These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

May 30, 1991 Hearing Room F 1:15 P.M. Tapes 85 - 87

MEMBERS PRESENT:Rep. John Schoon, Chair Rep. Hedy L. Rijken, Vice-Chair Rep. Jerry Barnes Rep. Lisa Naito Rep. Carolyn Oakley Rep. Beverly Stein Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta Mullins, Committee Assistant

MEASURES CONSIDERED: SB 715 PH & WS SB 139 WS SB 553 WS SB 670 WS SB 810 PH & WS HB 2757 PH & WS SB 17 WS SB 84 WS SB 1026 WS SB 901 PH SB 1096 WS

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TAPE 85, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:26 p.m. and opens the public hearing on SB 715 B-Eng.

SB 715 B-ENG. - REQUIRES BITTERING AGENT TO BE ADDED TO CERTAIN TOXIC HOUSEHOLD PRODUCTS. Witnesses:Sen. Mae Yih Lynn Tylzcak Dr. Brent Burton, Oregon Poison Control Center Terry Witt, Oregonians for Food and Shelter

The Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT A).

012 SEN. MAE YIH, submits and reads a prepared statement in support of SB 715 B-Eng. (EXHIBIT B).

062 LYNN TYLZCAK, reads portions of a prepared statement in support of SB 715 B-Eng. (EXHIBIT C).

134 DR. BRENT BURTON, Oregon Poison Control Center, submits a prepared statement, a letter for James K. Lace, M.D. and a chart on poisoning data (EXHIBIT D). He reads/summarizes his prepared statement.

218 TERRY WITT, Oregonians for Food and Shelter: We completed the proposed amendments (EXHIBIT E) about 10 minutes and have not a chance

to speak with Sen. Yih about them. The people who have testified are in support of this concept.

243 CHAIR SCHOON asks that Rep. Naito contact Sen. Yih to determine her support for the amendments and closes the public hear.

255 CHAIR SCHOON opens the public hearing on SB 810 and closes the public hearing.

278 CHAIR SCHOON opens the work session SB 139 A-Eng.

(Tape 85, Side A) SB 139 - REQUIRES CERTAIN HEALTH PRACTITIONERS LICENSEES TO NOTIFY BOARD OF MEDICAL EXAMINERS OF ANY NEW ADDRESS.

267 TERRY CONNOLLY, Administrator, explains provisions of the bill. The committee requested the SB 139-A3 amendments (EXHIBIT F) to make sure it is referring to "medically-related activities."

305 MOTION: REP. STEIN moves that the SB 139-A3 amendments BE ADOPTED.

351 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the motion PASSED. REP. NAITO is EXCUSED.

353 MOTION: REP. STEIN moves that SB 139 A-Eng, as amended, be sent to the Floor with a DO PASS recommendation.

356 VOTE: In a roll call vote, all members present vote AYE. REP. NAITO is

EXCUSED.

363 CHAIR SCHOON declares the motion PASSED. Rep. Stein will lead discussion on the Floor.

373 CHAIR SCHOON opens the work session on SB 553.

(Tape 85, Side A) SB 553 A - ENG. - REQUIRES MANUFACTURER TO PROVIDE WARNING LABEL ON TOYS WITH SMALL PARTS. Witnesses:Jon Stubenvoll, OSPIRG

372 MR. CONNOLLY reviews provisions of the bill.

Issues discussed: >Need for special label for Oregon. >Federal government is considering warning labels, therefore implementation date of bill is 199 3. >Definition of toy.

TAPE 86, SIDE A

017 JON STUBENVOLL: The definition of toy is quite narrow and does not include things such as clothing, sporting goods, bicycles, motorized vehicles.

027 REP. OAKLEY: I feel the concept is good, but I would much rather see the federal government take care of it.

037 MR. STUBENVOLL: SB 553 simply attempts to give consumers point-of-purchase information about a potential hazard.

REP. WALDEN: I understand the need to label and the point-of-information, but in the final analysis, parents have to understand that little things get in little peoples' mouths and labels aren't going to stop that.

061 REP. BARNES: I can see the concept, but I am concerned how far government can go to relieve parents of their responsibility for safe

guarding of their children.

069 REP. NAITO: I think toys are specifically made for children to play with. That is the distinction.

087 CHAIR SCHOON: I think we need to have a better definition of "toy." Will you bring that back to the committee?

069 MR. STUBENVOLL: I will.

090 MOTION: REP. STEIN moves that the SB 553-A5 amendment be adopted.

111 VOTE: In a roll call vote, REPS. BARNES, NAITO, STEIN, WALDEN, RIJKEN and CHAIR SCHOON vote AYE. REP. OAKLEY votes NO.

