

SENATE REVENUE COMMITTEE
APRIL 14, 2005 9:30 AM STATE CAPITOL BUILDING

Members Present: Senator Ryan Deckert, Chair
Senator Gary George
Senator Rick Metsger
Senator Floyd Prozanski
Senator Charles Starr, Vice Chair

Witnesses Present: Lynn Lundquist, Oregon Business Association
Kevin Lynch, PacifiCorp Holdings
Paul Graham, Public Utility Commission
Debra Buchanan, Dept. of Revenue
Dan Meek, Portland attorney
Liz Trojan, Oregon Public Power Coalition
Lee Beyer, PUC Chairman
Marge Kafoury, City of Portland
Ernest Delmazzo, Injured Workers' Alliance, West Linn

Staff Present: Paul Warner, Legislative Revenue Officer
Barbara Guardino, Committee Assistant

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005 Chair Deckert Calls meeting to order at 9:34 a.m. Opens work session on SB 841 which sets up a reserve fund.

WORK SESSION, SB 841

012 Paul Warner The committee has reviewed two previous amendments concerning the education stability fund which were not adopted. Discusses SB 841-3 amendments (**EXHIBIT 1**) which are a substitute for SB 841-1 amendments. They take the ending balance as a revenue source up to 2% of the general fund appropriations and transfer the ending balance calculation into the education stability fund.

037 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF SB 841-2 AMENDMENTS.**

039 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS**
VOTE: 5-0-0
VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT

047 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF SB 841-3 AMENDMENTS.**

050 Sen. George Question concerning SB 841-3 amendments, lines 14-16.

053 Warner Explains, the education stability fund has a 5% cap. With the dedicated lottery money, once that cap is reached, the lottery dedication drops from 18% to 15% and goes into a school matching

		capital fund. With this revenue source, once the cap is reached, the money goes back to the general fund.
067	Chair Deckert	Does not like this. Asks why this occurs.
071	Warner	Responds, that is a policy decision.
075	Chair Deckert	Asks the committee where they stand on this issue.
080	Sen. Metsger	Expresses concern about two aspects of using the stability fund as that source. <ol style="list-style-type: none"> 1) Without the vote of the people, this cap could occur in 36-48 months, which is too short a time to earn greater reserves 2) People are confused whether the state has a reserve fund. Wonders if this issue can be resolved now rather than taking further debate. Supports the will of the committee to advance the issue, but is not sure this is the best way to do it.
101	Chair Deckert	Asks Lynn Lundquist to respond.
113	Lynn Lundquist	There are pros and cons to both sides of this issue. OBA's priority is to assure there is an adequate reserve, and a 5% cap is not adequate. It may be necessary to make changes later.
126	Chair Deckert	Notes, lawmakers are constrained by the 5% cap unless they go to the voters. They have to decide whether to go to the voters. Also they have to think about what happens if the cap is achieved too soon. This is not the time to go to the voters.
134	Lundquist	Agrees. Recommends moving the SB 841-1 amendments to resolve this conflict.
143	Vice Chair C. Starr	Agrees, 5% is not enough, but lawmakers will have time to address that. There's no time like the present given the pressing need for a reserve fund. It is a policy decision. Feels conflicted. Encourages the committee to move the bill with SB 841-3 amendments.
171	Warner	Gives history of earlier bills and the original concept. Earlier bills never passed so there is no implementing language.
203	Sen. Prozanski	This is a policy decision, and clearly the legislature needs to plan for the future. Is not sure which amendment is needed, but lawmakers need to establish what level they need.
212	Chair Deckert	Summarizes, the committee agrees to get to the 5% figure. Will have a fourth amendment drafted and re-post the bill for April 19.
225	Sen. Prozanski	Asks for further explanation on who is accessing the matching fund. Today's taxing system allows landowners to defer tax payments. Wants to make sure there's a system in place to take care of the needs across the state. It seems this bill favors urban districts over suburban.
244	Chair Deckert	Will return Tuesday with a presentation on this issue.

