

PUBLIC HEARING AND WORK SESSION: HB 2129 A-ENG.

WORK SESSION: SB 464

TAPES 111 - 112 A/B

SENATE REVENUE COMMITTEE

MAY 12, 1999 - 3:00 P.M. - HEARING ROOM A - STATE CAPITOL BUILDING

Members Present: Senator Randy Miller, Chair

Senator Thomas Wilde, Vice Chair

Senator Lee Beyer

Senator Tom Hartung

Senator Charles Starr

Staff: Paul Warner, Legislative Revenue Officer

Lizbeth Martin-Mahar, Economist, Legislative Revenue Office

Ed Waters, Economist, Legislative Revenue Office

Joan Green, Committee Assistant

Witnesses: Dexter Johnson, Legislative Counsel

John DiLorenzo, Commodore Limited Liability Company

Harvey Rogers, City of Portland, Bond Counsel

Marge Kafoury, City of Portland

Eric Johansen, City of Portland

Annette Newingham, Lane County Clerk

Jim Manary, Department of Revenue

Gary Carlson, Associated Oregon Industries

Bob Castagna, Oregon Catholic Conference

Larry Harvey, Cultural Advocacy Coalition

Lynn McNamara, League of Oregon Cities

TAPE 111, SIDE A

004 Chair Miller Meeting called to order at 3:04 p.m.

WORK SESSION ON SB 464

013 Chair Miller Spoke to SB 464, which is a measure that he introduced to create a corporate and personal income tax credit for schools and charitable organizations and foundations, as it relates to education; the idea has grown. Sen. Starr has brought to the Chair's attention that SB 126 contains one of the elements from SB 464 and might be a more appropriate vehicle for the Chair's ideas.

033 Sen. Starr Discussed SB 126; the aims are similar as those contained in SB 464. Currently deductibility is allowed for contributions to religious institutions and this proposed tax credit would be a further incentive to those who might be encouraged to contribute in support of these foundations. Would personally prefer to use a bill relating to taxation rather than SB 464, which has a relating clause to public education only.

052 Chair Miller Discussed an opinion offered by Dexter Johnson, Legislative Counsel that an Oregon Supreme Court Opinion had a rather narrow view of that type of giving. Requested Mr. Johnson speak to that.

059 Dexter Johnson Provided historical background with two relevant constitutional provisions, as they relate to tax benefits flowing to religious schools:

1. The First Amendment to the U.S. Constitution.
2. Section 5, Article 1 of the Oregon Constitution.

In order for legislation to be valid it would need to comply with the Oregon Constitution, as well as the Federal Constitution. Cited Section 5, Article 1 of the Oregon Constitution, which prohibits any money being drawn from the State Treasury for the benefit of religious institutions. Discussed interpretation by the Oregon Supreme Court of that provision.

100 Johnson Referenced Dickman vs. Clackamas School District #64 case (1963) and how that precedence could possibly affect this measure.

SB 464 is not a direct benefit of either property or money to a religious school, but rather a tax credit. Discussed potential arguments that could be used to defend and oppose this measure.

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| 122 | Johnson | Referenced the legislative findings in the Budget Accountability Act, which is the procedure that must be followed when the State adopts its budget. This Act expressly provides that tax credits or expenditures of other kinds are the same thing as direct expenditures by the State because they result in a lowering of tax revenues and thereby a greater tax rate. |
| 136 | Chair Miller | Has the Court determined that the credit is viewed as an expenditure? |
| 141 | Johnson | That has been determined by the Legislature. |
| 146 | Chair Miller | SB 126 would create a credit allowing a citizen a variety of options. One of those options might be a contribution to a private entity, which might be affiliated with a religious activity. Wouldn't that qualify as a taxpayer making a personal decision in directing their money? |
| 157 | Johnson | That is the argument that would be made, but it could be at risk of the court concluding otherwise. |
| 161 | Chair Miller | Continued discussion of arguments that could be made by both sides, as it relates to the return of the kicker and choices made by citizens in how that money is spent. Commented on the "bizarre" treatment of credits as expenditures. |
| 172 | Johnson | Agreed that again that argument could be made. The kicker legislation is already on the books and that may be a reasonably foreseeable outcome, but not directly referenced by legislation. |
| 179 | Sen. Beyer | From a legal context what is the difference between allowing a deduction to a religious organization and offering a credit? |
| 183 | Johnson | None. Explained that the State's existing income tax system piggybacks off the Federal Internal Revenue code. The Internal Revenue code allows charitable contributions to charitable entities, including religious schools, under Section 170 of the Code for both federal and state tax purposes. "However, in that situation religious schools are one among a large class of entities for which charitable contributions can be made and a |

deduction claimed."

