



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

October 7, 2005

Dear participants,

The Department of Justice (DOJ) has been preparing legislative history for SB 408. That history includes relevant portions of the history of SB 171, which for a time, contained some of the language that the legislature eventually included in SB 408. The history includes all:

- (1) versions of the bills;
- (2) legislative staff reports;
- (3) legislative minutes of hearings;
- (4) transcripts of hearings;
- (5) exhibits submitted at hearings; and
- (6) floor speeches.

DOJ has arranged the history in chronological order, which it believes is the most user friendly way to organize it. To further assist the parties, the Public Utility Commission has put the history on its web site, so you may access it electronically.

There is one caution. The history is lengthy, and DOJ has not yet completed verifying the accuracy of all of the transcripts of the hearings and floor speeches. DOJ will continue to work on verification, and if it discovers any errors in the transcripts that are on the PUC's web, it will make corrected transcripts available as soon as possible. Let me add that I believe that any corrections will not result in substantive changes to the history.

If you have any questions about the history itself, you may contact me at (503) 947-4757 or my paralegal, Robin Stender at (503) 947-4762. If you have difficulty accessing the history, please contact Annette Taylor at the PUC. Her number is (503) 378-3943.

Sincerely,

Paul A. Graham  
Attorney-in-Charge  
Regulated Utility & Business Section



## MEASURE HISTORY FOR SB 171

SB 171 C-Eng

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President.

- 1-10 (S) Introduction and first reading. Referred to President's desk.
- 1-14 Referred to Business & Economic Development.
- 2-8 Public Hearing held.
- 3-24 Public Hearing held.
- 4-7 Public Hearing and Work Session held.
- 4-12 Recommendation: Do pass with amendments and be referred to Revenue. (Printed A-Eng)
- 4-12 Referred to Revenue by order of the President.
- 4-14 Public Hearing held.
- 4-18 Public Hearing held.
- 4-28 Work Session held.
- 5-4 Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.)
- 5-5 Second reading.
- 5-6 Third reading. Taken from 05-06 Calendar and placed on 05-10 Calendar on voice vote.
- 5-10 Motion to rerefer to Revenue carried on voice vote.
- 5-18 Work Session held.
- 6-1 Work Session held.
- 6-3 Work Session held.
- 6-7 Recommendation: Do pass with amendments to the B-Eng. bill. (Printed C-Eng.)
- 6-9 Bill read. Carried by Metsger. Passed.  
Ayes, 28; Nays, 1--Kruse; Excused, 1--Starr, B.
- 6-10 (H) First reading. Referred to Speaker's desk.
- 6-17 Referred to Elections and Rules with subsequent referral to Budget.
- 8-5 In committee upon adjournment.

# Senate Bill 171

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Public Utility Commission)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities.

## A BILL FOR AN ACT

1  
2 Relating to public utilities; amending ORS 757.005.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 757.005 is amended to read:

5 757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,  
6 "public utility" means:

7 (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or  
8 receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this  
9 state for the production, transmission, delivery or furnishing of heat, light, water or power, directly  
10 or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly  
11 within any town or city.

12 (B) Any corporation, company, individual or association of individuals, which is party to an oral  
13 or written agreement for the payment by a public utility, for service, managerial construction, en-  
14 gineering or financing fees, and having an affiliated interest with the public utility.

15 (b) As used in this chapter, "public utility" does not include:

16 (A) Any plant owned or operated by a municipality.

17 (B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that  
18 it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality  
19 where there is no municipal or public utility plant to furnish the same.

20 (C) Any corporation, company, individual or association of individuals providing heat, light or  
21 power:

22 (i) From any energy resource to fewer than 20 customers, if it began providing service to a  
23 customer prior to July 14, 1985;

24 (ii) From any energy resource to fewer than 20 residential customers so long as the corporation,  
25 company, individual or association of individuals serves only residential customers;

26 (iii) From solar or wind resources to any number of customers; or

27 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any  
28 number of customers.

29 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555  
30 **or 18 C.F.R. 292, as in effect on April 1, 2004.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (E) Any person furnishing heat, but not delivering electricity or natural gas to its customers,  
2 except:

3 (i) As provided in ORS 757.007 and 757.009; or

4 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally  
5 owned system that was furnishing steam or other thermal forms of heat to its customers.

6 (F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership,  
7 individual or association of individuals furnishing heat to a single thermal end user from an electric  
8 generating facility, plant or equipment that is physically interconnected with the single thermal end  
9 user.

10 (G) Any corporation, company, partnership, individual or association of individuals that fur-  
11 nishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any  
12 number of customers for use in motor vehicles and does not furnish any utility service described in  
13 paragraph (a) of this subsection.

14 (H) An electricity service supplier, as defined in ORS 757.600.

15 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisi-  
16 tion or development by a utility customer of energy resources to meet the heat, light or power re-  
17 quirements of that customer.

18

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## SENATE AMENDMENTS TO SENATE BILL 171

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

April 12

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest of the line and insert  
2 “creating new provisions; and amending ORS 756.515, 757.005 and 757.259.”.

3 On page 2, after line 17, insert:

4 “**SECTION 2.** Section 3 of this 2005 Act is added to and made a part of ORS chapter 317.

5 “**SECTION 3.** (1) Notwithstanding any other provision of law, a public utility, as defined  
6 in ORS 757.005, that elects or is required to file a consolidated federal return or be an  
7 includible corporation reported on a consolidated federal return, may not file a consolidated  
8 state return.

9 “(2)(a) Notwithstanding subsection (1) of this section, a public utility may elect to file a  
10 modified consolidated state return on behalf of an affiliated group that is limited to includible  
11 corporations that are located in this state and that primarily conduct energy-related activ-  
12 ities in this state.

13 “(b) The definitions in section 1504 of the Internal Revenue Code apply to this section.

14 “(3) The Department of Revenue may adopt rules to further define terms used in this  
15 section and to implement the provisions of this section.

16 “**SECTION 4.** Section 3 of this 2005 Act applies to tax years beginning on or after January  
17 1, 2006.

18 “**SECTION 5.** ORS 756.515 is amended to read:

19 “756.515. (1) Whenever the Public Utility Commission believes that any rate may be unreason-  
20 able or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or  
21 that an investigation of any matter relating to any public utility or telecommunications utility or  
22 other person should be made, or relating to any person to determine if such person is subject to the  
23 commission’s regulatory jurisdiction, the commission may on motion summarily investigate any such  
24 matter, with or without notice.

25 “(2) If after making such investigation the commission is satisfied that sufficient grounds exist  
26 to warrant a hearing being ordered upon any such matter, the commission shall furnish any public  
27 utility or telecommunications utility or other person interested a statement notifying it of the mat-  
28 ters under investigation, which statement shall be accompanied by a notice fixing the time and place  
29 for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint.

30 “(3) Thereafter proceedings shall be had and conducted in reference to the matters investigated  
31 in like manner as though complaint had been filed with the commission relative thereto, and the  
32 same orders may be made in reference thereto as if such investigation had been made on complaint.

33 “(4) The commission may, after making an investigation on the commission’s motion, but without  
34 notice or hearing, make such findings and orders as the commission deems justified or required by  
35 the results of such investigation. Except as provided in subsections (5) and (6) of this section such

1 findings and orders have the same legal force and effect as any other finding or order of the com-  
2 mission.

3 “(5) In addition to any other remedy provided by law, any party aggrieved by an order entered  
4 pursuant to subsection (4) of this section may request the commission to hold a hearing to determine  
5 whether the order should continue in effect. Any such request for hearing shall be submitted to the  
6 commission not later than 15 days after the date of service of the order, and the commission shall  
7 hold the hearing not later than 60 days after receipt of such a request for hearing.

8 “(6) If the commission receives a request for hearing pursuant to subsection (5) of this section,  
9 the order is suspended pending the outcome of the hearing unless the commission finds that the  
10 order is necessary for the public health or safety or to prevent the dissipation of assets of a business  
11 or activity subject to the commission’s regulatory jurisdiction.

12 “(7)(a) **If five years or more have elapsed from the date of service of an order approving**  
13 **a general rate revision for an electric or natural gas public utility, the commission may order**  
14 **the public utility to show cause as to why a new filing for a general rate revision is not**  
15 **necessary. In the investigation, the public utility shall bear the burden of showing that a new**  
16 **filing is not necessary.**

17 “(b) **If the commission determines that a new filing is necessary, the commission may**  
18 **order the public utility to make the new filing under ORS 757.205 within 90 days, or within**  
19 **a greater period of time as determined by the commission. The procedures described in ORS**  
20 **757.210 and 757.215 apply.**

21 “(c) **As used in this subsection, ‘general rate revision’:**

22 “(A) **Means a filing that affects all or most of the rate schedules of a public utility; and**

23 “(B) **Does not include changes:**

24 “(i) **That are the result of an automatic adjustment clause, as defined in ORS 757.210;**

25 “(ii) **In credits that are reflected in certain rate schedules and that are related to section**  
26 **5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L.**  
27 **96-501, as amended and in effect on the effective date of this 2005 Act; or**

28 “(iii) **That are the result of depreciation, amortization or similar items that are made in**  
29 **one rate schedule and result in affecting other rate schedules.**

30 “**SECTION 6.** Section 7 of this 2005 Act is added to and made a part of ORS chapter 756.

31 “**SECTION 7.** (1) **The Public Utility Commission may require any person filing a consol-**  
32 **idated federal income tax return that includes an electric or natural gas public utility to**  
33 **provide the commission with a copy of the return and any information on which the return**  
34 **is based.**

35 “(2) **The commission may require any public utility filing a modified consolidated state**  
36 **return under section 3 of this 2005 Act to provide the commission with a copy of the return**  
37 **and any information on which the return is based.**

38 “(3) **The commission may require any person filing a consolidated local income tax return**  
39 **that includes an electric or natural gas public utility to provide the commission with a copy**  
40 **of the return and any information on which the return is based.**

41 “**SECTION 8.** ORS 757.259 is amended to read:

42 “757.259. (1) **In addition to powers otherwise vested in the Public Utility Commission, and sub-**  
43 **ject to the limitations contained in this section, under amortization schedules set by the commission,**  
44 **a rate or rate schedule:**

45 “(a) **May reflect:**

1       “(A) Amounts lawfully imposed retroactively by order of another governmental agency; or

2       “(B) Amounts deferred under subsection (2) of this section.

3       “(b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so  
4 requests.

5       “(2) Upon application of a utility or ratepayer or upon the commission’s own motion and after  
6 public notice, opportunity for comment and a hearing if any party requests a hearing, the commis-  
7 sion by order may authorize deferral of the following amounts for later incorporation in rates:

8       “(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas  
9 or electricity approved by the Federal Energy Regulatory Commission;

10       “(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric  
11 Power Planning and Conservation Act of 1980;

12       “(c) Direct or indirect costs arising from any purchase made by a public utility from the  
13 Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recov-  
14 ered only from residential and small-farm retail electricity consumers;

15       “(d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262  
16 (2); or

17       “(e) Identifiable utility expenses or revenues, the recovery or refund of which the commission  
18 finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate  
19 levels or to match appropriately the costs borne by and benefits received by ratepayers.

20       “(3) Upon request of the public utility, the commission by order shall allow deferral of amounts  
21 provided as financial assistance under an agreement entered into under ORS 757.072 for later in-  
22 corporation in rates.

23       “(4) The commission may authorize deferrals under subsection (2) of this section beginning with  
24 the date of application, together with interest established by the commission. A deferral may be  
25 authorized for a period not to exceed 12 months beginning on or after the date of application.  
26 However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to  
27 subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements  
28 that the commission may prescribe and that are consistent with the provisions of this section.

29       “(5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described  
30 in this section shall be allowed in rates only to the extent authorized by the commission in a pro-  
31 ceeding under ORS 757.210 to change rates and upon review of the utility’s earnings at the time of  
32 application to amortize the deferral. The commission may require that amortization of deferred  
33 amounts be subject to refund. The commission’s final determination on the amount of deferrals al-  
34 lowable in the rates of the utility is subject to a finding by the commission that the amount was  
35 prudently incurred by the utility.

36       “(6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate  
37 impact of the amortizations authorized under this section in any one year may not exceed three  
38 percent of the utility’s gross revenues for the preceding calendar year.

39       “(7) The commission may allow an overall average rate impact greater than that specified in  
40 subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred  
41 by a natural gas utility if the commission finds that allowing a higher amortization rate is reason-  
42 able under the circumstances.

43       “(8) The commission may authorize amortizations for an electric utility under this section with  
44 an overall average rate impact not to exceed six percent of the electric utility’s gross revenues for  
45 the preceding calendar year. If the commission allows an overall average rate impact greater than

1 that specified in subsection (6) of this section, the commission shall estimate the electric utility's  
2 cost of capital for the deferral period and may also consider estimated changes in the electric util-  
3 ity's costs and revenues during the deferral period for the purpose of reviewing the earnings of the  
4 electric utility under the provisions of subsection (5) of this section.

5 "(9) The commission may impose requirements similar to those described in subsection (8) of this  
6 section for the amortization of other deferrals under this section, but may not impose such require-  
7 ments for deferrals under subsection (2)(c) or (d) or (3) of this section.

8 "(10) The commission may authorize amortization of a deferred amount for an electric utility  
9 under this section with an overall average rate impact greater than that allowed by subsections (6)  
10 and (8) of this section if:

11 "(a) The deferral was directly related to extraordinary power supply expenses incurred during  
12 2001;

13 "(b) The amount to be deferred was greater than 40 percent of the revenue received by the  
14 electric utility in 2001 from Oregon customers; and

15 "(c) The commission determines that the higher rate impact is reasonable under the circum-  
16 stances.

17 "(11) If the commission authorizes amortization of a deferred amount under subsection (10) of  
18 this section, an electric utility customer that uses more than one average megawatt of electricity  
19 at any site in the immediately preceding calendar year may prepay the customer's share of the de-  
20 ferred amount. The commission shall adopt rules governing the manner in which:

21 "(a) The customer's share of the deferred amount is calculated; and

22 "(b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.

23 **"(12) Upon application of a utility or ratepayer or upon the commission's own motion and**  
24 **after public notice, opportunity for comment and a hearing if any party requests a hearing,**  
25 **the commission may authorize the incorporation into rates of estimated federal and state**  
26 **taxes. In determining estimated federal and state taxes, the commission shall take into ac-**  
27 **count the effects of filing federal returns on a consolidated basis.**

28 "[12] (13) The provisions of this section do not apply to a telecommunications utility."  
29

**A-Engrossed  
Senate Bill 171**

Ordered by the Senate April 12  
Including Senate Amendments dated April 12

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Public Utility Commission)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities.

**Prohibits public utilities from filing consolidated state income tax returns. Establishes conditions under which utility may file modified consolidated return.**

**Authorizes Public Utility Commission to require copies of federal, state and local consolidated returns.**

**Establishes conditions under which commission may order new filing for general rate revision.**

**A BILL FOR AN ACT**

1  
2 Relating to public utilities; creating new provisions; and amending ORS 756.515, 757.005 and 757.259.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 757.005 is amended to read:

5 757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,  
6 "public utility" means:

7 (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or  
8 receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this  
9 state for the production, transmission, delivery or furnishing of heat, light, water or power, directly  
10 or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly  
11 within any town or city.

12 (B) Any corporation, company, individual or association of individuals, which is party to an oral  
13 or written agreement for the payment by a public utility, for service, managerial construction, en-  
14 gineering or financing fees, and having an affiliated interest with the public utility.

15 (b) As used in this chapter, "public utility" does not include:

16 (A) Any plant owned or operated by a municipality.

17 (B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that  
18 it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality  
19 where there is no municipal or public utility plant to furnish the same.

20 (C) Any corporation, company, individual or association of individuals providing heat, light or  
21 power:

22 (i) From any energy resource to fewer than 20 customers, if it began providing service to a  
23 customer prior to July 14, 1985;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (ii) From any energy resource to fewer than 20 residential customers so long as the corporation,  
2 company, individual or association of individuals serves only residential customers;

3 (iii) From solar or wind resources to any number of customers; or

4 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any  
5 number of customers.

6 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555  
7 or 18 C.F.R. 292, as in effect on April 1, 2004.

8 (E) Any person furnishing heat, but not delivering electricity or natural gas to its customers,  
9 except:

10 (i) As provided in ORS 757.007 and 757.009; or

11 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally  
12 owned system that was furnishing steam or other thermal forms of heat to its customers.

13 (F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership,  
14 individual or association of individuals furnishing heat to a single thermal end user from an electric  
15 generating facility, plant or equipment that is physically interconnected with the single thermal end  
16 user.

17 (G) Any corporation, company, partnership, individual or association of individuals that fur-  
18 nishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any  
19 number of customers for use in motor vehicles and does not furnish any utility service described in  
20 paragraph (a) of this subsection.

21 (H) An electricity service supplier, as defined in ORS 757.600.

22 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisi-  
23 tion or development by a utility customer of energy resources to meet the heat, light or power re-  
24 quirements of that customer.

25 **SECTION 2. Section 3 of this 2005 Act is added to and made a part of ORS chapter 317.**

26 **SECTION 3. (1) Notwithstanding any other provision of law, a public utility, as defined  
27 in ORS 757.005, that elects or is required to file a consolidated federal return or be an  
28 includible corporation reported on a consolidated federal return, may not file a consolidated  
29 state return.**

30 **(2)(a) Notwithstanding subsection (1) of this section, a public utility may elect to file a  
31 modified consolidated state return on behalf of an affiliated group that is limited to includible  
32 corporations that are located in this state and that primarily conduct energy-related activ-  
33 ities in this state.**

34 **(b) The definitions in section 1504 of the Internal Revenue Code apply to this section.**

35 **(3) The Department of Revenue may adopt rules to further define terms used in this  
36 section and to implement the provisions of this section.**

37 **SECTION 4. Section 3 of this 2005 Act applies to tax years beginning on or after January  
38 1, 2006.**

39 **SECTION 5. ORS 756.515 is amended to read:**

40 756.515. (1) Whenever the Public Utility Commission believes that any rate may be unreasonable  
41 or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that  
42 an investigation of any matter relating to any public utility or telecommunications utility or other  
43 person should be made, or relating to any person to determine if such person is subject to the  
44 commission's regulatory jurisdiction, the commission may on motion summarily investigate any such  
45 matter, with or without notice.

1 (2) If after making such investigation the commission is satisfied that sufficient grounds exist  
2 to warrant a hearing being ordered upon any such matter, the commission shall furnish any public  
3 utility or telecommunications utility or other person interested a statement notifying it of the mat-  
4 ters under investigation, which statement shall be accompanied by a notice fixing the time and place  
5 for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint.

6 (3) Thereafter proceedings shall be had and conducted in reference to the matters investigated  
7 in like manner as though complaint had been filed with the commission relative thereto, and the  
8 same orders may be made in reference thereto as if such investigation had been made on complaint.

9 (4) The commission may, after making an investigation on the commission's motion, but without  
10 notice or hearing, make such findings and orders as the commission deems justified or required by  
11 the results of such investigation. Except as provided in subsections (5) and (6) of this section such  
12 findings and orders have the same legal force and effect as any other finding or order of the com-  
13 mission.

14 (5) In addition to any other remedy provided by law, any party aggrieved by an order entered  
15 pursuant to subsection (4) of this section may request the commission to hold a hearing to determine  
16 whether the order should continue in effect. Any such request for hearing shall be submitted to the  
17 commission not later than 15 days after the date of service of the order, and the commission shall  
18 hold the hearing not later than 60 days after receipt of such a request for hearing.

19 (6) If the commission receives a request for hearing pursuant to subsection (5) of this section,  
20 the order is suspended pending the outcome of the hearing unless the commission finds that the  
21 order is necessary for the public health or safety or to prevent the dissipation of assets of a business  
22 or activity subject to the commission's regulatory jurisdiction.

23 **(7)(a) If five years or more have elapsed from the date of service of an order approving**  
24 **a general rate revision for an electric or natural gas public utility, the commission may order**  
25 **the public utility to show cause as to why a new filing for a general rate revision is not**  
26 **necessary. In the investigation, the public utility shall bear the burden of showing that a new**  
27 **filing is not necessary.**

28 **(b) If the commission determines that a new filing is necessary, the commission may**  
29 **order the public utility to make the new filing under ORS 757.205 within 90 days, or within**  
30 **a greater period of time as determined by the commission. The procedures described in ORS**  
31 **757.210 and 757.215 apply.**

32 **(c) As used in this subsection, "general rate revision":**

33 **(A) Means a filing that affects all or most of the rate schedules of a public utility; and**

34 **(B) Does not include changes:**

35 **(i) That are the result of an automatic adjustment clause, as defined in ORS 757.210;**

36 **(ii) In credits that are reflected in certain rate schedules and that are related to section**  
37 **5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L.**  
38 **96-501, as amended and in effect on the effective date of this 2005 Act; or**

39 **(iii) That are the result of depreciation, amortization or similar items that are made in**  
40 **one rate schedule and result in affecting other rate schedules.**

41 **SECTION 6. Section 7 of this 2005 Act is added to and made a part of ORS chapter 756.**

42 **SECTION 7. (1) The Public Utility Commission may require any person filing a consol-**  
43 **idated federal income tax return that includes an electric or natural gas public utility to**  
44 **provide the commission with a copy of the return and any information on which the return**  
45 **is based.**

1           (2) The commission may require any public utility filing a modified consolidated state  
2 return under section 3 of this 2005 Act to provide the commission with a copy of the return  
3 and any information on which the return is based.

4           (3) The commission may require any person filing a consolidated local income tax return  
5 that includes an electric or natural gas public utility to provide the commission with a copy  
6 of the return and any information on which the return is based.

7           SECTION 8. ORS 757.259 is amended to read:

8           757.259. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject  
9 to the limitations contained in this section, under amortization schedules set by the commission, a  
10 rate or rate schedule:

11           (a) May reflect:

12           (A) Amounts lawfully imposed retroactively by order of another governmental agency; or

13           (B) Amounts deferred under subsection (2) of this section.

14           (b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so re-  
15 quests.

16           (2) Upon application of a utility or ratepayer or upon the commission's own motion and after  
17 public notice, opportunity for comment and a hearing if any party requests a hearing, the commis-  
18 sion by order may authorize deferral of the following amounts for later incorporation in rates:

19           (a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas  
20 or electricity approved by the Federal Energy Regulatory Commission;

21           (b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric  
22 Power Planning and Conservation Act of 1980;

23           (c) Direct or indirect costs arising from any purchase made by a public utility from the  
24 Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recov-  
25 ered only from residential and small-farm retail electricity consumers;

26           (d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262  
27 (2); or

28           (e) Identifiable utility expenses or revenues, the recovery or refund of which the commission  
29 finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate  
30 levels or to match appropriately the costs borne by and benefits received by ratepayers.

31           (3) Upon request of the public utility, the commission by order shall allow deferral of amounts  
32 provided as financial assistance under an agreement entered into under ORS 757.072 for later in-  
33 corporation in rates.

34           (4) The commission may authorize deferrals under subsection (2) of this section beginning with  
35 the date of application, together with interest established by the commission. A deferral may be  
36 authorized for a period not to exceed 12 months beginning on or after the date of application.  
37 However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to  
38 subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements  
39 that the commission may prescribe and that are consistent with the provisions of this section.

40           (5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described  
41 in this section shall be allowed in rates only to the extent authorized by the commission in a pro-  
42 ceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of  
43 application to amortize the deferral. The commission may require that amortization of deferred  
44 amounts be subject to refund. The commission's final determination on the amount of deferrals al-  
45 lowable in the rates of the utility is subject to a finding by the commission that the amount was



1 prudently incurred by the utility.

2 (6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate  
3 impact of the amortizations authorized under this section in any one year may not exceed three  
4 percent of the utility's gross revenues for the preceding calendar year.

5 (7) The commission may allow an overall average rate impact greater than that specified in  
6 subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred  
7 by a natural gas utility if the commission finds that allowing a higher amortization rate is reason-  
8 able under the circumstances.

9 (8) The commission may authorize amortizations for an electric utility under this section with  
10 an overall average rate impact not to exceed six percent of the electric utility's gross revenues for  
11 the preceding calendar year. If the commission allows an overall average rate impact greater than  
12 that specified in subsection (6) of this section, the commission shall estimate the electric utility's  
13 cost of capital for the deferral period and may also consider estimated changes in the electric util-  
14 ity's costs and revenues during the deferral period for the purpose of reviewing the earnings of the  
15 electric utility under the provisions of subsection (5) of this section.

16 (9) The commission may impose requirements similar to those described in subsection (8) of this  
17 section for the amortization of other deferrals under this section, but may not impose such require-  
18 ments for deferrals under subsection (2)(c) or (d) or (3) of this section.

19 (10) The commission may authorize amortization of a deferred amount for an electric utility  
20 under this section with an overall average rate impact greater than that allowed by subsections (6)  
21 and (8) of this section if:

22 (a) The deferral was directly related to extraordinary power supply expenses incurred during  
23 2001;

24 (b) The amount to be deferred was greater than 40 percent of the revenue received by the  
25 electric utility in 2001 from Oregon customers; and

26 (c) The commission determines that the higher rate impact is reasonable under the circum-  
27 stances.

28 (11) If the commission authorizes amortization of a deferred amount under subsection (10) of this  
29 section, an electric utility customer that uses more than one average megawatt of electricity at any  
30 site in the immediately preceding calendar year may prepay the customer's share of the deferred  
31 amount. The commission shall adopt rules governing the manner in which:

32 (a) The customer's share of the deferred amount is calculated; and

33 (b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.

34 **(12) Upon application of a utility or ratepayer or upon the commission's own motion and**  
35 **after public notice, opportunity for comment and a hearing if any party requests a hearing,**  
36 **the commission may authorize the incorporation into rates of estimated federal and state**  
37 **taxes. In determining estimated federal and state taxes, the commission shall take into ac-**  
38 **count the effects of filing federal returns on a consolidated basis.**

39 ~~[(12)]~~ (13) The provisions of this section do not apply to a telecommunications utility.

40

## SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 171

By COMMITTEE ON REVENUE

May 4

1 On page 1 of the printed A-engrossed bill, line 2, after "ORS" delete the rest of the line and  
2 insert "757.005, 757.506 and 757.511."

3 On page 2, delete lines 30 through 34 and insert:

4 "(2) Subsection (1) of this section does not apply to a water utility, as defined in ORS  
5 758.300."

6 Delete lines 39 through 45 and delete pages 3 through 5 and insert:

7 "**SECTION 5.** ORS 757.506 is amended to read:

8 "757.506. (1) The Legislative Assembly finds and declares that:

9 "(a) The protection of customers of public utilities [*which*] **that** provide heat, light or power is  
10 a matter of fundamental statewide concern;

11 "(b) Existing legislation requires the Public Utility Commission's approval of one public utility's  
12 acquisition of another public utility's stocks, bonds and certain property used for utility purposes,  
13 but does not require the commission's approval of such acquisitions by persons not engaged in the  
14 public utility business in Oregon; and

15 "(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the  
16 power to exercise any substantial influence over the policies and actions of an Oregon public utility  
17 [*which*] **that** provides heat, light or power could result in harm to [*such*] **the** utility's customers,  
18 including but not limited to the degradation of utility service, higher rates, weakened financial  
19 structure **of the utility** and diminution of utility assets.

20 "(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not  
21 engaged in the public utility business in Oregon of the power to exercise any substantial influence  
22 over the policies and actions of an Oregon public utility [*which*] **that** provides heat, light or power  
23 in the manner set forth in this section and ORS 757.511 [*in order to prevent unnecessary and un-*  
24 *warranted harm to such utilities' customers*].

25 "**SECTION 6.** ORS 757.511 is amended to read:

26 "757.511. (1) [*No person, directly or indirectly, shall*] **A person may not directly or indirectly**  
27 acquire the power to exercise any substantial influence over the policies and actions of a public  
28 utility [*which*] **that** provides heat, light or power without first securing from the Public Utility  
29 Commission, upon application, an order authorizing [*such*] **the** acquisition [*if such person is, or by*  
30 *such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015*  
31 *(1), (2) or (3)*] **of that power.**

32 "(2) The application required by subsection (1) of this section shall set forth detailed information  
33 regarding:

34 "(a) The applicant's identity and financial ability;

35 "(b) The background of the key personnel associated with the applicant;

- 1       “(c) The source and amounts of funds or other consideration to be used in the acquisition;  
2       “(d) The applicant’s compliance with federal law in carrying out the acquisition;  
3       “(e) Whether the applicant or the key personnel associated with the applicant have violated any  
4 state or federal statutes regulating the activities of public utilities;  
5       “(f) All documents relating to the transaction giving rise to the application;  
6       “(g) The applicant’s experience in operating public utilities providing heat, light or power;  
7       “(h) The applicant’s plan for operating the public utility;  
8       “(i) How the acquisition will serve the public utility’s customers in the public interest; and  
9       “(j) [*Such*] **Any** other information [*as*] **that** the commission may require by rule.

