

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 SUBCOMMITTEE NO. 3

May 24, 1991
M.

Hearing Room 357 8:30 A.
Tape 22 - 23

MEMBERS PRESENT: Rep. Hedy L. Rijken, Chair Rep. Lisa Naito Rep. Beverly Stein

MEMBER EXCUSED: Rep. John Schoon

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

MEASURES CONSIDERED: SB 1096 PH & WS SB 1026 PH & WS SB 84 PH & WS SB 670 PH

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.

TAPE 22, SIDE A

004 CHAIR RIJKEN calls the meeting to order at 8:40 a.m. and opens the public hearing on SB 109 6.

SB 1096 A-ENG - ALLOWS PORTS TO OPERATE PIPELINES FOR PURPOSES OF TRANSPORTING MATERIALS TO INDUSTRIAL FACILITIES. Witnesses: Sen. Joan Duke Tony Federici, Port of St. Helens and Oregon Ports Association Ken Armstrong, Port of St. Helens Dave Harlan, Port of Astoria

010 SEN. JOAN DUKE: SB 1096 allows ports to operate pipelines in terms of transporting all kinds of things. I have with me representatives from the Port of Astoria and Port of St. Helens, both of whom will tell you why they need this legislation. There is another pipeline bill in the Legislature. We made sure before this bill came out of Transportation and the other one came out of Trade and Economic Development that they had similar amendments so one didn't offset the other. The other one is not exactly the same kind of bill; they can exist independently of each other.

The only opposition in the Senate was from the natural gas people. The last paragraph in the bill talks about what the ports won't be able to do as it relates to natural gas. That was the agreement in the Senate.

039 TONY FEDERICI, Commissioner, Port of St. Helens and Chairman, Legislative Committee, Oregon Public Ports Association, submits and reads a prepared statement in support of SB 1096 A-Eng. (EXHIBIT A).

093 KEN ARMSTRONG, Port of St. Helens: The Ports Division under Oregon Economic Development Department reviewed this for fiscal impact and found it would have no effect on the state. We have provided copies of testimony from Port of Morrow, Port of Coos Bay, a letter from the Columbia County Board of Commissioners, an outline of the history of

this issue prepared by James Shannon and a one-page issue (EXHIBIT B).

096 DAVE HARLAN, Port of Astoria, submits and paraphrases a prepared statement in support of SB 1096 A-Eng. (EXHIBIT C).

138 CHAIR RIJKEN closes the public hearing and opens the work session on SB 109 6 A-Eng.

148 MOTION: REP. NAITO moves that SB 1096 A-Eng. be sent to the full committee with a DO PASS recommendation.

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

155 CHAIR RIJKEN declares the motion PASSED.

CHAIR RIJKEN opens the public hearing on SB 1026.

(Tape 22, Side A) SB 1026 - REQUIRES MOTOR VEHICLE LIABILITY INSURERS TO ISSUE CARDS TO INSUREDS SHOWING DATES OF ISSUANCE AND EXPIRATION OF INSURANCE. Witness: Paul McCoy, representing Senator McCoy

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

150 PAUL McCOY, representing Senator McCoy: SB 1026 is an attempt to try to put some teeth in the problem of people driving without insurance. It is a small attempt and doesn't go as far as a lot of people would like for it to go. It requires insurance companies that sell automobile insurance policies to issue a card stating when the policy starts and when it ends. Many companies do that now. It just requires that all of them do it.

Currently, if you are involved in an accident you are required to exchange information and even though people may have insurance, they don't have anything to prove that they do. About 10 percent of cases that DMV process have no insurance.

195 CHAIR RIJKEN closes the hearing and opens the work session on SB 1026.

199 MOTION: REP. STEIN moves that SB 1026 be sent to the full committee with a DO PASS recommendation.

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

213 CHAIR RIJKEN declares the motion PASSED.

216 CHAIR RIJKEN opens the public hearing on SB 84.

(Tape 22, Side A) 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. Witnesses: Cindy Potter, Oregon State Mortuary and Cemetery Board Ted Hughes, Bateman Funeral Home, Newport James Garrett, Oregon Cemetery Association and Bateman Funeral Home, Newport

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

221 CINDY POTTER, Executive Director, Oregon State Mortuary and Cemetery Board, submits and reads a prepared statement in support of SB 84 A-Eng. (EXHIBIT F).

