

SENATE REVENUE COMMITTEE
APRIL 6, 2005 8:30 AM STATE CAPITOL BUILDING

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

Members Excused: Senator Rick Metsger

Witnesses Present: Senator Laurie Monnes Anderson, District 25
Michael McKeel, Multnomah County Fire District 10, Gresham
Dennis Mulvihill, Washington County
Stephanie Snowden, Multnomah County
Dave Boyer, Multnomah County CFO
Lynn McNamara, TSCC volunteer commissioner
Jason Williams, Taxpayer Association of Oregon
Laurie Wimmer Whelan, Oregon Education Association
Jeannette Holman, Dept. of State Lands
Julie Brandis, Associated Oregon Industries
Daniel H. Yates, Portland Spirit dinner boats

Staff Present: Paul Warner, Legislative Revenue Officer
Steve Meyer, Economist
Mary Ayala, Economist
Lizbeth Martin-Mahar, Economist
Barbara Guardino, Committee Assistant

TAPE 89, SIDE A

005 Chair Deckert Calls meeting to order at 8:40 a.m.

PUBLIC HEARING, SJR 25

016 Mary Ayala Gives brief overview of SJR 25. Proposes an amendment to Oregon's Constitution that enables a taxing district to propose, and voters to adopt, a rate limit on property taxes that is less than the district's permanent rate limit. See Staff Measure Summary (**EXHIBIT 1**). Gives brief background. Also see Revenue Impact of Proposed Legislation (**EXHIBIT 2**).

035 Sen. Laurie Monnes Anderson Testifies in favor of SJR 25. Gives context of bill: Gresham area fire districts have less and less money, so they tried to do away with the City of Gresham's fire district and merge with Fire District 10. (The ballot measure failed.) This makes economic sense and helps rural areas with fire safety. The districts felt that if the City of Gresham turned over their fire district, the level of taxation would stay the same. This didn't seem right.

071 Michael McKeel Testifies in favor of SJR 25. See written testimony (**EXHIBIT 3**). The

City of Gresham has one of the lowest taxing districts in Oregon. Because the vote to annex the city failed, the City of Gresham is proposing to close five city parks. Had the districts merged, the tax rate would have been lowered. Throughout the state there are small taxing districts that could merge and save money, but if the merger is a combination of both tax rates, the mergers will fail. That's why this bill is being proposed.

- 131 McKeel Proposal needs to be for certain situations, not just anyone for any reason. Oregon's Constitution should have a mechanism to lower tax rates that's appropriate to the service.
- 150 Chair Deckert Washington County has a similar situation.

WORK SESSION, SB 899

- 168 Chair Deckert Reviews, this bill came from Washington County because it did not want to be part of a joint tax commission that reviews budgets. The question resulted whether to have the statute on the books at all.
- 190 Dennis Mulvihill Explains briefly SB 899 -1 amendments (**EXHIBIT 4**): Any county that reaches 500,000 in population *may* create a tax supervising and conservation commission (TSCC). SB 899 -2 amendments (**EXHIBIT 5**) repeal TSCC.
- 215 Mulvihill SB 899-3 amendments (**EXHIBIT 6**) abolish the commission but allow it to be created by popular vote. SB 899-4 amendments (**EXHIBIT 7**) allow voters to create a commission by vote *if* their population in July 1, 2005 is 500,000. Notes, the committee expressed interest in SB 899-2 amendments. Washington County prefers SB 899-1 amendments.
- 228 Mary Ayala Clarifies the differences among the various amendments. See three staff measure summaries (**EXHIBITS 8, 9, 10**).
- 252 Chair Deckert Explains why he is interested in SB 899-2 amendments.
- 265 Sen. Prozanski Asks for clarification on differences between SB 899-3 and SB 899-4 amendments.
- 270 Ayala Further explains the differences.
- 285 Stephanie Snowden Submits a letter from Multnomah County Board of Commissioners (**EXHIBIT 11**). Introduces Dave Boyer, county chief financial officer.
- 289 Dave Boyer Testifies in support of SB 899. Directs members' attention to the aforementioned letter, paraphrases. Board would agree with changing the TSCC to make involvement voluntary, or abolishing it.
- 321 Chair Deckert Comments, that \$280,000 spent is also money saved by finding efficiencies. Has the county found that to be the case?
- 334 Boyer Responds, the TSCC is not geared to find the efficiencies. An elected internal auditor does this. Errors are found through auditors.
- 380 Lynn McNamara Does not see the TSCC as a redundant service. There are 37 taxing

districts in Multnomah County and their combined budgets are over \$7 billion. Staff provides a huge amount of comprehensive information about these budgets. Submits for the record The Tax Supervising and Conservation Commission Annual Report 2004-05 (**EXHIBIT 12**). The commission provides accountability and is potentially a watchdog for the taxpayer.