10       “(3) The commission **shall** promptly [*shall*] examine and investigate each application received  
11 pursuant to this section and shall issue an order disposing of the application within 19 business days  
12 of its receipt. [*If the commission determines that approval of the application will serve the public*  
13 *utility’s customers in the public interest, the commission shall issue an order granting the*  
14 *application.*] **In addition to any other factors the commission considers relevant to making a**  
15 **determination under this section, the commission is authorized to consider the reasonable-**  
16 **ness of the anticipated profits of the applicant following the acquisition in relation to the**  
17 **anticipated benefits and liabilities to be borne by the public utility’s customers following the**  
18 **acquisition. The commission shall issue an order approving the application if the commission**  
19 **determines that the acquisition:**

20       “(a) **Will constitute a net benefit to the customers of the public utility; and**

21       “(b) **Will do no harm to the interests of the public in general.**

22       “(4) The commission may condition an order **approving the application and** authorizing the  
23 acquisition upon the applicant’s satisfactory performance or adherence to specific requirements.

24       “(5) The commission [*otherwise*] shall issue an order denying the application **if the commission**  
25 **is unable to make the determination described in subsection (3) of this section.** The applicant  
26 shall bear the burden of showing that [*granting the application is in the public interest*] **the re-**  
27 **quirements of subsection (3) of this section will be satisfied by the applicant.**

28       “[(4)] (6) Nothing in this section shall prohibit dissemination by any party of information con-  
29 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
30 eral law.

31       “**SECTION 7. The amendments to ORS 757.506 and 757.511 by sections 5 and 6 of this 2005**  
32 **Act apply to applications for Public Utility Commission approval under ORS 757.511 for which**  
33 **the commission issues an order disposing of the application on or after the effective date of**  
34 **this 2005 Act.”.**

35

## B-Engrossed Senate Bill 171

Ordered by the Senate May 4  
Including Senate Amendments dated April 12 and May 4

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Public Utility Commission)

### SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities.

Prohibits public utilities from filing consolidated state income tax returns. **Specifies that prohibition does not apply to certain water utilities.** [*Establishes conditions under which utility may file modified consolidated return.*]

[*Authorizes Public Utility Commission to require copies of federal, state and local consolidated returns.*]

[*Establishes conditions under which commission may order new filing for general rate revision.*]

**Authorizes Public Utility Commission to apply net benefit standards when considering applications for acquisition of public utilities providing heat, light or power.**

### A BILL FOR AN ACT

1  
2 Relating to public utilities; creating new provisions; and amending ORS 757.005, 757.506 and 757.511.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 757.005 is amended to read:

5 757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,  
6 "public utility" means:

7 (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or  
8 receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this  
9 state for the production, transmission, delivery or furnishing of heat, light, water or power, directly  
10 or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly  
11 within any town or city.

12 (B) Any corporation, company, individual or association of individuals, which is party to an oral  
13 or written agreement for the payment by a public utility, for service, managerial construction, en-  
14 gineering or financing fees, and having an affiliated interest with the public utility.

15 (b) As used in this chapter, "public utility" does not include:

16 (A) Any plant owned or operated by a municipality.

17 (B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that  
18 it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality  
19 where there is no municipal or public utility plant to furnish the same.

20 (C) Any corporation, company, individual or association of individuals providing heat, light or  
21 power:

22 (i) From any energy resource to fewer than 20 customers, if it began providing service to a

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 customer prior to July 14, 1985;

2 (ii) From any energy resource to fewer than 20 residential customers so long as the corporation,  
3 company, individual or association of individuals serves only residential customers;

4 (iii) From solar or wind resources to any number of customers; or

5 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any  
6 number of customers.

7 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555  
8 **or 18 C.F.R. 292, as in effect on April 1, 2004.**

9 (E) Any person furnishing heat, but not delivering electricity or natural gas to its customers,  
10 except:

11 (i) As provided in ORS 757.007 and 757.009; or

12 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally  
13 owned system that was furnishing steam or other thermal forms of heat to its customers.

14 (F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership,  
15 individual or association of individuals furnishing heat to a single thermal end user from an electric  
16 generating facility, plant or equipment that is physically interconnected with the single thermal end  
17 user.

18 (G) Any corporation, company, partnership, individual or association of individuals that fur-  
19 nishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any  
20 number of customers for use in motor vehicles and does not furnish any utility service described in  
21 paragraph (a) of this subsection.

22 (H) An electricity service supplier, as defined in ORS 757.600.

23 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acqui-  
24 sition or development by a utility customer of energy resources to meet the heat, light or power re-  
25 quirements of that customer.

26 **SECTION 2. Section 3 of this 2005 Act is added to and made a part of ORS chapter 317.**

27 **SECTION 3. (1) Notwithstanding any other provision of law, a public utility, as defined  
28 in ORS 757.005, that elects or is required to file a consolidated federal return or be an  
29 includible corporation reported on a consolidated federal return, may not file a consolidated  
30 state return.**

31 **(2) Subsection (1) of this section does not apply to a water utility, as defined in ORS  
32 758.300.**

33 **(3) The Department of Revenue may adopt rules to further define terms used in this  
34 section and to implement the provisions of this section.**

35 **SECTION 4. Section 3 of this 2005 Act applies to tax years beginning on or after January  
36 1, 2006.**

37 **SECTION 5. ORS 757.506 is amended to read:**

38 757.506. (1) The Legislative Assembly finds and declares that:

39 (a) The protection of customers of public utilities [*which*] **that** provide heat, light or power is  
40 a matter of fundamental statewide concern;

41 (b) Existing legislation requires the Public Utility Commission's approval of one public utility's  
42 acquisition of another public utility's stocks, bonds and certain property used for utility purposes,  
43 but does not require the commission's approval of such acquisitions by persons not engaged in the  
44 public utility business in Oregon; and

45 (c) An attempt by a person not engaged in the public utility business in Oregon to acquire the

1 power to exercise any substantial influence over the policies and actions of an Oregon public utility  
2 [which] **that** provides heat, light or power could result in harm to [such] **the** utility's customers,  
3 including but not limited to the degradation of utility service, higher rates, weakened financial  
4 structure **of the utility** and diminution of utility assets.

5 (2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not  
6 engaged in the public utility business in Oregon of the power to exercise any substantial influence  
7 over the policies and actions of an Oregon public utility [which] **that** provides heat, light or power  
8 in the manner set forth in this section and ORS 757.511 [in order to prevent unnecessary and un-  
9 warranted harm to such utilities' customers].

10 **SECTION 6.** ORS 757.511 is amended to read:

11 757.511. (1) [No person, directly or indirectly, shall] **A person may not directly or indirectly**  
12 acquire the power to exercise any substantial influence over the policies and actions of a public  
13 utility [which] **that** provides heat, light or power without first securing from the Public Utility  
14 Commission, upon application, an order authorizing [such] **the** acquisition [if such person is, or by  
15 such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015  
16 (1), (2) or (3)] **of that power.**

17 (2) The application required by subsection (1) of this section shall set forth detailed information  
18 regarding:

- 19 (a) The applicant's identity and financial ability;
- 20 (b) The background of the key personnel associated with the applicant;
- 21 (c) The source and amounts of funds or other consideration to be used in the acquisition;
- 22 (d) The applicant's compliance with federal law in carrying out the acquisition;
- 23 (e) Whether the applicant or the key personnel associated with the applicant have violated any  
24 state or federal statutes regulating the activities of public utilities;
- 25 (f) All documents relating to the transaction giving rise to the application;
- 26 (g) The applicant's experience in operating public utilities providing heat, light or power;
- 27 (h) The applicant's plan for operating the public utility;
- 28 (i) How the acquisition will serve the public utility's customers in the public interest; and
- 29 (j) [Such] **Any** other information [as] **that** the commission may require by rule.

30 (3) The commission **shall** promptly [shall] examine and investigate each application received  
31 pursuant to this section and shall issue an order disposing of the application within 19 business days  
32 of its receipt. [If the commission determines that approval of the application will serve the public  
33 utility's customers in the public interest, the commission shall issue an order granting the  
34 application.] **In addition to any other factors the commission considers relevant to making a  
35 determination under this section, the commission is authorized to consider the reasonable-  
36 ness of the anticipated profits of the applicant following the acquisition in relation to the  
37 anticipated benefits and liabilities to be borne by the public utility's customers following the  
38 acquisition. The commission shall issue an order approving the application if the commission  
39 determines that the acquisition:**

40 (a) **Will constitute a net benefit to the customers of the public utility; and**

41 (b) **Will do no harm to the interests of the public in general.**

42 (4) The commission may condition an order **approving the application and** authorizing the  
43 acquisition upon the applicant's satisfactory performance or adherence to specific requirements.

44 (5) The commission [otherwise] shall issue an order denying the application **if the commission**  
45 **is unable to make the determination described in subsection (3) of this section.** The applicant

1 shall bear the burden of showing that *[granting the application is in the public interest]* **the re-**  
2 **quirements of subsection (3) of this section will be satisfied by the applicant.**

3 ~~[(4)]~~ (6) Nothing in this section shall prohibit dissemination by any party of information con-  
4 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
5 eral law.

6 **SECTION 7. The amendments to ORS 757.506 and 757.511 by sections 5 and 6 of this 2005**  
7 **Act apply to applications for Public Utility Commission approval under ORS 757.511 for which**  
8 **the commission issues an order disposing of the application on or after the effective date of**  
9 **this 2005 Act.**

10

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**SENATE AMENDMENTS TO  
B-ENGROSSED SENATE BILL 171**

By COMMITTEE ON REVENUE

June 7

1 On page 2 of the printed B-engrossed bill, delete lines 26 through 36 and insert:  
2 "**NOTE:** Sections 2 through 4 were deleted by amendment. Subsequent sections were not re-  
3 numbered."  
4

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# C-Engrossed Senate Bill 171

Ordered by the Senate June 7  
Including Senate Amendments dated April 12 and May 4 and June 7

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Public Utility Commission)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities.

*[Prohibits public utilities from filing consolidated state income tax returns. Specifies that prohibition does not apply to certain water utilities.]*

Authorizes Public Utility Commission to apply net benefit standards when considering applications for acquisition of public utilities providing heat, light or power.

## A BILL FOR AN ACT

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Relating to public utilities; creating new provisions; and amending ORS 757.005, 757.506 and 757.511.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 757.005 is amended to read:

757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, "public utility" does not include:

(A) Any plant owned or operated by a municipality.

(B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(C) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (iii) From solar or wind resources to any number of customers; or
- 2 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any
- 3 number of customers.

4 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555  
5 **or 18 C.F.R. 292, as in effect on April 1, 2004.**

6 (E) Any person furnishing heat, but not delivering electricity or natural gas to its customers,  
7 except:

- 8 (i) As provided in ORS 757.007 and 757.009; or
- 9 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally
- 10 owned system that was furnishing steam or other thermal forms of heat to its customers.

11 (F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership,  
12 individual or association of individuals furnishing heat to a single thermal end user from an electric  
13 generating facility, plant or equipment that is physically interconnected with the single thermal end  
14 user.

15 (G) Any corporation, company, partnership, individual or association of individuals that fur-  
16 nishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any  
17 number of customers for use in motor vehicles and does not furnish any utility service described in  
18 paragraph (a) of this subsection.

19 (H) An electricity service supplier, as defined in ORS 757.600.

20 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisi-  
21 tion or development by a utility customer of energy resources to meet the heat, light or power re-  
22 quirements of that customer.

23 **NOTE:** Sections 2 through 4 were deleted by amendment. Subsequent sections were not re-  
24 numbered.

25 **SECTION 5.** ORS 757.506 is amended to read:

26 757.506. (1) The Legislative Assembly finds and declares that:

27 (a) The protection of customers of public utilities [*which*] **that** provide heat, light or power is  
28 a matter of fundamental statewide concern;

29 (b) Existing legislation requires the Public Utility Commission's approval of one public utility's  
30 acquisition of another public utility's stocks, bonds and certain property used for utility purposes,  
31 but does not require the commission's approval of such acquisitions by persons not engaged in the  
32 public utility business in Oregon; and

33 (c) An attempt by a person not engaged in the public utility business in Oregon to acquire the  
34 power to exercise any substantial influence over the policies and actions of an Oregon public utility  
35 [*which*] **that** provides heat, light or power could result in harm to [*such*] **the** utility's customers,  
36 including but not limited to the degradation of utility service, higher rates, weakened financial  
37 structure **of the utility** and diminution of utility assets.

38 (2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not  
39 engaged in the public utility business in Oregon of the power to exercise any substantial influence  
40 over the policies and actions of an Oregon public utility [*which*] **that** provides heat, light or power  
41 in the manner set forth in this section and ORS 757.511 [*in order to prevent unnecessary and un-*  
42 *warranted harm to such utilities' customers*].

43 **SECTION 6.** ORS 757.511 is amended to read:

44 757.511. (1) [*No person, directly or indirectly, shall*] **A person may not directly or indirectly**  
45 **acquire the power to exercise any substantial influence over the policies and actions of a public**

1 utility [which] **that** provides heat, light or power without first securing from the Public Utility  
2 Commission, upon application, an order authorizing [such] **the** acquisition [if such person is, or by  
3 such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015  
4 (1), (2) or (3)] **of that power.**

5 (2) The application required by subsection (1) of this section shall set forth detailed information  
6 regarding:

- 7 (a) The applicant's identity and financial ability;
- 8 (b) The background of the key personnel associated with the applicant;
- 9 (c) The source and amounts of funds or other consideration to be used in the acquisition;
- 10 (d) The applicant's compliance with federal law in carrying out the acquisition;
- 11 (e) Whether the applicant or the key personnel associated with the applicant have violated any  
12 state or federal statutes regulating the activities of public utilities;
- 13 (f) All documents relating to the transaction giving rise to the application;
- 14 (g) The applicant's experience in operating public utilities providing heat, light or power;
- 15 (h) The applicant's plan for operating the public utility;
- 16 (i) How the acquisition will serve the public utility's customers in the public interest; and
- 17 (j) [Such] **Any** other information [as] **that** the commission may require by rule.

18 (3) The commission **shall** promptly [shall] examine and investigate each application received  
19 pursuant to this section and shall issue an order disposing of the application within 19 business days  
20 of its receipt. [If the commission determines that approval of the application will serve the public  
21 utility's customers in the public interest, the commission shall issue an order granting the  
22 application.] **In addition to any other factors the commission considers relevant to making a  
23 determination under this section, the commission is authorized to consider the reasonable-  
24 ness of the anticipated profits of the applicant following the acquisition in relation to the  
25 anticipated benefits and liabilities to be borne by the public utility's customers following the  
26 acquisition. The commission shall issue an order approving the application if the commission  
27 determines that the acquisition:**

- 28 (a) **Will constitute a net benefit to the customers of the public utility; and**
- 29 (b) **Will do no harm to the interests of the public in general.**

30 (4) The commission may condition an order **approving the application and** authorizing the  
31 acquisition upon the applicant's satisfactory performance or adherence to specific requirements.

32 (5) The commission [otherwise] shall issue an order denying the application **if the commission  
33 is unable to make the determination described in subsection (3) of this section.** The applicant  
34 shall bear the burden of showing that [granting the application is in the public interest] **the re-  
35 quirements of subsection (3) of this section will be satisfied by the applicant.**

36 [(4)] (6) Nothing in this section shall prohibit dissemination by any party of information con-  
37 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
38 eral law.

39 **SECTION 7. The amendments to ORS 757.506 and 757.511 by sections 5 and 6 of this 2005**  
40 **Act apply to applications for Public Utility Commission approval under ORS 757.511 for which**  
41 **the commission issues an order disposing of the application on or after the effective date of**  
42 **this 2005 Act.**

REVENUE: May have a revenue impact, statement not yet issued  
FISCAL: No fiscal impact

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<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Revenue
<b>Vote:</b>	3 - 0 - 2
<b>Yeas:</b>	Monnes Anderson, Starr B., Metsger
<b>Nays:</b>	0
<b>Exc.:</b>	Atkinson, Deckert
<b>Prepared By:</b>	Theresa Van Winkle, Administrator
<b>Meeting Dates:</b>	2/8; 3/24; 4/7

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**WHAT THE MEASURE DOES:** Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities. Makes changes to current statute regarding the tax returns for public electric utilities.

**ISSUES DISCUSSED:**

- Provisions of the measure
- Overview of Public Utility Commission recommendations to the Legislature regarding utility income taxes

**EFFECT OF COMMITTEE AMENDMENT:** Adds provisions to better match taxes collected and taxes paid by regulated utilities: require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon; direct the Commission to consider consolidated tax benefits when it includes federal income taxes to customer rates; require regulated utilities to file a general rate case at least once every five years.

**BACKGROUND:** SB 171-A corrects an error in ORS 757.055 related to the definition of a public utility. It reinstates an exemption for certain cogeneration facilities and small power production facilities from regulation as public utilities by adding a reference to the federal laws.

The measure is also a response to a recent recommendation from the Public Utility Commission (PUC) regarding the treatment of income taxes in utility ratemaking. The PUC currently sets a utility's rates on a stand-alone basis, with income taxes included in rates being based on the revenues and costs of the utility's regulated service. Customer rates do not include income taxes related to the utility's unregulated activities and rates do not reflect the operations of the utility's parent or other affiliated companies.

Concerns have been raised from consumer groups and other interests about the mismatch between taxes collected and taxes actually paid. Most of that concern is directed at the effects of filing consolidated tax returns. When the utility's parent company files taxes on a consolidated basis, losses in other unregulated operations can offset the utility's taxable income and reduce the parent's overall tax liability.

4/26/2005 9:36:00 AM

*This summary has not been adopted or officially endorsed by action of the committee.*

73<sup>rd</sup> OREGON LEGISLATIVE ASSEMBLY – 2005 Regular Session  
STAFF MEASURE SUMMARY  
SENATE COMMITTEE ON REVENUE

MEASURE: SB 171-B  
CARRIER: SEN. METSGER

REVENUE: Revenue statement issued

FISCAL: No fiscal impact

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Action: Do Pass With Amendments

Vote: 3-2-0

Yeas: Senators Metsger, Prozanski, Deckert

Nays: Senators George, C. Starr

Exc.:

Prepared By: Paul Warner, Economist

Meeting Dates: 4/14, 4/18, 4/28/05

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**WHAT THE MEASURE DOES:** Prohibits public utilities that file federal consolidated corporate income tax returns with the federal government from filing consolidated Oregon tax returns. Applies restriction to public utilities as defined in ORS 757.005. Exempts water utilities from provision, leaving energy related utilities subject to the restriction. Codifies net benefits standard for Public Utility Commission consideration of acquisitions. Exempts small cogeneration facilities from non-safety regulations.

**ISSUES DISCUSSED:**

- Recommendations from Public Utility Commission.
- Current method of estimating income taxes for utility rate decisions.
- Difference between estimated income taxes for rate decision versus actual taxes paid on consolidated tax return.
- Current industry tax burden.
- 1999 legislation that inadvertently included small cogeneration facilities under regulations.

**EFFECT OF COMMITTEE AMENDMENTS:** Excludes water utilities from prohibition on filing consolidated tax returns. Deletes provisions allowing for modified consolidated returns. Deletes language relating to periodic filing for general rate revisions. Adds reference to net benefit standard when Public Utility Commission considers acquisition proposals.

**BACKGROUND:** Standard rate setting procedures for public utilities call for calculation of taxes on a stand alone basis. This hypothetical calculation is then built into consumer rates. Public utilities often file income taxes as part of a consolidated group. Oregon law requires that consolidated entities file their corporate income taxes as a consolidated group and not as a separate subsidiary. This means that actual taxes may differ widely from the hypothetical calculation used to set rates. This is especially the case when the parent corporation filing a consolidated return reports negative net income and therefore has no corporate income tax liability. In this instance taxes are part of the rate base but were not actually paid to the state government. This situation arose with Portland General Electric and its parent corporation—Enron. This led to a request from the Senate Revenue committee Chairman to the Public Utility Commission for recommendations on how to reconcile differences between taxes actually paid and those built into rates. The Commission recommended that energy related regulated public utilities be prevented from filing consolidated state income tax returns.

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Paul Warner, Legislative Revenue Officer

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**REVENUE IMPACT OF PROPOSED LEGISLATION**  
**2005 73rd Oregon Legislative Assembly**

BILL NUMBER	REVENUE AREA	ECONOMIST	DATE
SB 171B	Corporate Income Tax	Paul Warner	5-2-05

**MEASURE DESCRIPTION:**

Prohibits regulated public utilities that file federal consolidated corporate income tax returns at the federal level from filing consolidated Oregon returns. Applies restriction to energy related utilities. Exempts water utilities from prohibition. Codifies net benefits standard for Public Utility Commission consideration of acquisitions. Exempts small cogeneration facilities from non-safety regulations.

**REVENUE IMPACT:**

The revenue impact from the prohibition on filing consolidated returns is indeterminate. In recent years, energy related utilities have predominantly filed consolidated returns in Oregon. Corporate income tax revenue from the energy related utilities varied between \$1.5 million and \$5 million between the 2000 and 2002 tax years. The impact of filing deconsolidated returns will vary from year- to-year depending on the profitability of the consolidated group as a whole. However, based on recent returns, revenue is likely to rise in the short-term.

REVENUE: No revenue Impact

FISCAL: No fiscal impact

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Action: Do Pass With Amendments

Vote: 5-0-0

Yeas: Senators George, Metsger, Prozanski, C. Starr, Deckert

Nays:

Exc.:

Prepared By: Paul Warner, Economist

Meeting Dates: 5/18, 6/1, 6/3

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**WHAT THE MEASURE DOES:** Exempts small cogeneration facilities from non-safety regulations. Codifies net benefits standard for Public Utility Commission (PUC) consideration of acquisitions.

**ISSUES DISCUSSED:**

- 1999 legislation (SB 1149) that inadvertently included small cogeneration facilities under regulations.
- Current practice by PUC for evaluating acquisition proposals.
- Alternative contained in SB 408 for elements of SB 171-B

**EFFECT OF COMMITTEE AMENDMENTS:** Deletes provisions prohibiting utilities who file consolidated federal corporate income tax returns from filing consolidated state corporate tax returns.

**BACKGROUND:** SB1149 approved by the 1999 Legislature marked a major change in the regulation of utilities in Oregon. This legislation provided commercial electricity users direct access to competitive markets no later than October 1, 2001. The bill also adopted transition policies and certain consumer protections. It further established a public purpose charge. Following implementation of SB 1149, the PUC recognized that certain small cogeneration facilities were inadvertently included in some regulatory standards.

**SENATE COMMITTEE ON BUSINESS AND ECONOMIC  
DEVELOPMENT**

February 8, 2005  
1:00 P.M.

Hearing Room B  
Tapes 18 - 19

**MEMBERS PRESENT:**       **Sen. Rick Metsger, Chair**  
                                  **Sen. Bruce Starr, Vice-Chair**  
                                  **Sen. Jason Atkinson**  
                                  **Sen. Ryan Deckert**  
                                  **Sen. Laurie Monnes Anderson**

**STAFF PRESENT:**         **Theresa Van Winkle, Committee Administrator**  
                                  **James Goulding, Committee Assistant**

**MEASURES/ISSUES HEARD:**  
                                  **SB 158 – Public Hearing**  
                                  **SB 81 – Public Hearing**  
                                  **SB 84 – Public Hearing**  
                                  **SB 171 – Public Hearing**

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These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 18, A</b>		
003	Chair Metsger	Calls the meeting to order at 1:06 p.m. Opens public hearing on SB 158.
<b><u>SB 158 – PUBLIC HEARING</u></b>		
010	Peter Threlkel	Corporation Division Director, Office of the Secretary of State. Presents written testimony in favor of SB 158 ( <b>EXHIBIT A</b> ).
035	Threlkel	Discusses positive feedback from various groups on the proposed legislation.
060	Chair Metsger	Inquires how long he has held his current position.
063	Threlkel	Relates he has been there three years.
065	Chair Metsger	Wonders about non profits groups that are covered. Asks if United Way and Providence Health System are covered.
070	Threlkel	Answers they are covered.
073	Chair Metsger	Asks if they could differentiate the types of groups that would not be burdened by the fee.
075	Threlkel	Replies there are three classifications for non-profit groups.
085	Chair Metsger	Asks if this has been anticipated in the Governor's budget



- 087 Threlkel Responds that it is not.
- 090 Chair Metsger Inquires if the bill has been through the Ways and Means process.
- 093 Threlkel States that a hearing is not scheduled until late February.
- 095 Sen. Monnes  
Anderson Questions if a non-profit organization could waive the fee if it is something they cannot afford.
- 097 Threlkel Offers that on a case by case basis it is something that can be done.
- 100 Sen. Atkinson Disagrees with some of the reasoning for the bill. Inquires why they aren't including small businesses in this measure.
- 115 Threlkel States it is something they had considered. Replies they have heard from a number of small businesses, and that there was a lot of opposition to a fee increase. Explains that they decided to address non-profit businesses first.
- 140 Sen. Atkinson Feels that to be fair they need to also lower fees for small businesses. Suggests an amendment to add small businesses into the bill.
- 145 Threlkel Offers that is a possibility.
- 147 Sen. Atkinson States that he will get an amendment drafted.
- 150 Sen. B. Starr References 2003 session bill HB 3656 essentially changed the fee from an administrative fund to a tax increase to support the general fund.
- 165 Threlkel Concurs that is correct.
- 167 Sen. B. Starr Observes the Secretary of State has received a lot of negative reactions from non profit groups over the fee increase and that is why this bill is being proposed.
- 170 Threlkel Agrees that is the case.
- 175 Chair Metsger Closes public hearing on SB 158. Opens a public hearing on SB 81.

**SB 81 – PUBLIC HEARING**

- 180 Lee Beyer Chair, Oregon Public Utilities Commission (PUC). Submits and presents his written testimony in favor of SB 81 (**EXHIBIT B**).
- 210 Sen. Monnes  
Anderson Asks for a specific example where this issue would occur.
- 225 Beyer Explains that a large industrial user could cut back usage during a peak time.
- 230 Sen. B. Starr Asks if this could apply to both residential and commercial users.
- 233 Beyer Agrees it could.
- 235 Sen. Monnes  
Anderson Wonders how feasible that aspect of the program would be.
- 237 Beyer Notes there is potential for it being successful.
- 245 Chair Metsger Closes public hearing on SB 81. Opens public hearing on SB 84.

**SB 84 – PUBLIC HEARING**

- 250 Beyer Gives testimony in favor of SB 84. Explains the purpose of the bill and its intended effect.
- 280 Sen. Monnes  
Anderson Offers that he is working to save users money.

- 285 Beyer Replies that it provides options and perhaps saves some money. Offers that this will help to diversify the system. Feels they are small changes, but moving in the right direction.
- 295 Chair Metsger Asks if there are possible negative ramifications.
- 300 Beyer Responds that there are none that he knows of.
- 310 Sara Chieffo Legislative Assistant, Senator Shields. Presents testimony on behalf of Senator Frank Shields. Discusses a net metering proposal being drafted by Sen. Shields and how it differs from SB 84. Defers to industry experts seated with her.
- 335 Jeff Bissonnette Fair and Clean Energy Coalition. Discusses the original 1999 net metering bill and the need to amend it to compensate for the technology currently available.
- 365 Jon Miller Executive Director, Oregon Solar Energy Industries Association. States they do not oppose SB 84, but wish to have a broader discussion on the matter. Feels there is a problem with the megawatt limitations imposed.
- 400 Chair Metsger Points out an issue he has in the bill as written. Asks if they would like to define the bill more specifically in regards to increasing the limit.
- 410 Jon Miller Feels they would like to see the PUC being able to raise the maximum limit but would like to see the minimum level set higher.
- 420 Chair Metsger Asks about the effects on small users.
- 423 Jon Miller Replies there would be no effect.
- 425 Bissonnette Advises that it would be up to the individual to decide what form of power generation they want to use or if they want to connect to the power grid.

**TAPE 19, A**

- 005 Bissonnette Continues discussing improvements in technology and the need to make statute changes to keep up.
- 025 Sen. Monnes Anderson Asks if a privately owned utility would be reluctant to endorse net metering as opposed to a publicly owned utility.
- 030 Jon Miller Answers that decreasing the revenue of a utility by using an alternative source would not be an issue. Points out there might be other issues.
- 037 Sen. Monnes Anderson Inquires what those other issues might be.
- 040 Jon Miller Discusses a scenario where an individual installs an overpowered energy source that exceeds their needs. Notes net metering is only to offset individual energy use, not to create independent power users.
- 045 Chair Metsger Thanks him for his testimony.
- 050 Shawn Miller Pacific Corporation. Testifies in favor of SB 84. Recognizes the benefits of encouraging energy conservation. Talks about a Southern Oregon Pepsi Cola plant that worked with the PUC to increase its net metering limit.
- 070 Teresa Miller Portland General Electric (PGE). Supports the bill and asks that they move it forward.