113 CHAIR SCHOON declares the motion PASSED and closes the work session on SB 553 A-Eng.

123 CHAIR SCHOON opens the work session on SB 670 A-Eng.

(Tape 86, Side A) SB 670 A-ENG. - REQUIRES PUBLIC UTILITY COMMISSION TO ORDER REFUND OF INTERIM RATE INCREASE AND SPECIFIES TIME PERIOD FOR COMPARISON OF EARNINGS TO REASONABLENESS OF RATES. Witnesses:Ron Eachus, Public Utility Commissioner Paul Graham, Department of Justice

130 RON EACHUS, Public Utility Commissioner, submit copies a chart (SEE EXHIBIT C OF SUBCOMMITTEE NO. 3 COMMITTEE MINUTES DATED MAY 22, 1991).

MR. EACHUS: The bill does two things. It improves the laws relating to PUC's authority when there is an interim rate increase granted and applies improvement to an existing PGE rate case which is on appeal.

The case got started when PGE came to the commission and asked for an interim rate increase because of increased costs related to Coal Strip 4 coal plant. The commission granted an interim rate increase and proceeded to a rate case. There were two cases. One case was docket UE 47 which used the 1986 test year. A test year is a designated 12-month period in which we try to determine what the company's costs were during that period. It is used to determine the revenue requirement for the utility. In this case there was a 1986 test year in UE 47 primarily to track the costs of Coal Strip 4. Another docket case, and UE 48 used the 1987 test year. That test year took into account some things that had changed from the 1986 test year, not the least of which was the passage of the tax reform act.

The ultimate result of the 1987 test year with the two cases was one rate order in which it was determined the rates for PGE would be reduced by $21 million. At that time PGE appealed the order. The two issues on appeal were the treatment of the investment tax credit and the sale of some of the assets related to the Boardman plant. At that time the commission did not order a refund of the interim rate increase.

Later, upon a petition by CUB in which the commission reconsidered the interim rate and whether or not there should have been a refund, the commission determined there should be a refund; that refund was $37.8 million which reflected the amount of the interim rate increase that was collected by PGE.

PGE also appealed that. We now had three issues upon appeal in court. The commission looked at it and determined two things. 1. That the way the law was constructed was unfair to both rate payers and to the utility in that it did not allow us to look at the actual earnings picture of the company during the period of time of the interim rate increase, and (2) we were concerned with having to take an all-or-nothing point of view in which our choices were either zero or

$38.7 million. Our interpretation of the law lead us to the $38.7, but we were concerned there was a substantial basis on which we would actually lose in court. The reasons for that were two. 1. The ambiguities in the statute. The statute, in talking about interim rate increases, in subsection (4) speaks directly to a refund where there is a hearing and the rates are not suspended and subsection (5) speaks to a different situation which applied in this case, but it does not speak about a refund. PGE makes the argument that (4) and (5) are read separately and since this particular rate increase was granted under (5) no refund is due according to the statute. We make the argument that they should be read together and that all interim rate increases are subject to refund.

Given there were two test years and one of those test years indicated that the interim rate increase was justified and given there are ambiguities in the statute, we felt that there was a substantial risk we would lose in court and the rate payers would get zero refund. In settlement discussion with PGE, we reached an agreement. The agreement is reflected in the chart (SEE EXHIBIT C OF SUBCOMMITTEE NO. 3 COMMITTEE MINUTES DATED MAY 22, 1991). The blue line represents the old revenue requirement representing the rate that was in effect at the time. The green line represents the new rate that was established and took effect upon the rate order which combined 47 and 48. When we set rates they apply prospectively. The only retroactive case in which it applies is when you do have an interim rate increase and because it is an interim, it is subject to the final outcome of the rate case.

If you look at the 1986 test year, you find that the interim increase which is represented by the red line is justified and the company did, based upon its cost, need the money. If you look at the 1987 test year, you will see the company did not need the money. We settled, an idea that came from CUB, which was a proper basis for settlement might be that you allow the company to keep the increase interim increase that was justified during the 1986 test year and the money that was collected during the 1987 test year and was not needed would go back to the rate payers. That is essentially what we did.

The other thing we did at issue is the interest. If you accept the approach that we took that they were entitled to the $22.1 million, then there is no question of interest as far as the $22.1 goes. There is about $8 million of interest at issue in relationship to the $15.7. There are other issues in this case, the investment tax credit and the Boardman issue. As part of our settlement we agreed to drop the claim on interest and PGE agreed to drop the claim on $47 million of investment tax credit. Ordinarily the commission would require interest. However, as part of this settlement because it enabled us to (1) assure there would be a refund and it would not be zero, and (2) to remove the investment tax credit issue from the case, we agreed there should not be any interest required in the settlement.

