

SENATE REVENUE COMMITTEE
JUNE 20, 2005 1:00 PM 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: Rep. Tom Butler, District 60
Shawn Miller, PPM Energy
Norman Ross, PPM Energy
Mike Roberts, PPM Energy
Gil Riddell, Association of Oregon Counties
Sen. Doug Whitsett, District 28
Al Switzer, Klamath County
John Phillips, Oregon Dept. of Revenue
Bill Linden, City of Klamath Falls
John DiLorenzo, Washington State public utilities
Gary Conkling, Northwest Regional ESD
Scott Corwin, PNGC Power, Portland
Sandy Flicker, Oregon Rural Electric Cooperative Assn.
Michelle Deister, League of Oregon Cities
Ozzie Rose, Oregon Assn. of Education Service Districts
Tricia Smith, Oregon School Employees Assn.
Rob Myers, North Central ESD

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

TAPE 144, SIDE A

005 Chair Deckert Calls meeting to order at 1:07 p.m.

PUBLIC HEARING, HB 3453

012 Mary Ayala Gives overview of HB 3453 (**EXHIBIT 1**). Exempts from property tax any tangible or intangible property whose use arises between qualified government entities and energy marketing companies. Gives background of court case, PPM vs. Oregon Dept. of Revenue.

PUBLIC HEARING, HB 3454-A

065 Rep. Butler Gives background of the PPM Energy bill, which was concerned with how far the intangibles tax should be extended. Much of intangible tax came about as a mistake. HB 3454-A, which spawned out of this issue, relates to use of the Pacific Northwest AC Intertie. Expresses concern that Oregon is unique in its tax treatment of these kinds of intangibles.

112	Rep. Butler	Has asked House leadership to address the overall issue of intangibles. These two issues are a question of fairness.
122	Chair Deckert	Asks if SB 3453 contains anything precedent-setting that could be used as a future model.
129	Rep. Butler	Responds, the City of Klamath Falls would like to remain an economic engine. Addresses the issue of precedent setting.
177	Shawn Miller	Testifies in support of HB 3453. Explains, the state taxed PPM's contract with the City of Klamath Falls. PPM claims the facility is wholly owned by the city. See EXHIBIT 5 .
197	Norman Ross	Testifies in support of HB 3453 on behalf of PPM Energy. This bill was drafted to address a narrow assessment issue. PPM was not notified of this process until a few days before the assessment notice was sent. Contends the assessment is unfair. Gives reasons: <ul style="list-style-type: none"> 1) Similar parties are not treated the same 2) Assessment represents poor tax policy
248	Ross	Counters what he believes Association of Oregon Counties and DOR will claim. <ul style="list-style-type: none"> 1) PPM is <i>not</i> a part-owner of this facility. 2) Passage will <i>not</i> create hardship to taxing districts. 3) PPM's relationship with the city is <i>not</i> equivalent to ownership. 4) DOR did <i>not</i> follow statutory mandate in its assessment.
358	Ross	Summarizes, the DOR has followed an unsound assessment practice which is discriminatory and in conflict with the Oregon Constitution. Asks committee to pass HB 3453.
366	Mike Roberts	Gives background on the plant and the relationship between PPM Energy and the City of Klamath Falls.
449	Roberts	Notes, a business venture of this size is not necessarily economically viable. This project went forward with what people understood to be Oregon's tax laws. They were surprised to be asked to pay property tax.

TAPE 145, SIDE A

035	Miller	Responds to whether to let the Supreme Court decide this issue, which is on appeal. PPM does not believe this tax ever should have been paid. The contract with the city can be renegotiated, but the city would end up paying the county's property taxes. This public-private partnership could not have happened under this tax situation.
061	Sen. George	Asks if the city owns the facility and did the people vote on a bond to buy it.
072	Miller	Responds, it is wholly owned by the city and bonded.
078	Sen. Metsger	Asks the panel if PPM is doing well financially. Follow-up questions concerning tax certainty and other pending energy company sales.