080 Chair Metsger Discusses the importance of considering possible changes to the bill before moving it forward. Closes Public Hearing on SB 84. Opens a public hearing on SB 171.

**SB 171 – PUBLIC HEARING**

095 Lee Beyer Testifies in favor of SB 171, presenting written testimony (**EXHIBIT C**).

110 Chair Metsger Closes public hearing on SB 171. Adjourns the meeting at 1:44 p.m.

**EXHIBIT SUMMARY**

- A. SB 158, Written testimony, Peter Threlkel, 8 pp
- B. SB 81, Written testimony, Lee Beyer, 1 p
- C. SB 171, Written testimony, Lee Beyer, 1 p

**SENATE REVENUE COMMITTEE  
SENATE BILL 171 WORK SESSION**

[February 8, 2005]

Chair: So we'll close the public hearing on Senate Bill 84 and open the public hearing on Senate Bill 171, and I have a funny feeling that it might be Chairman Beyer again. Well, look at that huh. It's a dynasty. You're a dynasty now. [Laughter.]

Beyer: Let's see if we can get one done.

Chair: Welcome. Again.

Beyer: Thank you Mr. Chair. For the record on this bill again, I am Lee Beyer, the Chairman of the Oregon Public Utility Commission, and Senate Bill 171 is our bill and what I'm embarrassed to say is that it corrects a mistake that we made back when I was on your side of the table passing Senate Bill 1149. We inadvertently, when we changed the law regarding the public purposes, by removing the requirement that they, that sellers of small purpose, small generators, selling power back, we changed the definition and made them, by definition, public utilities subject to regulation. We don't want to do that. It doesn't make sense to do that and essentially what this does is corrects that error and defines them as not a public utility. So it's just a change in definition, should be, I don't think there's any opposition to this, or I'd be surprised if there's any competing bills.

Chair: Okay. The bill is straightforward but there may be questions about it. Any questions? Okay, anybody else wants to testify on Senate Bill 171? Chairman Beyer, I'm going to hold this bill for a little bit. It's a very broad relating clause and I want to wait a few weeks. [Laughter.]

Beyer: I was afraid of that, Mr. Chair.

Chair: So, with that we'll close the public hearing on Senate Bill 171. With nothing more to come before the committee, we're adjourned.

Beyer: Thank you.

[End of recording.]



# Oregon

Theodore R. Kulongoski, Governor

MEASURE: SB 171  
EXHIBIT: 0 C  
Senate Business and Economic Development  
DATE: 2-8-05 PAGES: 1  
SUBMITTED BY: Lee Beyer

**Public Utility Commission**  
550 Capitol Street NE, Suite 215  
Mailing Address: PO Box 2148  
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503-373-7394

## Before the Senate Business & Economic Development Committee

### SB 171

**Testimony of Lee Beyer**  
**Chairman**  
**Oregon Public Utility Commission**

February 10, 2005

I am here to support Senate Bill 171 as introduced. This housekeeping bill corrects an inadvertent effect of Oregon's electricity restructuring law. It would ensure that certain cogeneration and small power production facilities, called qualifying facilities (up to 80 MW) are exempt from regulation as public utilities.

The federal Public Utility Regulatory Policies Act, or PURPA, encourages the efficient use of fossil fuels by promoting electricity production from these two types of generators. Under PURPA, utilities must buy power from these facilities at the cost the utility would have otherwise incurred to purchase or generate the power.

Beginning in 1979, Oregon adopted laws to implement PURPA (ORS 758.505 to 758.555). Currently, under ORS 757.005, qualifying facilities that make sales under Oregon's laws are exempt from being considered public utilities subject to the Commission's regulation.

However, Senate Bill 1149, the state's electricity restructuring law passed in 1999, by mistake relieved Portland General Electric and Pacific Power & Light from Oregon PURPA laws when they met public purpose obligations (ORS 757.612(4)). While qualifying facilities continue to make sales to these utilities under the federal PURPA law, the exemption from regulation as public utilities currently is for sales under Oregon's law.

This bill adds a reference to the federal law in ORS 757.005, in order to reinstate the exemption from regulation for these qualifying facilities.



**SENATE COMMITTEE ON BUSINESS AND ECONOMIC  
DEVELOPMENT**

March 24, 2005  
1:00 P.M.

Hearing Room B  
Tapes 48 - 49

**MEMBERS PRESENT:**       **Sen. Rick Metsger, Chair**  
                                  **Sen. Bruce Starr, Vice-Chair**  
                                  **Sen. Jason Atkinson**  
                                  **Sen. Ryan Deckert**  
                                  **Sen. Laurie Monnes Anderson**

**GUEST MEMBER:**       **Sen. Vicki Walker**

**STAFF PRESENT:**       **Theresa Van Winkle, Committee Administrator**  
                                  **James Goulding, Committee Assistant**  
                                  **Paul Warner, Legislative Revenue**  
                                  **Dexter Johnson, Legislative Counsel**

**MEASURES/ISSUES HEARD:**  
                                  **SB 171 – Public Hearing**  
                                  **SB 323 – Public Hearing and Work Session**  
                                  **SB 1002 – Work Session**  
                                  **SJM 2 – Public Hearing and Work Session**

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These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE #, A</b>		
003	Chair Metsger	Calls the committee to order at 1:12 p.m. Opens a public hearing on SB 171.
<b><u>SB 171 – PUBLIC HEARING</u></b>		
007	Chair Metsger	Remarks on -4 amendments to the measure before the committee <b>(EXHIBIT A)</b> .
024	Lee Beyer	Chair, Oregon Public Utility Commission (PUC). Begins by testifying on the PUC's positions on the measure.
035	Sen. Monnes Anderson	Inquires which section he is discussing.
037	Beyer	Replies that he is currently discussing the PUC's recommendations. Continues his testimony on SB 171.
060	Beyer	Voices the reasons they would not recommend a trueup.
075	Chair Metsger	Outlines the issues before the committee. Talks about ratepayer services.

090	Sen. Atkinson	Wonders who the fix is directed at, now that Enron is out of the picture.
097	Beyer	Replies that what they are doing comes out of the Enron situation.
120	Sen. Atkinson	Speculates what might occur without the -4 amendments.
125	Beyer	Comments.
127	Sen. Atkinson	Considers what would happen with the adoption of the -4 amendments.
129	Beyer	Declines to speculate.
135	Sen. B. Starr	Asks how many Oregon utilities would be subject to the -4 amendments.
140	Beyer	Responds that he hasn't had ample opportunity to scrutinize the -4 amendments.
157	Chair Metsger	Asks Mr. Warner to clarify the statute in question.
160	Paul Warner	Legislative Revenue Staff. Clarifies the statute.
170	Sen. B. Starr	Discusses with Chair Metsger the original intent of the amendment and a potential error in the -4s. Questions the changes in scope for the PUC.
180	Beyer	Offers that it should not present the PUC with a higher workload.
190	Sen. Deckert	Notes the heart of the matter is consolidated versus unconsolidated tax returns. Questions if they could define that new type of hybrid business or "liger".
210	Beyer	Observes these are outside of the PUC purview, but are important to be defined.
230	Chair Metsger	Hopes to consider this matter further.
243	Sen. Vicki Walker	Senate District 7. Asks Mr. Beyer about creating a more realistic picture of tax applications with the -4 amendments.
253	Beyer	Clarifies the amount paid by utilities in taxes.
287	Sen. Walker	Observes the -4 proposal's affect on tax obligations.
297	Beyer	Replies in regard to tax laws.
307	Sen. Walker	Discusses the spreading of liability through benefits.
309	Chair Metsger	Asks Mr. Warner to detail the -4 amendments.
320	Warner	Details the provisions of the -4 amendments to SB 171.
360	Warner	Walks the committee through the sections of the -4 amendment.
380	Sen. Monnes Anderson	Considers how many entities would be covered under that particular section.
389	Warner	Clarifies that it refers back to section three of the measure.
413	Dexter Johnson	Legislative Counsel. Notes that the point in question was a drafting error.
417	Warner	Expounds on the definition.
427	Sen. Monnes Anderson	Considers that she is still not clear on the review of rate schedules.
<b>TAPE 49, A</b>		
005	Warner	Relates the calculation of tax rates.

- 010 Chair Metsger Reiterates the process of filing a non consolidated tax return.
- 013 Warner Resumes describing the sections of the -4 amendments to SB 171.
- 025 Chair Metsger Asks for an analysis of the possibility of different tax requirements for utilities.
- 027 Johnson Details the basic statement of the current law. Points out the ways in which different entities are taxed.
- 045 Chair Metsger Suggests he narrow that definition further as it applies to public utilities.
- 050 Johnson Replies in regard to those types of utilities and their rate regulations.
- 057 Warner Observes the changes last session to the apportionment formula and the related statues that reference utilities.
- 070 Dan Meek Attorney, Multnomah County. Testifies in regards to a complaint he filed against the PUC. Relates the charges that Portland General Electric (PGE) has applied to user fees for taxes they have not paid.
- 110 Meek Elaborates on tax violations he has observed with PGE. Talks about a pending lawsuit against PGE pending in Multnomah circuit court.
- 140 Meek Observes the flaws in the PUC's method of evaluating the rates of utilities.
- 153 Chair Metsger Appreciates his observations. Asks about the findings of his research.
- 167 Meek Replies that his research is limited to the activities of PGE. Notes observations he has made in regards to the PUC not asking utilities how much they pay in taxes.
- 190 Meek Advocates that the PUC take the time to ask utilities what they pay in taxes.
- 197 Sen. Deckert Notes the tax laws enacted by the legislature. Points out that the PUC does not have jurisdiction over tax law.
- 217 Meek Points out this is not a tax issue, but a regulatory issue.
- 225 Sen. Deckert Questions what his suggested remedy would be.
- 233 Meek Submits his recommendations for rate regulations.
- 257 Sen. Deckert Asks if Chair Beyer wishes to respond to Mr. Meek's proposal.
- 265 Beyer Replies that the PUC makes adjustments in the rate setting process. References that the attorney general does not agree with Mr. Meek's interpretation.
- 275 Chair Metsger Summarizes the comments made. Asks Mr. Lynch to testify.
- 293 Kevin Lynch PacificCorp. Submits to any questions the committee has.
- 295 Chair Metsger Requests for his evaluation of the PUC's recommendation.
- 305 Lynch Refers back to the comments made by Sen. Deckert. Discusses the differences in structure of a utility business.
- 345 Lynch Details energy industry in Oregon.
- 390 Lynch Comments on the tax credit incentives for utilities.
- TAPE 48, B**
- 005 Lynch Mentions the legislature's use of the tax code as a business incentive.



- 013 Chair Metsger Notes the intent of the legislation.
- 017 Sen. B. Starr Asks his reaction to the language in the measure.
- 019 Lynch Replies.
- 023 Sen. B. Starr Inquires about the possible impact on related Oregon jobs.
- 027 Lynch Discusses the employment structure.
- 040 Chair Metsger Reiterates the points Senator Starr brought up.
- 050 Elizabeth Harchenko Director, Oregon Department of Revenue.
- 053 Chair Metsger Asks Ms. Harchenko to comment on the amendments.
- 057 Harchenko Makes general comments on the amendments and the tax implications.
- 080 Harchenko Notes the income transactions taking place.
- 115 Harchenko Suggests technical changes and narrowing the scope of the measure.
- 120 Chair Metsger Discusses previous conversations of this issue.
- 130 Sen. B. Starr Asks what this change would mean to Ms. Harchenko's department.
- 135 Harchenko Feels if it is narrow in scope it will not cause an appreciable change in how they do their work.
- 147 Chair Metsger Suggests that staff make additional changes to the bill to narrow the scope. Offers additional summarizing comments. Closes public hearing on SB 171. Opens a public hearing SB 323.

### **SB 323 – PUBLIC HEARING**

- 180 Sen. Walker Introduces SB 323 and asks Ms. Harchenko to describe the measure.
- 190 Harchenko Describes SB 323 and testifies in favor of it. Discusses the proposed -2 amendments (**EXHIBIT B**).
- 230 Harchenko Observes the issues that have arisen with the amendments. Notes the proposed -3 amendments that Mr. Gallagher submitted (**EXHIBIT C**). Advocates they pass SB 323 without amendments.
- 267 Tom Gallagher Oregon Newspaper Association. Agrees with Ms. Harchenko that they work out any changes needed.
- 269 Chair Metsger Clarifies Mr. Gallagher's concerns.
- 273 Harchenko Points out the need to address Mr. Gallagher's concern. Offers that the bill be amended in the House.
- 293 Chair Metsger Notes Ms. Harchenko's department might have the means to address these concerns.
- 297 Harchenko Concurrs that they do.
- 303 Sen. Walker States that even if they do not pass this bill there is operative legislation in place. Feels this measure is ready to be moved to the House for further action.
- 320 John Draneas Oregon State Bar. Speaks in favor of SB 323 as drafted. Opposes the proposed amendments. Notes that now the amendments have been withdrawn and he is in full support of SB 323.
- 350 Chair Metsger Closes public hearing on SB 323. Opens a work session on SB 323.

### **SB 323 – WORK SESSION**

- 363 Sen. B. Starr **MOTION: Moves SB 323 to the floor with a DO PASS recommendation.**
- 365 **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
**SEN. WALKER will lead discussion on the floor.**
- 367 Chair Metsger Closes work session on SB 323. Opens public hearing on SJM 2.
- SJM 2 – PUBLIC HEARING**
- 375 Sen. Walker Introduces and explains the measure. Defers to Mr. Lanter
- 400 Floyd Lanter Department of Consumer and Business Services. Presents written testimony in favor of SJM 2 (**EXHIBIT D**).
- TAPE 49, B**
- 003 Lanter Recommends the passage of SJM 2.
- 006 Cheryl Pellegrini Assistant Attorney General, Oregon Department of Justice. Testifies in favor of SJM 2. Submits a letter in favor of SJM 2 (**EXHIBIT E**).
- 039 Chair Metsger Closes public hearing on SJM 2. Opens a work session on SB 1002.
- SB 1002 – WORK SESSION**
- 048 Chair Metsger Requests an overview of the proposed amendments.
- 050 Dana Describes the modifications proposed -2 amendments would make to SB 1002 (**EXHIBIT F**).
- 057 Chair Metsger Reiterates the changes. Puts the committee at ease at 2:40 p.m.
- 066 Chair Metsger Calls the committee back to order at back at 2:42 p.m.
- 067 Sen. B. Starr **MOTION: Moves to ADOPT SB 1002-2 amendments dated 03/22/05.**
- 068 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**
- 070 Sen. B. Starr **MOTION: Moves SB 1002 to the floor with a DO PASS AS AMENDED recommendation.**
- 072 Sen. B. Starr Asks if they have had any testimony from building industries.
- 075 Chair Metsger Replies they are aware, but have not offered any testimony.
- 078 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
**SEN. SCHRADER will lead discussion on the floor.**
- 083 Chair Metsger Closes work session on SB 1002. Opens a work session on SJM 2.
- SJM 2 – WORK SESSION**
- 087 Sen. B. Starr **MOTION: Moves SJM 2 be sent to the floor with a BE ADOPTED recommendation.**
- 089 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
**SEN. WALKER will lead discussion on the floor.**
- 090 Chair Metsger Closes work session on SJM 2. Adjourns the committee at 2:49 p.m.

**EXHIBIT SUMMARY**

- A. SB 171, -4 amendments, staff, 7 pp
- B. SB 323, -2 amendments, staff, 2 pp
- C. SB 323, -3 amendments, staff, 2 pp
- D. SJM 2, Written testimony, Floyd Lanter, 13 pp
- E. SJM 2, Letter, Cheryl Pellegrini, 19 pp
- F. SB 1002, -2 amendments, staff, 1 p

Chair: Yes.

Woman: Is that, are you going Section by section?

Chair: No, Senator [inaudible], he's going over his recommendations and then Mr. Warner will explain the amendments.

Woman: [Inaudible.]

Chair: Okay. Secondly, that with respect to consolidated benefits for federal returns that you direct the Commission to take those into consideration in ratemaking; and third, that you direct that regulated utilities file a general rate case at least once every five years. So those are basically the three recommendations that we put forth. As I told the Revenue Committee this morning, you have a fairly extensive record that I provided to you – probably about \$20,000 plus of legal opinion from various counsel on that, so I think you have a pretty good background to help totally confuse you on the issue. This is a fairly complicated matter. I will say that as I said this morning, this is an issue that I think is in front of you and was in front of the Commission largely because of people's perceptions primarily in the Enron ownership of PGE that they were paying rates that included expenses for taxes and in effect those taxes never flowed through to the Oregon Treasury or the federal government or Multnomah County or anybody else. I think that's the issue, it's a perception of fairness. These recommendations are an attempt to recognize that. They are a significant departure from the current practice of the Public Utility Commission which is to treat taxation as we set rates on a stand-alone basis, that means we just look at the regulated utility and not who owns them or other affiliates, and treat it like it existed on its own when we set a rate. And, again, as I said this morning, that is a practice that is not without reasonableness. That's something that is done in most every other state in the United States, and has been done for many, many years. There's only a small handful of states that have departed. Having said that, the reality is that many of your constituents feel that process is unfair. As we've looked through it we have brought back to you recommendations which we think address that. We think they address the points and the requests that this Committee and the Revenue Committee asked us to. There will be parties from both sides who I'll assure you will disagree with that. I believe you'll hear from the utilities that they think that the current system is the appropriate one and the one we ought to go. And I believe you will hear from consumer advocates that we probably don't go far enough. I should also say one of the issues discussed in our white paper when we talked about that some weeks ago now was the potential for an annual true-up of taxes, an actual true-up. We are recommending that you not do that and the reasons basically or one is in a practical matter we can't do it. We don't think we can accomplish that. Secondly, there is significant negative tax impacts with the federal code that make it not a good thing to

do. And with that, I'm not going to go into great details, and I'd be happy to answer questions if you have any.

Chair: Thank you Commissioner. We will open it up to questions. Colleagues, and as we have talked about this issue over the last couple of months, you know I see it primarily as one major focus and that is with the regulated utility, that they are given the opportunity to collect what they believe is a tax liability which during the rate hearing, the rate setting process, have an opportunity to make a case of what they feel their liabilities would be so that those can be collected by the ratepayers. So there is an expectation that that is a real liability and to the extent that, and especially when we find consolidated tax returns from activities that are unrelated to the services that those ratepayers are actually receiving and offsetting those costs, I mean that's where the issue of fairness really comes in. And I appreciate Commissioner, I know for a couple of years you've been working on trying to analyze a very, very complicated issue, and I appreciate the efforts of the Commission and your unanimous recommendation that you present to us today and appreciate the very, you know, hard work on that. Questions from the Committee of Commissioner Beyer? Senator Atkinson?

Atkinson: Thank you. Commissioner, help me understand. We're fixing, you said in your remarks that we have a perception problem, we're fixing a perception problem and it's largely revolving around Enron, so that was the target. But Enron is no longer a company and so who is this directed at now to fix that perception problem, who is going to be affected by this change?

Beyer: Mr. Chair, Senator Atkinson, the issue arose around Enron but I think it goes farther than that in people's minds. The reality is that basically when we set rates we assume, after we figure out what the expenses and acceptable return would be, we basically assume that the utilities, all utilities, in their rates will pay taxes. The reality is that it's unlikely that they ever pay the amount, fully of the amount of taxes that we have included in our rates. Because of as I said this morning, and largely that's the result of, we don't know the policies that you and Congress set in terms of particular tax incentives that you provide them to do things that you perceive as a good public good. For example, accelerated depreciation. You're encouraging companies in general, that Congress is encouraging companies in general to spend on capital goods up front. The effect of that is that you're allowing them to reduce your other taxable benefit from a straight line benefit, so that would be a departure. So, that's an example. A pollution control credits, that would be something that this body has encouraged Oregon companies to invest in advanced pollution equipment, that's an offset through a credit against taxes that we would not have considered generally in the tax process, so that would be a departure from that. Again, that's the job you're in is trying to decide what incentives make sense but you have a difference from you know

what we may put into rates and what the public perceives as fair from other policies that you have set.

Chair: Go ahead.

Atkinson: So, without the -4 amendments we're going to have political campaigns that says PGE only pays ten bucks?

Beyer: I don't know what political campaigns you're going to have. [laughter]

Atkinson: Is that still possible without the -4s?

Beyer: I assume that's possible without the -4s.

Atkinson: What happens under the -4s to PGE?

Beyer: I think you, well, I don't know how to speculate on that, Senator, because I don't know what their taxes may be in a future year, if they don't have a taxable liability for whatever reasons, you still may only have \$10.

Atkinson: I'm sorry, I apologize for not talking in advance, I was running, thank you Mr. Chair.

Chair: AI?

Beyer: I hope you had your pedometer on.

Atkinson: No, I didn't. I think that thing is broken and doesn't work and taken the fact I ride bicycles and not run, so it's discriminatory.

Chair: Thank you Senator. Senator Starr?

Starr: Thank you, Mr. Chair. How many utilities in Oregon would be subject to these -4 amendments?

Beyer: To be honest, I haven't looked at the -4 amendments, I just got them a few minutes ago.

Starr: Well, my understanding...

Beyer: But the earlier provision, the language that was in there, the citation ORS 314.60, if you use that one, which Mr. Warner and I talked about this morning, that is a, I believe that's out of the Revenue Section of the ORS and that's a fairly, fairly broad description of what a public utility is and one of the things I advised this morning is you may want to change that...

Starr: Um-hmm.

Beyer: ...and that's a decision you would make. Our, and when I say our, the public utility definitions of a public utility are in 757.005 for electric, gas and water companies and 759.005 for telecommunications. In 757 you're probably talking about three electric companies, three gas companies, and 20, potentially 20 or so private water companies. Telecommunications is broader, there's probably between four and twenty.

Chair: Senator Starr, you brought up a very good point. In fact, Mr. Warner you may want to add some more light to that, I think that is an error in the -4s, how that's defined and I think it should be the 757 statute.

Starr: Um-hmm.

Warner: That's correct Mr. Chair, the 314.610 is broad. It includes communication, transportation, furnishing of electricity, water, steam, oil, oil products or gas. So it's a fairly broad definition. There are more narrow definitions. There's also an alternative one, also within the income tax statutes that's a little bit more narrow that the Committee may want to look at.

Chair: I think the intent was, the 757 statute, that Commissioner Beyer, and that would be what we would discuss further with the Legislative Counsel, I think that was an error.

Starr: So they, so the, so the goal or the purp[ose] would be, the goal was to encompass the smaller number of...

Chair: The energy Committees and energy companies.

Starr: ...and the same ones that you just mentioned, the, the three electric, three gas, four to 20?

Beyer: Water.

Starr: Water. So, I guess then if that's the target audience and let's say the [inaudible] are wrong, what additional workload is this going to put on the PUC? This is quite a bit of an additional scope in what the PUC has historically done, isn't it?

Beyer: Mr. Chair, Senator Starr, different pieces of it. The deconsolidation doesn't have a direct effect on our workload at all. That respects or relates to where the companies pay their taxes. The second piece, regarding deconsolidation, it's just a different methodology that we would use in rate setting. I don't think it increases the workload in doing that. There's been some question raised about the requiring the one to five years in our recommendation, rate case. Most of the energy companies are already coming in in that kind of a timeline, so I don't think it really affects that at all. It's just different – a different way to do business.

Chair: Okay. Senator Deckert?

Deckert: Thank you Mr. Chair. You know with having Paul here and Lee, I think we have the right people here to [duck sound] ...

Man: There's a duck under the table.

Deckert: ...you can bring your, I forget his name, we had him out this morning. But to me the heart of this question is what type of animal is this, you know, on the tax status question of deconsolidated versus consolidated. You have the pure traded sector, Columbia Sportswear or some firm like that that we know has customers throughout the world and can easily make the case for a deconsolidated tax return and so these amendments get at, and I don't know how you would get it down to, what is that, is that utility the same animal as a traded sector firm. Obviously it doesn't have, it has a confined customer base, has a confined income stream that's a regulated monopoly by the PUC, and so my interest would be in the -4s, can you get at really that group of different lagers? Different type of ah, animals for Senator Atkinson and my favorite new animal, can you get at that new animal that, and define it into statute and that would be the test on the -4s is can you really do that. And then in the telecommunications industry, is a, I don't know if they're in here, there they are, Qwest and Verizon, do they meet that same same definition, and then obviously we would be compelled to hear them out, of why they wouldn't fit that same criteria that we would be setting out for PacifiCorp or for PGE.

Man: Mr. Chair, Senator Deckert. I think you're hitting at the questions we were talking about this morning and we're being real cautious here and saying we're coming at you in response to the utility question. I think there is some legitimate legal questions that are outside of our ball park if you will, that relate to the tax equity and the definition and I think those most appropriately can be directed to the Department of Revenue and I think Director Harchenko is here and you might want to ask her of those as well as your legal counsel. You know our, in the legal analysis that we got from the Attorney General's office and rebuttal if you will, from various parties, that notion was challenged whether you could treat a gas company separate from other corporations in the state. So that's more of a legal argument that I think you want to explore that.

Deckert: Um-hmm.

Chair: Thank you Commissioner and that is one of the issues we brought up in fact after our meeting this morning and met with Dexter of course who wrote this amendment and we'll be happy to bring him in. I didn't ask him to come today just because of the workload that he has going but he's available, and felt clearly that he had no problem that you could differentiate a monopoly utility from other types of businesses. And even



within that sector, and I don't want to paraphrase him but we'll have Dexter come probably next week for any question on that line that in dealing with other utilities that have competitors who are unregulated, you know, it's totally different from those who have to flip the light switch and don't have option. But those are good questions, but again our Legislative Counsel feels totally comfortable in being able to differentiate that. Senator Walker?

Walker: Thank you Mr. Chair. Mr. Beyer, or Commissioner Beyer, I share your pain and sickness today so. My question is you indicated that this is a perception of fairness but I think it's more than that. Isn't it also a more realistic picture of the tax obligations by doing it this way? The proposal that we have in the -4s?

Beyer: Mr. Chair, Senator Walker, I think you're asking is the amount in rates are they really paid, and the obvious answer to that is in some cases, no. But, there is a difference between that and the tax laws which Congress and the Legislature have passed in terms of, you've allowed certain exemptions. There's, I want to be real clear we're not talking about anybody doing anything against the law. They're all complying with the tax codes that have been adopted it's just it has different effects. You know, taxes and tax treatment in setting rates are very different. One of the things we talked about this morning and I realize that you were not there, is one of the federal tests is if you're going to make the adjustment in the ratemaking process it has to bear a relationship to something that, you know is a benefit or a cost to the ratepayers. It's called the burdens and benefits test. And the example that we talked about is the Enron, and you know PGE as a utility encountered certain costs and an operating entity, what they paid out was a correct reflection of the cost of operating the utility. The owner of that utility, Enron, when they got that money and were figuring their taxes with all of their other business, you know, costs and obligations and losses, the net result, and I think it's fairly clear on the surface, when you have a company that's bankrupt, it essentially means they ain't got no money. And so they had no taxable liability, and that I think is what upset people about that. But from the operating utilities perspective, the costs that were reflected in rates were reflected of the normal costs of operating the utility. That sounds like a whole bunch of mumble-jumble but, you know.

Walker: Well, and Mr. Chair if I could follow up...

Chair: Um-hmm.

Walker: ...it was reflected in the rates, the cost was, but then there were benefits that did not inure back to the ratepayers. The benefits went to the bankrupt company, correct? I mean they got the, they were able to spread

the liability or the benefits through the whole larger company of Enron, rather than just isolating those benefits to PGE.

Beyer: Senator, I'm having a little trouble with your terminology. I understand what you're saying but I'm having...

Walker: Yeah.

Beyer: ...a little trouble with your terminology. Yes, those, they were able to write off PGE's tax liability in essence because they had losses from other subsidiaries or other companies.

Walker: So the ratepayers in Oregon paid for that, which is what we're trying to get at here in the -4, or with this whole bill.

Beyer: Yeah. I'm not disagreeing with you.

Walker: We're two sick people trying to talk to each other, thank you.

Chair: Any questions? Dexter, would you mind coming up forward. He was available so I thought we might get some of those questions, and Lee just stand by. Darn and I thought I was getting [inaudible].

A couple of things here I think would be helpful is, I'd like to ask Mr. Warner if he would first go through the -4 amendments as they relate to the testament we've just had from Commissioner Beyer and then questions for Dexter regarding the ability to differentiate tax treatment for utilities and any questions about the writing of the document. We also had a question, Dexter, about the definition for a utility that was used in this particular amendment. So, with that, Mr. Warner, if you could just walk us through the provisions of the amendment to the bill.