198 Sen. Beyer If that kind of language were mirrored it wouldn't be a problem?

207 Johnson That would work. It is not clear-cut that there is a problem currently, with the concept under discussion. "However, at some point there is a line between direct payment of monies from the State to a religious school and religious schools being among a very large class entities for which a deduction is allowable on contribution. Where that line is drawn is unclear."

219 Sen. Beyer "The closer we parallel existing deduction language the safer we would be?"

222 Johnson The broader the classes of organizations that can receive contributions in exchange for a credit the smaller the chance of litigation.

229 Chair Miller Church property is given preference in the tax code, correct?

234 Johnson Yes.

238 Chair Miller "How can that be defended if this other potential credit mechanism is viewed with suspicion?"

240 Johnson The courts view that property tax exemption as something that predates the Oregon Constitution.

Also noted that many states have similar or identical language to Section 5, Article 1 of the Oregon Constitution and some of those states have recently allowed tax credits of the type recommended in SB 126 and SB 464.

266 Chair Miller Referenced a letter addressed to Mr. Lamb from Mr. Bolick and Mr. Berry and gave Mr. Castagna an opportunity to comment. (Exhibit 1)

276 Bob Castagna Requested that the committee consider SB 126 with an amendment to include private, as well as public elementary and secondary school districts.

Submitted letter for the record from Mr. Bolick and Mr. Berry. (Exhibit 1)

303	Vice Chair Wilde	Spoke to including in the amendment an exception to previous legislation that has taken place in the State so that we aren't in violation of previously passed legislation, if SB 126 were the route taken by the Committee.
318	Chair Miller	Invited Mr. Harvey to come forward, Mr. Harvey spoke to SB 680 on May 4 and has proposed language to be incorporated into either SB 464 or SB 126.
326	Larry Harvey	Spoke in support of (-4) amendments. (Exhibit 6)
365	Chair Miller	Referenced language on lines 11-12; would it be agreeable if the word public were deleted on line 11, (Exhibit 6).
378	Harvey	Believes the Board of the Cultural Advocacy Coalition would be okay with that change.
381	Chair Miller	Are there currently signed agreements with other than public schools?
386	Harvey	Does not know of any circumstance where it is currently happening; does not know as it would be precluded. Knows of examples where non-profit organizations are providing links, as a result of grants from charitable organizations.
409	Chair Miller	Sen. Beyer has worked with Dexter Johnson during hearing on some language that might be blended into SB 126. Requested Mr. Johnson read the language into the record and then comment on it.
418	Johnson	Read the following language into the record: "Taxpayers may take a 50% tax credit, up to a maximum of \$50 per tax year, for contributions made to public or non-profit organizations organized under Section 501 of the Internal Revenue Code in support of educational sports, cultural and arts activities." Additional research is needed to determine the appropriate subsection this would fall under.
449	Sen. Beyer	Spoke to a safety net in making the language broader and less specific and trying to move as close to the Internal Revenue Service Code as possible.

468	Chair Miller	Requested that the amendments are drafted and either SB 464 or SB 126, which has the broader relating clause.
477	Staff	Distributed revenue impact statement for the (-3) amendment, (Exhibit 2) and the (-3) amendment, (Exhibit 3).

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PUBLIC HEARING ON HB 2129 A-ENG

042	Lizbeth Martin-Mahar	Discussed HB 2129, which addresses numerous topics including late filing fees for exempt organizations, appeal board requirements and clarifications of exemption claims. (Exhibit 4)
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Noted that there is the (-A12) amendment, submitted by Ms. Newingham of Lane County. (Exhibit 9) Described the purpose of the amendment, (Page 1, Exhibit 4).