- 143 Chair Deckert Sees both sides of this issue. Asks panel whether the bill clarifies the law or if it sets a new policy.
- 161 Ross Responds, PPM needs to be looked at as an isolated extension of DOR's assessment practices. DOR has never extended its assessment reach to capture this type of intangible asset.
- 171 Chair Deckert Is there something similar to this partnership in Oregon?
- 174 Miller This has only occurred once, and that is this project. The bill will only affect PPM.
- 197 Ross This type of assessment is a matter of bad tax policy in that it is tied to a commodity. The Supreme Court issue is whether the DOR had a constitutional right to assess PPM, not the value assigned.
- 214 Chair Deckert Follow-up questions and discussion with panel on whether other similar partnerships would be formed as a result of this bill.
- 259 Ayala Was under the impression that all centrally assessed property is based on an income approach.
- 269 Ross Responds, in this instance there's been no attempt to look at the income. The DOR assumed that PPM owns 47% of the facility.
- 325 Gil Riddell Reads testimony in opposition to HB 3454 (**EXHIBIT 6**). Exhibit includes an editorial against the bill from Klamath Falls newspaper, The Herald & News. Let the Supreme Court do its work; AOC is confident the state will prevail. This bill will change the tax policy landscape.
- 390 Sen. Doug Whitsett Testifies in opposition to HB 3453. Oregon statute never intended to exempt generation facilities owned by a city. Believes this precedent would result in many new private-public ownerships. Urges the committee to vote no.
- 422 Sen. George Asks question concerning the newspaper article.
- 449 Sen. Whitsett Responds, Klamath County's tax assessor believes this is a method of excluding PPM from the tax roles.

TAPE 144, SIDE B

- 020 Al Switzer Reads prepared statement why Klamath County Board of Commissioners opposes HB 3453 (**EXHIBIT 7**). The bill will cause significant revenue losses for other local districts. The bill promotes unfair competition. Compares PPM with Co-gen and Cobb.
- 069 Chair Deckert Asks who built the Cobb plant.
- 071 Switzer It has not been built yet, but it is sited and going through the process. It is a private project.
- 073 Sen. George Refers to the first bullet point in Riddell's testimony.

076	Riddell	Responds, Sen. George has an old handout. The new one supersedes, AOC is not implying it is ownership. AOC's purpose is to address general statewide policy. Policy change would affect typical tax treatment of private use of public property.
092	Sen. Prozanski	Asks, what is PPM's actual use of the facility?
107	Sen. George	Asks about the 53% of the facility that is not contested.
115	Riddell	Believes none of the power generated at the facility is sold locally.
118	John Phillips	DOR is neutral on this bill. Clarifies interpretations. DOR believes the property is taxable. It is owned by a public entity and is under contract for use by a private entity. The private entity is taxable.
147	Sen. George	Asks, is this a lease of the facility or an agreement to purchase the power generated by that facility?
151	Phillips	PPM generates electricity and sells the energy for its own purposes. The question is whether to exempt one entity from taxation.
160	Sen. George	Follow-up questions and discussion with Phillips.
206	Phillips	Points out, there's a lot of discussion about intangible property. It is the tangible property that's being taxed. DOR uses three approaches and decides which best fits the property.
216	Sen. George	Asks if any money has ever been collected from this tax and transferred to a school district or to the county.
221	Switzer	Answers no, the money is in an agency account and will not be disbursed until the lawsuit is settled.
228	Chair Deckert	Asks Phillip to summarize the tax court decision.
241	Phillips	The judge ruled that the property is taxable, and that decision was appealed. Parts of the opinion DOR didn't agree with, part PPM didn't agree with, but DOR agrees with the end result.
249	Chair Deckert	Asks Ayala to get a copy of the opinion.
256	Phillips	Summarizes, DOR disagrees with PPM's claims.
276	Bill Linden	Testifies in favor of HB 3453. The City of Klamath Falls came to the Legislature for authorization to construct this plant. There is no question that the facility is 100% city owned. Gives background.
326	Linden	This bill is drawn as narrowly as possible to affect only this facility. This is a dispute between Klamath County and the City of Klamath Falls. "Significant revenue losses" is an overstatement. "You can't really lose what you never had." Strongly encourages the committee to move this bill. It restores parties to the status quo.
371	Sen. Prozanski	Asks Linden how an enterprise zone would work in this situation.