276 Issues have been raised over the dollar amounts.

277 CHAIR SCHOON: I understand the bill does provide for interest in the future.

278 MR. EACHUS: That is correct.

280 CHAIR SCHOON: I am having trouble with the interest question in any case because it seems since they are a regulated industry that if you make them pay interest they are going to need more money and you will give them a rate increase. It seems that is the process you went through in arriving at your conclusion for the settlement. You took a lot of things into consideration and did it in the simplest way.

300 MR. EACHUS: I think you have to consider that during the period of

interim rate increase the company gets the money and they are able to use it and get interest on that money. They have not only collected the interim dollars, but they have also gotten the interest or the opportunity for interest on those dollars. If we find that interim rate was not justified, then the money that should have gone to the rate payers because the interim rate was not justified, they would not have gotten it or the interest on it, either. So when we refund, we refund not only the money, but the interest that the utility has gained by the virtue of the fact that they have had this money to which they weren't really entitled and that is also due to the rate payers. Otherwise, you are allowing a utility to keep interest earned on money it was not entitled to have. That is why we would ordinarily refund the interest the company was able to gain on the interim increase that was not justified.

311 CHAIR SCHOON: You are still looking at the bottom line of what the company is earning when you establish the rate.

312 MR. EACHUS: The bottom line is that the company's costs are, in fact, less and it would not have an effect in raising their costs because the costs are less. Having to pay the interest back simply doesn't have any cost impact on the future at all. It is simply an equity issue. In this case, the rate payers paid the utility $15.7 million which the utility was able to gain interest on. That is what happens when you do an interim rate increase. You are granting the rate increase without having the full benefit of the rate case and that is why it is refundable.

The bill clears up the statute and says that essentially all interim rate increases very clearly are subject to refund. It requires the interest on those in the future. But it also allows us to take into account the earnings of the company. Currently, the laws gives a snapshot. You take the interim increase here and the rate here and if they are different everything goes back to the rate payers. The current law doesn't allow us to take into account, as in this case, that period of time as in the 1986 test year the company really did need the money. It also clears up the ambiguity. My example is assuming there is always a refund possibility; there is ambiguity in the statute and this clears that up. It applies it to this previous case because it creates the basis upon which we can issue the order of the $15.7 and go to the court and say this represents a decision based upon the law as the Legislature passed it.

We believe this settlement is justified for two reasons. 1. It is fair. The only thing before the court right now is either zero or $37.8. Either one of those is unfair. If it is zero it is unfair to the rate payers. If it is $37.8 it is unfair to the utility. We think this represents a fair approach and we think it is based on good law for the future and that is why we support the bill.

367 Some parties have come before the Legislature and used a number of other dollar figures. A $105 million give away was used at one point. That $105 million is not based upon the law as it is written or the law as it would be. The $105 would require us to go back to the dollars, not just the interim increase, but the other dollars pending the rate case. (While showing a hand- drawn graph) The blue line represents the existing rate. The green line would represent the new rate. The $105 theory would say if the rate was less, then you go back and capture all the difference from the time the rate was filed, everything from the pendency of the rate case. It is retroactive rate making and it is not what we ordinarily do and it is not what the statute says we should do or allows us to do. Conversely, which we don't often hear, is that the same logic would say if the rate was higher, you would go back and make the rate payers pay the utility for the dollars that were not collected pending the rate case based on the difference between the new rate and

the old rate. The $105 is based on going back and also adding the interim. There is no basis in law. The primary argument has been that PGE agreed to a refund in the interim order and they agreed to the refund pending the outcome of the case. That includes all the dollars involved in addition to the interim rate increase during the pendency of the rate case. That was not the commission's intent nor was it PGE's intent in that order. What PGE agreed to was a refund. PGE, however, maintains there is no refund due for a couple of reasons. 1. It was under subsection (5) of the statute and no refund is due, and 2. if you look at the two cases the one case which used the test year designed to track Coal Strip 4, which was the reason for the interim rate increase in the first place, shows that the company was justified in getting the interim rate increase.

421 The other figure that has been used has been that this settlement represents a $40 million reduction from what the rate payers are entitled to. That is based on taking the $22.1 plus its interest which is about $12 million and the $15.7 plus its interest, which is $8, and then subtracting the $15.7. That assumes the rate payers are due and entitled to and would get by virtue of the courts, the $22.1. It is our feeling there is a very strong possibility that the courts would say zero and the rate payers wouldn't get anything and the company, based on their costs, up be due the $22.1, but not the $15.7.