Noted that there is the (-A13) amendment, submitted by the City of Portland. (Exhibit 7) Described the purpose of the amendment, (Page 1, Exhibit 4).

Noted that there is the (-A13) amendment, submitted by Gary Carlson and Jim Manary. (Exhibit 10) Described the purpose of the amendment, (Page 2, Exhibit 4).

There is no substantial change to the measure that would result in t a revenue impact.

080	Jim Manary	Presented testimony in support of measure. (Exhibit 5)
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148	Manary	Continued with section by section review of bill, (Page 2, Exhibit 5).
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192	Manary	Continued with section by section review of bill, (Page 4, Exhibit 5).
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291	Marge Kafoury	Introduced Harvey Rogers and Eric Johansen, who will speak in support of the (-A13)
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amendment. (Exhibit 7)

299	Harvey Rogers	Spoke in support of the (-A13) amendment. (Exhibit 7)
324	Eric Johansen	Spoke in support of the (-A13) amendment. (Exhibit 7)
366	Chair Miller	Has the City of Portland examined the balance of the bill or is the interest only in the (-A13) amendment?
371	Kafoury	The City of Portland followed the progress of the measure on the House side.
377	Sen. Beyer	The language changes that the City of Portland is requesting, in your opinion, do not change the way Option 3 functions, it just clarifies?
382	Rogers	Correct, the language change requested is consistent with what we understand the Department of Revenue would do as an administrative rule, even without the change.
392	Sen. Beyer	Was the (-A13) amendment prepared in cooperation with the Department of Revenue?
394	Rogers	It was prepared by a City attorney and myself and forwarded to Legislative Counsel. It is my understanding that Department of Revenue has no objection to the amendment, although I have not personally talked with them.
406	Sen. Beyer	Requested that for the record Mr. Manary comment on the on the (-A13) amendment. (Exhibit 7)
416	Manary	Just saw the (-A13) amendment; not sure that the Department would have any objections.
421	Sen. Beyer	Requested that as Mr. Manary be prepared to respond to the statement that this is consistent with the way the Department would administer under current law and the (-A13) amendment is for clarification purposes.
436	Annette Newingham	Spoke in support of the (A12) amendment. (Exhibits 8 and 9)

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031	Gary Carlson	Spoke in support of the (-A15) amendment. (Exhibit 10)
063	Manary	Spoke in support of the (-A15) amendment. (Exhibit 10)
073	Sen. Beyer	Is the concern protection of proprietary information?
076	Carlson	Yes, it is the income data in particular.
092	Sen. Beyer	It is a more accurate way to predict value?
096	Carlson	Owners are willing to divulge cost data for the purpose of trying to arrive at an accurate value for the plant. However, many would be unwilling to reveal all plant income data.
103	Sen. Beyer	Don't they reveal plant income data in the income tax reports?
105	Carlson	Yes, but those are closely guarded by the Department.
106	Sen. Beyer	Isn't all of this protected from disclosure by Department staff?
108	Manary	Yes, income tax information is not shared with the property tax side of the Department. Reviewed historical background and a dispute that arose in approximately 1980 and came out of Douglas County, as it relates to the proprietary issue.
150	Sen. Beyer	The Department is comfortable that the (-A15) amendment will allow for a fair appraised value?

152	Manary	The expense information moves the Department closer to getting a market value on the plant.
162	John DiLorenzo	Spoke in support of the (-A14) amendment. (Exhibit 11)
237	DiLorenzo	Continued with testimony in support of the (-A15) amendment, (Exhibit 11).
288	Sen. Beyer	At the end of the second period is the permanent rate adjusted up to market value?
291	DiLorenzo	"No. Without a transition rule there is nothing to protect parties that had transactions in process when the law changed to be able to avail themselves under the old law."
308	Sen. Beyer	Would we go back 30 years to that value, is that the permanent value?
317	DiLorenzo	Cited an example of how the reapplication would apply and affect valuations.
327	Sen. Beyer	What would be the permanent value when the freeze is finished?
327	DiLorenzo	The permanent value, after the freeze, would be whatever Measure 50 would provide.
357	Sen. Beyer	Requested Mr. Manary address how the enterprise zones and the multi-family tax exemptions are adjusted under Measure 50?
362	Manary	Described the process used in assessing properties coming off of a specially assessed program.
370	Sen. Beyer	That is different from this situation because this was already on the tax rolls and the value would be whatever it would have been in 1995?
374	Manary	This would only protect it for the timeframe specified at the normal market value assessment with the Measure 50 limits in place.
383	Sen. Beyer	It would not be locked in at whatever it was in 1995?

