

**HOUSE REVENUE COMMITTEE
MAY 1, 2003 8:30 AM STATE CAPITOL BUILDING**

Members Present:

Representative Lane Shetterly, Chair
Representative Wayne Scott, Vice Chair
Representative Joanne Verger, Vice Chair
Representative Phil Barnhart
Representative Vicki Berger
Representative Pat Farr
Representative Mark Hass
Representative Elaine Hopson
Representative Max Williams

Witness Present:

Richard Jarvis, Chancellor Oregon University System
Tim White, President, Oregon State University
John Phillips, Department of Revenue (DOR)
Betsy Earls, Harrang, Long, Gary, Rudnick
Jack Benton, Sumco USA Corporation
Larry Glasscock, Salem Economic Development Corporation (SEDCOR),
Manager Salem Enterprise Zone
Dexter Johnson, Legislative Counsel
Pete Shepherd, Attorney General's Office (AG)
Bob Russell, Oregon Trucking Association
Jim Gardner, Gardner and Gardner representing Phillip Morris
Marshall Coba, Council of Independent Tobacco Manufacturers of America
Dave Redmond, Carolina Tobacco
Richard Kosesan, Brown and Williamson Tobacco Corp.
Mark Nelson, R.J.R Tobacco

Staff Present:

Paul Warner, Legislative Revenue Officer
Richard Yates, Legislative Revenue Office
Mazen Malik, Legislative Revenue Office
Kathy Tooley, Committee Assistant

TAPE 148, SIDE A

004 Chair Shetterly Calls meeting to order at 8:40 a.m.

OPENED PUBLIC HEARING SJR 7-A

016	Richard Yates		Provided description and background of SJR 7-A, (Exhibit 1). Provided Fiscal Analysis, (Exhibit 2).
029	Chancellor Jarvis	Richard	Spoke in support of SJR 7A. Described affects of passage of Measure 5 on education facilities and need for more to meet enrollment needs.
060	Tim White		Spoke on behalf of 7 Oregon University Presidents, in unanimous support of SJR 7A, (Exhibit 3). Discussed 5 points, (Exhibit 4), the measure would: <ul style="list-style-type: none">• Leverage more private investments in capital facilities on university campuses.• Encourage more donors to invest in universities.• Will allow an advantage in competing against other states.• Will not send Oregonians into an abyss of debt.

- Oregon is a conservative when it comes to debt, this measure will not alter that.

102 Discussion regarding subsequent referral to Ways and Means?

119 Chair Shetterly Closed public hearing on SJR 7A.

OPENED PUBLIC HEARING ON SB 230

127 Mazen Malik Provided background and description of SB 230, (Exhibit 5). Provided Revenue Impact, (Exhibit 6).

196 Phillips The issue for DOR is compliance, this bill would allow DOR to weight the penalty based on severity of non-filing, (Exhibit 7). Discussed chart of raw data in (Page 2, Exhibit 7), shows incidence of chronic non filers.

278 Questions and discussion regarding chart of raw data.

292 Questions and discussion regarding filing due dates.

315 Rep. Phillips These 85 non-filers simply do not want to file?

314 Phillips Described a large company that said it would not be filing. Penalty of \$250 was not an issue for them vs. the amount of time to process.

330 Chair Shetterly This is an annual statutory filing?

332 Phillips Answered affirmatively.

334 Rep. Barnhart There are some companies that never file a return at all? Should the maximum penalty be higher, so penalty costs more than following the law?

335 Phillips Answered affirmatively. Would like to see the penalty increased for centrally assessed properties and then evaluate it.

354 Rep. Hass Reiterated Rep. Barnhart's comments.

365 Rep. Barnhart Assume DOR would reserve larger fines for big company.

371 Phillips The limit is \$5000. Do not want to paint all companies this way. Associated Oregon Industries is not opposing because they file and want others to file.

384 Chair Shetterly Closed the Public Hearing on SB 230.

OPENED WORK SESSION ON SB 230

386 Rep. Hass **MOTION: MOVED SB 230 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION**

393 **ROLL CALL: MOTION PASSED 9-0-0 REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.**

Rep. Berger will carry the bill.

400 Chair Shetterly Closed the Work Session on SB 230.

402 Yates Ways and Means would like to see SJR 7; would like to review university construction budget, and debt service.

REOPENED WORK SESSION ON SJR 7

411 Rep. Verger **MOTION: MOVED SJR 7 TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION AND SUBSEQUENT REFERRAL TO WAYS AND MEANS.**

**ROLL CALL: MOTION PASSED 8-0-1
REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hopson, Scott, Verger, Williams, Chair Shetterly. EXCUSED: Hass.**

OPENED PUBLIC HEARING ON SB 858

427 Malik Provided background and description of SB 858, (Exhibit 7). Provided Revenue Impact (Exhibit 8).

480 Rep. Verger What changes would be made to the minimum employment requirements? Who would determine how many jobs created in the enterprise zone?