Warner: Mr. Chair on the -4s, first of all, it's important to recognize that under our corporate income tax law, companies are required to file consolidated returns and this doesn't change that, that remains the state policy on corporate income taxes. And there's good tax policy reasons for that that we could talk about if you'd like, but that would remain the policy. So this is an exception to that policy in which essentially Recommendation 1 from the PUC is contained in that Section 3 of the Amendment, which requires that any utility defined under ORS 314.610 which is fairly broad as we mentioned, is required to even if they file a federal return, a consolidated return, they cannot file a consolidated return in Oregon. So what that means is in terms of the mechanics and calculation of their state income tax, they would follow a method, and I believe the Committee went through the white paper that the PUC provided and they did give an example in that in terms of how in a stand-alone approach, a deconsolidated tax return would be calculated. So it would be fairly straightforward and that would be the requirement. Now I'm sure there's

some issues that would, methodological issues that would come up in terms of that calculation, but in theory it's pretty straightforward. Sub 2 under Section 3 allows a modification for these returns on the case for a separate return on behalf of an affiliated group that is limited to a corporation that is in the state primarily conducting energy related activities. So a fairly narrow exception there, and that's obviously aimed at some existing operations now that would fit that definition. It begins to take effect in January 1, 2006, their tax year's beginning then and remember corporations file on a staggered basis so they don't all start on January 1, they pretty much are spread across the months. So, the first page there, Section 3 is really your Recommendation 1 from the Commission which recommends that regulated utilities file standalone or deconsolidated income tax returns in Oregon. If you look on Page 3 of Section 5, sub 6 there, this begins the process along with Section 6 which is really Recommendation 3 from the PUC which requires regulated utilities to file a general rate case at least once every five years, so that's laid out, I think Commissioner Beyer explained under current law that doesn't happen. Utilities can come forward and ask for a rate case, but some of them have gone as long as 10 years without having a general rate case.

Anderson: Mr. Warner?

Warner: Yes?

Anderson: Mr. Chair?

Chair: Yes.

Anderson: On this, I think they were trying to ask Commissioner Beyer how many entities would be under this section. Isn't this going to add to their expense?

Warner: Um.

Anderson: Their workload?

Warner: Senator Moss-Anderson, I think really the discussion earlier was referring back to Section 3 in terms of the public utilities that are defined.

Anderson: Okay, now.

Warner: And so the number of those that are defined would be, could be more narrow than what's under 314.610 and this might be an area for Dexter to comment on, but this would be a fairly broad group if you were to narrow it down to the definition under 757.005, that's the 26 companies that the Commissioner referred to, and I think his answer was that it wouldn't require a large workload.

Chair: Dexter, would you want to, that might be a good point to interject here on the definition that we have in Section 3. The amendment does have the 314.

Johnson: Right.

Chair: You'd want to comment on that. Commissioner Beyer and others were suggesting that the 757 statute was more limiting to what we were trying to get at just wanted to get your comments on that.

Johnson: Yeah, Mr. Chair, Dexter Johnson, Legislative Council Office. I agree that the 757 definition, if you're limiting it to energy utilities, is the more appropriate definition and that's just a drafting error.

Chair: Go ahead, proceed.

Warner: Mr. Chair, I have that definition is, it's limited to aspects of furnishing heat, light, water or power. Those are the four elements to it, in that definition. Now, does that address your question, Senator?

Anderson: Well, I'm not just aware of how much work goes into taking each corporation or entity and reviewing their schedule of rates and if we're adding a big workload, I was just curious if that was [inaudible] be a Ways And Means issue?

Warner: Well, I can't speak directly to that, but I think it's pretty clear from the white paper as it was laid out by the Commission that they go through and, in effect, calculate what a stand-alone state income tax would be, in terms of their calculations, and they've laid that out in Attachment C of their February 1 white paper.

Chair: So, essentially, Senator, what this would do is have them file a nonconsolidated tax return and the Commission sets the rate based on the nonconsolidated tax return so they would be synonymous. Go ahead.

Warner: And the last element, three, is at the bottom of page 6 and the top of page 7, and again this is linked directly to the third, actually it was recommendation number two from the PUC and that was to direct the Commission consolidated tax benefits when it includes federal income taxes and customer rates. And so if you look at the language there starting on line 2, the Commission may authorize the incorporation into rates of estimated federal and state taxes. So, and then it says that the Commission shall take into account the effects of filing federal returns on a consolidated basis. So, that's recommendation two is embedded in that portion of the amendment, and this is an issue that was discussed in the revenue Committee this morning and there would be some decisions that the PUC would have to make in terms of actually implementing that particular provision.

Chair: Thank you, Mr. Warner. Mr. Johnson, if you could, we had a question prior to your arrival regarding the legitimacy of having a different tax requirement for the public utilities, the public energy utilities as opposed to other corporations, and we'd be interested in your analysis on the ability to do that.

Johnson: Okay. Mr. Chair, let me begin, I guess, with kind of a basic statement of what the law is, and that is that legislatures have generally broad latitude in creating different classifications for tax purposes whereby if there is rational basis for treating one group of taxpayers differently from another. Courts will support that classification. Taking that analysis and applying that to this case, it's my conclusion that treating public utilities that are subject to a rate approval process with a PUC is, in which taxes are taken into account, that that is a sufficiently justifiable basis for treating those taxpayers differently from businesses that are not subject to that rate regulation. And so that would be a permitted distinction between different groups of taxpayers.

Chair: And if you could maybe narrow that further then, to the differentiation between energy utilities and other utilities, and your analysis on that. Like, for example, of the wireless carriers or Verizon, Quest, etcetera, the telecommunications.

Johnson: Mr. Chair, that's a bit of a closer call, but I think even there, there is a distinction between telecommunication utilities where they are also subject to competition with companies and developing technologies that are not regulated, as contrasted with the energy utilities where I think all competition there is between entities that are either public entities or are subject to rate regulation.

Chair: Questions for Mr. Johnson? Paul, did you have a question, or did you want [inaudible]?

Graham: It occurred to me and Dexter may comment on this. In an unrelated tax matter last session, you changed the apportionment for [inaudible] you recall and how we apportion corporate income for corporate entities that operate in more than one state, how we apportionate it back to Oregon, and within that statute there is a definition of telecom companies in which they are allowed an election to essentially to apportion their income under a different formula than what applies to other companies, so that strikes me as perhaps a similar, or legally a similar kind of distinction.

Johnson: I would agree with that.

Chair: Any other questions? Thank you for taking time. I know you're busy there. Thank you very much, Mr. Johnson. Okay, let's see, unless

someone has actually signed up to testify? No one did. So, I'm going to ask some people to come testify. You didn't sign up?

Man: No, I didn't, there wasn't a sign-up sheet.

Chair: Oh, well, come forward.

Meek: Good afternoon, Chairman Metsger, and members of the Committee. My name is Dan Meek. Wasn't expecting to be here. I didn't know about this hearing actually, but I did see...

Chair: We're on the web, you know.

Meek: Yes, I...

Chair: So, you could find it and we are posted, check it frequently.

Meek: But, I missed this one. In any event, I've had some involvement in this issue. I filed a complaint at the Public Utility Commission a little bit over two years ago against Portland General Electric for charging rate payers income taxes, about \$92.6 million a year, and then not actually paying those. The complaint was dismissed by the Public Utility Commission. In fact, I was gaveled into silence at the only public hearing about it by the chairman of the Commission, Mr. Hemingway. So, I appealed that to the Marion County Circuit where Judge Dickey a few months later decided that the Commission erred in dismissing the complaint and sent it back to the Commission where it is, where it's bumping along now. In the meantime, we've discovered other information about the utilities that the fact that PGE has now charged us since 1997, \$730 million for federal and state income taxes that it actually has not paid and that amount increases by \$254,000 per day, every day, it's in our rates, \$92.6 million a year. And it's not just Portland General Electric who's doing that. It's also Pacific Power and Light and also perhaps other utilities, as well. I found out just a few months ago that this is not only going on in a manner that the PUC has approved, but it's also going on on the county level in a manner that the PUC has not approved. That is, Portland General Electric actually puts a line on the bills for any customer in Multnomah County that says Multnomah County Tax, and so I asked them in the proceeding, how much you've collected, that's Multnomah County tax, that means the Multnomah County Business income tax. I asked them how much you've collected in Multnomah County Business income tax since 1997. They said, well, it's about a million and a half dollars a year, so it adds up to something over \$7 million right now. And then I asked them how much have you paid Multnomah County in Multnomah County Business income tax since 1997. And the answer was zero. And that's not even approved by the PUC. The PUC has a rule that says that a utility can tack on a line to the bill in any local jurisdiction if the local jurisdiction imposes on the

utility a tax that the utility is required to pay, that's what it says, required to pay. PGE concludes that it is entitled to charge me and other rate payers in Multnomah County, the Multnomah County Business income tax on their income, even though they don't pay any of that to Multnomah County. So, we have a lawsuit against Portland General Electric under ORS 756.185 for violating a utility statutes now pending in the Multnomah County Circuit Court. The ideas that the PUC have come up with, I think, miss one very important point, and that is none of them address the \$730 million that PGE alone has charged us for income taxes they have not paid and will never pay. The first item of business, I would say, in any of this legislation is to get back that money. We should not close the barn door after \$730 million horses have already left the barn and are wandering around. We need to get some of those horses, as many as possible, back in the barn door. So, I would say that we need to change the baseline here, change the baseline for allowing these utilities to charge rate payers for income taxes by saying that you don't get to charge rate payers for income taxes, even if you actually pay them, until you actually pay the income taxes you charged to rate payers for the last, let's say, 10 years, but didn't pay. So, let's change the baseline. That is, they have to pay their income taxes that they've already charged to us before they can charge us more for income taxes. In addition, there are some problems with each of the ideas that the Public Utilities Commission has advanced. The idea of filing consolidated state tax return, the way the PUC calculates the income taxes that they allow the utilities to charge to rate payers is not based on any kind of hypothetical tax return. It's the most simple calculation you can possibly imagine. They take the projected net income of the utility and they multiply it by the effective tax rate, that is 34% federal, whatever it is on the state level, six and a half percent, something like that. It's just a straight, just a straight calculation. It assumes no deductions. It assumes no anything else. That's what gets charged to rate payers. What the utility actually pays is much different. It's much different if they are consolidated, like with Enron, or Scottish Power. I know with Enron, the amount that Enron actually paid the state in income taxes since it took over PGE is zero. PGE did occasionally pay \$10 a year when it was deconsolidated. But this problem also happens in stand alone utilities or when utilities are not consolidated with their parents for calculation of federal or state income taxes. Portland General Electric was deconsolidated from Enron from the period of May 7, 2001 through December 24, 2002, about a year and a half. During that time they charged rate payers \$140 million for federal and state income taxes and they paid \$10 to the state in 2002 and in 2003 they paid another \$10. After charging us \$15.6 million a year for the state income taxes that they weren't paying, we're paying it in our bills, but they're not remitting it to the state. So, I'm comfortable with the notion of allowing of this hypothetical deconsolidated tax return being filed. And without examining the Commission's report in greater detail, I wouldn't have any

other comments at this time, but I would very much welcome any questions.

Chair: Thank you, Mr. Meek. And I appreciate your observation of the \$733 million. Candidly, I think that might be a ball up a hill that may be very difficult to reach, particularly knowing probably the rate payers would end up paying that if that had to go out anyway. Although I appreciate exactly your point of view on that and understand that. I would be curious because I know you have studied this stuff for a long time and while there's been a lot of talk about PGE which is, you know, what did certainly bring this thing forward, as you're right and as the Commissioner pointed out, this effects everyone. In your research have you had any concrete evaluation of the other major utilities who would be subjected to this amendment. For example, PacifiCorp through Scottish Power, or Northwest Natural Gas. Have you any research in terms of the rates that they have been collecting that have actually paid, or is all your information limited to the PGE case?

Meek: Senator Metsger, or Chairman, there are only so many hours in the day. I have not yet filed complaints against Pacific Power and Light or lawsuits against them to find out what that information is. Curiously, I found out in the various PGE proceedings that in the past, since Enron acquired PGE in 1997, neither the PUC nor the PUC staff, has ever asked PGE how much income taxes they paid, either on the federal level, the state level, or the county level. Never even asked them how much they paid. So, the PUC ought to do a report, and you know, the white paper I just heard mentioned, was pitiful really. I mean, it did not in any way describe the problem, it just said well, here's what some other states do, and how it described what other states do was wrong. I filed two sets of comments on the white paper. In every circumstance in other states where they forbid utilities from charging rate payers for income taxes they don't pay, it has always been upheld. That concept has been upheld by the US Supreme Court since 1956 and it's been upheld in the courts of every state that I've found. I can't find the case on Westlaw anywhere, or in public utility reports, where any kind of these adjustments have been disallowed. In any event, let's have the PUC ask the other utilities, how much have you charged rate payers for income taxes, and let's go back 10, 20 years, whatever would be appropriate, on federal income taxes, state income taxes, local income taxes, and how much has actually been paid to each of those taxing jurisdictions by either you or your parent corporation on your behalf. Simple question, but the PUC has never asked it.

Chair: Thank you, Mr. Meek. Questions for Mr. Meek?

Deckert: Mr. Chair?

Chair: Senator Deckert.



Deckert: One comment, Mr. Meek, and I deeply appreciate the work that you've done. In some ways, I feel like just in the way we characterize, I guess, the villains in this story, in many ways I think, and I'll put myself at the center here as revenue chairman in the state senate, we're the ones who enact the tax laws. The companies conform to the tax laws that we enact. The PUC does not have jurisdiction and so in some ways I feel like if we're casting this issue, and rightfully so, we it before us today, but if we look back over the last 5 or 10 years, we're the ones that are responsible for the tax laws of this state, and I've been at least a little, or at least I know where I'm coming down on this issue, and I'm happy that folks have brought it up, but for me, I've just, I guess, in the general dialog on this, I've thought that the story hasn't been accurately told of who really, because I don't blame the companies that much for just complying with the tax laws that we enact, and I apologize that it's more of a comment than a question, but I do feel it's important to at least set that correction in place.

Meek: Senator Deckert, Chair Metsger, I would say this is not a tax issue at all. It is a rate regulation issue. The state can tax utilities or other businesses any way that they wish. The entire point is not that the utilities are or are not complying with tax law. The point is that the Oregon Public Utility Commission allows them to charge to rate payers \$730 million of alleged costs that they never had. So, I don't see this as a tax issue at all. I see it as a rate regulation issue.

Deckert: Mr. Chair?

Chair: [Inaudible.]

Deckert: Your remedy, and this is helpful, your remedy would be that we would not go to deconsolidated tax status for regulated monopoly utilities. Your remedy would be that the PUC and when they do their rate setting disallow any tax issue to be embedded in customers' rates. That would be ...

Meek: Senator Deckert, my first recommendation is that the baseline that we all start with takes into account the amount that rate payers have paid for utility income taxes that have never been paid over some period of time in the past. So, essentially you don't grant the utilities a bonus by closing the barn door after the horses are out. Secondly, there are any number of ways to go about this that other states and other public utility Commissions in other states and the federal power Commission have adopted at various times, and I'm not ready at this point to give a recommendation on specifically how to do it, but in no event have I found cases where these other states or other regulators where there has actually been a change in the tax law. It's simply a change in the way that utility rates are set to reflect real costs and not costs that are not essentially not

there, and that's what these are. In fact, the US Supreme Court, it's decision in 19, can't remember, it's 56 or 67, said that utility rate payers have to pay, are required to pay for real costs, they are not required to pay for imaginary costs and when you charge rate payers for income taxes that are not paid, that's an imaginary cost. But, I really don't think this requires a change in tax law. It requires a change in the law pertaining to the way rates are set.

Deckert: So, Mr. Chair, my question would be and very helpful, and I guess it's to Chairman Beyer, is that accurate? Could you, when setting rates, simply disallow and this may take a, if you need to study it, I'm happy to wait, could you simply take out that portion, whatever, it's 9% for individuals and, you know, try to figure in whatever big credits the state grants and say we will discount that from the rates?

Man: Mr. Chair, Senator Deckert, we do make some adjustments in the rate setting process. Mr. Meek has different views on that. The packet that I provided each of you have the filings of Mr. Meek in them and his positions and they have others' response to them, including specific response from the Attorney General. Respecting Mr. Meek's position, I'm not an attorney, I'm not going to get into a disagreement. You can read those as well as I can. Suffice to say that the Attorney General does not agree with Mr. Meek.

Chair: I'm sorry, but that's a document I haven't seen. Thank you. Are there other questions for Mr. Meek? Okay, thank you very much. I think Mr. Meek's position and how it differs from the -4, I think, a lot, if I can kind of capture what he's saying is he'd like to have the utilities have the ability to capture in rates stuff that they have paid. In other words, we know they've paid it, now you can capture it. What the PUC has done in their recommendation, part of which is in the -4 is saying by having at least a five year reevaluation they can get to that same thing in a different way. It's a different approach and different point of view of that. Is there anybody else who would wish to testify today on this? [Someone mumbling to him.] Excuse me? [More mumbling.] Yeah, [inaudible] ask that. Okay, then I will ask. Let's see, who shall I bring up here? Kevin's in the back there? Yes. Sir, will you please come forward?

Woman: Lucky you.

Chair: See, this is what we call stealth signups. We don't sign up, we'll work other ways, but we just love to have the dialog, so.

Lynch: Chair Metsger, I'm Kevin Lynch with PacifiCorp and I'm happy to answer any questions you have of me.

Chair: I think the first question, Mr. Lynch, I know we've had discussions, I know you've discussed this with other members and truly your insight is valued. So, I would like for the record to give us your evaluation of the PUC's recommendations which, as you know, are embodied in the -4 amendments, it may not be perfect yet, but that's the concept anyway.

Lynch: Okay. I'll try. I haven't had much of a chance to read either of their recommendations in detail, or the -4 amendments. But let me make a couple of observations that might be useful, I hope. There are a couple of comments that your colleague Senator Deckert made that I think are important to think about in framing this issue. One of them is where really is the responsibility for setting the kind of tax policy that ought to apply to utilities. And related to that actually is the second observation he made which is what kind of animal is a utility or a company that owns a utility? They're both really good questions and I want to explore them just a little bit with you, to think about how this legislation really works or what it might mean. Utilities that are owned by investors or parent customers of utilities that are owned by investors have a number of obligations, both to the customers and the owners of the utility. One is to provide adequate and reliable service at reasonable rates for the utility service. The other is to try to make sure that investors are getting a good rate of return and that's important to customers in a way, too, because of the ability of the utility to attract capital from investors is important, as a utility needs to make investments to keep its system modern. So, to some degree, yeah, we have some differences in the way that our product is priced and our products are delivered, but we also have a lot of the same characteristics of any other business in this country: to try to make our business attractive. The other thing I might observe, too, is that to the degree that you want to create a distinction between utilities that provide a service on a competitive basis or on a regulated basis, I might remind the Committee that this legislature adopted retail electric competition for the two significant investor-owned electric utilities in Oregon in 1999. So, we, in fact, do have competition. To some degree it's a little bit more theoretical than it is practical right now, but that's a function of energy markets. It's not a function of state public policy. So, it's worth considering that we have that additional burden on our business if we want to retain customers, that we do, in fact, have competition. In some ways, not all that dissimilar to the telecommunication companies. One of the way that we try to make our business attractive to other, to investors, is by using some of our earnings and investing those in things that enhance our corporate parent's return. As you are aware, PacifiCorp has a number of affiliated businesses under a US holding company, the most prominent of which, I guess, is here in Oregon, known as PPM Energy. PPM is the second largest developer and marketer of renewable energy, or wind energy, in the county. It has aspirations to become the largest. It is also a substantial developer and operator of something called natural gas storage which is essentially a big warehouse underground for people who develop and

transfer natural gas to various users and the warehouse service is provided so that supply and demand can be leveled and people can, you know, put in gas in underground when demand isn't high and take it out when it is. So, that's a service that PPM is very involved in as a business. I want to focus on a minute on the renewable energy issue because it's an important one and it's become a major focus of the company's business. We have about almost 900 megawatts of wind energy either that PPM owns or owns the right to sell the power to. In 2000 I don't think PPM had any renewable energy, no wind energy. So, that's a pretty big portfolio that's been built up in about four years. Aspirationally, they'd like to get to about 2000 megawatts by the year 2010 and they have a business plan to get there. A key driver of the ability to run that business is the availability of a federal production tax credit for renewable energy. If PPM were a stand alone business, the wind energy business is not profitable, standing, you know, on its own, without that energy tax credit. So, it needs a company, as does any renewable energy developer, it needs another company with a gain to be able to take advantage of those tax credits, to offset, basically to offset their losses, and to use the tax credit. So, we think it's a good marriage of business and public policy to try to do those things together as affiliated businesses. There are a lot of other businesses that PacifiCorp has been involved in historically that have involved the use of various types of tax credits, be it for low income housing or other real estate development. Right now, we are focused on energy, and that's where we want to be and that's where we intend to stay for awhile. But, you know, to the degree that this legislative body and that the congress and other state legislatures want to use the tax code to encourage the investment in socially and economically advantageous and desirable activities, I think you need to ask yourself a question: why should or shouldn't the parent or an electric utility or a gas utility where the parent of one of those companies, be not allowed, or be disqualified from using its earnings to make those kinds of investments in the things that you want people to invest in. With that, I think I'll conclude and be happy to answer any questions.

Chair: Thank you, Mr. Lynch, and I think you're aware of what we attempt to do in Section 32a is to recognize PPM and other types of corporations within the state of Oregon involved in energy to allow a limited consolidation in recognition of those efforts. Questions for Mr. Lynch? Senator Starr?

Starr: Thank you. Thank you for your testimony. Have you seen the language in Section 32a?

Lynch: Chair Metsger, Senator Starr, just quite recently. I haven't had the opportunity to parse and not being an attorney and certainly not being a tax attorney, I would need to have some expertise brought to bear on it.

Starr: Just one question?

Chair: Yes.

Starr: Approximately what kind of employment, how many folks does PPM employ in the state of Oregon and, you know, if, you know, this language in 2a isn't appropriate, what, I just want to tread lightly here, for putting Oregonians that are working in those jobs...

Lynch: Sure.

Starr: In jeopardy perhaps.

Lynch: Fundamentally, there are two, well, PPM has about 200 employees in the Portland area, out of a company of 300. They are engaged in a number of different types of businesses effective around the country. The development and marketing of renewable energy and renewable energy projects that PPM has developed are in Oregon, Washington, Wyoming, Colorado, California, Iowa, Minnesota and there are developments that are underway in a number of other states. Most of the development and marketing work for those activities are headquartered in Portland. And it's similarly with energy trading off of those renewable projects. The trading floor, the primary trading floor for the company is in Portland, as well. That's about 200 employees. I might add that five years ago, I think PPM had five employees, I would say. As I mentioned, you know, there were no wind projects in the portfolio four and a half years ago. Now, there are almost a thousand megawatts.

Starr: Thank you.

Chair: Any questions? Thank you, Mr. Lynch, and I think that's a very good point, Senator Starr, which is why we actually included that in there so that the intent being that if, of course, keeping in mind that on a federal basis, wherever they are, they could still receive whatever benefit of the consolidated one, but in the state of Oregon if they are involved with other subsidiaries, such as PPM, and doing good things in the energy field to allow them to offset the profits, say, in this case, of a PacifiCorp, for that activity we should make sure that that is part of the package. I think that is important, not to take away that incentive for renewables. For the last person I will ask to come up this afternoon is Elizabeth Arshanko, please. And then we will conclude this for the day and move on to the other items. Welcome.

Arshanko: Good afternoon, Mr. Chair.

Chair: I think what we would like and some members may have some specific questions, but I would think I would prefer to start with anyway is your overview from a revenue side for the recommendations by the Public Utility Commission and what the Committee is addressing here with the - 4s or something similar to them.

Arshanko: Thank you, Mr. Chair, members of the Committee. For the record, Elizabeth Arshanko, director of your department of revenue. I am going to keep my comments very general. We've only just begun to look at these amendments. We've already identified an issue that was discussed earlier with Mr. Johnson and there are some technical questions that if you decide to pursue this policy of requiring separate company filing or a separate group of companies to file together that aren't part of a consolidated federal return, there's probably a little more language that we would need than what's in the bill right now. And we'll be happy to work with staff on that. This conversation has been going, as you mentioned earlier, for a couple of years now. And I think what I'd like to focus on is the fundamental policy the legislature adopted in going with the consolidated federal return as the primary base in the first instance for any corporation that's filing under our corporate tax laws. Of course, consistency with federal returns is a value that we've talked about in both the individual income tax and the corporate income tax and in Oregon, the statutes track fairly closely with the definitions of taxable income and for corporate purposes. Which companies are in the group that the state looks to to determine how much tax is attributable to the activities that that group conducts within the state. And there are years in which going in which using that methodology of saying we're going to look at an economic enterprise and determine what the liability of those companies in that enterprise who are present and doing business in our state, what their liability is with respect to the activity of the entire enterprise. In some years that means that Oregon would get more income tax, more corporate tax, from the company that's actually here physically, than it would get it on a stand alone basis, and in other years, less. The kinds of concerns that you would hear from on the tax policy side would be when you separate out a legal entity from a group that's conducting a single kind of business, a single business enterprise, but is using multiple business entities. The risk is created that in the pricing of transactions that occur between members of that family that income can be moved from where it's earned to somewhere else. And we're actually seeing a lot of conversation about this on the federal level right now with respect to domestic versus foreign corporations that are really owned and are part of the same kind of business, where transactions such as loans, payments for the use of patented process or trademarks are the vehicles by which income is moved somewhere where it's not within anybody's taxing jurisdiction. So, I'll just alert you that whenever you go to separate company accounting, you do create that risk if the kind of business that the company is engaged in has that possibility. So, I think you would want to think about that. The other thing is, again, as we've just looked at the amendments, it seems to be clear in the report, the recommendation and the conversation among the Committee members, that the focus of the amendments is intended only to be regulated utilities. The way the amendments are written right now, they are broader than just regulated

utilities, so we would be happy to participate in making sure that the language does that. Otherwise, we administer whatever tax law you tell us you want administered. We do have provisions in our statutes today that do allow the department on audit to review the reports that, or the returns that come in and try to determine whether they fairly reflect the income earned through activities engaged in in Oregon and there is always the possibility that on audit, especially of a separately filed return, we might take the position that something that is going on in that return or separately from that return that effects the tax liability of the company isn't correct and assess additional tax. And that can happen as much as three or five or seven years later, depending on whether there's a federal audit that reopens those same years. So, there's some technical aspects of how the tax law works and how our administration works that I would want you to be informed about as you make the decision.

Chair: Well, thank you, Ms. Arshanko. The, you know, there's a couple of things, you've heard the testimony here earlier, and going back to when we had this discussion a couple years ago before the senate revenue Committee that Senator Deckert was chairing at that time, that important to look at the distinction between general corporations and utility monopolies providing essential services which, unlike if we had Starr and Metsger Enterprises, we may make money or lose money based on our business model, but in a regulated utility where a rate or return of profit or return on equity is dictated by the Public Utility Commission, as opposed to someone else who's making their own risk and be allowed to assess rate payers for that. Your points are very, very valid on looking at especially technical aspects of the bill. We will definitely work with your department to make sure that that is correct. Questions from the Committee?

Starr: Yes.

Chair: Senator Starr.

Starr: Thank you, Mr. Chair. I guess, what does this change mean to your department as far as where your staffing levels, your ability to administer this kind of change? Is it, I mean, talk a little bit about what that would mean.

Arshanko: Mr. Chair, Senator Starr, if the scope of the bill is limited as the discussion indicates to a fairly small number of taxpayers, I don't think it's going to have an appreciable impact in terms of it's not going to require us to get additional staff. We might need to do some specialized training. We might need to do some rule making to help be as predictable as possible to those companies that would be using this method, if it's approved. But I don't see a significant change in the way that we do our work. As we

would audit a company that was subject to this rule, we would audit according to the terms of the statute.

Starr: Thanks.

Chair: Other questions? Thank you, Mrs. Arshanko.

Arshanko: Thank you, Mr. Chair.

Chair: Colleagues, my objective would be to work with staff on making the corrections to the bill that are necessary, first of all, to limit it to the scope of which we have discussed. Secondly, to work with the Department of Revenue on any issues they have to make sure that is correct. One thing I'll say, I did say about a month ago, and I'll say it one more time. Mr. Meek brought this point up. In terms of the hypothetical issue of collecting taxes and the possibility that profits could be such that you would actually have to collect more from rate payers because you were too profitable, as opposed to being able to determine what you were allowed in rates, and then what you actually ended up paying to the state, and we don't the numbers on some of the other firms. We do know from Portland General Electric because of the activities. We don't know for PP&L. We don't know for Northwest Natural. But, again, what I would say prior to going to work session on the bill, perhaps next week, or shortly thereafter, would be able to make an offer once again. If any of the utilities that would be subject to regulation under this bill, care to share that they have evidence that they had to pay more than they actually collected at any time in the last 10 years, so we're talking about dozens and dozens of tax years, I would be happy to consider that information to see if you actually had to pay more than you were allowed to collect before we move forward with the bill. So far no single tax year has been presented to me that that took place. So, but I will ask that one more time and would be happy to have the Committee consider that. Other than that, we will work on that and bring this bill back at that time and we'll close the public hearing on Senate Bill 171. And thank you for your attendance and thank you Mr. Warner, for helping us on that. Let's see, Senator Walker, are you prepared to do 323?