TED HUGHES, representing Bateman Funeral Home in Newport: Mr. Bateman operates a funeral home in Newport. He embarked upon an expansion

program for crypts and mausoleums a couple of years ago and always had in mind that he would use his same marketing people he used before. He asked government if it was permissible or not. This allows a small business more flexibility than they now have. Jim Garrett is counsel for Oregon Cemetery Association and can answers questions about the bill.

267 JAMES GARRETT, Attorney, representing Oregon Cemetery Association and Gene Bateman of Bateman Funeral Home in Newport: I presented a letter to the committee (EXHIBIT G). The purpose of the letter was to advise that the association is in favor of bill as written. By and large most cemeteterians are small business people. This is a means by which a small business person can raise funds to make capital expenditures, increase their ability to expand in a more nontraditional capital raising function. They accept the responsibility for the independent contractors who would be representing them in their community realizing their license is on the line.

320 REP. NAITO: What is ORS 97.530?

323 MS. POTTER: The statute prohibits someone from receiving any kind of a "kick back" for steering people to a particular cemetery.

333 1CHAIR RIJKEN closes the public hearing and opens the work session on SB 84.

342 MOTION: REP. NAITO moves that SB 84 A-Eng. be sent to the full committee with a DO PASS recommendation.

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

346 CHAIR RIJKEN declares the motion PASSED.

357 CHAIR RIJKEN opens the public hearing on SB 670.

(Tape 22, Side A) SB 670 A-Eng. - REQUIRES PUBLIC UTILITY COMMISSION TO ORDER REFUND OF INTERIM RATE INCREASE AND SPECIFIES TIME PERIOD FOR COMPARISON OF EARNING TO REASONABLENESS OF RATES. Witnesses: J. Rion Bourgeois, Citizens Utility Board Dan Meek, Portland Chapter Oregon Fair Share and Utility Rate Reform Project Margaret Beutler, Citizens Utility Board John Stephens, attorney Denise McPhail, Portland General Electric Pamela Lesh, Portland General Electric

367 TERRY CONNOLLY, Administrator, reviews the provisions of the bill.

357 J. RION BOURGEOIS, Citizens Utility Board (CUB), submits a letter dated May 21, 1991 with attachments (EXHIBIT H) and a copy of the relevant portions of Order No. 87-406 (EXHIBIT I), a 1987 Oregon PUC rate case involving Pacific Northwest Bell, where the commission ordered a refund of an interim rate increase under the statute we are considering today.

He reviews models in his letter of March 21 (EXHIBIT H).

TAPE 23, SIDE A

>The differential in the PGE between the higher increased interim rates and the final rates that came out of the order amount to \$114.9 million before interest. That was argued by CUB before the PUC.

>The second model argued for CUB amounted to \$64 million before interest. That was the differential between the increased interim rate and the old existing rates.

>The third model that was argued by CUB at the administrative level was the \$15.4 million which is the differential between the interim rates and the old rates. This was one-half year after the tax reformat was

adopted. PUC came up with its own figure saying they authorized the \$64 million increase, but they took it out of the spent nuclear fuel fund and they only over collected approximately \$38 million. Since they collected that much, that is what they would be ordered to refund. They also ordered that the refund be with interest. The amount today, if PUC had abided by its order and PGE had not appealed, would be \$54 million with interest according to Mr. Stephens computations.

>In the Marion Circuit Court CUB did not resume its argument for the larger differential, the argument I had made in UT 43 and which Mr. Stephens made at the administrative level. Instead they merely supported the PUC and argued the \$37.8 million with interest was a valid order.

>After the case was appealed to circuit court and the case had been fully briefed by all parties and argued to the court, while it was under advisement, the PUC and PGE then agreed to settle the case.