265	Sen. Prozanski	Follow-up comments on smaller school districts having an equal opportunity to participate.
276	Warner	Clarifies, SB 841-4 amendments will be similar to SB 841-3 but without Section 2 (2).
286	Lundquist	Agrees, he does not want this money to return to the general fund.
299	Chair Deckert	Closes work session on SB 841. Leaves motion to move SB 841-3 amendments on the table.

PUBLIC HEARING: SB 171

311	Warner	<p>SB 171-A was referred from Business and Economic Development Committee. See staff measure summary (EXHIBIT 2). Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities. Also see RE: Recommendation on treatment of utility income taxes (EXHIBIT 3) from Public Utility Commission Director Lee Beyer. Reads Summary:</p> <ol style="list-style-type: none"> 1) Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon 2) Direct the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates 3) Require regulated utilities to file a general rate case at least once every five years.
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336	Sen. Metsger	Both committees have talked extensively about these three issues.
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371	Kevin Lynch	Speaks of overall concern of energy utilities against SB 171-A. This is a discriminatory tax and regulatory bill against energy utilities. They are expected to file state income taxes differently from other businesses. Points out differences in prior amendments. Rationale was, electric and telecom companies are hybrids, partly regulated and partly not. There's a gray area that should be of some concern. Gives examples.
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433	Lynch	Buying and selling of electricity in the wholesale market is competitive. Prices between electric companies are under market-based prices. PacifiCorp only engages in that business to make sure customers will have enough energy. Does not suggest this bill be amended to bring telecoms into the system, only to treat utilities all the same.
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462	Lynch	Comments in regard to PUC's white paper, submitted to the committee last month. Section 8 of the bill requires the PUC to make consolidated tax adjustments in setting retail electric rates. It introduces a whole new element of risk into how rates are set.
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040	Lynch	As amended, SB 171 puts the unregulated energy affiliates of the utilities like PPM Energy (a wind energy developer) at a competitive disadvantage. Gives reasons.
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069	Lynch	Continues, this legislation would undercut the governor's stated goal of increasing renewable energy portfolios by 1% per year. It is important to have sound developers like PPM, and this legislation would diminish that.
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082	Lynch	Points out a number of wording problems in Section 3 in creating an exception. For example: the phrase "located in the state". Contends language may create constitutional problems.
124	Lynch	There's nothing in this legislation that prohibits the commission from providing tax information to the general public. This creates a form of discrimination in who would have to divulge information. Concludes, this bill puts customers at risk. Many states keep a clear line between regulated and unregulated businesses. The unregulated businesses have less predictable revenue income and earning streams. Recommends that the committee not move forward with this legislation.
149	Sen. George	Asks if there is anything in this bill that benefits ratepayers.
155	Lynch	Is not aware of how that would work. This should not make any difference to customers. Warns, this bill sets some precedents that should cause worry.
165	Sen. Metsger	Comments on keeping the line clear between regulated and unregulated activities.
175	Lynch	Responds, there's a fine distinction to be made. Customers do not necessarily equal taxpayers. One cannot assume that taxes collected as a stand-alone utility would benefit people from whom they are raised. The utility is a business, not a tax collector, so why it would be treated under this legislation differently from every other business is the flip side of Sen. Metsger's question.
202	Chair Deckert	Asks, when PacifiCorp goes in for a rate case, are customers' taxes imbedded into the rates? That is a separate discussion. Why would the state, once taxes are imbedded into customer rates, have a tax policy that would not take that into account?
228	Lynch	Responds, there is a bad model out there. He is giving lawmakers a new model of business behavior that is within the public interest. Two sides to the equation: One, a utility is given a monopoly service territory; two, it is obligated to serve every customer in the area. So setting the price by regulation rather than market forces is a surrogate mechanism. The question is whether that makes utilities "not real businesses." He contends, in many respects, they are.
281	Sen. Metsger	Responds to Lynch's claim that this bill discriminates. Utilities have a monopoly and customers have no choice. PUC sets that price and sets taxes as part of it. That is what distinguishes a utility from a business. Utilities are discriminated both against and for.
296	Lynch	Counters, PacifiCorp has the opportunity to make a return on equity, but there is no guarantee. We have to run the business smart, while dealing with weather, the economy and other things that effect its success. There are privileges for and obligations against, and they battle each other to a draw. Therefore utilities should be treated like any other business.