487 Malik Described statute requirements. SB 858 would allow readjustment of the starting level of employees, if capital investment is at least \$20 million.

TAPE 149, SIDE A

051 Malik Discussed -2 amendments (Exhibit 9).

067 Betsy Earls Representing SUMCO Oregon, regarding employee headcount issues.

072 Chair Shetterly To the bill in chief or -A2, both?

072 Earls Both.

077 Jack Benton Spoke in favor of SB 858, (Exhibit 10) discussed investment \$750 million in property and equipment in Salem since 1982. In the last four years have lost \$250 million in Salem. Need to revise cost structures for survival.

133 Benton Key issue is headcount requirement for enterprise zone and maintenance of employees. As part of pre-certification requirement, if investing more than \$25 million can ask sponsor for a waiver of the headcount requirement which SUMCO did not request. Discussed collapse of semi-conductor industry in 2001. Company still struggling to recover, discussed drop in headcount. Statute on enterprise zones would disqualify SUMCO; SB 858 allows the City of Salem to waive head count requirement based on investment in excess of \$20 million. Discussed letter to Senator Ryan Deckert included in Exhibit 10, and SUMCO's intent to stay in Salem.

199 Benton Discussed SUMCO's willingness to commit to head count requirement going forward. The objective is to maintain an active enterprise in Salem.

192 Chair Shetterly Do you want to speak to -A2

202 Benton The -A2 amendment is a technical issue regarding time frame of enactment. Clarifies any taxes paid affected by SB 858 because it had not been enacted would be refunded to SUMCO, for this year only.

209	Rep. Farr	As far as you know is SUMCO the only company statewide affected by this?
221	Benton	There is no other specific company mentioned. There may be 1 and possibly 5.
230	Rep. Hass	I bet you wish you weren't here needing this bill, pragmatism says this is something you do to keep this industry alive to get away from reputation of government mandates.
244	Chair Shetterly	Important to attract business, but important to retain.
245	Rep. Barnhart	It appears that the -2's put in what the -1's took out?
253	Benton	No. The original bill as it was drafted contemplated a refund of a payment made in 2002 which was not SUMCO's intent. -2A limits refund to payments made this year.
262	Larry Glassock	Spoke in support of SB 858 as amended. Discussed history of SUMCO, assured committee that predecessor Mitsubishi would not have been there, but for the enterprise zone. Spoke to retaining SUMCO and being receptive to their needs.
302	Rep. Barnhart	Are products sold to other companies in Oregon for further manufacturing?
308	Benton	Product is silicon wafer, base material in semi-conductor; key customers are Hewlett Packard, Motorola, Intel, Fairchild, and International Rectifier. Silicon wafer minor part of the silicon industry. It's a worldwide product.
310	Rep. Berger	Discussed history and importance of SUMCO and predecessor to Salem. Important to help company as they helped Salem through difficult economic times.
344	Rep. Farr	Fiscal statement doesn't include the refund contained in the amendment.
330	Malik	Refund would be in the year 2003; it would be addressed next biennium.
359	Chair Shetterly	Revenue impact would be based on local government approval of this amendment to the agreement, something the state is not imposing, but something they would encounter.
361	Malik	Answered affirmatively.
354	Phillips	Discussed -2 amendments, DOR does not have a problem with them and as a practical matter the property has not yet been disqualified for 2002-2003 tax year. Described process of disqualification.
387	Chair Shetterly	Are you suggesting an amendment?
385	Phillips	No, do not want to hold the bill up.
387	Rep. Williams	Could you do administratively?
392	Phillips	Trying to think of a way to do that.
392	Chair Shetterly	Refund applies to penalties and interest as well?
403	Dexter Johnson	Suggested tax abatement language.

413 Chair Shetterly Are you comfortable making that a conceptual amendment?
418 Johnson I'm comfortable.
422 Chair Shetterly Closed Public Hearing SB 858

OPENED WORK SESSION ON SB 858

426 Chair Shetterly Are you comfortable with this?
428 Rep. Verger Indicated approval, would like the conceptual amendment repeated word for word.
468 Johnson After line 17 of the –A2 amendment provided conceptual language.
478 Rep. Williams **MOTION: MOVED ADOPTION OF THE CONCEPTUAL AMENDMENT THE –A2 AMENDMENT INTO SB 858, INSERTING AFTER LINE 17, “(4) IF PROPERTY TAXES, INTEREST AND PENALTY DESCRIBED IN (1) OF THIS SECTION HAVE NOT BEEN PAID, SUCH AMOUNT SHALL BE ABATED”.**
ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT).
493 Rep. Williams **MOTION: MOVED ADOPTION OF THE –A2 AMENDMENT, AS CONCEPTUALLY AMENDED INTO SB 858.**
ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT).
498 Rep. Williams **MOTION: MOVED SB 858 AS AMENDED, INCLUDING CONCEPTUAL AMENDMENTS, TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION**
511 **ROLL CALL: MOTION PASSED 9-0-0**
REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger, Williams, Chair Shetterly.
Rep. Berger will carry the bill.