439 CHAIR SCHOON: Does this legislation affect the court case in any way?

441 MR. EACHUS: If we pass this the commission will issue an order implementing the $15.7 million refund. If that order were challenged, which I assume it would be by parties that do not agree to the $15.7, we would go to court. However, we would be able to go to court and say the $15.7 represents the authority given to us by the Legislature and there is a legal basis for the $15.7.

459 CHAIR SCHOON: One of the parties you referred to would not be the utility involved because they agreed to the solution.

461 MR. EACHUS: That is correct. It would not be the utility. The other two parties that have objected have been the Citizens Utility Board and the Utility Reform Project. CUB has played a major role in that the original concept on how to split this came from them, but as the statute was constructed, there wasn't legal authority to do this. When we were reconsidering the refund issue, we looked to find a way to do what we are doing now. We looked at the statute and thought the statute either said it is going to be zero or $37.8. It wasn't until we got into court and were able to engage in settlement agreements that we were able to reach this.

TAPE 85, SIDE B

CUB came in and supported the $37.8 once we did get to court. Their objection to the $15.7 was primarily based upon the fact they felt interest ought to be included. We chose not to for the reasons I cited. It still guaranteed zero. We are able to settle and we got rid of the other issue of the investment tax credit.

035 REP. NAITO: It is seems we are really asked to make two policy decisions. I don't want to get involved with the court case. The first policy decision is, is it reasonable to say that part of the interim rate only can be refunded and take away the all-or-nothing idea. Assuming we would do that, we would want to add interest and say it is appropriate to put interest on that. The second policy decision, and that is where I can't really go, is to say notwithstanding that policy, we will also take a look back and involve ourselves in this court case to say that you have the authority to give up the interest based on the

other court case. That, to me, gets in the realm of if you have the authority to settle you could do that anyway and if you don't, you shouldn't have it and we really shouldn't be granting you more authority.

There was testimony, I understand, that you thought you had the authority to settle and I don't see why we need to say without interest up until now.

053 MR. EACHUS: The new law that applies to the future makes things less flexible and does require the interest. Under ordinary circumstances interest is not required as a matter of law. It is something we would ordinarily do. As far as the court case goes, it is our discretion. The future makes it clear that interest would always be. And ordinarily we would. If it were not for the other issues in this court case, it would be. It does give us the discretion in the existing court case to make a decision in the big picture which involves other issues.

066 REP. OAKLEY: If this becomes law, and the other parties continue to litigate, could that hold up the refund to customers?

067 PAUL GRAHAM, Department of Justice: No, it will not hold up the refund. With respect to Rep. Naito's question, the commission right now has two options--zero or $37.8. It cannot come up with the $15.7. It does not have the wherewith all to make the findings of facts and conclusions of law necessary to support that number. That is why the commission is here supporting the bill. It can't come up with the $15.7, leaving the interest issue aside. In order to come up with the $15.7, in order to come up with a refund that would give the company what it needed and take away what it didn't need, it needs this law.

081 REP. NAITO: I understand they need the law, but it is my understanding that you also have settled for $15.7.

083 MR. GRAHAM: All we have done is to enter an accounting order. There is no rate making order. The accounting order is on appeal now. I think the commission's authority to settle for $15.7 is questionable. CUB has filed a brief indicating it believes the commission does not have the authority to make the findings of fact and conclusions of law to justify the $15.7. There is a good possibility CUB will win in court. But if this bill passes the commission will have the wherewith all to make those findings.

An agency has to justify everything it does with findings of fact and conclusions of law. It is going to be very difficult for the commission to say we think this is fair and this is why when we need findings of fact and conclusions of law to get to the $15.7.

097 MR. EACHUS: We have an existing record in this case. We can go back in the case and examine the issue of the test years and the $22.1 and the $15.7, but we have no basis in law for that. Right now we have an accounting order based on it is fair and it avoids the risk of litigation. There is a good chance the court will say you don't really don't have the authority to issue an order based on risk of litigation.

110 REP. WALDEN: Will PGE get the $47 million investment tax credit?

111 MR. EACHUS: No. PGE gives up its claim.

112 REP. WALDEN: Would that have been something they would have lost in court anyway?

114 MR. EACHUS: We feel like we were in a better position on that. However, by settling and getting rid of it, we avoid all risk of losing

on it. Frankly, I think we were in the better position there. PGE may feel like they were in the better position on the refund itself. I get back to being able to reach a settlement which assures a $15.7 million refund where there is a very good risk of zero. Ultimately we were faced with the decision of a way to include the investment tax credit and deal with the interest in a way that ultimately lead to a settlement. We could have refused, but we might not have reached a settlement and we would have been stuck with the possibility of zero. If you would like more information on the arguments and details of the investment tax credit, Mr. Warren and Mr. Graham can give you more background on the issue.

