taxation.
385	Jason Eisdorfer	Citizens Utility Board (CUB). Supports the -A8 amendments and feels that it has all the elements needed. Testifies in opposition to the -A9 amendments.
TAPE 77, B		
005	Eisdorfer	Relates the big differences observed between the -A8 and -A9 amendments.
030	Eisdorfer	Feels the -A9 amendments force the customer to take on all the risk.

040	Sen. Walker	Appreciates the clarification on the –A9 amendments.
048	Sen. B. Starr	Asks if Ms. Fisher was present at the last committee meeting.
050	Fisher	Replies she wasn't, but heard the testimony.
051	Sen. B. Starr	References Pamela Lesh's rate scenarios provided during the previous hearing.
055	Fisher	Offers her observations on Ms. Lesh's testimony.
080	Fisher	Relates that the –A8 amendments should correct many of Ms. Lesh's concerns.
083	Chair Metsger	Invites further comments from Mr. Meek.
087	Dan Meek	Comments on the –A9 amendment. Feels there are relations between the –A7 and –A9 amendments. Notes the –A8 removed elements that were comparing estimates to actuals. Observes the scenarios for income tax payment based on what rate payers actually pay.
120	Meek	Reserves judgment on –A9 amendments, as he is still looking them over.
123	Chair Metsger	Remarks on the need to move this forward. Summarizes the debate on the measure. Feels this is a crucial component for protecting the ratepayer.
137	Sen. Monnes Anderson	MOTION: Moves to ADOPT SB 408A-A8 amendments dated 5/31/05.
145	Sen. Deckert	Believes they should move this measure forward. Concedes the –A8 amendments may not be perfect, but fix a number of current problems.
155	Sen. Atkinson	Wonders why they would move this forward when it is not technically accurate. Asks that they not move bills forward when they know there is still work to be done.
157	Chair Metsger	Observes that the measure accomplishes the task. Feels that some have a different opinion on the matter.
160		VOTE: 3-2-0 AYE: 3 - Deckert, Monnes Anderson, Metsger NAY: 2 - Atkinson, Starr B. The motion CARRIES.
163	Chair Metsger Sen. Monnes Anderson	MOTION: Moves SB 408A to the floor with a DO PASS AS AMENDED recommendation.
165		VOTE: 3-2-0 AYE: 3 - Deckert, Monnes Anderson, Metsger NAY: 2 - Atkinson, Starr B. The motion CARRIES. SEN. METSGER will lead discussion on the floor.
167	Sen. Atkinson	Serves notice of a possible minority report.
173	Chair Metsger	Closes the work session on SB 408A. Opens a public hearing on HB 3273A.

HB 3273A – PUBLIC HEARING

176	Jerod Broadfoot	Plumbing and Mechanical Contractors Association. Testifies in favor of the measure with the -A3 amendments (EXHIBIT D). Observes the technical fixes made by the amendments.
190	Chair Metsger	Closes the public hearing on HB 3273A. Opens a work session on HB 3273A.

HB 3273A – WORK SESSION

211	Sen. B. Starr	MOTION: Moves to ADOPT HB 3273A-A3 amendments dated 5/26/05.
213		VOTE: 5-0-0

215	Chair Metsger Sen. B. Starr	Hearing no objection, declares the motion CARRIED. MOTION: Moves HB 3273A to the floor with a DO PASS AS AMENDED recommendation.
217		VOTE: 5-0-0
	Chair Metsger	Hearing no objection, declares the motion CARRIED. SEN. B. STARR will lead discussion on the floor.
219	Chair Metsger	Closes work session on HB 3273A. Opens a work session on SB 572.
<u>SB 572 – WORK SESSION</u>		
224	Theresa Van Winkle	Committee Administrator. Explains the measure and the provisions of the -14 (EXHIBIT E) and -15 (EXHIBIT F) amendments. Notes the amendments are identical with the exception that the -15 amendments would remove home health care from the measure.
235	Chair Metsger	Reiterates the difference between the amendments.
TAPE 78, A		
005	Brian DeLashmutt	Oregon Nurses Association. Explains the elements deleted and revised from previous amendments. Notes the measure no longer has the law enforcement component.
040	DeLashmutt	Offers that it allows the nurse involved to call law enforcement as necessary. Advocates the -14 amendments be adopted.
055	Sarah Reeder	Oregon Association for Homecare. Opposes the -14 amendments and supports the -15 amendments. Talks about the difficulties associated with the home health component.
072	DeLashmutt	Relates a membership poll describing incidents in home health care situations. Supports the -14 amendments.
080	Sen. Atkinson	Asks for clarification on the section that is different between the -14 and -15 amendments.
085	DeLashmutt	Clarifies the differences.
090	Sen. Atkinson	Wonders who is going to read the incident reports when they are filed.
095	DeLashmutt	Offers it will be the employee and employer primarily, but it could be a variety of law enforcement or state officials.
115	Chair Metsger	Asks Mr. Bishop for his opinion.
117	Bruce Bishop	Oregon Association of Hospitals. Discusses the changes made in the -14 and -15 amendments. Feels these amendments substantially lighten the burden. States his belief that hospitals are already taking the needed steps. Believes this measure is not needed, but notes his objections have been reduced.
140	Chair Metsger	Solicits opinions from the committee members.
147	Sen. Monnes Anderson	Relays her experiences in both public and home health. Feels the inclusion of home health is needed. Supports the adoption of the -14 amendments.
165	Sen. Atkinson	Supports the -15 amendments.
175	Sen. B. Starr	Notes he also prefers the -15 amendments.
180	Sen. Deckert	Concurs with Senator Monnes Anderson's support for the -14 amendments.
190	Chair Metsger	Declares a potential conflict of interest as his company represents health industry workers.
195	Sen. B. Starr	MOTION: Moves to ADOPT SB 572-15 amendments dated 5/31/05.
197		VOTE: 2-3-0 AYE: 2 - Atkinson, Starr B.