**OPENED WORK SESSION ON HB 2368
TAPE 148, SIDE B**

060 Yates Provided description of HB 2368 Corrected A Engrossed. Described amendments, lack of disagreement among parties.
077 Chair Shetterly Acknowledged nods indicating no disagreement among parties in hearing room.
079 Yates Discussed –A6 amendments which changed delivery sales have been replaced; -A7 are replaced. Discussed differences in -A8, (Exhibit 11); -A9 (Exhibit 12) amendments.
087 Chair Shetterly Do –A8s and –A9s incorporate the –A7s.
086 Yates -A7s have been replaced by –A10 (Exhibit 13).

092	Yates	Discussed differences in -A8s and -A9s address concerns between non-participating manufacturers under the Master Settlement Agreement (MSA), and the major tobacco producers who are a party to those agreements.
127	Yates	Issue who has authority to enforce the act, only the AG or by civil case and people in the industry.
130	Rep. Farr	Which is which?
131	Chair Shetterly	The -A8s would create the broader private/AG enforcement.
134	Rep. Barnhart	The -A8s are broader in both areas and -A9s are narrower in both areas.
136	Yates	Answered affirmatively.
137	Yates	-A10s replaced -A7s, the objective is to provide funding for the Task Force out of cigarette/product taxes. Discussed scope of -A7s. -A10s are proportionately responsible for these costs.
145	Chair Shetterly	Are the -A10s a consensus amendment?
146	Yates	I believe so.
149	Rep. Barnhart	The affect of this is to apportion the enforcement costs over all of the recipients of the various pieces of the tax.
152	Yates	That is the affect. Ways and Means intends to hold the health plan harmless.
160	Chair Shetterly	MOTION: MOVED ADOPTION OF THE -5 AMENDMENT INTO HB 2368. ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT EXCEPT REP. WILLIAMS, EXCUSED)
167	Chair Shetterly	MOTION: MOVED ADOPTION OF THE -10 AMENDMENT INTO HB 2368. ORDER: HEARING NO OBJECTION, THE CHAIR SO ORDERS. (ALL MEMBERS PRESENT EXCEPT REP. WILLIAMS, EXCUSED)
181	Pete Shepherd	At the request of the Chair, convened a work group and arrived at consensus on the -A5 and -A10 amendments. Developed the alternative --A8s and -A9s for the Committee's consideration.
187	Shepherd	Department of Justice does not object to -A8s, but -A9 are adequate to do what the state needs to do in adding enforcement tools.
198	Rep. Barnhart	-A9s and -A8s do everything the state wants?
110	Shepherd	-A8s is not necessary because -A9s are sufficient; does not object to the -A8s.
206	Shepherd	Provided history of NPM statute to explain why the -A9s are adequate.
273	Shepherd	Discussed noncompliant manufacturer.
279	Shepherd	Discussed private cause of action and private remedies under HB 2094.
297	Shepherd	Discussed private cause of action and injunctive relief.
324	Shepherd	Discussed the difference been the -A8 and -A9

337	Rep. Farr	The -A9s plus HB 2094 equal -A8s other than in the case of a compliant manufacturer?
342	Shepherd	Answered affirmatively.
345	Rep. Farr	Does either provision allow the manufacturer to not sell product while the lawsuit is in process?
349	Shepherd	Did not understand question.
350	Rep. Farr	One manufacturer could sue another for noncompliance and while being sued, they would be prevented from selling product in the state of Oregon.
358	Shepherd	Explained preliminary injunction, nothing to prevent litigant from seeking such an order.
378	Rep. Farr	How many states grant enforcement authority for tobacco regulation by manufacturers?
382	Shepherd	Did not know the answer.
391	Rep. Verger	Clarify the non participating manufacturer companies (NPMs) that are reputable, did not participate, but paid into the escrow and are compliant? Discussed gray and black markets. Do NPMs include all of those good people or all the black hat people?
406	Shepherd	Tried to distinguish between NPMs who are compliant with Oregon law and those who are not. There are people in both categories.
412	Rep. Verger	So a NPM that is non-compliant would include all of those illegally selling cigarettes in Oregon?
418	Shepherd	Nodded affirmatively.
422	Chair Shetterly	Regarding injunctive relief, the state has the same ability to obtain a preliminary injunction.
423	Shepherd	Answered affirmatively.
432	Bob Russell	Has small issue with -A8 and -A9, superfluous provision relating to delivery service. No longer have a role in making sure tax has been paid.
502	Russell	This says the shipper has to show stamps on bottom of cigarettes.
505	Rep. Farr	This takes the burden off the delivery service and places it on the seller?
506	Russell	The amendments do that, there is no burden on the delivery service. This says the shipper has to show the tax on the bottom of the cigarettes for no purpose, because the delivery service no longer has the burden.