383	Linden	Responds, if the facility had qualified under the enterprise zone statute, there would have been a tax exemption.
406	Sen. Metsger	Asks Linden his feelings about an assumption, made in good faith, to amend the bill to reflect this project only, and assure it would not change tax policy.
445	Linden	Would not object to making it narrower.
465	Acting Chair Metsger	Closes public hearing on HB 3453. Opens public hearing on HB 3454-A.

TAPE 145, SIDE B

CONTINUE PUBLIC HEARING ON HB 3454-A

025	John DiLorenzo	Reads written testimony in support of HB 3454-A (EXHIBIT 8). Discusses fair treatment of entities out of Oregon, and similar cases currently in litigation in Seattle and Tacoma, Washington.
074	DiLorenzo	Page 3: ORS 307.090 exempts city property from taxation. Gives possible outcomes of a ruling. The court and parties are awaiting legislation from Oregon Legislature.
113	DiLorenzo	Page 4: HB 3454-A would not affect the tax status of any contract signatory other than Seattle and Tacoma. Explains why.
131	DiLorenzo	Explains why the Washington companies that he represents oppose the amendments. Directs members' attention to chart on property taxation of entities with contractual rights (EXHIBIT 9).
212	Gary Conkling	Testifies in support of HB 3454-A (EXHIBIT 10). Proposes an amendment, SB 3454-A3 (EXHIBIT 11) to treat Snohomish PUD, Seattle City Light and Tacoma Power alike in exempting them from property taxation in Oregon.
280	Conkling	Explains the core of the Snohomish case – the policy question is one of nexus. Does it make sense for Oregon to tax these utilities which are not even doing business in Oregon? Asks to add Snohomish PUD to HB 3454-A.
316	Chair Deckert	Asks, what would be Snohomish's position without the amendment? Follow-up questions.
332	Conkling	Without HB 3454-A3 amendment, Snohomish would be left as the only remaining plaintiff in tax court.
358	Sen. George	Comments on the AC Intertie. Asks, is it possible to identify which electrons have gotten to California, or to even tax it?
413	Conkling	Agrees, tracking electrons to a destination is probably not what anyone does.
429	Sen. George	Expresses concern about taxing power to and from its destination. This would be a significant change that could hurt a system that functions well. It is not possible to identify where the electrons are.

445 Sen. Prozanski Refers to DiLorenzo's chart. Oregon PUDs are taxed. Is hearing that Conkling wants Oregon to treat two similar situations differently.

TAPE 146, SIDE A

025 Conkling Responds, Oregon's tax statutes refer to *people's* utility districts, and Snohomish is a *public* utility district. This bill is written narrowly to apply only to property rights associated with the intertie. This is a unique circumstance.

046 Sen. Prozanski Follow-up questions and discussion with Conkling. Asks Conkling to comment about gas pipelines.

058 Conkling Responds, these interests, if they were in Washington, would not be subject to tax. Comments on natural gas pipelines.

088 Sen. George Notes that if Snohomish PUD had physical facilities here, they'd be taxed.

113 Sandy Flicker Testifies in support of HB 3454-A2 amendment (**EXHIBIT 12**), which includes in-state and out-of-state PUDs and electric cooperatives. Agrees with Rep. Butler that this bill is about equity. Agrees with DiLorenzo's testimony that the issue is about locally driven, nondiscriminatory tax policy. Sen. George captured this issue.

140 Scott Corwin Reads testimony in support of HB 3454-A2 amendment (**EXHIBIT 13**). Gives background and reasons why the bill should be amended to exempt cooperatives' rights to the intertie.