[End of Public Hearing on Senate Bill 171.]



SB 171-4  
(LC 434)  
3/24/05 (DJ/ps)

**PROPOSED AMENDMENTS TO  
SENATE BILL 171**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and insert "creating new provisions; and amending ORS 757.005,  
3 757.210 and 757.259."

4 On page 2, after line 17, insert:

5 **"SECTION 2. Section 3 of this 2005 Act is added to and made a part**  
6 **of ORS chapter 317.**

7 **"SECTION 3. (1) Notwithstanding any other provision of law, a**  
8 **public utility, as defined in ORS 314.610, that elects to file a consol-**  
9 **idated federal return may not file a consolidated state return.**

10 **"(2)(a) Notwithstanding subsection (1) of this section, a public util-**  
11 **ity may elect to file a modified consolidated state return on behalf of**  
12 **an affiliated group that is limited to includible corporations that are**  
13 **located in this state and that primarily conduct energy-related activ-**  
14 **ities in this state.**

15 **"(b) The definitions in section 1504 of the Internal Revenue Code**  
16 **apply to this section.**

17 **"SECTION 4. Section 3 of this 2005 Act applies to tax years begin-**  
18 **ning on or after January 1, 2006.**

19 **"SECTION 5. ORS 757.210 is amended to read:**

20 **"757.210. (1) Whenever any public utility files with the Public Utility**  
21 **Commission any rate or schedule of rates stating or establishing a new rate**  
22 **or schedule of rates or increasing an existing rate or schedule of rates, the**  
23 **commission may, either upon written complaint or upon the commission's**  
24 **own initiative, after reasonable notice, conduct a hearing to determine the**

1 propriety and reasonableness of such rate or schedule. The commission shall  
2 conduct such a hearing upon written complaint filed by the utility, its cus-  
3 tomer or customers, or any other proper party within 60 days of the utility's  
4 filing; provided that no hearing need be held if the particular rate change  
5 is the result of an automatic adjustment clause. At such hearing the utility  
6 shall bear the burden of showing that the rate or schedule of rates proposed  
7 to be established or increased or changed is just and reasonable. The term  
8 'automatic adjustment clause' means a provision of a rate schedule which  
9 provides for rate increases or decreases or both, without prior hearing, re-  
10 flecting increases or decreases or both in costs incurred or revenues earned  
11 by a utility and which is subject to review by the commission at least once  
12 every two years.

13 "(2)(a) Subsection (1) of this section does not apply to rate changes under  
14 an approved alternative form of regulation plan, including a resource rate  
15 plan under ORS 757.212.

16 "(b) Any alternative form of regulation plan shall include provisions to  
17 ensure that the plan operates in the interests of utility customers and the  
18 public generally and results in rates that are just and reasonable and may  
19 include provisions establishing a reasonable range for rate of return on in-  
20 vestment. In approving a plan, the commission shall, at a minimum, consider  
21 whether the plan:

22 "(A) Promotes increased efficiencies and cost control;

23 "(B) Is consistent with least-cost resources acquisition policies;

24 "(C) Is consistent with maintenance of safe, adequate and reliable service;  
25 and

26 "(D) Is beneficial to utility customers generally, for example, by mini-  
27 mizing utility rates.

28 "(c) As used in this subsection, 'alternative form of regulation plan'  
29 means a plan adopted by the commission upon petition by a public utility,  
30 after notice and an opportunity for a hearing, that sets rates and revenues

1 and a method for changes in rates and revenues using alternatives to cost-  
2 of-service rate regulation.

3 “(d) Prior to implementing a rate change under an alternative form of  
4 regulation plan, the utility shall present a report that demonstrates the cal-  
5 culation of any proposed rate change at a public meeting of the commission.

6 “(3) Except as provided in ORS 757.212, the commission, at any time, may  
7 order a utility to appear and establish that any, or all, of its rates in a plan  
8 authorized under subsection (2) of this section are in conformity with the  
9 plan and are just and reasonable. Except as provided in ORS 757.212, such  
10 rates, and the alternative form of regulation plan under which the rates are  
11 set, also shall be subject to complaint under ORS 756.500.

12 “(4) Periodically, but not less often than every two years after the im-  
13 plementation of a plan referred to in subsection (2) of this section, the com-  
14 mission shall submit a report to the Legislative Assembly that shows the  
15 impact of the plan on rates paid by utility customers.

16 “(5) The commission and staff may consult at any time with, and provide  
17 technical assistance to, utilities, their customers, and other interested parties  
18 on matters relevant to utility rates and charges. If a hearing is held with  
19 respect to a rate change, the commission’s decisions shall be based on the  
20 record made at the hearing.

21 “(6) Notwithstanding subsections (1) and (2) of this section, the  
22 commission shall conduct a hearing to determine the propriety and  
23 reasonableness of the schedule of rates in effect for a public utility at  
24 least once every five years.

25 **“SECTION 6.** Notwithstanding ORS 757.210 (6), if the rates or  
26 schedule of rates of a public utility have not been reviewed by the  
27 Public Utility Commission under ORS 757.210 within five years prior  
28 to the effective date of this 2005 Act, the Public Utility Commission  
29 may conduct a hearing that satisfies the requirements of ORS 757.210  
30 (6) if the hearing is held prior to July 1, 2007.

1       “SECTION 7. ORS 757.259 is amended to read:

2       “757.259. (1) In addition to powers otherwise vested in the Public Utility  
3 Commission, and subject to the limitations contained in this section, under  
4 amortization schedules set by the commission, a rate or rate schedule:

5       “(a) May reflect:

6       “(A) Amounts lawfully imposed retroactively by order of another govern-  
7 mental agency; or

8       “(B) Amounts deferred under subsection (2) of this section.

9       “(b) Shall reflect amounts deferred under subsection (3) of this section if  
10 the public utility so requests.

11       “(2) Upon application of a utility or ratepayer or upon the commission’s  
12 own motion and after public notice, opportunity for comment and a hearing  
13 if any party requests a hearing, the commission by order may authorize  
14 deferral of the following amounts for later incorporation in rates:

15       “(a) Amounts incurred by a utility resulting from changes in the whole-  
16 sale price of natural gas or electricity approved by the Federal Energy Reg-  
17 ulatory Commission;

18       “(b) Balances resulting from the administration of Section 5(c) of the  
19 Pacific Northwest Electric Power Planning and Conservation Act of 1980;

20       “(c) Direct or indirect costs arising from any purchase made by a public  
21 utility from the Bonneville Power Administration pursuant to ORS 757.663,  
22 provided that such costs shall be recovered only from residential and small-  
23 farm retail electricity consumers;

24       “(d) Amounts accruing under a plan for the protection of short-term  
25 earnings under ORS 757.262 (2); or

26       “(e) Identifiable utility expenses or revenues, the recovery or refund of  
27 which the commission finds should be deferred in order to minimize the fre-  
28 quency of rate changes or the fluctuation of rate levels or to match appro-  
29 priately the costs borne by and benefits received by ratepayers.

30       “(3) Upon request of the public utility, the commission by order shall al-

1 low deferral of amounts provided as financial assistance under an agreement  
2 entered into under ORS 757.072 for later incorporation in rates.

3 “(4) The commission may authorize deferrals under subsection (2) of this  
4 section beginning with the date of application, together with interest estab-  
5 lished by the commission. A deferral may be authorized for a period not to  
6 exceed 12 months beginning on or after the date of application. However,  
7 amounts deferred under subsection (2)(c) and (d) or (3) of this section are not  
8 subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject  
9 to such limitations and requirements that the commission may prescribe and  
10 that are consistent with the provisions of this section.

11 “(5) Unless subject to an automatic adjustment clause under ORS 757.210  
12 (1), amounts described in this section shall be allowed in rates only to the  
13 extent authorized by the commission in a proceeding under ORS 757.210 to  
14 change rates and upon review of the utility’s earnings at the time of appli-  
15 cation to amortize the deferral. The commission may require that amorti-  
16 zation of deferred amounts be subject to refund. The commission’s final  
17 determination on the amount of deferrals allowable in the rates of the utility  
18 is subject to a finding by the commission that the amount was prudently  
19 incurred by the utility.

20 “(6) Except as provided in subsections (7), (8) and (10) of this section, the  
21 overall average rate impact of the amortizations authorized under this sec-  
22 tion in any one year may not exceed three percent of the utility’s gross  
23 revenues for the preceding calendar year.

24 “(7) The commission may allow an overall average rate impact greater  
25 than that specified in subsection (6) of this section for natural gas commod-  
26 ity and pipeline transportation costs incurred by a natural gas utility if the  
27 commission finds that allowing a higher amortization rate is reasonable un-  
28 der the circumstances.

29 “(8) The commission may authorize amortizations for an electric utility  
30 under this section with an overall average rate impact not to exceed six

1 percent of the electric utility's gross revenues for the preceding calendar  
2 year. If the commission allows an overall average rate impact greater than  
3 that specified in subsection (6) of this section, the commission shall estimate  
4 the electric utility's cost of capital for the deferral period and may also  
5 consider estimated changes in the electric utility's costs and revenues during  
6 the deferral period for the purpose of reviewing the earnings of the electric  
7 utility under the provisions of subsection (5) of this section.

8 “(9) The commission may impose requirements similar to those described  
9 in subsection (8) of this section for the amortization of other deferrals under  
10 this section, but may not impose such requirements for deferrals under sub-  
11 section (2)(c) or (d) or (3) of this section.

12 “(10) The commission may authorize amortization of a deferred amount  
13 for an electric utility under this section with an overall average rate impact  
14 greater than that allowed by subsections (6) and (8) of this section if:

15 “(a) The deferral was directly related to extraordinary power supply ex-  
16 penses incurred during 2001;

17 “(b) The amount to be deferred was greater than 40 percent of the revenue  
18 received by the electric utility in 2001 from Oregon customers; and

19 “(c) The commission determines that the higher rate impact is reasonable  
20 under the circumstances.

21 “(11) If the commission authorizes amortization of a deferred amount un-  
22 der subsection (10) of this section, an electric utility customer that uses more  
23 than one average megawatt of electricity at any site in the immediately  
24 preceding calendar year may prepay the customer's share of the deferred  
25 amount. The commission shall adopt rules governing the manner in which:

26 “(a) The customer's share of the deferred amount is calculated; and

27 “(b) The customer's rates are to be adjusted to reflect the prepayment of  
28 the deferred amount.

29 **“(12) Upon application of a utility or ratepayer or upon the com-  
30 mission's own motion and after public notice, opportunity for com-**

1 ment and a hearing if any party requests a hearing, the commission  
2 may authorize the incorporation into rates of estimated federal and  
3 state taxes. In determining estimated federal and state taxes, the  
4 commission shall take into account the effects of filing federal returns  
5 on a consolidated basis.

6 “[12] (13) The provisions of this section do not apply to a telecommuni-  
7 cations utility.”

8

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**SENATE COMMITTEE ON BUSINESS AND ECONOMIC  
DEVELOPMENT**

April 7, 2005  
1:00 P.M.

Hearing Room B  
Tapes 56 - 59

**MEMBERS PRESENT:**       **Sen. Rick Metsger, Chair**  
                                  **Sen. Bruce Starr, Vice-Chair**  
                                  **Sen. Jason Atkinson**  
                                  **Sen. Ryan Deckert**  
                                  **Sen. Laurie Monnes Anderson**

**MEMBER EXCUSED:**

**STAFF PRESENT:**       **Theresa Van Winkle, Committee Administrator**  
                                  **James Goulding, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**SB 579 – Work Session**  
**HJR 8A – Public Hearing and Work Session**  
**SB 171 – Public Hearing and Work Session**  
**SB 151 – Work Session**  
**SB 408 – Work Session**  
**SB 209 – Work Session**  
**SB 408 – Work Session**  
**SB 210 – Work Session**  
**SB 211 – Work Session**  
**SB 212 – Work Session**  
**SB 997 – Work Session**  
**SB 949 – Work Session**  
**SB 950 – Work Session**  
**SB 672 – Work Session**  
**SB 951 – Work Session**  
**SB 952 – Work Session**  
**SB 955 – Work Session**  
**SB 327 – Work Session**  
**SB 385 – Work Session**  
**SB 173 – Work Session**  
**SB 1008 – Public Hearing**

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These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 56, A</b>		
003	Chair Metsger	Calls the meeting to order at 1:07 p.m. Opens a work session on SB



579.

**SB 579 – WORK SESSION**

- 010 Theresa Van Winkle Committee Administrator. Explains the proposed -3 amendment (**EXHIBIT A**).
- 015 Chair Metsger Clarifies the language changes made.
- 020 Sen. Atkinson **MOTION: Moves to ADOPT SB 579-3 amendments dated 4/7/05.**
- 021 **VOTE: 3-0-2**  
**EXCUSED: 2 - Deckert, Monnes Anderson**
- 022 Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
Sen. Atkinson **MOTION: Moves SB 579 to the floor with a DO PASS AS AMENDED recommendation.**
- 024 **VOTE: 3-0-2**  
**EXCUSED: 2 – Deckert, Monnes Anderson**  
Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
**SEN. PROZANSKI will lead discussion on the floor.**
- 025 Chair Metsger Closes work session on SB 579. Opens a public hearing on HJR 8A.

**HJR 8A – PUBLIC HEARING**

- 030 Rep. Patti Smith House District 52. Submits written testimony in favor of HJR 8A (**EXHIBIT B**). Advocates the adoption of the measure making the pear Oregon's official state fruit.
- 045 Chair Metsger Welcomes the Blossom Court from Hood River and others in attendance.
- 050 Rep. Sal Esquivel House District 6. Testifies in support of HJR 8A. Comments on the pear industry within the state.
- 083 Dani Peters 2005 Blossom Court, Hood River Valley High School. Testifies in support of HJR 8A.
- 089 Lisa Perry 2005 Blossom Court, Hood River Valley High School. Provides comments in favor of HJR 8A
- 096 Ariel MacMillan 2005 Blossom Court, Hood River Valley High School. Offers her support for the measure.
- 103 Hannah Mason 2005 Blossom Court, Hood River Valley High School. Speaks in favor of HJR 8A
- 115 John McCulley Tree Fruit Growers. Observes that there is no opposition to the measure amongst the various fruit growing groups.
- 127 Kevin Moffitt President, Pear Bureau Northwest. Presents written testimony (**EXHIBIT C**) and "Case for Making Pears..." packet (**EXHIBIT D**). Makes the case for the pear being the state fruit.
- 167 Moffitt Continues presenting his written testimony.
- 175 Chair Metsger Voices his approval for their efforts on this measure.
- 183 Sen. Monnes Anderson Questions how the pear compares with berries in terms of crop value.
- 187 Moffitt Compares the pear industry with other fruit industries within the state.
- 201 Chair Metsger Closes public hearing on HJR 8A. Opens a work session on HJR 8A.

HJR 8A – WORK SESSION

- 220 Sen. B. Starr **MOTION: Moves HJR 8A be sent to the floor with a BE ADOPTED recommendation.**
- 223 Sen. Monnes  
Anderson Comments on her bias for berries as the state fruit, but notes she will not oppose this measure.
- 235 **Chair Metsger** **VOTE: 5-0-0**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. METSGER will lead discussion on the floor.**
- 237 Chair Metsger Closes work session on HJR 8A and opens a public hearing on SB 171.

SB 171 – PUBLIC HEARING

- 238 Chair Metzger Reiterates prior discussion on the measure. Points out there are -4 (EXHIBIT E) and -6 amendments (EXHIBIT F) before the committee. Notes his preference for adopting the -6 amendments and then moving the measure to Revenue.
- 260 Sen. B. Starr Asks for clarification on the differences between the -4 and -6 amendments.
- 263 Theresa Van  
Winkle Committee Administrator. Offers that the -6 amendments clarify technical issues in the -4 amendments.
- 268 Chair Metsger Notes additional modifications.
- 274 Sen. Monnes  
Anderson Clarifies that they are only considering the -6 amendments.
- 281 Rick Willis Executive Director, Oregon Public Utilities Commission (PUC). Defers to Mr. Graham to explain the amendments.
- 285 Chair Metsger Asks Mr. Graham to provide a walkthrough of the amendments.
- 290 Paul Graham Attorney General, PUC. Summarizes the amendments.
- 297 Sen. B Starr Asks about for clarification on how a utility would make their case to the PUC.
- 300 Graham Explains the process.
- 320 Sen. B. Starr Considers the timeframe for the process.
- 235 Graham Offers that it is designed to be resolved quickly.
- 335 Sen. B. Starr Asks if he has shared the amendments with utilities.
- 337 Graham Replies that he has. Explains the various suggestions from utilities. Notes the changes made to the language to address their concerns.
- 345 Sen. B. Starr Wonders if PacifiCorp has commented on the amendments.
- 350 Willis Prefers to allow PacifiCorp to explain their views.
- 355 Chair Metsger Requests for Mr. Lynch to come forward on behalf of PacifiCorp.
- 360 Kevin Lynch PacifiCorp. Voices that they have not had time to review the amendments in great detail. Notes they do not have a problem with the rate portion of the amendment.
- 375 Chair Metsger Notes there will be an additional public hearing when this measure moves to Revenue. Closes public hearing on SB 171. Opens a work session on SB 171.

SB 171 – WORK SESSION

- 380 Sen. B. Starr **MOTION: Moves to ADOPT SB 171-6 amendments dated 4/7/05.**
- 381 **VOTE: 3-0-2**
- Chair Metsger  
383 Sen. B. Starr **EXCUSED: 2 - Atkinson, Deckert**  
**Hearing no objection, declares the motion CARRIED.**  
**MOTION: Moves SB 171 to the floor with a DO PASS AS**  
**AMENDED recommendation and BE REFERRED to**  
**the committee on Revenue.**
- 385 Sen. B. Starr States he is not entirely comfortable with measure as it is now, and will  
reconsider it on the floor depending on the action taken in Revenue.
- 387 **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Hearing no objection, declares the motion CARRIED.**
- 390 Chair Metsger  
Chair Metsger Closes work session on SB 171. Opens a work session on SB 151.
- SB 151 – WORK SESSION**
- 393 Chair Metsger Summarizes the prior public hearing on the measure.
- 400 Sen. Alan Bates Senate District 3. Offers some history of the issue being addressed.
- TAPE 57, A**
- 005 Sen. Bates Discusses Personal Injury Protection (PIP) minimum amounts and the  
impact of previous legislation. Notes there are several sets of  
amendments before the committee. Discusses -2 (**EXHIBIT G**), -4  
(**EXHIBIT H**), and -5 amendments (**EXHIBIT I**). Advocates  
adoption of the -4 amendments.
- 022 John Powell State Farm Insurance. Supports the adoption of -4 amendments. Points  
out they have not have yet had time to assess all the details of the  
language. Offers that they will continue to evaluate the bill as it moves  
through the process.
- 050 Doug Barber PeaceHealth, Sacred Heart Hospital in Eugene. Relates the previous  
session's legislation and the need to fix the unintended consequences.
- 064 Sen. B. Starr Wonders who will be profiting and who will be losing money as a  
result of this measure.
- 070 Sen. Bates Indicates the intent is to assist hospitals and trauma centers. Discusses  
the fee schedule rates.
- 083 Sen. B. Starr Asks if this will raise interest rates.
- 085 Barber Replies in regards to PIP cost limits and potential effects.
- 100 Sen. Bates Relays that the current PIP level was set in the 1970s. Notes the  
change is very small compared to inflation.
- 109 Barber Clarifies the cost shift.
- 117 Sen. Bates States that this measure will protect trauma centers, which assist those  
with the most critical needs.
- 125 Chair Metsger Mentions they have been primarily discussing the -4 amendments.  
Asks that they discuss the -2 amendments.
- 132 Powell Notes the changes the -2 amendments make to the PIP amounts.
- 165 Sen. B. Starr Considers the -5 amendments.
- 166 Powell Notes the reason for having the -5 amendment drafted. Advocates the -

4 amendment over the -5 version.

- 174 Sen. B. Starr **MOTION: Moves to ADOPT SB 151-4 amendments dated 4/6/05.**  
 175 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
**Hearing no objection, declares the motion CARRIED.**  
 177 Chair Metsger **MOTION: Moves to ADOPT SB 151-2 amendments dated 3/31/05.**  
 179 Sen. B. Starr **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
**Hearing no objection, declares the motion CARRIED.**  
 182 Chair Metsger **MOTION: Moves SB 151 to the floor with a DO PASS AS**  
 Sen. B. Starr **AMENDED recommendation.**  
 184 Sen. B. Starr Advocates caution in addressing issues like this. Points out the factors  
 involved, and the desire to keep insurance rates low.  
 190 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**  
**SEN. BATES will lead discussion on the floor.**  
 193 Chair Metsger Closes work session on SB 151. Opens a work session on SB 408.

**SB 408 – WORK SESSION**

- 217 Sen. Ben Westlund Senate District 27. Discusses the -3 amendments (**EXHIBIT J**) which  
 replace the original language of the measure. Advocates the  
 responsible management of forest resources and greater cooperation  
 with native tribes.  
 253 Michael Mason Confederated Tribes of Warm Springs. Introduced Mr. Potts to the  
 committee. Submits testimony on behalf of Ron Suppah (**EXHIBIT**  
**K**).  
 263 Larry Potts General Manager, Warm Springs Forest Products. Testifies in favor of  
 SB 408 with the -3 amendments. Talks about the jobs that will be  
 created through economic expansion in an environmentally friendly  
 manner.  
 300 Potts Explains the long term benefits of the project, including the reduction  
 of wildfires.  
 335 Potts Discusses renewable potential of bio-mass fuel.  
 365 Chair Metsger Expresses appreciation for the work of Sen. Westlund and members of  
 the tribe.  
 381 Sen. Westlund Appreciates the assistance of Chair Metsger.  
 384 Sen. Monnes Anderson Notes she supports the bill except for the ability to sell energy above  
 market level. Fears rates will be raised as a result.  
 400 Sen. Westlund Clarifies that market forces are at work and there has to be a willing  
 buyer.

**TAPE 56, B**

- 005 Sen. Westlund Mentions that in the overall picture it is a very small amount of power  
 being generated.  
 010 Potts Replies there is no firm quantification of the public benefit. Points out  
 that this pilot project will show very strong social and economic value.

- 025 Sen. Monnes Anderson Reiterates her discomfort with the proposal. Feels the costs will outweigh the benefits.
- 033 Sen. Westlund Mentions that if this measure prevents even one forest fire, the benefits will outweigh the costs.
- 045 Sen. B. Starr **MOTION: Moves to ADOPT SB 408-3 amendments dated 4/4/05.**
- 047 **VOTE: 3-1-1**  
**AYE: 3 - Atkinson, Starr B., Metsger**  
**NAY: 1 - Monnes Anderson**  
**EXCUSED: 1 - Deckert**  
**The motion CARRIES.**
- 050 Chair Metsger Sen. B. Starr **MOTION: Moves SB 408 to the floor with a DO PASS AS AMENDED recommendation.**
- 053 **VOTE: 3-1-1**  
**AYE: 3 - Atkinson, Starr B., Metsger**  
**NAY: 1 - Monnes Anderson**  
**EXCUSED: 1 - Deckert**  
**The motion CARRIES.**  
**SEN. WESTLUND will lead discussion on the floor.**
- 055 Chair Metsger Closes work session on SB 408. Opens a work session on SB 209.
- SB 209 – WORK SESSION**
- 065 Theresa Van Winkle Committee Administrator. Explains the provisions of the measure. Points out that there are -1 amendments (**EXHIBIT L**).
- 080 Cheryl Pellegrini Assistant Attorney General, Department of Justice (DoJ). Notes that the -1 amendments do not include all the changes requested. Discusses the need for additional revisions.
- 099 Sen. B. Starr Asks if these are the only amendments before the committee.
- 103 Van Winkle Replies that the -1 amendments were received earlier in the day.
- 105 Sen. B. Starr Observes the time since the first public hearing. Wonders why there are not additional amendments.
- 110 Chair Metsger Requests that they hold off on this measure.
- 117 Pellegrini Reiterates that the language was submitted to legislative counsel.
- 120 Chair Metsger Comments that they do not have the proper amendment before them and will not take action at this time. Closes work session on SB 209. Puts the committee at ease at 2:13 p.m.
- 135 Chair Metsger Calls the committee back to order at 2:14 p.m. Apologizes for missing that Mr. Nelson wanted to testify on SB 408. Re-opens the work session SB 408.
- SB 408 – WORK SESSION**
- 140 Mark Nelson Industrial Customers of Northwest Utilities. Submits membership list of the utilities (**EXHIBIT M**). Offers commentary on the language of the measure, commends the work of the Warm Springs Tribe. Presents his concerns for making the proposal economical. Opposes the measure as currently amended by the -3 amendments.
- 194 Chair Metsger Offers it is a limited pilot project. Hopes that Mr. Nelson will continue to track the bill through the process.

- 215 Nelson States that he hopes to see additional changes made to the measure as it moves forward.
- 220 Chair Metsger Closes work session on SB 408. Opens a work session on SB 210.
- SB 210 – WORK SESSION**
- 227 Van Winkle Explains the provisions of the measure. Notes the presence of -2 (EXHIBIT N) and -4 amendments (EXHIBIT O).
- 237 Sen. B. Starr Considers which amendments they wish to move.
- 240 Chair Metsger Asks that Mr. Powell come forward to explain the -4 amendments. Remarks on the difficulty of finding the proper language for the sign.
- 249 John Powell State Farm Insurance. Provides additional explanation of the -4 amendments.
- 252 Shawn Miller Property Casualty Insurers Association. Comments that the -4 amendments should be a part of the measure.
- 255 Chair Metsger Reiterates that they feel it would be a fair balance.
- 260 Kevin Neely Executive Assistant to the Attorney General. Notes he has no concerns with either amendments.
- 275 Sen. Monnes Anderson Voices her concerns with language in the -4 amendments. Feels the measure does not accomplish anything for the consumer.
- 292 Neely Notes it is valuable for consumers to understand the agreements made between insurance companies and auto shops.
- 307 Sen. Monnes Anderson Expresses her feelings that this measure is not reasonable. Relates her feelings that simply posting a sign will not have much impact.
- 324 Chair Metsger States they will return to this measure. Closes work session on SB 210. Opens a work session SB 211.

**SB 211 – WORK SESSION**

- 330 Fred Boss Assistant Attorney General, Oregon Department of Justice. Provides details on the -2 amendments (EXHIBIT P).
- 363 Chair Metsger Observes the -2 encompass the previous -1 amendments.
- 370 Sen. B. Starr **MOTION: Moves to ADOPT SB 211-2 amendments dated 4/7/05.**
- 373 **VOTE: 4-0-1**  
**EXCUSED: 1 - Deckert**  
**Hearing no objection, declares the motion CARRIED.**
- 376 Chair Metsger **MOTION: Moves SB 211 to the floor with a DO PASS AS**  
Sen. B. Starr **AMENDED recommendation.**
- 378 **VOTE: 5-0-0**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. METSGER will lead discussion on the floor.**
- 382 Chair Metsger Closes work session SB 211. Opens a work session on SB 212.

**SB 212 – WORK SESSION**

- 405 Van Winkle Provides an overview of the measure.
- 415 Cheryl Pellegrini Begins to offer the background fn the measure.

**TAPE 57, B**

- 005 Pellegrini Assistant Attorney General, Department of Justice. Continues to

discuss the measure. Submits a letter from Charles Harwood  
(EXHIBIT Q).

039 Sen. B. Starr

**MOTION: Moves SB 212 to the floor with a DO PASS  
recommendation.**

049

**VOTE: 4-1-0**

**AYE: 4 - Deckert, Monnes Anderson, Starr B., Metsger**

**NAY: 1 - Atkinson**

Chair Metsger

**The motion CARRIES.**

**SEN. METSGER will lead discussion on the floor.**

051 Chair Metsger

Closes the work session on SB 212. Opens a work session on SB 210.

**SB 210 – WORK SESSION**

053 Sen. B. Starr

**MOTION: Moves to ADOPT SB 210-2 amendments dated 3/31/05.**

055

**VOTE: 4-1-0**

**AYE: 4 - Atkinson, Deckert, Starr B., Metsger**

**NAY: 1 - Monnes Anderson**

Chair Metsger

**The motion CARRIES.**

057 Chair Metsger

**MOTION: Moves SB 210 to the floor with a DO PASS AS  
AMENDED recommendation.**

060 Sen. Atkinson

Remarks that he will oppose this measure.