TAPE 149, SIDE B

047	Rep. Barnhart	Section 75 says what you are supposed to do, that does not include making sure the taxes are paid?
051	Russell	Section 75 deals with seller, 78 deals with seller but also tells how they must ship the tobacco products, including verifying age of majority at the time of

delivery to the ultimate consumer which trucking industry supports.

- 060 Chair Shetterly Noted Pete Shepherd indicated approval for deleting that provision of the amendments.
- 065 Jim Gardner Discussed policy differences between -A8 and -A9. Discussed enforcement tools, characterized -A8s as more aggressive on internet sales protection of minors and protection of state revenue.
- 123 Gardner Discussed press release, and support of Alcohol, Tobacco and Firearm enforcement, (Exhibit 14), discussed private sector enforcement allowed under -A8 amendments. Provided "ORS 293.535", (Exhibit 15).
- 174 Rep. Farr Shepherd's testimony said, HB 2094 allows the allegiance to happen without the using the -A8's, do you disagree with that statement?
- 177 Gardner Disagreed as HB 2094 gives injunctive standing, NPM statute has nothing to do with minors and internet sales.
- 185 Marshall Coba Described CITMA as an association of complying NPMs. Spoke in support of HB 2368, the -9 amendment, and the regulation of internet sales to minors. CITMA believes -8s are a backdoor attempt to regulate NPMs, believes there is adequate enforcement of regulations.
- 218 David Redmond Defined CITMA membership should not be characterized as foreign. CITMA supports requiring mail order sellers to affix an Oregon stamp to cigarettes and non-cigarettes to be in full compliance. Supports delivery system of licensed distributors in Oregon.
- 254 Redmond Regarding Gardner's comments. Allowing big tobacco to be an enforcer is a vigilante concept. CITMA is comfortable with the AG taking necessary course of action. Does not support the -A8 amendment. Supports -A9 with HB 2094 for state enforcement of internet and delivery sales.
- 290 Dick Kosesan Discussed Tax Collections from 1995-96 fiscal, through 2003-04 fiscal year, (Exhibit 16). Growth in collections is not commensurate with tax increase. Lost revenue is not a function of decreased consumption.
- 352 Mark Nelson Centers for Disease Control studies suggest there has not been a reduction in consumption of cigarettes in Oregon. Discussed "Loophole in NPM Exhibit T Legislation - Western Region", (Exhibit 17). Discussed NPMs avoidance of mandated escrow payments in all states.
- 485 Chair Shetterly -A8 does not close the loop hole.
- 490 Nelson AG prefers -A9, but can live with -A8. -A8 needs every piece of authority to go after delivery violators.

TAPE 150, SIDE A

- 045 Nelson Discussed resources of tobacco industry that would bring violators to court. Discussed shrinkage in Master Settlement Agreement to Oregon due to NPMs; discussed 12-13% NPM sales of cigarettes in Oregon.
- 065 Chair Shetterly Closed Work Session on HB 2368-A.
- 071 Chair Shetterly Meeting adjourned at 10:30 a.m.

Tape Log Submitted by,

Kathy Tooley, Committee Assistant

Exhibit Summary:

1. Yates, "Staff Measure Summary SJR 7-A", 3 pages
2. Yates, "Fiscal Analysis SJR 7-A", 2 pages
3. White, "Letter of Support for Passage of SJR 7", 2 pages
4. Malik, "Staff Measure Summary SB 230-A", 1 page
5. Malik, "Revenue Impact SB 230-A", 1 page
6. Phillips, "Testimony SB 230: Late Filing Penalties", 2 pages
7. Malik, "Staff Measure Summary SB 858-A", 1 page
8. Malik, "Revenue Impact SB 858-A", 1 page
9. Malik, "SB 858-A2 Amendment", 1 page
10. Benton, "Sumco Oregon Corporation", 7 pages
11. Yates, "HB 2368-A8 Amendments", 9 pages
12. Yates, "HB 2368-A9 Amendments", 8 pages
13. Yates, "HB 2368-A10 Amendments", 5 pages
14. Gardner, "Administration of Public Funds", 2 pages
15. Gardner, "Phillip Morris USA Applauds ATF's Effort to Eliminate Contraband Cigarettes", 1 page
16. Kosesan, "Oregon Cigarette Tax Review", 1 page
17. Nelson, "Loophole in NPM Exhibit T Legislation – Western Region", 2 pages