384 Manary No.

Addressed the (-A13) amendment and the language is consistent with current practice, (Exhibit 7). "For the record, Ms. Kafoury did advise the Department that there would be an amendment, I just had not seen the wording."

404 Lynn McNamara The League of Oregon Cities would be interested in a revenue impact on (-A14) amendment, (Exhibit 11).

416 Chair Miller The League has no position at this time?

420 McNamara The League would prefer not to see a greater revenue loss to cities.

421 Sen. Beyer Did the League oppose this on the House side in 1997?

423 McNamara "I don't know, I wasn't here."

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TAPE 112, SIDE B

WORK SESSION ON HB 2129 A-ENG.

009 Sen. Beyer MOTION: MOVED (-A12) AMENDMENT TO HB 2129 A-ENG. BE ADOPTED. HEARING NO OBJECTION, THE CHAIR SO ORDERED.

011 Sen. Beyer MOTION: MOVED (-A13) AMENDMENT TO HB 2129 A-ENG. BE ADOPTED. HEARING NO OBJECTION, THE CHAIR SO ORDERED.

015 Sen. Beyer MOTION: MOVED (-A14) AMENDMENT TO HB 2129 A-ENG. BE ADOPTED.

017 Chair Miller Offered a friendly amendment to the (-A14) amendment. On line 14 the language needs to be changed as follows:

"358.545 as amended and in effect on the date of purchase. (1995 edition)."

028	Sen. Beyer	AMENDED MOTION: MOVED (-A14) AMENDMENT, AS AMENDED BY FRIENDLY AMENDMENT ON LINE 14 PAGE 1 OF (-A14) AMENDMENT MOTION: MOVED (-A14) AMENDMENT TO HB 2129 A-ENG. BE ADOPTED. HEARING NO OBJECTION, THE CHAIR SO ORDERED.
038	Sen. Beyer	MOTION: MOVED (-A15) AMENDMENT TO HB 2129 A-ENG. BE ADOPTED. HEARING NO OBJECTION, THE CHAIR SO ORDERED.
042	Sen. Beyer	MOTION: MOVED HB 2129 A-ENG. AS AMENDED, TO THE SENATE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.
045	VOTE	ROLL CALL VOTE: MOTION PASSES 5-0-0 SENATORS VOTING AYE: Beyer, Hartung, Starr, Wilde, Chair Miller Sen. Beyer will carry the bill.
052	Chair Miller	Meeting adjourned at 4:27 p.m.

Submitted by, Reviewed by,

Joan Green Kim T. James

Committee Assistant Revenue Office Manager

Exhibit Summary:

1. SB 464, Castagna, Submitted letter from Mr. Bolick and Mr. Berry, 2 pages
2. SB 464, Waters, (-3) Revenue impact statement, 1 page
3. SB 464, Waters, (-3) amendments, (DJ/ps) 04/28/99, 2 pages
4. HB 2129, Martin-Mahar, Staff measure summary, House staff measure summary, revenue and fiscal impact statements, 6 pages
5. HB 2129, Manary, Written testimony, 4 pages
6. SB 464, Harvey, (-4) amendments, (DJ/ps) 05/12/99, 1 page

7. HB 2129, Kafoury, (-A13) amendments, (DJ/ps) 05/12/99, 3 pages
8. HB 2129, Newingham, Written testimony, 1 page
9. HB 2129, Newingham, (-A12) amendments, (DJ/ps) 05/04/99, 2 pages
10. HB 2129, Manary/Carlson, (-A15) amendments, (DJ/ps) 05/12/99, 6 pages
11. HB 2129, DiLorenzo, (-A14) amendments, (DJ/ps) 05/12/99, 1 page