129 REP. OAKLEY: In agreeing to put the requirement that in the future interest will be paid, are you not giving up the flexibility you now have in the out of court settlement.

134 MR. EACHUS: That in a case may be true, but since it represents what we would ordinarily do--. Usually in settlements there are a lot of opportunities that provide flexibility and you sort of deal with what is there. I do not think that would be a problem in the future because it is clearing up (the ambiguities). In the new statute there are no ambiguities; refunds are due. If refunds are due interest ought to follow the principal. In this case there is a very great ambiguity over the statute. We were not able to settle with PGE by requiring the interest. On the other hand we did get PGE to agree to drop the other issue which we probably would have won on, but on which we avoided the risk.

If the statute passes and applies to the future, we will not see the same kind of problem as in this case.

157 REP. BARNES: You are required to balance out the interest of the general public or rate payers as well as maintain a viable utility. For the record, in your mind the best interest of both parties, and especially I am talking about the ratepayer, have been protected.

160 MR. EACHUS: In our minds this represents a fair result for both the utility and rate payers based on our analysis of the utility's earnings and based upon the facts as we know them. During the period of time in which the utility did need the money, the utility would be able to keep the money. During the period of time in which they did not need it, it would go to the rate payers. The interest becomes the only issue at that point. That simply becomes a question of judgement as to whether or not it is worth forgoing the interest in order to settle the case and avoid the risk of zero. It was our determination it was.

173 REP. STEIN: I have amendments which I would like to move at this time in regard to interest. The SB 670-A4 and -A7 amendments and the hand-engrossed bill are hereby made a part of these minutes (EXHIBIT G).

I am starting from the viewpoint that it is the role of the Legislature to stay in the are of policy making and not intervene in rate making. As a former participant in a number of rate cases, I am quite familiar with the complexity of utility rate regulation and I think it is something the Legislature is best to stay out of. With that in mind as a general policy approach, I am suggesting the amendments in the hand-engrossed bill. We are in no way disputing or challenging the proposed change that would allow the PUC to have a firm legal footing to the settlement they have agreed to in terms of the $15.7 million. They needed some conclusions of law that were very clear and I think the changes that have been proposed clear up the statute and are very appropriate and I am willing to support them.

Lines 11 to 13 (page 2) comes to us from the Senate with indication that in the future interest will be required on any kind of refunds. I think

Commissioner Eachus has done a very good job of explaining why this is generally given and why it is appropriate and is fair to rate payers that interest follow principal, as he indicated, when there has been an interim rate increase that is not justified.

Section 2 troubles me. Section 2 indicates that the legal basis for the $15.7 in terms of the authority for refund, will be retroactive essentially to 1986 to provide that kind of legal underpinning or allow them to go forward with confidence. However, there is an exception on the issue of the interest. The issue of interest is not taken back to 198 6. My proposal is to strike the sentence that would mean that the interest requirement does not have to go back to 1986 and make other changes that make it clear that the interest requirement would go back to 1986.

That puts the PUC in a new position in terms of negotiations because one of the main issues we heard was whether they had the right to settle. We have just given them the right to settle. So now you are left with interest versus the investment tax credit. You heard from Commissioner Eachus that the investment tax credit issue is not a particularly strong issue.

In any case, there will be an order issued. The order will either be for the $15 million plus interest or not interest. That will be up to the other parties. There are intervenors and PGE who have the right to appeal that to the court. Perhaps the PUC will negotiate a better deal because we essentially have taken one of the questionable issue out of the case.

I think we should go for consistent policy for rate payer protection in terms of the issue of interest. I don't think there is any reason for us to say that interest is not due from January 1986 onward and take that issue out of the case. The effect would be that the rate payers, instead just $15.7 million, will be able to have a refund of $25.3 million which is a fair return given the principles we have talked about here in regards to the right to interest.

235 With my amendment, the order would include interest and could be appealed. If you just pass the bill as it came from the Senate, the order will be for $15.7. In any case it could still be appealed. If there is no bill, it is back where it started, between the zero and $38 million option. I think this is a very good deal for the consumers and is not unfair to the company in any way since the whole principle that interest should be allowed is in law. I urge you to approve the amendments I have proposed which also indicate the interest should be at the rate equal to the utility's authorized rate of return during the time the interim rate schedule is in effect.

254 MR. EACHUS: I made the arguments as to why we didn't do the interest, but we do have a concern over the other part which says that the interest must be at the rate of return. We have had instances in which we have had arguments whether it ought to be at the rate of return or the rate of return on equity. I believe we have cases where we have ordered the refund based upon return on equity which is usually a higher interest rate than the rate of return. That provision may prohibit us from using a higher rate of interest in a case in which we think it is appropriate.