066

**VOTE: 3-2-0**

**AYE: 3 - Deckert, Starr B., Metsger**

**NAY: 2 - Atkinson, Monnes Anderson**

Chair Metsger

**The motion CARRIES.**

**SEN. METSGER will lead discussion on the floor.**

068 Chair Metsger

Closes the work session on SB 210. Opens a work session on SB 997.

**SB 997 – WORK SESSION**

070 Van Winkle

Explains the provisions of SB 997. Notes the -3 amendments before the committee (EXHIBIT R).

082 Darrell Fuller

Oregon Auto Dealers Association. Notes he has just received the -3 amendments. States that the amendments appear to address all prior concerns.

099 Cheryl Pellegrini

Points out additional details of the measure.

105 Sen. Monnes  
Anderson

Inquires about the cost difference between paper and electronic filing.

107 Pellegrini

Clarifies the costs.

110 Sen. Monnes  
Anderson

Asks what the price is now.

111 Pellegrini

Replies is has not changed.

114 Fuller

Notes the current difference in statute.

122 Sen. B. Starr

**MOTION: Moves to ADOPT SB 997-3 amendments dated 4/7/05.**

127

**VOTE: 4-0-1**

**EXCUSED: 1 - Atkinson**

Chair Metsger

**Hearing no objection, declares the motion CARRIED.**

130 Sen. B. Starr

**MOTION: Moves SB 997 to the floor with a DO PASS AS  
AMENDED recommendation.**





263 Chair Metsger Closes the work session on SB 950. Opens a public hearing on SB 672.

**SB 672 – PUBLIC HEARING**

267 Chair Metsger Editor/Publisher of the Mount Scott Monitor. Explains the history of the measure. Notes the immense complexity of the measure.

300 Philip Robbins Resident of Portland. Summarizes the issues being faced. Presents written testimony (**EXHIBIT U**) and a CD-ROM (**EXHIBIT V**).

350 Robbins Details the concerns related to electing condominium representatives.

400 Robbins Talks about the problems with disclosure.

**TAPE 58, A**

005 Robbins Concludes his testimony.

020 Chair Metsger Summarizes the details of his testimony.

024 Richard Vial Attorney, Vial Fotheringham LLP. Discusses his experience as part of the Condominium Homeowner's Association Working Group.

045 Vial Talks about various administrative election structures.

072 Vial Discusses the proposed -2 amendments to SB 672 (**EXHIBIT W**).

081 Chair Metsger Suggests Mr. Carlson summarize the various amendments before them.

090 Eric Carlson Senate Majority Office. States the theory behind SB 672 in helping to provide balance among home owner associations. Presents a written summary (**EXHIBIT X**) to the committee.

125 Carlson Further discusses the issues addressed by the measure and the -2 amendments. Points out additional -4 amendments (**EXHIBIT Y**).

155 Chair Metsger Discusses the need to bring this issue forward at this time. Offers there is a lot of additional work to be done. Asks which issues can be worked out and decided this session.

170 Robbins Observes that this is a work in progress.

177 Chair Metsger Asks that they work further on it and present their findings back to the committee.

183 Vial Proposes they hold a working group on the disclosure issue.

187 Chair Metsger Relays his concerns. Remarks that they have the expertise to work these issues out.

203 Vial Reiterates his desire to address the issue and take action.

212 Chair Metsger Comments that there is a lot more work ahead before this measure can move forward. Closes public hearing SB 672. Opens a work session SB 951.

**SB 951 – WORK SESSION**

230 Van Winkle Explains the provisions of the measure and the -1 amendments (**EXHIBIT Z**).

240 Neil Jackson Comments that they have been unable to reach a consensus on this measure.

260 Steve Murrell Concurs with Mr. Jackson. Offers that they attempted to check the potential cost changes, but could not find an exact number.

273 Chair Metsger Asks if he has any historical data on this issue.

- 277 Murrell Relates that there have been changes across different states. Provides some details on the variables.
- 293 Chair Metsger States that he doesn't feel comfortable moving the bill at this time.
- 316 Sen. Deckert Feels this is an equity issue. Offers he is willing to pay more to ensure the coverage of family members.
- 325 Chair Metsger Offers his hopes for working out a solution. Closes work session on SB 951. Opens a work session SB 952.

**SB 952 – WORK SESSION**

- 335 Jackson Testifies, that once again they have been unable to find common ground.
- 347 Chair Metsger Asks for Mr. Murrell's take on this subject.
- 351 Murrell Comments on the reasons they were unable to reach an agreement.
- 376 Chair Metsger Wonders about the cost change if this measure went into law.
- 386 Murrell Offers it hinges on when someone is "made whole" after an injury, which is difficult to quantify.
- 399 Chair Metsger Remarks that there is more work to be done. Closes work session SB 952. Opens a work session on SB 955.

**SB 955 – WORK SESSION**

- 403 Van Winkle Explains the provisions of the measure. Points out there -1 amendments before the committee (**EXHIBIT AA**).

**TAPE 59, A**

- 004 Chair Metsger Notes the inclusion of a letter from the Oregon Real Estate Agency (**EXHIBIT BB**).
- 010 Barry Pack Committee to Protect Condominium Developers and Homeowners. Details the -1 amendments. Advocates their adoption.
- 027 Chair Metsger Notes the concerns of the committee in regards to impacts on Oregon consumers.
- 039 Brian DeMarco Oregon Real Estate Agency. Notes he has no opposition to SB 955 as drafted. Discusses his concerns with the -1 amendments.
- 080 DeMarco Continues addressing his concerns with the -1 amendments.
- 105 Chair Metsger Expresses his own concerns with the -1 amendments. Observes this measure will not be moving today.
- 117 Pack Replies that all parties will work for a compromise.
- 120 DeMarco Discusses a prior workgroup.
- 121 Vial Supports the idea of addressing these issues. Does not support passing SB 955 without amendments. Feels they need a new set of amendments.
- 142 Jana Jarvis Oregon Association of Realtors. States they are monitoring the measure at this time.
- 150 Chair Metsger Asks for the opinion of the committee.
- 155 Sen. Deckert Feels they should move the base bill.
- 161 Chair Metsger Offers they should hold the measure to give time to address some of the issues. Closes work session on SB 955. Opens a work session on SB

327.

**SB 327 – WORK SESSION**

- 175 Van Winkle Discusses the provisions of the measure. Notes there are -1 amendments (**EXHIBIT CC**).
- 179 Jan Amling Consumer Credit Counseling Service. Explains the -1 amendments.
- 203 **Sen. B. Starr** **MOTION: Moves to ADOPT SB 327-1 amendments dated 3/31/05.**
- 204 **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Hearing no objection, declares the motion CARRIED.**
- 207 **Chair Metsger** **MOTION: Moves SB 327 to the floor with a DO PASS AS**  
**Sen. B. Starr** **AMENDED recommendation.**
- 209 **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Chair Metsger** **Hearing no objection, declares the motion CARRIED.**  
**SEN. MORSE will lead discussion on the floor.**
- 210 Chair Metsger Closes work session on SB 327. Opens a work session on SB 209.

**SB 209 – WORK SESSION**

- 212 Chair Metsger Observes more time is needed to examine the amendments. Closes work session on SB 209. Opens a work session on SB 385.

**SB 385 – WORK SESSION**

- 214 Van Winkle Explains the provisions of the measure. Notes there are -2 amendments to SB 385 (**EXHIBIT DD**).
- 218 Bob Keith Administrator, Oregon Appraiser Certification and Licensure Board (ACLB). Talks about difficulties with earlier drafts of the measure in regard to fingerprint technology.
- 230 Chair Metsger Remarks on the amount of work put into making a compromise.
- 237 Sen. B. Starr Questions the extent of changes made by the -2 amendments.
- 242 Keith Points out they are primarily to delete the fingerprint requirements.
- 245 **Sen. B. Starr** **MOTION: Moves to ADOPT SB 385-2 amendments dated 4/7/05.**
- 247 Sen. Monnes Anderson Asks if there is a general fund impact.
- 249 Keith Replies that civil penalties go into the general fund. States they are attempting to correct that.
- 253 Sen. Monnes Anderson Questions the extent of impact.
- 257 Van Winkle Clarifies the difference.
- 260 **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Chair Metsger** **Hearing no objection, declares the motion CARRIED.**
- 263 **Sen. B. Starr** **MOTION: Moves SB 385 to the floor with a DO PASS AS**  
**AMENDED recommendation.**
- 265 Sen. Monnes Anderson Asks if the measure needs to go to Ways and Means.

- 267 Chair Metsger Clarifies that it does not.
- 270  
Chair Metsger **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. MONNES ANDERSON will lead discussion on the floor.**
- 280 Chair Metsger Closes work session on SB 385. Observes they no longer have a quorum. Calls for a recess at 3:40 p.m.
- 300 Chair Metsger Calls the committee back to order at 3:51 p.m. Observes the committee now has a quorum. Opens a work session on SB 173.

**SB 173 – WORK SESSION**

- 307 Van Winkle Explains the provisions of the measure.
- 312 Chair Metsger Summarizes the previous public hearing.
- 320 Mike Marsh Oregon Department of Transportation (ODOT). Submits a letter to the committee (**EXHIBIT EE**). Summarizes the process changes being made.
- 357 Chair Metsger Comments on the letter passed out. Asks if he has talked to the other committee members about their earlier concerns.
- 370 Marsh Replies that the letter was written to address those concerns.
- 389 Sen. B. Starr Wonders if there is any opposition to the bill.
- 390 Marsh Relays that they have addressed all concerns.
- 392 Chair Metsger Asks Mr. Marsh to provide additional feedback.
- 397 Marsh Provides greater detail on the degree of customer satisfaction and amount of contracts granted.
- 405 Jessica Harris Adamson Associated General Contractors. Notes her support of the measure.

**TAPE 58, B**

- 003 Sen. B. Starr **MOTION: Moves SB 173 to the floor with a DO PASS recommendation.**
- 005  
Chair Metsger **VOTE: 3-0-2**  
**EXCUSED: 2 - Atkinson, Deckert**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. DECKERT will lead discussion on the floor.**
- 007 Chair Metsger Closes work session on SB 173. Opens a work session on SB 209.

**SB 209 – WORK SESSION**

- 010 Chair Metsger States that they now have the -2 (**EXHIBIT FF**) amendments before them.
- 015 Pellegrini Reviews the provisions of the -2 amendments.
- 021 Chair Metsger Asks for the principle changes introduced by the -2 amendments.
- 025 Pellegrini Details the changes introduced by the -2 amendments to address prior concerns of committee members.
- 067 Pellegrini Discusses the addition of “safe harbor” language to the bill.
- 097 Chair Metsger Observes the complications of the issue and the improvements the -2 amendments introduce. Feels this is the type of measure people do not

- consider until a catastrophe occurs.
- 119 Sen. Deckert Considers if they inserted the gas provision.
- 120 Chair Metsger Replies it is now in the measure.
- 123 Sen. B. Starr **MOTION: Moves to ADOPT SB 209-2 amendments dated 4/7/05.**
- 125 **VOTE: 4-0-1**  
**EXCUSED: 1 - Atkinson**  
**Hearing no objection, declares the motion CARRIED.**
- 127 Chair Metsger **MOTION: Moves SB 209 to the floor with a DO PASS AS**  
Sen. B. Starr **AMENDED recommendation.**
- 129 **VOTE: 4-0-1**  
**EXCUSED: 1 - Atkinson**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. METSGER will lead discussion on the floor.**
- 135 Harrison Conley Legislative Counsel. Praises the efforts of counsel staff in getting the amendment before the committee.
- 140 Chair Metsger Expresses his appreciation for their efforts. Closes work session on SB 209. Opens a public hearing on SB 1008.

**SB 1008 – PUBLIC HEARING**

- 150 Chair Metsger Provides a background on SB 1008. Asks Sen. Deckert to update the committee on the status of the measure.
- 159 Sen. Deckert Notes the individuals involved to bring this forward and the groups meeting to work out the details.
- 177 Sen. Deckert Discusses the proposed model for a public corporation that operates like a private corporation.
- 190 Sen. Deckert Details the governing of the company and working for the public benefit.
- 210 Sen. Deckert Offers additional information will be provided at the next meeting.
- 217 Van Winkle Notes that they cannot yet post Senate Measures for the next meeting.
- 223 Chair Metsger Comments that they will work to bring these issues back as soon as possible. Closes the public hearing on SB 1008. Adjourns the committee at 4:16 p.m.

**EXHIBIT SUMMARY**

- A. SB 579, -3 amendments, staff, 2 pp
- B. HJR 8A, Written testimony, Rep. Patti Smith, 1 p
- C. HJR 8A, Written testimony, Kevin Moffitt, 2 pp
- D. HJR 8A, “Presenting the Case for Making Pears...”, Kevin Moffitt, 10 pp
- E. SB 171, -4 amendments, staff, 7 pp
- F. SB 171, -6 amendments, staff, 7 pp
- G. SB 151, -2 amendments, staff, 3 pp
- H. SB 151, -4 amendments, staff, 1 p
- I. SB 151, -5 amendments, staff, 1 p

- J. SB 408, -3 amendments, staff, 2 pp
- K. SB 408, Written testimony of Ron Suppah, Michael Mason, 4 pp
- L. SB 209, -1 amendments, staff, 2 pp
- M. SB 408, Membership List, Mark Nelson, 1 p
- N. SB 210, -2 amendments, staff, 1 p
- O. SB 210, -4 amendments, staff, 2 pp
- P. SB 211, -2 amendments, staff, 2 pp
- Q. SB 212, Letter from Charles Harwood, Cheryl Pellegrini, 1p
- R. SB 997, -3 amendments, staff, 3 pp
- S. SB 949, -2 amendments, staff, 1 pp
- T. SB 950, -2 amendments, staff, 6 pp
- U. SB 672, Written testimony, Phil Robbins, 5 pp
- V. SB 672, CD ROM, Phil Robbins
- W. SB 672, -2 amendments, staff, 136 pp
- X. SB 672, Summary Proposed Amendments to SB 672, Richard Vial, 7 pp
- Y. SB 672, -4 amendments, staff, 2 pp
- Z. SB 951, -1 amendments, staff, 1 p
- AA. SB 955, -1 amendments, staff, 4 pp
- BB. SB 955, Oregon Real Estate Agency Letter, Brian DeMarco, 3 pp
- CC. SB 327, -1 amendments, staff, 1 p
- DD. SB 385, -2 amendments, staff, 1 p
- EE. SB 173, Written testimony, Mike Marsh, 3 pp
- FF. SB 209, -2 amendments, staff, 2 pp

**Senate Business and Economic Development Committee  
Senate Bill 171 Work Session**

**April 7, 2005**

Chair: Now, let's go, we're going to open up a work session on Senate Bill 171. Colleagues, this is the CoGen bill before us a number of times with the amendment which includes the information provided by the Public Utility Commission and their -6 amendments which require that a regulated energy utility file a deconsolidated tax return. It also says that if there's been five years or more from a rate hearing, that a rate hearing will be held; however, the PUC has modified that to allow a utility to make a case why they don't have to have a five-year hearing, so it would give them an opportunity to make a case for not having to do so. And then the third major element that we discussed, well, there's four major elements, third major element then would be to allow the PUC to consider federal and state taxes when determining rates for a utility. This, we've heard extensively on this issue. I think it's really a good public policy. The Chairman of Revenue, however, would like to, and I think it's appropriate, to continue to discuss this issue in the Revenue Committee, so it would be the Chair's desire to pass the -6 amendments into the bill and send the bill to Revenue for further consideration.

Starr: Just a quick question, Mr. Chair?

Chair: Yes, Senator Starr.

Starr: What's the difference between the -4s and the -6s?

Chair: Go ahead, Theresa.

Miller: Chair Metsger, Vice Chair Starr, at the hearing where the -4 amendments were introduced there was some technical questions that arose from the Public Utility Commission. In particular, the definition of a utility. And there was a couple of questions from the Department of Revenue. So, it's just clarification of language and questions that came up during the last hearing.

Chair: And the other issue, Senator Starr, which is on page 3, line 7 through 12, the modification of the five-year requirement to allow a utility to make a case to the PUC that they should not have to come in for a rate hearing, but they would have the burden of proof to demonstrate why that would not be necessary. Other questions on the amendments?

Woman: I haven't gone through them all.

Chair: Okay. Is anybody from the PUC here? Well, would you come forward? This might be even more helpful.

Woman: Mr. Chair?

Chair: Yeah?

Woman: We're just considering the -6s?

Chair: Yes, -6s and then send the bill to Committee on Revenue.

Woman: Okay.

Chair: Sorry, we have so many people from so many places, I lose track of, with all our varied bills today.

Woman: [Inaudible mumbling.]

Willis: Good afternoon, Mr. Chair, members of the Committee. I'm Rick Willis, Executive Director of the Public Utility Commission, and with me is Paul Graham. He's the Attorney General assigned to our agency and he can tell you in detail just what those amendments do.

Chair: You have them before you, Mr. Graham, would you just please just give us a walk through of the amendments for the Committee again, please?

Graham: Yes, Chair Metsger. What the amendments do is deal with the requirement that the utilities come in within five years for a new general rate filing, if there hasn't been a general rate change within that time period. There are five key provisions here. First, we use a general investigatory statute, ORS 756, to allow the utility to come in and show why a rate filing isn't necessary. The PUC has the authority to ask them to come in after a five-year period and say, all right, we think a general rate filing is necessary. And then the utility has an opportunity to demonstrate why each one is not necessary. The burden of persuasion, as you already pointed out, is on the utility to do that. So, if the utility is unsuccessful, then the Commission can order the utility to make a rate filing. You have to give the utility at least 90 days to prepare one and can get more time if need be. The definition by the way, that we took of a general rate filing, is from one of our administrative rules. It's been around for a long time and everybody, I think, is pretty comfortable with it. But that's basically the way that this provision would work. I drafted the language and I went over it with a representative from Portland General who was comfortable with it, and then we talked about it at the last Commission meeting on Tuesday and the Commission approved it and then Mr. Willis sent it on over here. So, I think it's something that as far as I know everybody is comfortable with.

Chair: Any questions for?

Starr: Yeah.

Chair: Yes, Senator Starr.



Starr: Thank you, Mr. Chair. What the, in line 9 on page 3 of the amendment says the Commission may order the public utility to show cause as to why the new filing for a general rate revision is not necessary. What kinds of things could it be that the utility can present the PUC that would kind of get them out of this? I mean, what does that really mean?

Graham: A couple examples: let's say the utility has a major resource coming online in, say, 18 months. They might say why don't you wait 18 months? We have this major resource coming online, that would be a better time to handle this. That's just one example. Or they might say that there are some costs that have increased that are greater than costs that have decreased and the utility might say if we do come in, you might wind up with a little bit of a cost increase. And so, you know, we're willing to stay away, if you're willing not to have us come in. So, those are the types of things that could come in. It's very broad language, so it would give the utility the opportunity to have its due process, so it could show any reason at all, any reason under the sun, and I've just given you a couple of examples, as to why it's really not necessary to make a general rate change.

Starr: And, Mr. Chair?

Chair: Yes.

Starr: And what kind of timeframe would this process take?

Graham: We use the general investigative statute so that we could do this quickly. We could probably do this at a public meeting where we would have maybe the staff of the PUC might come in and recommend that the commission use the authority to require the utility to come in for a general rate filing and then the utility could come in with its own written submission and offer its reasons as to why it shouldn't. Now, if you needed a more involved process, we could do that. We could even have a process in theory that would involve direct and cross-examination, although I envision that this would probably be handled at a public meeting because the decision is not what the rates are going to be, it's just whether or not there should be a new look at the rates. So, probably a fairly quick process.

Starr: Okay, and this last question?

Chair: Yes.

Starr: And you've shared these amendments with the utilities and the utilities are in support of these amendments?

Graham: I actually worked out the principles here with Pamela Lesh of PGE and then I shared the language with her. She made one tweak in the language and that was to allow the commission to have the ability to allow more than 90 days for a rate filing if the commission felt that that was wise. And I made that change. And as

far as I know, I haven't heard of any opposition from the utilities. But I did work on the language with Portland General.

Starr: What about PacifiCorp?

Graham: They were at the meeting, I believe, on Tuesday. I didn't hear any opposition. Mr. Willis?

Willis: Mr. Chair, Senator Starr. I believe that they were at the meeting, but I don't want to say that they were supportive. I would leave it to them. I don't recall them making a comment one way or the other. I don't want to present their point of view.

Chair: Sure, yeah, I know they are opposed to the deconsolidated tax return. Is Kevin here, Lynch?

Man: Yes.

Chair: [Inaudible] Kevin? Kevin, do you want to come forward for just a moment? We heard from PacifiCorp, you know, they don't like the, certainly oppose the deconsolidated tax return. We've heard that. We're now talking about these other amendments and comments. The rest of this stuff.

Lynch: Right. For the record, Kevin Lynch with PacifiCorp. We have not had the opportunity to review the amendments specifically. I think, you know, generally, I mean our attorneys haven't parced all of the words, but generally have a pretty good amount of faith in Paul's legislative drafting and we don't have a philosophical opposition to being, you know, to looking at coming in every five years. I mean, from a practical standpoint, we anticipate in the near future to be in for rate cases on a more frequent basis and than that, so it probably wouldn't effect us. So, without looking at the specifics of the words for this, I would say we don't have a problem with this part of the amendments.

Starr: Thank you.

Chair: Yeah, I just want to make a comment, though, first, is that we are going to be sending this to the Revenue Committee where we will have a public hearing, so if someone wants to comment on this because of the volume of work today, that public hearing for further discussion on this entire bill with these amendments will take place in Revenue. So, with that ...

Starr: Mr. Chair, are we going to work this ...

Chair: How are we going to work this...

Woman: [Inaudible.]

Chair: Just to make sure I do that, a work session on Senate Bill 171.

Starr: Mr. Chair, I move the -6 amendments to Senate Bill 171.

Chair: Senator Starr has moved the -6 amendments to Senate Bill 171. Further discussion? Any objection? So ordered.

Starr: I move Senate Bill 171 as amended by the -6s to the Revenue Committee.

Chair: Senator Starr has moved Senate Bill 171 as amended to the Revenue Committee. Further discussion?

Man: Mr. Chair?

Chair: Yes?

Man: I'm willing to move this bill forward with these amendments. I'm not totally convinced that I'm agreeable with everything that's written in here, so I would reserve the right if this bill comes out of Revenue that I might oppose it on the Senate floor. I just want to put that on the record.

Chair: Absolutely. Any other further discussions? Any objection? So ordered. Send it off to Revenue. Okay, now, we're just about 1:30. We're trying to keep to our schedule here. So, we're going to go back to open a work session on Senate Bill 151.

[End of Work Session on Senate Bill 171.]

SB 171-4  
(LC 434)  
3/24/05 (DJ/ps)

**PROPOSED AMENDMENTS TO  
SENATE BILL 171**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and insert "creating new provisions; and amending ORS 757.005,  
3 757.210 and 757.259."

4 On page 2, after line 17, insert:

5 **"SECTION 2. Section 3 of this 2005 Act is added to and made a part**  
6 **of ORS chapter 317.**

7 **"SECTION 3. (1) Notwithstanding any other provision of law, a**  
8 **public utility, as defined in ORS 314.610, that elects to file a consol-**  
9 **idated federal return may not file a consolidated state return.**

10 **"(2)(a) Notwithstanding subsection (1) of this section, a public util-**  
11 **ity may elect to file a modified consolidated state return on behalf of**  
12 **an affiliated group that is limited to includible corporations that are**  
13 **located in this state and that primarily conduct energy-related activ-**  
14 **ities in this state.**

15 **"(b) The definitions in section 1504 of the Internal Revenue Code**  
16 **apply to this section.**

17 **"SECTION 4. Section 3 of this 2005 Act applies to tax years begin-**  
18 **ning on or after January 1, 2006.**

19 **"SECTION 5. ORS 757.210 is amended to read:**

20 **"757.210. (1) Whenever any public utility files with the Public Utility**  
21 **Commission any rate or schedule of rates stating or establishing a new rate**  
22 **or schedule of rates or increasing an existing rate or schedule of rates, the**  
23 **commission may, either upon written complaint or upon the commission's**  
24 **own initiative, after reasonable notice, conduct a hearing to determine the**

1 propriety and reasonableness of such rate or schedule. The commission shall  
2 conduct such a hearing upon written complaint filed by the utility, its cus-  
3 tomer or customers, or any other proper party within 60 days of the utility's  
4 filing; provided that no hearing need be held if the particular rate change  
5 is the result of an automatic adjustment clause. At such hearing the utility  
6 shall bear the burden of showing that the rate or schedule of rates proposed  
7 to be established or increased or changed is just and reasonable. The term  
8 'automatic adjustment clause' means a provision of a rate schedule which  
9 provides for rate increases or decreases or both, without prior hearing, re-  
10 flecting increases or decreases or both in costs incurred or revenues earned  
11 by a utility and which is subject to review by the commission at least once  
12 every two years.

13 "(2)(a) Subsection (1) of this section does not apply to rate changes under  
14 an approved alternative form of regulation plan, including a resource rate  
15 plan under ORS 757.212.

16 "(b) Any alternative form of regulation plan shall include provisions to  
17 ensure that the plan operates in the interests of utility customers and the  
18 public generally and results in rates that are just and reasonable and may  
19 include provisions establishing a reasonable range for rate of return on in-  
20 vestment. In approving a plan, the commission shall, at a minimum, consider  
21 whether the plan:

22 "(A) Promotes increased efficiencies and cost control;

23 "(B) Is consistent with least-cost resources acquisition policies;

24 "(C) Is consistent with maintenance of safe, adequate and reliable service;  
25 and

26 "(D) Is beneficial to utility customers generally, for example, by mini-  
27 mizing utility rates.

28 "(c) As used in this subsection, 'alternative form of regulation plan'  
29 means a plan adopted by the commission upon petition by a public utility,  
30 after notice and an opportunity for a hearing, that sets rates and revenues

1 and a method for changes in rates and revenues using alternatives to cost-  
2 of-service rate regulation.

3 “(d) Prior to implementing a rate change under an alternative form of  
4 regulation plan, the utility shall present a report that demonstrates the cal-  
5 culation of any proposed rate change at a public meeting of the commission.

6 “(3) Except as provided in ORS 757.212, the commission, at any time, may  
7 order a utility to appear and establish that any, or all, of its rates in a plan  
8 authorized under subsection (2) of this section are in conformity with the  
9 plan and are just and reasonable. Except as provided in ORS 757.212, such  
10 rates, and the alternative form of regulation plan under which the rates are  
11 set, also shall be subject to complaint under ORS 756.500.

12 “(4) Periodically, but not less often than every two years after the im-  
13 plementation of a plan referred to in subsection (2) of this section, the com-  
14 mission shall submit a report to the Legislative Assembly that shows the  
15 impact of the plan on rates paid by utility customers.

16 “(5) The commission and staff may consult at any time with, and provide  
17 technical assistance to, utilities, their customers, and other interested parties  
18 on matters relevant to utility rates and charges. If a hearing is held with  
19 respect to a rate change, the commission’s decisions shall be based on the  
20 record made at the hearing.

21 “(6) Notwithstanding subsections (1) and (2) of this section, the  
22 commission shall conduct a hearing to determine the propriety and  
23 reasonableness of the schedule of rates in effect for a public utility at  
24 least once every five years.

25 **“SECTION 6.** Notwithstanding ORS 757.210 (6), if the rates or  
26 schedule of rates of a public utility have not been reviewed by the  
27 Public Utility Commission under ORS 757.210 within five years prior  
28 to the effective date of this 2005 Act, the Public Utility Commission  
29 may conduct a hearing that satisfies the requirements of ORS 757.210  
30 (6) if the hearing is held prior to July 1, 2007.

1        “SECTION 7. ORS 757.259 is amended to read:

2        “757.259: (1) In addition to powers otherwise vested in the Public Utility  
3 Commission, and subject to the limitations contained in this section, under  
4 amortization schedules set by the commission, a rate or rate schedule:

5        “(a) May reflect:

6        “(A) Amounts lawfully imposed retroactively by order of another govern-  
7 mental agency; or

8        “(B) Amounts deferred under subsection (2) of this section.

9        “(b) Shall reflect amounts deferred under subsection (3) of this section if  
10 the public utility so requests.