427 McNamara Summarizes: Multnomah County needs the TSCC and it provides a valuable service. Does not favor eliminating it, but would look at different ways to fund it.

TAPE 90, SIDE A

010 Sen. Prozanski Based on Multnomah County's letter, they would vote to not support keeping the TSCC. Asks McNamara what proposal she would support. Also asks why these districts were established and why are they still necessary? There are other checks and balances.

024 McNamara Responds, Multnomah County is unique in that there are 37 taxing districts, and TSCC's role is to look at all of them and provide comparative and comprehensive information. To know there is that kind of oversight is important.

044 Sen. Prozanski Follows up, it seems Multnomah County would take steps to disassemble the commission. Then the question would be, how would this issue come before the voters? Has not seen the other 36 districts expressing a desire to keep the TSCC.

056 McNamara The county has just begun to survey these taxing districts to gauge their level of support.

068 Sen. Prozanski Has not heard any convincing information why this proposal should move forward.

075 Chair Deckert Questions why the state should tell any county they must have this.

079 Vice Chair C. Starr Has heard from taxpayers that TSCC provides a centralized service for taxpayer information. It seems this is a vital service.

094 Jason Williams Testifies, the Taxpayer Association of Oregon's experience with TSCC has been outstanding. It is one of the best performing entities he's come across. There is a problem with understanding budgets when governments grow large. TSCC bridges the gap in explaining budgets. Praises the TSCC's annual report as "the gold standard" for public access and transparency in government. They save money. Advocates leaving the commission as it is.

141 Chair Deckert
148 Williams The dilemma is, should the state tell a county it must have this? Understands the local control implications, but Multnomah County governments had a poor record in dealing with the media before the TSCC came up with this report.

158 Sen. Prozanski Asks why the state adopted the 500,000 population figure as a threshold.

171 Williams Has not researched this. The argument is that if the government

grows to a certain size, this oversight becomes important. The idea of a benchmark seems to be a rational one.

190	Sen. George	Agrees with Williams' analysis in relation to Multnomah County and supports the idea of a TSCC, but sees the idea of mandating it as offensive.
203	Williams	This commission is a life-saving device. If someone wants to come up with an idea that keeps local control, that's fine. But getting rid of the commission will make it harder for the media and taxpayers to have access and transparency.
216	Ayala	Reviews the amendments: <ul style="list-style-type: none">• SB 899-1 gives the county the option of creating a TSCC when the population grows to 500,000• SB 899-2 abolishes Multnomah TSCC and repeals provisions that say it's required• SB 899-3 abolishes TSCC and allows any county with a population of 500,000 or more as of July 1, 2005 to create a TSCC with voter approval• SB 899-4 gives option to a population of 500,000 or more to create a TSCC
237	Sen. Prozanski	Comments that SB 899-3 and SB 899-4 amendments take effect in July. Therefore there would be only two counties that could have these TSCCs. His concern is making sure there is something for all the counties, not just two. Is this the intent of the amendments?
263	Chair Deckert	Expresses concern that this is an outdated (1917) statute. Also, it is not the state's role to tell counties they must create a TSCC. They should have a right to if they want to.
285	Sen. Prozanski	Refers to commissioners' letter. State shouldn't mandate it, but needs to make certain that those who want it can have it.
290	Vice Chair C. Starr	Appears the SB 899-4 amendment accomplishes that: purpose by saying "may establish a commission."
304	Sen. George	Is curious why they would want to continue this. They could be added to the budget committee.
365	Mulvihill	My reading of SB 899-4 amendments is to allow all districts except Multnomah County to not have a TSCC. Multnomah County TSCC would still exist.
385	Vice Chair C. Starr	Asks for clarification on SB 899-2 amendments.
390	Sen. George	That's a decision they'd make, based upon the interest of Multnomah County.
397	Sen. Prozanski	Asks chair to carry this bill over. Is not ready to take action until he understands the amendments.
425	Chair Deckert	Is fine with that idea. Asks Ayala to prepare a statement of what each

amendment accomplishes. Bill is scheduled for a work session on Friday.