277 REP. STEIN: I am not sure what to do with the new information I just received and may not move that part of the amendment, just to keep this real clear the issue I am trying to address is the issue of interest. If this ends up in conference committee, that issue can be brought up again at that point.

282 MOTION: REP. STEIN moves that the SB 670-A7 amendments BE ADOPTED.

287 VOTE: In a roll call vote, REPS. NAITO, STEIN and RIJKEN vote AYE. REPS. BARNES, WALDEN and CHAIR SCHOON vote NO. REP. OAKLEY is EXCUSED.

291 CHAIR SCHOON declares the motion FAILED.

291 MOTION: REP. WALDEN moves that SB 670 A-Eng. be sent to the Floor with a DO PASS recommendation.

297 REP. STEIN: I will vote no and will be indicating that I will be serving notice of a possible Minority Report.

300 VOTE: In a roll call vote, REPS. BARNES, OAKLEY, WALDEN and CHAIR SCHOON vote AYE. REPS. NAITO, STEIN and RIJKEN vote NO.

305 CHAIR SCHOON declares the motion PASSED.

306 REP. STEIN: I serve notice of a possible Minority Report.

311 REP. NAITO: I will join Rep. Stein.

302 CHAIR SCHOON opens public hearing on SB 810.

(Tape 85, Side B) SB 810 - MODIFIES DEFINITION OF BED AND BREAKFAST FACILITY TO INCLUDE APPURTENANT STRUCTURES. Witnesses:Sen. John Brenneman Art Keil, Oregon Health Division

The Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT H).

317 SEN. JOHN BRENNEMAN: SB 810 came about from a problem developed in my district with Malcolm and Sally Palmer who have a bed and breakfast in Lincoln City. They were thinking about adding a structure on an adjoining lot and wanted to serve both out of one kitchen and found they had troubles with the Health Division. We found out there are instances in the state that are doing that now and it is contrary to current law. Unamended, the bill allowed for more than one residence to serve in that capacity. The Health Division expressed concern about controlling that type of situation and offered to the Palmers that they could go to a restaurant classification on their kitchen to serve both facilities.

After working with the Health Division, the Palmers and the Bed and Breakfast Guild and others we came up with an amended bill that talks about appurtenant structures. An "appurtenance" means "belonging to, accessory or incident to, an adjunct dependent or annexed to." A thing is an appurtenance to something else only when it stands in relationship of an incident to a principle and is necessarily connected with the use and enjoyment of the later. Kathleen Beaufait says the definition is from an Oklahoma case law situation. It would include a summer or guest house or a room over a garage, but probably not two separate independent residences with food served at only one of them.

The Palmers really aren't taken care of yet by wanting to have two residences side by side on two tax lots, but the Health Division would not accept amendments to take this a step further. They are satisfied now with the current language.

391 ART KEIL, Health Division, submits and summarizes a prepared statement in support of SB 810 (EXHIBIT I).

401 CHAIR SCHOON closes the public hearing and opens the work session on SB 810 A-Eng.

403 MOTION: REP. WALDEN moves that SB 810 A-Eng. be sent to the Floor

with a DO PASS recommendation.

406 VOTE: In a roll call vote, all members are present and vote AYE.

408 CHAIR SCHOON declares the motion PASSED. Rep. Rijken will lead discussion on the Floor.

418 CHAIR SCHOON opens the public hearing on HB 2757.

(Tape 85, Side B) HB 2757 - PROHIBITS OPTICIANS FROM DUPLICATING OPHTHALMIC LENS WITHOUT SIGNED, WRITTEN PRESCRIPTION FROM OPTOMETRIST.

422 CHAIR SCHOON: We have the HB 2757-1 amendments (EXHIBIT J) at the request of the Optometric Association which delete the contents of the bill as originally printed and substitutes a number of items commonly called housekeeping items relating to approval of licensing, examination fees, continuing education, and use of intoxicants by members of the optometry profession. The Senate doesn't want to move the bills which contain the contents of the amendments. I have spoken to the Senate Chair and he has no objection to our doing the housekeeping amendments in this bill. We have the assurance of the optometrists there will be no effort to inject any turf battles or other items into this. I would hope the committee would adopt the proposed amendment and wait for further response from the Senate Chair before we do anything further on the bill.

397 CHAIR SCHOON closes the public hearing and opens the work session on HB 275 7.

469 MOTION: CHAIR SCHOON moves that the HB 2757--1 amendments BE ADOPTED.

VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the motion PASSED. REP. OAKLEY is EXCUSED.