11       “(2) Upon application of a utility or ratepayer or upon the commission’s  
12 own motion and after public notice, opportunity for comment and a hearing  
13 if any party requests a hearing, the commission by order may authorize  
14 deferral of the following amounts for later incorporation in rates:

15       “(a) Amounts incurred by a utility resulting from changes in the whole-  
16 sale price of natural gas or electricity approved by the Federal Energy Reg-  
17 ulatory Commission;

18       “(b) Balances resulting from the administration of Section 5(c) of the  
19 Pacific Northwest Electric Power Planning and Conservation Act of 1980;

20       “(c) Direct or indirect costs arising from any purchase made by a public  
21 utility from the Bonneville Power Administration pursuant to ORS 757.663,  
22 provided that such costs shall be recovered only from residential and small-  
23 farm retail electricity consumers;

24       “(d) Amounts accruing under a plan for the protection of short-term  
25 earnings under ORS 757.262 (2); or

26       “(e) Identifiable utility expenses or revenues, the recovery or refund of  
27 which the commission finds should be deferred in order to minimize the fre-  
28 quency of rate changes or the fluctuation of rate levels or to match appro-  
29 priately the costs borne by and benefits received by ratepayers.

30       “(3) Upon request of the public utility, the commission by order shall al-

1 low deferral of amounts provided as financial assistance under an agreement  
2 entered into under ORS 757.072 for later incorporation in rates.

3 “(4) The commission may authorize deferrals under subsection (2) of this  
4 section beginning with the date of application, together with interest estab-  
5 lished by the commission. A deferral may be authorized for a period not to  
6 exceed 12 months beginning on or after the date of application. However,  
7 amounts deferred under subsection (2)(c) and (d) or (3) of this section are not  
8 subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject  
9 to such limitations and requirements that the commission may prescribe and  
10 that are consistent with the provisions of this section.

11 “(5) Unless subject to an automatic adjustment clause under ORS 757.210  
12 (1), amounts described in this section shall be allowed in rates only to the  
13 extent authorized by the commission in a proceeding under ORS 757.210 to  
14 change rates and upon review of the utility’s earnings at the time of appli-  
15 cation to amortize the deferral. The commission may require that amorti-  
16 zation of deferred amounts be subject to refund. The commission’s final  
17 determination on the amount of deferrals allowable in the rates of the utility  
18 is subject to a finding by the commission that the amount was prudently  
19 incurred by the utility.

20 “(6) Except as provided in subsections (7), (8) and (10) of this section, the  
21 overall average rate impact of the amortizations authorized under this sec-  
22 tion in any one year may not exceed three percent of the utility’s gross  
23 revenues for the preceding calendar year.

24 “(7) The commission may allow an overall average rate impact greater  
25 than that specified in subsection (6) of this section for natural gas commod-  
26 ity and pipeline transportation costs incurred by a natural gas utility if the  
27 commission finds that allowing a higher amortization rate is reasonable un-  
28 der the circumstances.

29 “(8) The commission may authorize amortizations for an electric utility  
30 under this section with an overall average rate impact not to exceed six



1 percent of the electric utility's gross revenues for the preceding calendar  
2 year. If the commission allows an overall average rate impact greater than  
3 that specified in subsection (6) of this section, the commission shall estimate  
4 the electric utility's cost of capital for the deferral period and may also  
5 consider estimated changes in the electric utility's costs and revenues during  
6 the deferral period for the purpose of reviewing the earnings of the electric  
7 utility under the provisions of subsection (5) of this section.

8       “(9) The commission may impose requirements similar to those described  
9 in subsection (8) of this section for the amortization of other deferrals under  
10 this section, but may not impose such requirements for deferrals under sub-  
11 section (2)(c) or (d) or (3) of this section.

12       “(10) The commission may authorize amortization of a deferred amount  
13 for an electric utility under this section with an overall average rate impact  
14 greater than that allowed by subsections (6) and (8) of this section if:

15       “(a) The deferral was directly related to extraordinary power supply ex-  
16 penses incurred during 2001;

17       “(b) The amount to be deferred was greater than 40 percent of the revenue  
18 received by the electric utility in 2001 from Oregon customers; and

19       “(c) The commission determines that the higher rate impact is reasonable  
20 under the circumstances.

21       “(11) If the commission authorizes amortization of a deferred amount un-  
22 der subsection (10) of this section, an electric utility customer that uses more  
23 than one average megawatt of electricity at any site in the immediately  
24 preceding calendar year may prepay the customer's share of the deferred  
25 amount. The commission shall adopt rules governing the manner in which:

26       “(a) The customer's share of the deferred amount is calculated; and

27       “(b) The customer's rates are to be adjusted to reflect the prepayment of  
28 the deferred amount.

29       “(12) Upon application of a utility or ratepayer or upon the com-  
30 mission's own motion and after public notice, opportunity for com-

1 ment and a hearing if any party requests a hearing, the commission  
2 may authorize the incorporation into rates of estimated federal and  
3 state taxes. In determining estimated federal and state taxes, the  
4 commission shall take into account the effects of filing federal returns  
5 on a consolidated basis.

6 "[12] (13) The provisions of this section do not apply to a telecommuni-  
7 cations utility."

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SB 171-6  
(LC 434)  
4/7/05 (DJ/ps)

**PROPOSED AMENDMENTS TO  
SENATE BILL 171**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and insert "creating new provisions; and amending ORS 756.515,  
3 757.005 and 757.259."

4 On page 2, after line 17, insert:

5 **"SECTION 2. Section 3 of this 2005 Act is added to and made a part  
6 of ORS chapter 317.**

7 **"SECTION 3. (1) Notwithstanding any other provision of law, a  
8 public utility, as defined in ORS 757.005, that elects or is required to  
9 file a consolidated federal return or be an includible corporation re-  
10 ported on a consolidated federal return, may not file a consolidated  
11 state return.**

12 **"(2)(a) Notwithstanding subsection (1) of this section, a public util-  
13 ity may elect to file a modified consolidated state return on behalf of  
14 an affiliated group that is limited to includible corporations that are  
15 located in this state and that primarily conduct energy-related activ-  
16 ities in this state.**

17 **"(b) The definitions in section 1504 of the Internal Revenue Code  
18 apply to this section.**

19 **"(3) The Department of Revenue may adopt rules to further define  
20 terms used in this section and to implement the provisions of this  
21 section.**

22 **"SECTION 4. Section 3 of this 2005 Act applies to tax years begin-  
23 ning on or after January 1, 2006.**

24 **"SECTION 5. ORS 756.515 is amended to read:**

1 "756.515. (1) Whenever the Public Utility Commission believes that any  
2 rate may be unreasonable or unjustly discriminatory, or that any service is  
3 unsafe or inadequate, or is not afforded, or that an investigation of any  
4 matter relating to any public utility or telecommunications utility or other  
5 person should be made, or relating to any person to determine if such person  
6 is subject to the commission's regulatory jurisdiction, the commission may  
7 on motion summarily investigate any such matter, with or without notice.

8 "(2) If after making such investigation the commission is satisfied that  
9 sufficient grounds exist to warrant a hearing being ordered upon any such  
10 matter, the commission shall furnish any public utility or telecommuni-  
11 cations utility or other person interested a statement notifying it of the  
12 matters under investigation, which statement shall be accompanied by a no-  
13 tice fixing the time and place for hearing upon such matters in the manner  
14 provided in ORS 756.512 for notice of complaint.

15 "(3) Thereafter proceedings shall be had and conducted in reference to the  
16 matters investigated in like manner as though complaint had been filed with  
17 the commission relative thereto, and the same orders may be made in refer-  
18 ence thereto as if such investigation had been made on complaint.

19 "(4) The commission may, after making an investigation on the commis-  
20 sion's motion, but without notice or hearing, make such findings and orders  
21 as the commission deems justified or required by the results of such inves-  
22 tigation. Except as provided in subsections (5) and (6) of this section such  
23 findings and orders have the same legal force and effect as any other finding  
24 or order of the commission.

25 "(5) In addition to any other remedy provided by law, any party aggrieved  
26 by an order entered pursuant to subsection (4) of this section may request  
27 the commission to hold a hearing to determine whether the order should  
28 continue in effect. Any such request for hearing shall be submitted to the  
29 commission not later than 15 days after the date of service of the order, and  
30 the commission shall hold the hearing not later than 60 days after receipt

1 of such a request for hearing.

2 “(6) If the commission receives a request for hearing pursuant to sub-  
3 section (5) of this section, the order is suspended pending the outcome of the  
4 hearing unless the commission finds that the order is necessary for the  
5 public health or safety or to prevent the dissipation of assets of a business  
6 or activity subject to the commission’s regulatory jurisdiction.

7 “(7)(a) If five years or more have elapsed from the date of service  
8 of an order approving a general rate revision for an electric or natural  
9 gas public utility, the commission may order the public utility to show  
10 cause as to why a new filing for a general rate revision is not neces-  
11 sary. In the investigation, the public utility shall bear the burden of  
12 showing that a new filing is not necessary.

13 “(b) If the commission determines that a new filing is necessary,  
14 the commission may order the public utility to make the new filing  
15 under ORS 757.205 within 90 days, or within a greater period of time  
16 as determined by the commission. The procedures described in ORS  
17 757.210 and 757.215 apply.

18 “(c) As used in this subsection, ‘general rate revision’:

19 “(A) Means a filing that affects all or most of the rate schedules  
20 of a public utility; and

21 “(B) Does not include changes:

22 “(i) That are the result of an automatic adjustment clause, as de-  
23 fined in ORS 757.210;

24 “(ii) In credits that are reflected in certain rate schedules and that  
25 are related to section 5(c) of the Pacific Northwest Electric Power  
26 Planning and Conservation Act of 1980, P.L. 96-501, as amended and in  
27 effect on the effective date of this 2005 Act; or

28 “(iii) That are the result of depreciation, amortization or similar  
29 items that are made in one rate schedule and result in affecting other  
30 rate schedules.

1        “SECTION 6. Section 7 of this 2005 Act is added to and made a part  
2 of ORS chapter 756.

3        “SECTION 7. (1) The Public Utility Commission may require any  
4 person filing a consolidated federal income tax return that includes  
5 an electric or natural gas public utility to provide the commission with  
6 a copy of the return and any information on which the return is based.

7        “(2) The commission may require any public utility filing a modified  
8 consolidated state return under section 3 of this 2005 Act to provide  
9 the commission with a copy of the return and any information on  
10 which the return is based.

11       “(3) The commission may require any person filing a consolidated  
12 local income tax return that includes an electric or natural gas public  
13 utility to provide the commission with a copy of the return and any  
14 information on which the return is based.

15        “SECTION 8. ORS 757.259 is amended to read:

16        “757.259. (1) In addition to powers otherwise vested in the Public Utility  
17 Commission, and subject to the limitations contained in this section, under  
18 amortization schedules set by the commission, a rate or rate schedule:

19        “(a) May reflect:

20        “(A) Amounts lawfully imposed retroactively by order of another govern-  
21 mental agency; or

22        “(B) Amounts deferred under subsection (2) of this section.

23        “(b) Shall reflect amounts deferred under subsection (3) of this section if  
24 the public utility so requests.

25        “(2) Upon application of a utility or ratepayer or upon the commission’s  
26 own motion and after public notice, opportunity for comment and a hearing  
27 if any party requests a hearing, the commission by order may authorize  
28 deferral of the following amounts for later incorporation in rates:

29        “(a) Amounts incurred by a utility resulting from changes in the whole-  
30 sale price of natural gas or electricity approved by the Federal Energy Reg-

1 ulatory Commission;

2 “(b) Balances resulting from the administration of Section 5(c) of the  
3 Pacific Northwest Electric Power Planning and Conservation Act of 1980;

4 “(c) Direct or indirect costs arising from any purchase made by a public  
5 utility from the Bonneville Power Administration pursuant to ORS 757.663,  
6 provided that such costs shall be recovered only from residential and small-  
7 farm retail electricity consumers;

8 “(d) Amounts accruing under a plan for the protection of short-term  
9 earnings under ORS 757.262 (2); or

10 “(e) Identifiable utility expenses or revenues, the recovery or refund of  
11 which the commission finds should be deferred in order to minimize the fre-  
12 quency of rate changes or the fluctuation of rate levels or to match appro-  
13 priately the costs borne by and benefits received by ratepayers.

14 “(3) Upon request of the public utility, the commission by order shall al-  
15 low deferral of amounts provided as financial assistance under an agreement  
16 entered into under ORS 757.072 for later incorporation in rates.

17 “(4) The commission may authorize deferrals under subsection (2) of this  
18 section beginning with the date of application, together with interest estab-  
19 lished by the commission. A deferral may be authorized for a period not to  
20 exceed 12 months beginning on or after the date of application. However,  
21 amounts deferred under subsection (2)(c) and (d) or (3) of this section are not  
22 subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject  
23 to such limitations and requirements that the commission may prescribe and  
24 that are consistent with the provisions of this section.

25 “(5) Unless subject to an automatic adjustment clause under ORS 757.210  
26 (1), amounts described in this section shall be allowed in rates only to the  
27 extent authorized by the commission in a proceeding under ORS 757.210 to  
28 change rates and upon review of the utility’s earnings at the time of appli-  
29 cation to amortize the deferral. The commission may require that amorti-  
30 zation of deferred amounts be subject to refund. The commission’s final

1 determination on the amount of deferrals allowable in the rates of the utility  
2 is subject to a finding by the commission that the amount was prudently  
3 incurred by the utility.

4 “(6) Except as provided in subsections (7), (8) and (10) of this section, the  
5 overall average rate impact of the amortizations authorized under this sec-  
6 tion in any one year may not exceed three percent of the utility’s gross  
7 revenues for the preceding calendar year.

8 “(7) The commission may allow an overall average rate impact greater  
9 than that specified in subsection (6) of this section for natural gas commod-  
10 ity and pipeline transportation costs incurred by a natural gas utility if the  
11 commission finds that allowing a higher amortization rate is reasonable un-  
12 der the circumstances.

13 “(8) The commission may authorize amortizations for an electric utility  
14 under this section with an overall average rate impact not to exceed six  
15 percent of the electric utility’s gross revenues for the preceding calendar  
16 year. If the commission allows an overall average rate impact greater than  
17 that specified in subsection (6) of this section, the commission shall estimate  
18 the electric utility’s cost of capital for the deferral period and may also  
19 consider estimated changes in the electric utility’s costs and revenues during  
20 the deferral period for the purpose of reviewing the earnings of the electric  
21 utility under the provisions of subsection (5) of this section.

22 “(9) The commission may impose requirements similar to those described  
23 in subsection (8) of this section for the amortization of other deferrals under  
24 this section, but may not impose such requirements for deferrals under sub-  
25 section (2)(c) or (d) or (3) of this section.

26 “(10) The commission may authorize amortization of a deferred amount  
27 for an electric utility under this section with an overall average rate impact  
28 greater than that allowed by subsections (6) and (8) of this section if:

29 “(a) The deferral was directly related to extraordinary power supply ex-  
30 penses incurred during 2001;



1       “(b) The amount to be deferred was greater than 40 percent of the revenue  
2 received by the electric utility in 2001 from Oregon customers; and

3       “(c) The commission determines that the higher rate impact is reasonable  
4 under the circumstances.

5       “(11) If the commission authorizes amortization of a deferred amount un-  
6 der subsection (10) of this section, an electric utility customer that uses more  
7 than one average megawatt of electricity at any site in the immediately  
8 preceding calendar year may prepay the customer’s share of the deferred  
9 amount. The commission shall adopt rules governing the manner in which:

10       “(a) The customer’s share of the deferred amount is calculated; and

11       “(b) The customer’s rates are to be adjusted to reflect the prepayment of  
12 the deferred amount.

13       **“(12) Upon application of a utility or ratepayer or upon the com-  
14 mission’s own motion and after public notice, opportunity for com-  
15 ment and a hearing if any party requests a hearing, the commission  
16 may authorize the incorporation into rates of estimated federal and  
17 state taxes. In determining estimated federal and state taxes, the  
18 commission shall take into account the effects of filing federal returns  
19 on a consolidated basis.**

20       **“[(12)] (13) The provisions of this section do not apply to a telecommuni-  
21 cations utility.”.**

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**SENATE REVENUE COMMITTEE**  
**APRIL 14, 2005 9:30 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Lynn Lundquist, Oregon Business Association  
Kevin Lynch, PacifiCorp Holdings  
Paul Graham, Public Utility Commission  
Debra Buchanan, Dept. of Revenue  
Dan Meek, Portland attorney  
Liz Trojan, Oregon Public Power Coalition  
Lee Beyer, PUC Chairman  
Marge Kafoury, City of Portland  
Ernest Delmazzo, Injured Workers' Alliance, West Linn

Staff Present: Paul Warner, Legislative Revenue Officer  
Barbara Guardino, Committee Assistant

**TAPE 96, SIDE A**

005 Chair Deckert Calls meeting to order at 9:34 a.m. Opens work session on SB 841 which sets up a reserve fund.

**WORK SESSION, SB 841**

012 Paul Warner The committee has reviewed two previous amendments concerning the education stability fund which were not adopted. Discusses SB 841-3 amendments (**EXHIBIT 1**) which are a substitute for SB 841-1 amendments. They take the ending balance as a revenue source up to 2% of the general fund appropriations and transfer the ending balance calculation into the education stability fund.

037 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF SB 841-2 AMENDMENTS.**

039 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS**  
**VOTE: 5-0-0**  
**VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**

047 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF SB 841-3 AMENDMENTS.**

050 Sen. George Question concerning SB 841-3 amendments, lines 14-16.

053 Warner Explains, the education stability fund has a 5% cap. With the dedicated lottery money, once that cap is reached, the lottery dedication drops from 18% to 15% and goes into a school matching capital fund. With this revenue source, once the cap is reached, the

- money goes back to the general fund.
- 067 Chair Deckert Does not like this. Asks why this occurs.
- 071 Warner Responds, that is a policy decision.
- 075 Chair Deckert Asks the committee where they stand on this issue.
- 080 Sen. Metsger Expresses concern about two aspects of using the stability fund as that source.
- 1) Without the vote of the people, this cap could occur in 36-48 months, which is too short a time to earn greater reserves
  - 2) People are confused whether the state has a reserve fund. Wonders if this issue can be resolved now rather than taking further debate. Supports the will of the committee to advance the issue, but is not sure this is the best way to do it.
- 101 Chair Deckert Asks Lynn Lundquist to respond.
- 113 Lynn Lundquist There are pros and cons to both sides of this issue. OBA's priority is to assure there is an adequate reserve, and a 5% cap is not adequate. It may be necessary to make changes later.
- 126 Chair Deckert Notes, lawmakers are constrained by the 5% cap unless they go to the voters. They have to decide whether to go to the voters. Also they have to think about what happens if the cap is achieved too soon. This is not the time to go to the voters.
- 134 Lundquist Agrees. Recommends moving the SB 841-1 amendments to resolve this conflict.
- 143 Vice Chair C. Starr Agrees, 5% is not enough, but lawmakers will have time to address that. There's no time like the present given the pressing need for a reserve fund. It is a policy decision. Feels conflicted. Encourages the committee to move the bill with SB 841-3 amendments.
- 171 Warner Gives history of earlier bills and the original concept. Earlier bills never passed so there is no implementing language.
- 203 Sen. Prozanski This is a policy decision, and clearly the legislature needs to plan for the future. Is not sure which amendment is needed, but lawmakers need to establish what level they need.
- 212 Chair Deckert Summarizes, the committee agrees to get to the 5% figure. Will have a fourth amendment drafted and re-post the bill for April 19.
- 225 Sen. Prozanski Asks for further explanation on who is accessing the matching fund. Today's taxing system allows landowners to defer tax payments. Wants to make sure there's a system in place to take care of the needs across the state. It seems this bill favors urban districts over

suburban.

- 244 Chair Deckert Will return Tuesday with a presentation on this issue.
- 265 Sen. Prozanski Follow-up comments on smaller school districts having an equal opportunity to participate.
- 276 Warner Clarifies, SB 841-4 amendments will be similar to SB 841-3 but without Section 2 (2).
- 286 Lundquist Agrees, he does not want this money to return to the general fund.
- 299 Chair Deckert Closes work session on SB 841. Leaves motion to move SB 841-3 amendments on the table.

**PUBLIC HEARING: SB 171**

- 311 Warner SB 171-A was referred from Business and Economic Development Committee. See staff measure summary (**EXHIBIT 2**). Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities. Also see RE: Recommendation on treatment of utility income taxes (**EXHIBIT 3**) from Public Utility Commission Director Lee Beyer. Reads Summary:
- 1) Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon
  - 2) Direct the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates
  - 3) Require regulated utilities to file a general rate case at least once every five years.
- 336 Sen. Metsger Both committees have talked extensively about these three issues.
- 371 Kevin Lynch Speaks of overall concern of energy utilities against SB 171-A. This is a discriminatory tax and regulatory bill against energy utilities. They are expected to file state income taxes differently from other businesses. Points out differences in prior amendments. Rationale was, electric and telecom companies are hybrids, partly regulated and partly not. There's a gray area that should be of some concern. Gives examples.
- 433 Lynch Buying and selling of electricity in the wholesale market is competitive. Prices between electric companies are under market-based prices. PacifiCorp only engages in that business to make sure customers will have enough energy. Does not suggest this bill be amended to bring telecoms into the system, only to treat utilities all the same.
- 462 Lynch Comments in regard to PUC's white paper, submitted to the committee last month. Section 8 of the bill requires the PUC to make consolidated tax adjustments in setting retail electric rates. It introduces a whole new element of risk into how rates are set.

**TAPE 97, SIDE A**

- 040 Lynch As amended, SB 171 puts the unregulated energy affiliates of the utilities like PPM Energy (a wind energy developer) at a competitive disadvantage. Gives reasons.
- 069 Lynch Continues, this legislation would undercut the governor's stated goal of increasing renewable energy portfolios by 1% per year. It is important to have sound developers like PPM, and this legislation would diminish that.
- 082 Lynch Points out a number of wording problems in Section 3 in creating an exception. For example: the phrase "located in the state". Contends language may create constitutional problems.
- 124 Lynch There's nothing in this legislation that prohibits the commission from providing tax information to the general public. This creates a form of discrimination in who would have to divulge information. Concludes, this bill puts customers at risk. Many states keep a clear line between regulated and unregulated businesses. The unregulated businesses have less predictable revenue income and earning streams. Recommends that the committee not move forward with this legislation.
- 149 Sen. George Asks if there is anything in this bill that benefits ratepayers.
- 155 Lynch Is not aware of how that would work. This should not make any difference to customers. Warns, this bill sets some precedents that should cause worry.
- 165 Sen. Metsger Comments on keeping the line clear between regulated and unregulated activities.
- 175 Lynch Responds, there's a fine distinction to be made. Customers do not necessarily equal taxpayers. One cannot assume that taxes collected as a stand-alone utility would benefit people from whom they are raised. The utility is a business, not a tax collector, so why it would be treated under this legislation differently from every other business is the flip side of Sen. Metsger's question.
- 202 Chair Deckert Asks, when PacifiCorp goes in for a rate case, are customers' taxes imbedded into the rates? That is a separate discussion. Why would the state, once taxes are imbedded into customer rates, have a tax policy that would not take that into account?
- 228 Lynch Responds, there is a bad model out there. He is giving lawmakers a new model of business behavior that is within the public interest. Two sides to the equation: One, a utility is given a monopoly service territory; two, it is obligated to serve every customer in the area. So setting the price by regulation rather than market forces is a surrogate mechanism. The question is whether that makes utilities

"not real businesses." He contends, in many respects, they are.

- 281 Sen. Metsger Responds to Lynch's claim that this bill discriminates. Utilities have a monopoly and customers have no choice. PUC sets that price and sets taxes as part of it. That is what distinguishes a utility from a business. Utilities are discriminated both against and for.
- 296 Lynch Counters, PacifiCorp has the opportunity to make a return on equity, but there is no guarantee. We have to run the business smart, while dealing with weather, the economy and other things that effect its success. There are privileges for and obligations against, and they battle each other to a draw. Therefore utilities should be treated like any other business.
- 356 Paul Graham Gives brief review on the three recommendations on the PUC's white paper (refer to exhibit 3 summary, numbers are flipped: 3, 2, 1).
- 1) Require regulated utilities to file a general rate case at least once every five years.
  - 2) Direct the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates
  - 3) Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon

**TAPE 96, SIDE B**

- 027 Debra Buchanan Dept. of Revenue has authorization in the statute to disclose confidential information in certain cases, and restrictions of subsequent disclosure by the recipients. That could be written into this bill if desired.
- 039 Sen. Metsger Asks PUC for a response to Mr. Lynch's point of keeping the line clear between regulated and unregulated activities – the idea of a deconsolidated tax return versus consolidated is unfair and risky to ratepayers.
- 040 Graham Responds, filing a deconsolidated tax return means the issue goes away.
- 067 Sen. Metsger Counters, other costs would be collected based on regulated activity on behalf of the ratepayers, as opposed to the consolidated return in which they are at risk to unregulated activities.
- 074 Graham Responds, a company like PGE has regulated activities but also has unregulated activities.
- 092 Sen. Metsger Asks Warner to supply information on taxes collected from the state's utilities.
- 095 Warner Responds, he asked DOR to give a general look at revenue from the industry. The utilities in question all file as consolidated companies, so percentages vary. In terms of revenue from 2000-2002 tax years,

it varied from \$1.5 to \$5 million collected by the state.

- 110 Sen. Metsger Asks for a ballpark figure on what PacifiCorp and Northwest Natural built into their annual rates.
- 115 Graham Can get those figures. Explains how these taxes are estimated.
- 144 Sen. Metsger Comments, he would be interested to have figures of what was built into the rates. Clearly, just with the information we have, with PGE alone, they've collected \$42 million over a 3-year period and the total energy collection was \$1.5 to \$5 million for all utilities. So even if nothing were collected from PacifiCorp or Northwest Natural, this is a huge discrepancy. He asked if any of them could find a time in which they actually paid more than they collected. PacifiCorp did find one year out of 30 tax years.
- 168 Sen. George Of the states that collect income tax, how many prohibit filing consolidated returns?
- 179 Graham Does not know.
- 190 Chair Deckert Believes 41 states have the consolidated form on their regulated utilities. Asks why rate setters are missing the mark so badly.
- 196 Graham Does not believe the PUC is missing the mark. The idea in rate setting is to estimate the cost for the utility, not for the parent. Data shows PGE made tax payments to Enron, and the estimates are not far off.
- 206 Chair Deckert Asks, when PGE customers' money was distributed to Enron, where did Oregon's tax liability end up?
- 227 Graham Because of Oregon tax law the parent corporation, Enron, was allowed to file a consolidated return, offset gains with losses and pay no tax. That's a tax problem, not a regulatory problem. Gives example of buying a newspaper as opposed to buying electricity.
- 238 Chair Deckert Question is, are they the same animal. When you flip that light switch, do you have options available?
- 260 Graham PUC is just posing a solution in respect to state taxes. In regard to federal court cases, don't look at cases on an issue-by-issue basis. Ratemaking is holistic. One cannot judge the fairness of rates by selecting one item. The question is, overall, are the rates fair?
- 277 Sen. George Comments on the holistic approach.
- 286 Graham We are attempting to take a snapshot of the utilities' estimated expenses and of the appropriate return on equity and setting rates based on that.

- 293 Dan Meek See written testimony in regard to "true-up" provision (**EXHIBIT 4**) against the bill. Also see The Oregonian article, "True-up utility taxes" (**EXHIBIT 5**). Contends SB 171-A does not true-up utility taxes, in fact it would authorize the Oregon PUC to continue its abusive practice of allowing utilities to charge ratepayers for income taxes that neither the utility nor its corporate parent ever pays.
- 356 Meek Contends many incorrect statements have been made today. The charging of phony state income taxes to ratepayers is in no way prevented by this provision. PGE filed non-consolidated state income tax returns in 2002. It charged ratepayers \$15.6 million (not \$14 million) and paid \$10. PGE has charged \$1,000 per ratepayer since 1997 that PGE and Enron have not paid. Other utilities are performing the same practice.
- 365 Meek Third, this bill applies after 2006, thus allowing the utilities to retain the money they already charged as phony taxes.
- 386 Meek Fifth, it allows the OPUC to authorize the incorporation into rates of estimated federal and state taxes. That is the problem, what it is doing now. It authorizes the PUC to continue the problem.
- 396 Meek Consolidation is only one of several problems. Calls for the committee to return to SB 408. It is a true-up of tax payments with charging ratepayers what the utility paid for income taxes. Changes one word from "is" to "has been".
- 401 Chair Deckert May be joining utilities in opposition to this bill.
- 422 Liz Trojan Oregon Public Power Coalition believes any regulated utility that collects taxes should be paying those taxes, not pocketing them. \$92.6 million has not made it into the state coffers. SB 171-A does not adequately address this issue; SB 408 does address issue in the form of the true-up. We can't allow \$740 million in taxpayer money to evaporate into thin air. We need it for schools and other government services.
- 452 Chair Deckert Asks PUC Commissioner Beyer's opinion on the idea of not charging ratepayers of regulated utilities any state taxes. Everyone wins.