228 Corwin Comments on DiLorenzo's testimony and chart. Would have drafted the chart slightly differently.

275 Vice Chair C. Starr Asks, what services are being provided with the taxes received?

278 Corwin Can't name any services.

296 Vice Chair C. Starr Follow-up questions and discussion with Corwin and Flicker. If there's a tax due, they should be liable for the tax.

358 Vice Chair C. Starr Is persuaded to move HB 3454-A2 amendment and the bill.

367 Sen. George Agrees, this is not a fair way to achieve revenue.

416 Phillips Believes this bill extends the same benefits to municipalities of other states that are extended to municipalities of Oregon. DOR is neutral on this policy choice. Clarifies comment by DiLorenzo concerning tangible property. In regard to who's using the property, it's all challenging because of new technology. DOR is trying to apply the Legislature's policies.

TAPE 147, SIDE A

032 Chair Deckert Asks Phillips how DOR arrived at the assessment point.

035 Phillips Responds, DOR noticed years ago that one entity reported substantially different assets from year to year. It turned out they were including use of the property in the intertie. That's how the DOR

realized there was a problem.

055 Chair Deckert Why are municipalities filing with Oregon Dept. Revenue in the first place?

058 Phillips Responds, there was other activity in Oregon.

072 Sen. George If federal government wouldn't give Oregon the information, it must assume Oregon wouldn't be taxing.

079 Phillips Is not sure the feds are under any obligation to share information.

084 Riddell Testifies in opposition to HB 3454-A. See written testimony (**EXHIBIT 14**). Notes, if an Oregon city uses property in Washington state, it would be taxed if owned by a private entity. They have a parallel statute. Asks the committee to let current law stand and to let the tax courts work through this. Slow down, it's gotten very complex and there are potential unintended consequences.

138 Sen. George Also believes there could be major retaliation.

144 Michelle Deister League of Oregon Cities opposes HB 3454-A2 and HB 3454-A3 amendments because they convey exemptions to entities that currently pay property tax in Oregon.

164 Chair Deckert Closes public hearing on HB 3454-A. Opens hearing on SB 415.

PUBLIC HEARING, SB 415

168 Chair Deckert Gives background of SB 415 which changes the school funding formula.

185 Steve Meyer The SB 415-2 amendment (**EXHIBIT 23**) replaces the original bill. It increases the school district's share of state and local revenue from 95% to 95.25%, and drops Education Service Districts' share accordingly. The bill also reduces maximum administrative costs allowed.

214 Meyer Directs members' attention to ESD Finance Distribution chart (**EXHIBIT 24**). Responds to questions about the chart.

252 Ozzie Rose Testifies against SB 415-2 amendment on behalf of Oregon Assn. of ESDs. The bill moves \$20 million from ESDs to school districts, about \$15 per child. This change will result in cuts to ESDs and they'd have to fund the services elsewhere. Each district would be affected differently, and small districts would suffer the most. COSA and OSBA don't support this measure.

314 Chair Deckert ESDs have not gone through the tough cuts that school districts have. This bill would at least have some partial benefit to schools.

334 Rose Has no idea of the impact on many of these districts. Gives examples.

378 Vice Chair C. Starr Comments on a meeting held with Douglas County ESD. Cannot believe they could continue to operate if a 50% cut in administration is mandated.

390	Chair Deckert	Clarifies, it's 50% of the .25% revenue cut.
417	Sen. Prozanski	Agrees, Douglas ESD would suffer. Is waiting for additional information.
438	Conkling	Refers to written testimony of Northwest Regional ESD Superintendent Jim Mabbott (EXHIBIT 28), who opposes SB 415-2 amendment. Draws attention to the third paragraph.