479 CHAIR SCHOON closes the work session on HB 2757.

TAPE 86, SIDE B

024 CHAIR SCHOON opens the work session on SB 17 A-Eng.

SB 17 A-ENG. - DESIGNATES STATE TREASURER AS APPROVAL AUTHORITY FOR REVENUE BONDS ISSUED BY HEALTH, HOUSING, EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY.

029 MR. CONNOLLY reviews the provisions of SB 17 A-Eng.

040 REP. STEIN: The SB 17 A3 amendments (EXHIBIT K) are in response to a concern when we originally heard the bill. The situation we find ourselves in right now is that we don't need a lot more hospitals. I was afraid we might be encouraging the financing of new hospitals by giving them the benefit of tax free bonding. After investigating this, I found out a lot about municipal hospital authorities which probably needs to be look at because they are all over the place and nobody knows exactly what is going on. I have offered them amendment that indicates that the Treasurer shall collect data from the municipal authorities regarding the amount and nature of the bonded indebtedness and that it be offered to the office of Health Policy.

053 REP. STEIN moves that the SB 17 A3 amendments BE ADOPTED.

056 CHAIR RIJKEN, hearing no objection to the motion, declares the motion PASSED. REP. SCHOON is EXCUSED.

055 MOTION: REP. STEIN moves that SB 17 A-Eng., as amended, be sent to the Floor with a DO PASS recommendation.

061 VOTE: In a roll call vote, all members present vote AYE. REP. SCHOON is EXCUSED.

067 CHAIR RIJKEN opens the work session on SB 84 A-Eng.

(Tape 86, Side B) SB 84 A-ENG. - ALLOWS CERTAIN PERSON, FIRM, CORPORATION OR ENTITY UNDER CONTRACT WITH CEMETERY AUTHORITY TO RECEIVE COMPENSATION FOR SALE OF GRAVES, CRYPTS, NICHES, BURIAL VAULTS OR MARKERS.

069 MR. CONNOLLY reviews provisions of the bill.

076 CHAIR RIJKEN: This legislation would be to clarify that an endowment care cemetery authority may contract with a person, firm or corporation to sell pre-arrangement sales contracts or pre-construction sales contracts.

091 MOTION: REP. BARNES moves that SB 84 A-Eng. be sent to the House Floor with a DO PASS recommendation.

094 VOTE: In a roll call vote, all members present vote AYE. REP. SCHOON is EXCUSED.

099 CHAIR RIJKEN opens the work session on SB 1026.

(Tape 86, Side B) SB 1026 - REQUIRES MOTOR VEHICLE LIABILITY INSURERS TO ISSUE CARDS TO INSUREDS SHOWING DATES OF ISSUANCE AND EXPIRATION OF INSURANCE. Witness:Brian Boe, National Association of Independent Insurers

100 MR. CONNOLLY reviews provisions of the bill.

103 BRIAN BOE, National Association of Independent Insurers: Earlier this week in discussion with my client, we became aware of a situation in Delaware where a similar statute was interpreted that the card serves as prima facia evidence of a policy in force. It was further interpreted that to meet the letter of the law, an insurer, for someone who was making monthly payments on their car insurance policy, would have to issue a card every month to demonstrate a proof of payment for the policy. The administrative burden for insurers in Delaware who do this is so onerous they are requiring the full six-month payment. We request that either through a conceptual amendment or statement of the intent on the record, that is not the intention of the sponsors of the bill.

127 REP. WALDEN: What is the expiration date in a situation like that?

137 MR. BOE: Unless payment is not made and the policy lapses, it is the end of the six-month period represented on the card. I think the issue is what the card is to represent. A card with six months is proof of obtaining insurance, not proof of payment.

178 REP. BARNES: Does this put the insurer in a liability situation should they issue a card that is supposedly good for six months, but after the first month the policy holder doesn't make his premium payments?

181 MR. BOE: That is exactly what happened in Delaware. They held the insurer responsible. We believe there should be some language, a brief statement of intent in statute that makes it clear that is not the intent of this provision.

202 CHAIR SCHOON: We will hold the bill over to allow Mr. Boe to work on it. He closes the work session on SB 1026.

213 REP. STEIN will lead discussion on the Floor on SB 17 A-Eng.

219 CHAIR SCHOON opens the public hearing on SB 901 A-Eng.

(Tape 86, Side B) SB 901 A-ENG. - PRESCRIBES PROCEDURE FOR APPROVAL OF SPECIAL TELECOMMUNICATIONS CONTRACTS. Witnesses:Gary Wilhelms, U. S. West Communications Mike Kane, Public Utility Commission

The Senate Staff Measure Summary, Legislative Fiscal Impact Analysis and Revenue Impact Analysis are hereby made a part of these minutes (EXHIBIT L).