- 356 Paul Graham Gives brief review on the three recommendations on the PUC's white paper (refer to exhibit 3 summary, numbers are flipped: 3, 2, 1).
- 1) Require regulated utilities to file a general rate case at least once every five years.
 - 2) Direct the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates
 - 3) Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon

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- 027 Debra Buchanan Dept. of Revenue has authorization in the statute to disclose confidential information in certain cases, and restrictions of subsequent disclosure by the recipients. That could be written into this bill if desired.
- 039 Sen. Metsger Asks PUC for a response to Mr. Lynch's point of keeping the line clear between regulated and unregulated activities – the idea of a deconsolidated tax return versus consolidated is unfair and risky to ratepayers.
- 040 Graham Responds, filing a deconsolidated tax return means the issue goes away.
- 067 Sen. Metsger Counters, other costs would be collected based on regulated activity on behalf of the ratepayers, as opposed to the consolidated return in which they are at risk to unregulated activities.
- 074 Graham Responds, a company like PGE has regulated activities but also has unregulated activities.
- 092 Sen. Metsger Asks Warner to supply information on taxes collected from the state's utilities.
- 095 Warner Responds, he asked DOR to give a general look at revenue from the industry. The utilities in question all file as consolidated companies, so percentages vary. In terms of revenue from 2000-2002 tax years, it varied from \$1.5 to \$5 million collected by the state.
- 110 Sen. Metsger Asks for a ballpark figure on what PacifiCorp and Northwest Natural built into their annual rates.
- 115 Graham Can get those figures. Explains how these taxes are estimated.
- 144 Sen. Metsger Comments, he would be interested to have figures of what was built into the rates. Clearly, just with the information we have, with PGE alone, they've collected \$42 million over a 3-year period and the total energy collection was \$1.5 to \$5 million for all utilities. So even if nothing were collected from PacifiCorp or Northwest Natural, this is a huge discrepancy. He asked if any of them could find a time in which they actually paid more than they collected. PacifiCorp did find one year out of 30 tax years.
- 168 Sen. George Of the states that collect income tax, how many prohibit filing consolidated returns?

179	Graham	Does not know.
190	Chair Deckert	Believes 41 states have the consolidated form on their regulated utilities. Asks why rate setters are missing the mark so badly.
196	Graham	Does not believe the PUC is missing the mark. The idea in rate setting is to estimate the cost for the utility, not for the parent. Data shows PGE made tax payments to Enron, and the estimates are not far off.
206	Chair Deckert	Asks, when PGE customers' money was distributed to Enron, where did Oregon's tax liability end up?
227	Graham	Because of Oregon tax law the parent corporation, Enron, was allowed to file a consolidated return, offset gains with losses and pay no tax. That's a tax problem, not a regulatory problem. Gives example of buying a newspaper as opposed to buying electricity.
238	Chair Deckert	Question is, are they the same animal. When you flip that light switch, do you have options available?
260	Graham	PUC is just posing a solution in respect to state taxes. In regard to federal court cases, don't look at cases on an issue-by-issue basis. Ratemaking is holistic. One cannot judge the fairness of rates by selecting one item. The question is, overall, are the rates fair?
277	Sen. George	Comments on the holistic approach.
286	Graham	We are attempting to take a snapshot of the utilities' estimated expenses and of the appropriate return on equity and setting rates based on that.
293	Dan Meek	See written testimony in regard to "true-up" provision (EXHIBIT 4) against the bill. Also see The Oregonian article, "True-up utility taxes" (EXHIBIT 5). Contends SB 171-A does not true-up utility taxes, in fact it would authorize the Oregon PUC to continue its abusive practice of allowing utilities to charge ratepayers for income taxes that neither the utility nor its corporate parent ever pays.
356	Meek	Contends many incorrect statements have been made today. The charging of phony state income taxes to ratepayers is in no way prevented by this provision. PGE filed non-consolidated state income tax returns in 2002. It charged ratepayers \$15.6 million (not \$14 million) and paid \$10. PGE has charged \$1,000 per ratepayer since 1997 that PGE and Enron have not paid. Other utilities are performing the same practice.
365	Meek	Third, this bill applies after 2006, thus allowing the utilities to retain the money they already charged as phony taxes.
386	Meek	Fifth, it allows the OPUC to authorize the incorporation into rates of estimated federal and state taxes. That is the problem, what it is doing now. It authorizes the PUC to continue the problem.
396	Meek	Consolidation is only one of several problems. Calls for the committee to return to SB 408. It is a true-up of tax payments with charging ratepayers what the utility paid for income taxes. Changes one word

from “is” to “has been”.