WORK SESSION, SB 845
TAPE 89, SIDE B

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| 029 | Steve Meyer | Begins overview of SB 845-1 Staff Measure Summary (EXHIBIT 13). Designates unused value of gift cards to be property presumed abandoned after 3 years from date of purchase or last transaction. Applies to gift cards issued on or after January 1, 2006. |
| 038 | Meyer | Introduces SB 845-1 amendment (EXHIBIT 14). Has four parts:
1) expands the definition of a gift card
2) line 9: exempts cards used for charitable/nonprofit purposes
3) line 14: deals with cards redeemable for merchandise only
4) line 17: criteria for payment to State Lands Division |
| 067 | Laurie Wimmer
Whelan | Gives Oregon Education Association's reasoning for the SB 845-1 amendments. OEA does not mean gift certificates, but gift cards explicitly. Brings members' attention to lines 14-16 – in this case reportable value is only 75% of face value rather than 100%. Asks the committee to support this amendment. |
| 097 | Chair Deckert | Clarifies, this solves the issue of paper certificates. |
| 086 | Jeannette Holman | The paper certificates portion is addressed in the revised definition of gift card, which specifies it is an electronic record. Associated Oregon Industries raised the 75% issue, which referred Dept. of State Lands to a case in Tennessee courts. Notes, making the bill take effect earlier would raise constitutional issues, so State Lands left the normal effective date. Finally, the U.S. Supreme Court characterizes unclaimed property as "not a takings issue" because the state is not holding the property, but is acting as a conservator. |
| 124 | Sen. George | Questions the concept of holding property. |
| 128 | Holman | State Lands holds property in perpetuity, and because of that it does not go into the general fund except interest that goes into the common school fund. Courts have held this is not a taking. |
| 133 | Julie Brandis | Associated Oregon Industries strongly opposes SB 845. The concession in response to the Tennessee court case was a good one, but the role of the Division of State Lands is to put money in the hands of the rightful owner. AOI argues, the rightful owner might still hold the card. The unclaimed property is converting the gift card into cash. The state authorizes itself to have more authority than the customer. The bill is vague on how the retailer is to report the information, and this sounds like "a complete nightmare." The amendment exempts gift cards sold to nonprofit organizations. There is no way to sort this out. |
| 177 | Brandis | AOI does not think it is good policy to treat gift certificates and gift cards differently. There are a variety of Supreme Court cases on the issue of ownership and unclaimed property. Two rules come into play: the primary rule is the last known address. We do not believe the zip code of place of purchase is the holder's last known address. That is creating a fictional address. The secondary rule is, it's the debtor's |

state of incorporation. The Supreme Court has been solid because it doesn't want disputes over who has the right to unclaimed property.

- 216 Sen. George Expresses concern with the idea of not being able to separate out cards used for fundraising purposes. Also, asks for a response on the issue of the three-year limit. Follow-up questions.
- 237 Brandis Companies are vehement that they will honor a customer's card regardless of its age.
- 244 Wimmer Whelan Responds to Sen. George's questions.
- 268 Sen. Prozanski Is not comfortable with the treatment of gift cards for of charitable organizations. A retailer would have to offer two different sets of cards. This wouldn't work.
- 280 Wimmer Whelan Responds, is not sure how it would work either.
- 285 Sen. Prozanski Asks Brandis to elaborate on the 25/75 split for the state and the retailer based on the Tennessee ruling.
- 292 Brandis Responds, the Tennessee court concluded there was a contract, and the state was taking the full value of the contract. The Supreme Court said they could not take the full percentage of a contract. There is also a contractual issue between the obligor and the debtor.
- 325 Sen. Prozanski Follows up on the two-part test of the last address.
- 334 Chair Deckert Asks how many states have legislation on gift cards?
- 340 Wimmer Whelan Responds, most states have them.
- 345 Chair Deckert Are other states finding ways to deal with these questions?
- 356 Wimmer Whelan There's also a third test for reporting, and that is the place of the transaction. That's why a zip code would work.
- 358 Sen. Prozanski Which test is the priority?
- 377 Wimmer Whelan Understands it would be the second one.
- 381 Sen. Prozanski Is not comfortable with separating out nonprofit use of cards. Wants to support money going into the school fund, but this scenario is going to be a nightmare.
- 397 Brandis Gives background on where she obtained primary and secondary tests. Some states have taken a look at what level they want their divisions of lands chasing around. Does not support this, is just bringing it up.
- 439 Wimmer Whelan Notes, 23 states exclude gift cards; 27 states include them. Comments on the issue of nonprofits and the balance. Market responds to rapidly changing conditions to remain profitable. There will be a way to put a tag on whether this is a nonprofit. With respect to the 75/25 balance, if the full face value has not been cashed, a 25%