>The fifth figure is zero which PGE argues for. In my opinion, that argument is very strained under the statute. They are arguing that since they had requested a \$50 million increase and were only given a \$40 million increase, that the language of subparagraph (4) of the statute doesn't apply and since subparagraph (5) does not repeat the refund language, there is no refund authorized. It is too late for PGE to make that argument. In 1986 when they were granted the interim rate increase, the increased revenues were going to be subject to refund and PGE did not appeal that.

>The Oregon PUC and PGE decided to settle the case. In return for PGE dropping their investment tax credit issue on appeal, the PUC would agree there would only be a refund of the \$15.4 million without interest. But PGE would be entitled to continue to urge a \$79 million increase on appeal.

>CUB and the Utility Reform Project (URP), represented by Mr. Meek, did not agree to the so-called settlement. While the case was still pending before the Marion County Circuit Court, the Oregon PUC issued a supplemental order wherein it sought to revise its previous order and refund only the \$15.4 million without interest. URP appealed that order and the CUB moved for reconsideration of the order arguing that it is a bad settlement because it is not enough and that the PUC lacked the authority to enter into a settlement. The PUC and PGE have apparently agreed with Mr. Stephens that they lack the authority to enter into such a settlement and that is why we are here today seeking retroactive authority to order the lesser figure.

Issues discussed: >Whether PUC has authority to combine two cases and settle. >Procedures in settlement of cases.

316 MR. BOURGEOIS: If you do decide to adopt SB 670 to clarify the language of the statute and give the PUC the discretion to select whatever number, I would urge you to make that prospective and not retroactive. If you are going to adopt SB 670, I would urge you to amend the bill to include my proposed amendment to ORS 756.515 which deals with show cause cases brought by the PUC to reduce a utility's rates. It is clear the PUC has the authority to grant interim rate increases before the hearing. On the other hand if the commission or an intervenor feels a utility should reduce its rates and brings a show cause case, why not level the playing field by giving the PUC the authority to order interim rate decreases. If you are going to amend ORS 757 .215, which deals with interim rate increases, you should also amend ORS 756 .515 which deals with rate decreases.

356 DAN MEEK, Portland Chapter Oregon Fair Share and Utility Reform Project: I served throughout the case at the administrative level and on appeal as the attorney for the Utility Reform Project. He submits a prepared statement and chart relating to the PGE refund (EXHIBIT J).

This is special legislation for PGE. The only essential effect this

legislation has is to change the law retroactive to January 1, 1986 for the benefit of PGE. He paraphrases portions of his statement and explains the chart. (EXHIBIT J).

TAPE 22, SIDE B

MR. MEEK continues with his explanation.

070 CHAIR RIJKEN: What is the Utility Reform Project?

MR. MEEK: URP is a non profit entity, a 501 C4, consisting of a board of directors and members, some of whom are PP&L and PGE rate payers. URP has been actively involved in six PP&L cases, 3 PGE rate cases and one telephone rate case.

079 MARGARET BEUTLER, Legislative Chair, Citizen Utility Board and an elected commissioner: CUB is a public organization put into place by voters to represent consumers in rate cases. John Stephens represents CUB on the rate case before you. Rion Bourgeois represents CUB on a number of other cases. We would like to have you eliminate the retroactive clause on this bill and retain the version that requires interest. We feel giving the PUC the authority to decide on interest is not sufficient if they are going to require interest in other cases, then consumers are entitled to interest on any refunds. We would like for you to take the opportunity today to adopt amendments. Mr. Bourgeois and Dan MEEK have amendments to allow for rate decreases as well. The PUC has testified and maintained in hearings that they don't have the authority to decrease rates. As a representative of consumers I feel that is a gross injustice.

136 JOHN STEPHENS, an attorney testifying on his own behalf, submits and summarizes a prepared statement (EXHIBIT K). I think the effect of this legislation doesn't give them any ability to settle that they don't already have. I think it would have the effect of saying they can make the order to provide for \$15.7 million, and it is silent on whether they have to provide for interest or not. It would be my intention if this bill did pass to go back to the commission and say you have to award interest because there is no rational basis for not awarding it.