	Chair Metsger	NAY: 3 - Deckert, Monnes Anderson, Metsger
200	Sen. Monnes Anderson	The motion FAILS.
205		MOTION: Moves to ADOPT SB 572-14 amendments dated 5/31/05.
		VOTE: 3-2-0
		AYE: 3 - Deckert, Monnes Anderson, Metsger
		NAY: 2 - Atkinson, Starr B.
209	Chair Metgser	The motion CARRIES.
	Sen. Deckert	MOTION: Moves SB 572 to the floor with a DO PASS AS AMENDED recommendation.
213	Sen. B. Starr	Clarifies his preference to remove the home health portion. States that he will support moving the measure forward.
217		VOTE: 4-1-0
		AYE: 4 - Deckert, Monnes Anderson, Starr B., Metsger
		NAY: 1 - Atkinson
	Chair Metsger	The motion CARRIES.
		SEN. MONNES ANDERSON will lead discussion on the floor.
223	Chair Metsger	Closes work session on SB 572. Opens a work session on SB 672.
<u>SB 672 – WORK SESSION</u>		
220	Van Winkle	Explains the provisions of the -5 amendments (EXHIBIT G) to SB 672.
255	Chair Metsger	Asks Mr. Carlson to further explain the amendments.
265	Eric Carlson	Senate Majority Office. Details the provisions of the measure and the amendments worked out through the work group.
300	Carlson	Explains the agreements and recommendation of the work group.
325	Richard Vial	Attorney, Vial Fotheringham LLP. Notes the rapid growth of this sector of housing. Testifies in support of SB 672 with the -5 amendments.
348	Chair Metsger	Considers the importance of moving this measure forward.
350	Vial	Discusses the clarification and changes made to statutes.
383	Sen. Monnes Anderson	Asks about electronic voting and the potential for fraud.
388	Vial	Notes there must be prior consent for anyone voting electronically.
400	Sen. B. Starr	MOTION: Moves to ADOPT SB 672-5 amendments dated 5/31/05.
403		VOTE: 4-0-1
		EXCUSED: 1 - Deckert
	Chair Metsger	Hearing no objection, declares the motion CARRIED.
405	Sen. B. Starr	MOTION: Moves SB 672 to the floor with a DO PASS AS AMENDED recommendation.
410	Sen. Atkinson	Contents he doesn't feel they need legislation to allow condominium associations to act like governments.
415	Vial	Notes his feelings that these associations are like mini-municipalities. Talks about the vast amount of homes covered by the association and the need for provisions supplied by this measure.
430	Chair Metsger	States the committee is at ease for a moment due to technical issues.

003	Chair Metsger	Observes the committee is back on the record. Reiterates the motion before them is to pass the measure as amended by the -5 amendments.
005		VOTE: 3-1-1 AYE: 3 - Monnes Anderson, Starr B., Metsger NAY: 1 - Atkinson EXCUSED: 1 - Deckert The motion CARRIES. SEN. METSGER will lead discussion on the floor.
	Chair Metsger	
012	Chair Metsger	Makes concluding comments and an overview of the next meeting. Closes the work session on SB 672. Adjourns the committee at 3:15 p.m.

EXHIBIT SUMMARY

- A. **HB 2017A, Written testimony, Darrell Fuller, 1 p**
- B. **SB 408A, -A8 amendments, staff, 6 pp**
- C. **SB 408A, -A9 amendments, staff, 3 pp**
- D. **HB 3273A, -A3 amendments, staff, 1 p**
- E. **SB 572, -14 amendments, staff, 5 pp**
- F. **SB 572, -15 amendments, staff, 4 pp**
- G. **SB 672, -5 amendments, staff, 26 pp**