profit for providing zero merchandise is a pretty good gift to the business community. Finally, this is a consumer protection issue. If a business goes bankrupt, the gift card holder is without recourse under current law.

TAPE 90, SIDE B

- 029 Daniel Yates As a vendor who issues gift cards, testifies against SB 845. A 25% retainer is not pure profit. The initial cost to get a supply of gift cards is over \$25,000, and there are other costs. It would create financial difficulties to make these changes. Gives an example of someone purchasing a \$200 gift card. Over the course of several years they use some and re-charge it. Is a merchant supposed to report this as unclaimed property? People treat gift cards like cash. Merchants treat them as cash, and merchants honor cards that are several years old. Also, there are lots of scams. People will buy gift cards and try to finagle cash back on them and beat the computer systems.
- 085 Yates Lastly, it is not possible without a significant investment layout to issue cards that are for charitable purposes and some that are not. It would cost thousands to set up a separate system. Has issued gift cards for seven months, and is outraged the state is considering changing the rules.
- 105 Chair Deckert Consumer groups say they'd like to see this money in a common school fund rather than simply go unclaimed. Your side might be the prevailing side on this issue.
- 116 Yates Unclaimed gift certificates are eventually declared income. The state treasury gets an immediate 10%. Makes more sense to allow unclaimed property to stay with businesses. There is a liability cost to businesses for holding these on books. He's always looking for ways to reduce liabilities. The state benefits when he pays taxes.
- 155 Sen. George Thanks Yates for bringing this tax issue up.
- 166 Chair Deckert Committee will carry this bill over to Friday.

WORK SESSION, SB 896

- 175 Chair Deckert This bill is ready to move, but the committee does not have a quorum. Closes work session; adjourns meeting at 10:20 a.m.

Tape Log Submitted by,

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SJR 25, Staff Measure Summary, 4/6/05, Ayala, 1 pp.
2. SJR 25, Revenue Impact of Proposed Legislation, 4/6/05, Ayala, 1 pp.
3. SJR 25, Comments, Michael L. McKeel, Chairman, Multnomah County Fire District 10, April 6, 2005, 1 pp.

4. SB 899, proposed SB 899-1 amendments, 3/9/05, Mulvihill, 1 pp.
5. SB 899, proposed SB 899-2 amendments, 4/5/05, Mulvihill, 18 pp.
6. SB 899, proposed SB 899-3 amendments, 4/6/05, Mulvihill, 3 pp.
7. SB 899, proposed SB 899-4 amendments, 4/6/05, Mulvihill, 1 pp.
8. SB 899, Staff Measure Summary, 4/5/05, Ayala, 1 pp.
9. SB 899, Staff Measure Summary, 4/6/05, Ayala, 1 pp.
10. SB 899, Staff Measure Summary, 4/6/05, Ayala, 1 pp.
11. SB 899, Board of County Commissioners, Multnomah County Oregon re: Senate Bill 899, 4/6/05, Boyer, 2 pp.
12. SB 899, TSCC Annual Report 2004-2005, McNamara, 249 pp.
13. SB 845, Revenue Impact of Proposed Legislation, 4/5/05, Meyer, 1 pp.
14. SB 845, proposed SB 845-1 amendments, 4/4/05, Meyer, 2 pp.