237 GARY WILHELMS, Director, Government Relations, U. S. West Communications, submits and reads a prepared statement in support of SB 901 A-Eng. (EXHIBIT M). The new Section 3 in the bill is now subparagraph (11) in the SB 901-A4 amendments (EXHIBIT N).

Issues discussed: >Voiding of contracts.

336 MIKE KANE: If a contract occurs in between rate cases and the company starts losing money on the contract, it is generally the shareholders who will lose money because rates have already been set. If we get to a rate case and look at the contract as having been entered in imprudently, we will impute rates to that contract.

382 MR. KANE submits and reads a portion of his prepared statement in support of SB 901 A-Eng. with the SB 901-A4 amendments (EXHIBIT O).

384 CHAIR SCHOON: Asks the opponents to look at the proposed amendments and announces that there will be a subsequent work session at which time we could take testimony and consider amendments. He closes the public hearing on SB 901 A-Eng.

TAPE 87, SIDE A

420 CHAIR SCHOON opens the work session on SB 1096.

SB 1096 A-ENG. - ALLOWS PORT TO OPERATE PIPELINES FOR PURPOSE OF TRANSPORTING MATERIALS TO INDUSTRIAL FACILITIES. Witness:Ken Armstrong, Port of St. Helens

003 REP. RIJKEN: SB 1096 A-Eng. would physically allow a port to own, acquire, construct, operate, improve or maintain pipelines to transport materials. There is prohibition dealing with natural gas pipelines or related facilities.

028 REP. BARNES: Would the pipelines be only on the property of the port?

030 KEN ARMSTRONG, Port of St. Helens: The intent of the legislation is strictly within the confines of the port district. I think the entire statute, ORS 777, is fairly clear that everything discussed is to the confines of port district.

042 MOTION: REP. RIJKEN moves that SB 1096 A-Eng. be sent to the Floor with a DO PASS recommendation.

044 VOTE: In a roll call vote, all members are present and vote AYE.

049 CHAIR SCHOON declares the motion PASSED. Rep. Oakley will lead discussion on the Floor.

060 CHAIR SCHOON reopens the work session on SB 715 B-Eng.

(Tape 87, Side A) SB 715 B-ENG. - REQUIRES BITTERING AGENT TO BE ADDED TO CERTAIN TOXIC HOUSEHOLD PRODUCTS.

061 REP. NAITO: I reviewed the proposed amendments with the proponents and opponents of the bill. On page 1 of the hand-engrossed bill (EXHIBIT E) the change of "bittering" to "aversive" apparently includes more agents that could be appropriate to use that would have the same effect. Apparently "bittering" is very limited certain substances. On page 2, there are some housekeeping changes and "bittering" is changed to "aversive." The main change is in Section 4 changing the very broad "ethylene glycol" and methanol provision to insert more specific substances.

The amendments conform to the 1970 federal requirements for substances that must contain child proof caps. The proponents of the bill assured me these are the two main substances they are concerned about.

091 There will be a poison prevention task force that will review the exceptions to the bill. A company that would have a product which they were unable to put the aversive agent in would need to make a showing that they could not do it for safety or functional reasons.

113 MOTION: REP. NAITO moves that SB 715 B-Eng. be amended as shown on the hand-engrossed bill (EXHIBIT E).

116 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the motion PASSED.

120 MOTION: REP. NAITO moves that SB 715 B-Eng., as amended, be sent to the Floor with a DO PASS recommendation.

124 VOTE: In a roll call vote, all members are present and vote AYE.

125 CHAIR SCHOON declares the motion PASSED. Rep. Naito will lead discussion on the Floor.

136 CHAIR SCHOON announces the committee will meet on Monday morning at 8:00 a.m. and declares the meeting adjourned at 3:27 p.m.

Respectfully submitted,Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -SB 715, Senate Staff Measure Summary, Legislative Fiscal Analysis and Revenue Impact Analysis, staff B -SB 715, prepared statement, Sen. Mae Yih C -SB 715, prepared statement, Lynn Tylzcak D -SB 715, prepared statement, letter from Dr. Lace, and Poisoning Exposure Data, Dr. Brent T. Burton E -SB 715, hand-engrossed bill, Terry Witt F -SB 139, SB 139-A3 amendments, committee G -SB 670, hand-engrossed bill, SB 670-A7 and SB 670-A4 amendments, Rep. Stein H -SB 810, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff I -SB 810, prepared statement, Art Keil J -HB 2757, HB 2757-1 amendments, Rep. Schoon K -SB 17, SB 17-A3 amendments, Rep. Stein L -SB 901, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff M -SB 901, prepared statement, Gary Wilhelms N -SB 901, SB 901-A4 amendments, Gary Wilhelms O -SB 901, prepared statement, Mike Kane