- 401 Chair Deckert May be joining utilities in opposition to this bill.
- 422 Liz Trojan Oregon Public Power Coalition believes any regulated utility that collects taxes should be paying those taxes, not pocketing them. \$92.6 million has not made it into the state coffers. SB 171-A does not adequately address this issue; SB 408 does address issue in the form of the true-up. We can't allow \$740 million in taxpayer money to evaporate into thin air. We need it for schools and other government services.
- 452 Chair Deckert Asks PUC Commissioner Beyer's opinion on the idea of not charging ratepayers of regulated utilities any state taxes. Everyone wins.

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- 030 Lee Beyer The issue is the one raised by Sen. Metsger: Who is paying what? Some 17,000 Oregon corporations paid \$10. The problem in taxation is setting a tax rate on one side and then setting public policies with offsets. The reality is, none of these companies have violated the law. They are filing their taxes legally and paying the amount of tax termed appropriate by the legislature and Congress. One way to solve this is the true-up. PUC's legal counsel says they can't do that. One answer would be to not require utilities to pay taxes at all. Utilities' return on equity would be reduced as a result.
- 066 Marge Kafoury Presents a letter from the Portland City Council urging PUC to change its practice of allowing taxes to be collected in rates and not paying them (**EXHIBIT 6**). The expectation of a customer who pays a bill as a tax is that those taxes will be paid to a taxing jurisdiction. Has no opinion whether SB 171 accomplishes this.
- 075 Ernest Delmazzo Comments on statement by Commissioner Beyer that other businesses did not pay taxes. Those businesses were not monopolies and they did not charge customers for taxes that weren't paid. Also, PUC has the authority to get tax records from the utilities. Also, during the years Enron owned PGE (1997-2001), it received net tax rebates of \$387 million from the federal government. It hasn't paid taxes since bankruptcy, but continues to collect almost \$2 million per week. PUC continues to allow PGE to charge income taxes. This bill does nothing but give PGE legal cover to keep the \$730 million it charged ratepayers – that averages \$1,000 per ratepayer.
- 114 Sen. Metsger Co-sponsored SB 408 with Sen. Walker. Part of the difficulty with this legislation over the last two years is the warring attorneys and the warring philosophies, which comes to one conclusion: No conclusion. Fears they are facing this again, that nothing will change. It would be interesting for PUC and Mr. Meek to clarify the true-up. Asks Mr. Warner to revisit why we are limited in the true-up position. This can't sit for another session.
- 142 Sen. George Forty-two states allow consolidated. If Oregon were to withdraw, would this impact investment in Oregon?
- 148 Chair Deckert That's a good question. Does not know who could answer it.

165 Chair Deckert

This bill will be rescheduled for Monday, April 25. Closes public hearing on SB 171-A. Adjourns meeting at 11:05 a.m.

Tape Log Submitted by,

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 841, proposed SB 841-3 amendments, 4/12/05, Warner, 1 pp.
2. SB 171-A, Staff Measure Summary, 4/8/05, Warner, 1 pp.
3. SB 171-A, memo from Public Utility Commission RE: Recommendation on treatment of utility income taxes, 3/22/05, Warner, 1 pp.
4. SB 171-A, testimony of Daniel Meek opposing SB 171-A, 4/14/05, 2 pp.
5. SB 171-A, OregonLive.com article, "True up utility taxes," 2/26/05, Meek, 1 pp.
6. SB 171-A, memo from City of Portland RE: Comments on Department of Justice Memo Recognizing Tax Liabilities in Setting Utility Rates, 3/4/05, Kafoury, 1 pp.