226 DENISE McPHAIL, Portland General Electric, submits and reads a prepared statement in support of SB 670 (EXHIBIT L).

296 MS. McPHAIL: Rep. Stein has shared her amendments with us (EXHIBIT M). She wanted to make it clear that refunds are required for increases granted under (4) and (5). That is in the printed bill beginning on line 4 of page 2. We believe putting the rate of interest in statute is unnecessary and amending the bill for that purpose at this time would delay its passage. Eliminating the language to base refunds on "reasonably representative" would undo the basic fairness issue that is involved in this bill. We want to resist that. The commission feels the process involves input from parties at all stages in rate setting. We would resist eliminating the retroactivity section. If what we are proposing in SB 670 is good for the future, then it ought to be good for what has gone on in the past on a basic fairness issue. I don't know how to respond on treating rate decreases the same as increases and in talking to the commission they don't understand what is intended either. We need clarification on that.

323 PAMELA LESH, Portland General Electric: We agree with Mr. Stephens that the interim rate statutes aren't very well written and we agree that the \$37 million refund is not a certainty. We do disagree with him on interest. We and the commission are proposing the \$15.7 million refund and Mr. Stephens is suggesting it ought to be \$22 million. That is a fairly small difference. We disagree with Mr. Stephens' alternative proposed resolution. The time for alternatives was a year ago when the commission was considering the process on settlement.

We don't deny that the order allowing us to put in process what was not an interim rate increase, but was an interim measure to allow us

additional revenue contained those words. No one can give the commission authority that it doesn't have; it is either in the statute or it is not. We cannot expand its powers by agreeing. >There were two cases involved before the commission: UE 47 with the interim relief and the docket which said it was subject to refund. That docket had the 1986 test year. The final result on that test year was more than enough to cover the amount of interim relief we received. It would have supported it fully. The only confusion came when docket UE 47 covering a year later did not result in an increase, but contained a decrease because of the effects of Congress's tax reform act. It would have been our understanding at the time that any refund would have been calculated off the outcome of the docket in which we got the interim relief.

Questions have arisen with the ability of the commission to settle. It is fairly common in matters before the commission for two or more parties to agree on how certain issues should be resolved. They look at that as they would look at evidence in the record and make their decision.

There is the issue of litigation against the PUC for something it has done in the courts. We think the commission has the ability to recognize the uncertainty of litigation against it and to act to protect customers' interest. We also believe there are basis which the commission could use to reach the same result as it reached in this so-called settlement. There are reasons why this was a proper result notwithstanding settling issues in litigation.

We agree there is just one appeal. There were three issues in the appeal, two have been settled.

The Legislature is not being asked to resolve this case; it is being asked to empower the commission who has the expertise to be able to carry out the decision it would like to make. We think that is different than asking the Legislature to resolve the case.

463 REP. STEIN: My tendency on this bill is to try to use it as an opportunity to clean up the statutes and not to resolve the current case. I do have amendments drafted and I would like to have input on them for the next meeting (EXHIBIT M).

477 CHAIR RIJKEN closes the public hearing on SB 670 and declares the meeting adjourned at 10:06 a.m.

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly Assistant

Administrator

EXHIBIT SUMMARY

A -SB 1096, prepared statement, Tony Federici B -SB 1096, letters, testimony from James Shannon and Issue Paper, Ken Armstrong C -SB 1096, prepared statement, David Harlan D -SB 1026, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff E -SB 84, Senate Staff Measure Summary, Legislative Fiscal Impact Assessment and Revenue Impact Analysis, staff F -SB 84, prepared statement, Cindy Potter G -SB 84, letter, James Garrett H -SB 670, letter, J. Rion Bourgeois I -SB 670, Order No. 87-406, J. Rion Bourgeois J -SB 670, prepared statement, Dan Meek K -SB 670, prepared statement, John Stephens L -SB 670, prepared statement, Denise McPhail M -SB 670, SB 670-A4 amendments, Rep. Stein