TAPE 146, SIDE B

038	Conkling	Finally, in Douglas County school districts, 85% of ESD revenues go toward education of special needs students.
055	Chair Deckert	Asks if Conkling would support reducing the school funding figure by \$24 million.
061	Rose	Responds, the school funding number is irrelevant to this discussion. The issue is how it's distributed. In Douglas County there is no place to increase efficiencies. They won't be able to replace the service cut out of ESD. This does not address the issues. It will create disarray and make it harder to give services to children, especially in smaller districts.
092	Chair Deckert	Counters that there are economies of scale at the larger districts.
103	Tricia Smith	OSEA opposes this amendment. Disagrees with the belief that there are inefficiencies in ESDs. This is moving deck chairs around on the Titanic. Don't cut some to feel like you're helping others.
113	Rob Myers	Was not aware the amendment included a 50% reduction in administrative costs. In smaller ESDs there are no savings to be had. Three of the five small ESDs returned more money to the state than they received.
135	Chair Deckert	Will not move this bill today for lack of support. Asks committee for their opinions.
138	Sen. Prozanski	Agrees. We must realize ESDs are different in size and performance.
155	Chair Deckert	Comments on the Legislature's current school funding hearings. Closes public hearing on SB 415. Adjourns meeting at 4:02 p.m.

Tape Log Submitted by,

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. HB 3453, Staff Measure Summary, Ayala, 6/20/05, 1 pp.
2. HB 3453, Revenue Impact of Proposed Legislation, Ayala, 6/20/05, 1 pp.
3. HB 3453, Staff Measure Summary, Ayala, 4/27/05, 1 pp.

4. HB 3453, Revenue Impact of Proposed Legislation, Ayala, 4/21/05, 1 pp.
5. HB 3453, PPM Energy, Miller, 1 pp.
6. HB 3453, testimony of Gil Riddell on behalf of AOC, 6/20/05, 2 pp.
7. HB 3453, testimony of Al Switzer, 6/20/05, 1 pp.
8. HB 3454-A, testimony of John DiLorenzo, 6/20/05, 7 pp.
9. HB 3454-A, Property Taxation of Entities chart, DiLorenzo, 6/20/05, 1 pp.
10. HB 3454-A, Memorandum from Gary Conkling, 6/20/05, 3 pp.
11. HB 3454-A, Amendment HB 3454-A3, Conkling, 6/17/05, 1 pp.
12. HB 3454-A, Amendment HB 3454-A2, Legislative Counsel, 6/1/05, 2 pp.
13. HB 3454-A, Statement of Scott Corwin for PRC, 6/20/05, 2 pp.
14. HB 3454-A, testimony of Gil Riddell on behalf of AOC, 6/20/05, 1 pp.
15. HB 3454-A, Staff Measure Summary, Ayala, 6/20/05, 1 pp.
16. HB 3454-A, Revenue Impact of Proposed Legislation, Ayala, 6/20/05, 1 pp.
17. HB 3454-A, Staff Measure Summary, Ayala, 4/27/05, 1 pp.
18. HB 3454-A, Revenue Impact of Proposed Legislation, Ayala, 4/21/05, 1 pp.
19. HB 3454-A, Revenue Impact of Proposed Legislation for HB 3454-A2, Ayala, 6/20/05, 1 pp.
20. HB 3454-A, Staff Measure Summary for HB 3454-A2, Ayala, 6/20/05, 1 pp.
21. HB 3454-A, Staff Measure Summary for HB 3454-A3, Ayala, 6/20/05, 1 pp.
22. HB 3454-A, Revenue Impact of Proposed Legislation for HB 3454-A3, Ayala, 6/20/05, 1 pp.
23. SB 415, Amendment SB 415-2, Legislative Counsel, 6/16/05, 4 pp.
24. SB 415, ESD Finance Distribution, Meyer, 6/15/05, 1 pp.
25. SB 415, Revenue Impact of Proposed Legislation, Meyer, 6/17/05, 1 pp.
26. SB 415, Staff Measure Summary, Meyer, 6/20/05, 1 pp.
27. SB 415, Staff Measure Summary, Taylor, 4/14/05, 1 pp.
28. SB 415, testimony by NWRES D Superintendent Jim Mabbott, 6/20/05, 1 pp.