**TAPE 97, SIDE B**

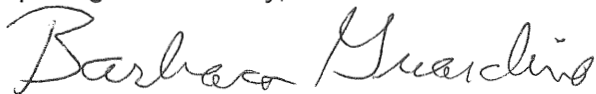
030 Lee Beyer

The issue is the one raised by Sen. Metsger: Who is paying what? Some 17,000 Oregon corporations paid \$10. The problem in taxation is setting a tax rate on one side and then setting public policies with offsets. The reality is, none of these companies have violated the law. They are filing their taxes legally and paying the amount of tax termed appropriate by the legislature and Congress. One way to solve this is the true-up. PUC's legal counsel says they can't do that. One answer would be to not require utilities to pay taxes at all. Utilities' return on equity would be reduced as a result.



- 066 Marge Kafoury Presents a letter from the Portland City Council urging PUC to change its practice of allowing taxes to be collected in rates and not paying them (**EXHIBIT 6**). The expectation of a customer who pays a bill as a tax is that those taxes will be paid to a taxing jurisdiction. Has no opinion whether SB 171 accomplishes this.
- 075 Ernest Delmazzo Comments on statement by Commissioner Beyer that other businesses did not pay taxes. Those businesses were not monopolies and they did not charge customers for taxes that weren't paid. Also, PUC has the authority to get tax records from the utilities. Also, during the years Enron owned PGE (1997-2001), it received net tax rebates of \$387 million from the federal government. It hasn't paid taxes since bankruptcy, but continues to collect almost \$2 million per week. PUC continues to allow PGE to charge income taxes. This bill does nothing but give PGE legal cover to keep the \$730 million it charged ratepayers – that averages \$1,000 per ratepayer.
- 114 Sen. Metsger Co-sponsored SB 408 with Sen. Walker. Part of the difficulty with this legislation over the last two years is the warring attorneys and the warring philosophies, which comes to one conclusion: No conclusion. Fears they are facing this again, that nothing will change. It would be interesting for PUC and Mr. Meek to clarify the true-up. Asks Mr. Warner to revisit why we are limited in the true-up position. This can't sit for another session.
- 142 Sen. George Forty-two states allow consolidated. If Oregon were to withdraw, would this impact investment in Oregon?
- 148 Chair Deckert That's a good question. Does not know who could answer it.
- 165 Chair Deckert This bill will be rescheduled for Monday, April 25. Closes public hearing on SB 171-A. Adjourns meeting at 11:05 a.m.

Tape Log Submitted by,



Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 841, proposed SB 841-3 amendments, 4/12/05, Warner, 1 pp.
2. SB 171-A, Staff Measure Summary, 4/8/05, Warner, 1 pp.
3. SB 171-A, memo from Public Utility Commission RE: Recommendation on treatment of utility income taxes, 3/22/05, Warner, 1 pp.
4. SB 171-A, testimony of Daniel Meek opposing SB 171-A, 4/14/05, 2 pp.
5. SB 171-A, OregonLive.com article, "True up utility taxes," 2/26/05, Meek, 1 pp.
6. SB 171-A, memo from City of Portland RE: Comments on Department of Justice Memo Recognizing Tax Liabilities in Setting Utility Rates, 3/4/05, Kafoury, 1 pp.

**SENATE REVENUE COMMITTEE  
SENATE BILL 171 PUBLIC HEARING**

**April 14, 2005**

Chair: [Begins mid-sentence] ...and we will open a public hearing on Senate Bill 171 and let's do a quick introduction of the bill. Paul, I want to get Kevin Lynch up because he has a pressing engagement in Portland.

Graham: Mr. Chair, Senate Bill 171 has just come to you as a referral. You have before you Senate Bill 171 that has come from the Business and Economic Development Committee and there's the Staff letter summary from the Committee administrator in that Committee and then a letter from Senator Metsger, the chair of the Committee recommending that the bill be referred to the Senate Revenue Committee. What the bill does is it implements the three recommendations that were received from Commission Beyer and the Public Utility Commission. And I did go ahead and make a copy of that first page for you. Those recommendations are requiring regulated utilities to file standalone income tax returns, not file consolidated returns, directing the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates, and also requires regulated utilities to file a general rate case at least every five years. So those elements are all in 171. I can go through those if you like.

Chair: I think we should. But I want to get—Senator Metsger, do you want to make a few comments? We're just kind of introducing 171.

Metsger: Right. Nothing extensively. We have talked about this extensively in both committees. I think, you know, having Paul kind of refresh us on those elements is important. I think we've talked about public policy issue a lot and--in passing this from the Business Committee. But I just think a refresher on what this does and the Public Utility Commission is here to go over those and I think their analysis will be helpful.

Chair: And we're going to do that. But we're going to first, because his pre-school son selected him as the person of the day at his pre-school, which is so important and that starts at 11:00, we're going to get Kevin, if you're available, we'd like to have Kevin Lynch come up and maybe testify in opposition to the bill and at least we can do one good thing for him and (laughter) get him to his pre-school.

Lynch: Thank you for that, Chair Deckert and the members of the committee. For the record, my name is Kevin Lynch. I represent PacifiCorp Holdings. I'm not going to try to explain to my son what it is that I do for a living or what I did this morning. Hopefully, he'll figure that out a little bit better a little bit later on, but for a four-year old it's something that I really can't miss this morning, so thank you very much for indulging me.

As you know, our companies have a lot of concerns about this legislation and are opposed it, and I think a number of the other energy utilities, if not all of them, in the state may well be as well. I want to speak a little bit just briefly about our overall concern on it, and I think it's also important to note that because of the rush of business at the Business Committee and the succession of amendments that have been incorporated into this bill now, I'm not really sure there's been a real venting of the substance of the language as it now stands. So I want to make a couple of comments about the specifics of the bill, if that's all right.

Chair: Okay.

Lynch: Okay. First of all, as I think you know, on an overall basis, we think that this is a fairly discriminatory type of tax and regulatory bill. There are thousands of corporations in Oregon—tens of thousands of corporations in Oregon. My guess is there are hundreds, if not thousands, that file their federal and state income taxes on a consolidated basis. In Section 3 of this legislation it picks on six energy utilities and 20, I think it's 22 water utilities to file their state income taxes in a different way. That is of significant concern on its own. In addition, the dash 6 amendments that were adopted in the business committee last week, it made a further distinction from the dash 4 amendments by excluding the telecommunications utilities from having to file on a deconsolidated basis as well. I understand from earlier discussion about this issue that the rationale was, well, those utilities can be distinguished from the energy and water utilities because they are in a competitive environment. And I just would like to point out a couple of things about that. Actually, I think, both—at least the electric companies and the telecomm companies, at least the incumbent telecomm companies are sort of hybrid businesses. Their—parts of their business are in fact regulated and parts of them are not. And to make that kind of distinction between the two, there's probably a gray area that should be of some concern. For example, the incumbent local exchange companies in Oregon have state established service territory allocations, just like electric and gas utilities do for the distribution of their service on the local level. On the other hand, there are parts of the business that are competitive. And for the electric utilities, there's competition as well.

As you know, we have retail competition policy in a state, that's one. On another basis we have competition all the time for our service territory. In over the last ten years Pacific Power & Light has lost service territory to municipalizations in Hermiston, Oregon, and around Brownville and Halsey in Linn County. We faced the threat of losing our service territory in Multnomah County two years ago but defeated that on the ballot.

The third thing that's probably worth noting is that our buying and selling of electricity in the wholesale market, what you might think is, I don't know, comparable to the long-distance market for telecommunications, is competitive. It is—the prices that are set for buying and selling essentially electricity between utilities, not to end-use customers or between utilities and marketers at the wholesale level is done under market-based pricing that is under the aegis of the

Federal Energy Regulatory Commission and not state regulators. And that is essentially deregulated. So that's a fairly significant thing. In fact, the revenues from our wholesale power sales just for PacifiCorp are 15 to 20 percent of our gross utility annual revenues every year and our expenses for purchases are comparable. We only engage in that business to make sure that we have enough power for our customers for when our own plants are not generating enough and we make sure that when we have a little bit more and our plants either going to be idle or, you know, if they're in surplus, that we sell it to another utility, get the revenue back and that helps keep our prices stable, or at least helps to keep them down. So it is a competitive business and the distinctions between telecomm and energy utilities is not as clear.

Now, I want to assure you I am not going to suggest to the committee that I amend the bill further to bring the telecomms back into the legislation. I think what I would rather you consider is that you treat us all the same by not requiring the deconsolidation filing on the state income tax returns.

Couple of other things overall in the bill. As you know, and as I think the Commission's white paper from a couple of months ago pointed out quite eloquently, this legislation through--I believe it's section 8 requiring the Commission to look at consolidated or to make consolidated tax adjustments in setting retail electric rates for the energy utilities, introduces a whole new element of risk into the way that rates are set. The unregulated affiliates of electric and gas utilities really have little or probably nothing to do with the provision in the price of service to those customers, but reaching up or reaching over and grabbing into the tax advantages or potentially the tax disadvantage of those affiliated businesses puts those customers financially at risk for the activities of businesses that they really have nothing to do with. The Commission has a long-held policy of what's called ring fencing off utility customers and utility operations financially from the unregulated activities and that applies to—that applies to taxes as well. It has applied to that. And that seems to us to make an awful lot of sense for keeping a clear line of distinction between what the customers of the regulated utilities are responsible for and what the businesses of the unregulated affiliates of the utilities are responsible for.

I might add that that as amended Senate Bill 171 puts the unregulated energy affiliates of the utilities at a competitive disadvantage. For example, our merchant energy affiliate, PPM Energy, which I think some of you are familiar with but is the second largest developer and marketer of renewable—of wind energy—in America and has a number of projects either up and running or under construction or planned in the state of Oregon and around the country. It will put us at a disadvantage for a couple of reasons. One, just by virtue of not being able to file on a consolidated basis—and I can talk about the specifics of section 3 if you want. But second, because of the disclosure requirements of the income tax forms that I believe are in section 7 of the bill, there are concerns about what—about how much of the information that a—tax information that these merchant businesses would have to disclose to the Oregon Public Utility Commission under

those—under the requirement that the consolidated groups tax forms be handed over. That means the release of a fair amount of information about a business that is a very competitive business. And since not all businesses that are competing for that—in other words, other merchant energy companies are not under the same obligation to disclose that information, it would put companies like PPM at a competitive disadvantage. People would understand better what the finances are and it would give other companies the ability to operate in more of a financial black box and undercut PPM's ability to compete for projects and to compete for customers. That's a very dangerous thing from our perspective.

Finally, I might add that, again, because of the impacts on our renewable energy business, I think that this legislation would undercut the important goal that the state of Oregon, as articulated by the Governor yesterday, to try to increase the amount of renewable energy in the utilities' portfolios by one percent a year over the next years or so. PPM Energy is the developer and the marketer of wind energy for a project under construction in Eastern Oregon called Klondike II. The bulk of the output of that project, if not all of it, is being sold to PGE to add into its portfolio of renewable energy. If the state wants to meet the aspiration of increasing its renewable portfolio by one percent a year, it's going to need renewable energy developers to provide that resource and its very important—PPM Energy is a very financially solid leading developer. It's very important to have high quality financially sound developers doing these projects for the benefit of the utilities and its customers and this legislation would diminish the effectiveness and the ability of PPM to do that.

A couple of other things just to point out. I think there are a number of technical and wording problems in section 3 of the legislation. I do want to point out that I know that Senator Metsger and you, Chair Decker, have made some effort to try to accommodate this concern that I've raised with you previously about our merchant business, but I think the language in section 3, though well intended, doesn't really work to create an exception for that. For example, what the meaning of the phrase "located in the state" is not really clear. The headquarters of PPM are located here, a number of its subsidiary businesses, the way the companies incorporate, are not, so if we have to take those out we sort of undercut the intent. Secondly, not really sure what the meaning of "primarily conducting energy-related activities" is. I think I could be pretty comfortable with that plain reading of it, but not sure what that might mean five or ten years down the road and I'm not sure who really interprets that beyond the Department of Revenue. And the third thing is that I'm concerned about the phrase about the energy activities being located in the state because, while we have a lot of activity in our merchant business here in Oregon, we have a lot in a number of other jurisdictions and I think I've shown you all maps before of where the renewable energy projects are being developed by a group of developers located here in the state. For example, earlier this week, it was announced that PPM is a 50-50 partner with a company called Zilka Energy Systems to develop a 200 megawatt renewable energy project in upstate New York. Now, that's clearly not located in the state. And so if we're doing, it seems not to work as an exception. I might

also add there's probably a constitutional problem with that language as it would appear to create a restraint on trade and probably violate the interstate commerce clause of the constitution if we want to keep that kind of limitation.

I've mentioned the problem—the concerns we have about turning over the tax forms and I think that's a bad precedent, too, as well. The Revenue Department keeps things, I think, to itself in the Revenue Department and while there may be an imperative because the OPUC regulates prices of the electric utilities to have the information of the utility and its consolidated group, its tax information provided to the Commission, I'm not sure where you stop drawing that line. Should the Transportation Department get the information—the tax information of the contractors it does business with for highway and transit projects to make sure that it's not charging too much when it contracts with the state to do a project. You know, that may not be a concern of yours today, but may be a concern in a future committee a couple of years down the road and it starts to erode the integrity of the way that tax returns and tax forms are treated. I might add, too, that there literally isn't anything in this legislation that prohibits the Commission or restricts the Commission from providing, in turn, that tax information to the general public. And I think that ought to be—that, as I mentioned previously, that could clearly put our competitive businesses at a disadvantage, the ones that have to do this and creates a form of discrimination because some companies would have to divulge that information and some would not.

Finally, I guess I would just say in conclusion, you know, back to the original point about what kind of risk this puts the customers at. Many of the states in this country make sure that keep this line clear between the regulated and the unregulated businesses of the companies in setting rates for customers and making assumptions about how much tax liability there is for those customers. The unregulated businesses that can be around utilities have much less predictable revenue--income and earning streams than do utilities, generally speaking, though certainly we've had some volatility in the utility business over the last five or six years as well. And I don't think in the two months since the Commission released its white paper to comment on it and then provide it some views to this committee and the Business Committee, I don't think that concern has really been diminished by anybody very substantially. We are bringing in the activities of the unregulated businesses to the customers of the regulated businesses and that's a very dangerous line to cross in our opinion. And so as a consequence of that I would recommend to the committee that it not move forward with this legislation. Happy to answer any questions you might have.

Chair: Thank you. Thank you very much for the details and we'll go to Senator George and then Senator Metsger.

George: I have an email here and the person that wrote this makes an interesting statement and said it provides no benefit to ratepayers and then they allege that the purpose of this is to get more for the state of Oregon. Relative to the ratepayers, do you

see anything in this bill that would aid ratepayers? They're not going to get a reduction, to my understanding? Or is that a possibility?

Lynch: Chair Deckert, Senator George, I'm not aware of a way that that would work. If you make an assumption in rates for what the utility may be liable for as a standalone company for income taxes and you then require them to file on a deconsolidated basis, it shouldn't make any difference to the customers. And if you're a business customer, from a philosophical standpoint, you should be very worried about a number of the precedents that this bill sets.

Chair: Senator Metsger.

Metsger: Thank you. Thank you, Mr. Lynch, and congratulations on your title. Just a couple of things. I want to kind of clarify for the record that you made a couple of points including during your conclusion about how important it is that we keep the line clear between regulated activities and risk, in this case, the ratepayers and unregulated activities. But in truth, isn't that exactly what we do under the status quo which is what we're trying to correct with the—with a deconsolidated tax return, in that you are allowing under the government authority that has been given to the PUC and for you as a private entity to be able to go to ratepayers and collect taxes which other companies aren't allowed to do. That you are allowed to collect taxes based on the regulated activities of the public utility commission but you put the customers at risk because then when—on the outflow of that pipe, you get to take your unregulated activities outside the state and negate that. I mean that's—isn't that exactly your same argument?

Lynch: Chair Deckert, Senator Metsger, I think the answer to that is no and here's why. There's a fine distinction, I think, to be made on this. Customers do not necessarily equal taxpayers. They're not—they're not one and the same and so the assumption about taxes as—that are collected in rates as a standalone utility, if there's not a hermitically sealed system that those dollars would then go back to benefit the exact same people from whom they are raised. We have three investor-owned electric utilities in this state. We have three investor-owned natural gas utilities in this state. They collect different amount of assumed taxes as utilities in the state and the money goes in and out of, you know, in and out of the treasury and then out at differing rates. I'm not explaining this very well but there's not—I guess if you're simply assuming that the utility is a tax collector and not a business, then the answer to your question would be yes. But the utility is a business and not a tax collector. And so why we are treated, why would we be treated under this legislation differently from virtually every other business in the state is really the flipside of the concern and the question that you have.

Man: Can I just ask one question on that? So—because I struggle with that, that this might actually be helpful. If customers—to me when PacifiCorp goes in for a rate case, embedded in those rates—and this is when PacifiCorp goes to the PUC—embedded in there is those customers taxes.

Lynch: Uh-huh.

Man: Right into the rates.

Lynch: Uh-huh.

Chair: And so, I guess, the thing that I circle around and try to get a grasp upon is why would we—and I understand the renewable argument—for me, the way I, at least in my mind, work around the PPM and the renewable is that that is a separate discussion. The state has many tax credits. We have the Energy Trust. And we ought to be encouraging and providing incentives for renewables, but why would we, once the taxes have been embedded in the customer rates—and the celebrated case and I know you're not here to talk about the Enron case, but \$740 million was in customers rates and then take out of the state and lost and I would argue, Senator George, that there was a net loss. Though you're right, it's taxpayers' loss, manifest in schools, in higher ed and community colleges, but I guess that's what I struggle with, is that customers in my mind do equal ratepayers or taxpayers because when a regulated utility that in my mind is different from other businesses in the state because of it's defined service territory, that when it goes in, it does embed those rates in, and so why would we then have a tax policy that would, I guess, not take that into account, that that actually is occurring.

Lynch: Chair Deckert, it's a difficult and interesting question and I'm not going to sit here and defend or speak to what another utility and its parent company did. There is a bad model out there. There is a perception that what occurred in that case was not in the public interest. I think I've given you a model of business behavior which, by and large, is in the public interest. Let me say this, though. The way that prices for electric and gas service are set are a surrogate for the market; the regulated prices that are set are a surrogate for the market. And it's not a one-sided equation. I think it's really important to remember to remember it with respect to the regulatory compact that there really are two things to think about. One is that the utility is in fact given a monopoly service territory where it has an exclusive franchise to serve those customers. But the other side of the equation is that that utility has the obligation to serve every one of the customers inside that area. And so setting the price for that service by regulation rather than by market forces again at the local level is simply a surrogate for that, you know, for setting—it's a surrogate mechanism. And it's one that makes some sense to do but it sort of—whether that makes utilities not real businesses is your question, frankly. And I think, and there are many respects in which utilities and their parent companies are real businesses. We don't have a lot of differentiation among other businesses when the utility or its parent company needs to after the market and raise capital. We compete against every other business in the world for that with a limited number of people who are willing to buy our shares or buy our bonds. So in that respect we are very much a real business. And the cost of that is very important to our customers. If we are not an attractive investment, the cost of the capital that we need to raise to build a new power plant or build a new substation goes up. And that cost goes back to our customers.



So try to set aside for a minute the equation that—or try to remember that there are two sides to that equation for the monopoly service that we are given the opportunity to provide and remember that there's an obligation on the other side of it.

Chair: Uh-huh. Senator Metsger.

Metsger: Thank you. Well, on that same point, Mr. Lynch, because I want to go back to one of your earlier points also about you called it a discriminating bill because it treats you different than different corporations, and you just talked about what makes it different. You are a monopoly. When I go to my—when I go to my wall switch and turn that light on, I only have—you know, I'm PGE in that case, I have no choice. I can't go to Costco and Fred Meyer and make those types of choices. And because of that monopoly—and I don't get to set the price, I don't get to shop. If I want a broom, I go to Costco and go to Fred Meyer, whoever has the best price and those prices are set by what get me, the customer, in the door to purchase that product. I don't have that choice. Whatever the kilowatt hour is for my electricity, I have to pay. And the PUC sets that and they set taxes as part of that. And that's what distinguishes the businesses that you're involved in and they provide a great public service, but because they do provide a public service and because it is a critical necessity of citizens, you have those like, you say, obligations and also given certain, you know, rights, and that is to collect taxes on that basis. But I think, when you talk about discrimination, you're discriminated against and for and in this case, you're given an opportunity to say here's your equity and we're going to give you a return on that. And the guy who's running the hardware store doesn't have the government get to set a return on his investment, he—if he doesn't sell the inventory, he just loses it.

Lynch: Chair Deckert, Senator Metsger, couple of points on that. But let me start with the last thing that you said first. Our company has an opportunity to make a return on equity. Our company in Oregon in 2004 had the opportunity to make 10.7 percent return on equity; it made 7.4 percent. In 2001 it had the opportunity to make 10.75 percent; it made 1.88 percent. So that guarantee, there is not a guarantee of our return on equity. There is an opportunity. We have to run the business smart. We have to deal with the vagaries of weather, of markets, of the economy, whether it's good or bad, how high loads are. We have all sorts of things that affect the well-being of this business, you know, affect its performance, good or bad, financially, that are just like every other business in this state and this country. So you know, I guess would argue for you that, as you said, there are obligations—there are privileges pro and obligations against in the regulatory compact and I think, frankly, they battle each other to a draw. And the result of that is that we probably ought to be treated like any other business in this state.

Chair: Other questions? Thank you for putting up with our grilling. Enjoy the rest of your day. And if you want Paul or someone from the PUC to go with you to the pre-school and describe that deconsolidated tax returns, we would ...

Lynch: I don't think – frankly, thank you for the time. I know it's a complicated issue and a difficult one and your questions, if I could be so bold to say it, are very good ones and very important ones to answer. And it's very—this is a very difficult issue. There are a couple of sides to every coin and we feel it's very important for you to see the side that we think is one worth preserving.

Chair: Thank you. Thank you. Commission Beyer, would you like to come up—or we'd like someone from the PUC. I think a request has been made to at least—okay, it's--Mr. Graham gets the short stick and tells what good questions we ask. Good morning.

Graham: Good morning, members of the committee. I'm Paul Graham, Oregon Department of Justice, chief counsel for the PUC.

Chair: You delivered a white paper to—you delivered a set of recommendations to us. If you could quickly review what your recommendations were and perhaps--a good case was made against those recommendations, perhaps answer at least one or two of the points if you choose.

Graham: This is with respect to 171 now, we're talking about.

Chair: That's the--we're in work session on.

Graham: There were three recommendations and one of the recommendations was to have utilities come in every five years to file a general rate case, if they hadn't been in. Actually, it was to give the Commission the authority to have them come in once every five years. And there was some language that is now in the bill that gives the Commission the authority to open an investigation to determine whether it is necessary for the utility to come in, the utility can argue that it's not necessary for the utility to come in. And then the Commission makes a determination whether it is necessary for the utility to come in or not. And if it determines that it is, then the utility would come in and file a general rate case. It would have 90 days or more to prepare the general rate case and submit that to the Commission under ORS 757.205, which is the statute that we operate under, and that statute would give the utility the burden of persuasion as well as the burden of going forward with evidence. So it would just be a normal rate case that the Commission would be able to force the utility to file. That's one piece of it.

Another piece of it is that the Commission can consider what effect if any the parent's tax liability has on the cost of the utility for providing service. So if you have an electric utility or a natural gas utility, and it has a parent corporation, and the parent corporation is paying maybe a lot in taxes or maybe very little in taxes or maybe nothing in taxes, then the Commission would be able to consider, as a factual issue, in a rate case what effect the tax liability, if any, has on the cost of the utility's provision of service. Remember the Commission's job is to determine what it cost PGE or PacifiCorp or Idaho Power, on the gas side, Avista, Cascade Natural and Northwest Natural to provide service. And so it would be

looking to see do these tax liabilities or lack thereof have any effect on the cost of the utility in the provision of electric service in the case of the three electric or natural gas service in the case of the three natural gas companies. The parties would be free to raise an issue, just say yeah, there is a connection between the tax liability and the utility's cost or no, there isn't. So that was another recommendation the Commission had.

And then the third piece of this is—the third piece of this was simply to give the PUC the ability to obtain this tax information for cases in which parties wished to say that there is some connection between the parent's tax liability and the rates for the utility. So, the PUC would be able to obtain tax information from the parent of the utility and find out what the parent paid in taxes. Because right now the PUC doesn't know what the parent paid in taxes.

Man: Would that information be public to your knowledge? And Debra, if you want to help answer that that would be helpful, because that was one of the questions that was raised.

Graham: As far as I know it would be public under the Public Records Act but I never researched the issues, there may be some exceptions in the Public Records Act, there may be some language, if not and there may be some problems under federal law. One of the things that probably could be done, though, is to have a protective order so that the tax information would not go to the general public, rather it would go only to the participants in a rate case. So, for example, if you had a PGE rate case, and parties could sign protective orders that would allow consumer groups like the Citizens Utility Board, the Industrial Customers of Northwest Utilities, Associated Oregon Industries to receive the information and any other intervenors could receive the information with the understanding that they would use the information only for purposes of the rate case and they would not disclose it outside the case.

Buchanan: Good morning, Mr. Chair, and members of the committee. Debra Buchanan, Department of Revenue. Mr. Chair, we do have authorization in the statute to disclose confidential information in certain cases and there are provisions that then restrict subsequent disclosure of that information by the recipients. So that is something that could be written into this, if you desire to do that.

Chair: Thank you. Senator Metsger.

Metsger: I have a question and I'm not sure if Paul or if it's Lee. I'd like to have you respond to Mr. Lynch's comment. His overall point was that in terms of keeping the line clear between regulated, unregulated activities, the idea of a deconsolidated tax return versus the consolidated tax return, that this was unfair and provided, you know, risk to ratepayers. And I just would like a response from the PUC, since this is one of your recommendations of the deconsolidated tax return which is what you are collecting the rates on a deconsolidated basis is to get the counterpoint to his comments.

Graham: Okay. The other piece of this bill, by the way, was that the utility would file consolidated—

Metsger: I mean that's the major point here that the utilities are mostly concerned about, they're concerned about it all, but that's [inaudible].

Graham: And I think the PUC's recommendation was this is a way to remove this as an issue. There are two sides to the issue. One can say that setting rates for standalone utilities is the way to say and other people may disagree with that. But with respect to state taxes, if you simply have the utility filing a deconsolidated return, then the issue goes away because then you know that the money that is put in the rates for state taxes—it actually may not have been paid, because the utility may have done better or worse than we estimated, but there would be a direct payment under state tax law by the utility through the Department of Revenue. So it was simply designed to remove this as an issue. As I say, though, you could have a utility, say, like PGE, I believe it has about \$14 million in estimated state taxes built into its rates and if it has a good year, it may pay more than that. And if it has bad year, it may pay less than that. And whether it has a good or bad year can depend on a lot of factors such as power costs. In 2001, for example, PGE's power costs were substantially in excess of the estimates that we made because of the power crisis and that means their taxes that they paid, and they were on a standalone basis at that time, were much less than was estimated in rates. And if you just want to look at the taxes, you can say well, the ratepayers were losers here because there was \$14 million in estimated taxes and nothing got paid. But if you look at rates holistically and look at the power cost and everything else, then you would see no, the company had losses and those losses meant the company didn't pay the taxes. So this piece about having filed a deconsolidated return wouldn't necessarily mean that if we estimated \$14 million, that \$14 million is going to be paid. It could be less and it could be more.

Man: But the point would be—because that's true, you have other costs, but those are being collected based on the regulated activity of that utility on behalf of those ratepayers and they make or lose depending on what those costs are, as opposed to the deconsolidated—or the consolidated return in which they're at risk to unregulated activities that they're also paying—potentially paying for or benefiting from—from activities by other unrelated companies in other parts of the country.

Graham: Well, that's true if you're going to look at the parent's tax liability. If they're filing a consolidated return, then what the parent would pay would depend not just on what the utility does but what all sorts of other companies do. By the way, I should add that a company like PGE doesn't engage in just regulated activities. It has unregulated activities as well. So when you look at what it's paying, it's paying based not only on the regulated activities but the unregulated activities. What we do when we set rates for a utility, we look at just the regulated operations and we try to figure out what the taxes a standalone utility would pay

on those regulated operations, bear in mind that there are unregulated operations, too.

So let's get back to the example of PGE having \$14 million built into its rates. Those—that \$14 million built into its rate is just for the regulated activities of the company. That assumes we nailed it right on the head and PGE had to pay \$14 million for the regulated activities. It might make some additional money on its unregulated activities and it might have paid \$18 million, say. You don't match up \$18 million and \$14 million. You match up the amount of money it paid for its regulated activities with what's in the rates to see how well we did on our estimate.

Metsger: Mr. Chair?

Chair: Uh-huh.

Metsger: Can I ask Mr. Warner a question. Mr. Warner, I understand you've done some--look at the taxes that actually were collected by—on behalf of the utilities from the state and I would be curious for any information in terms of—giving us a perspective on what actually has been collected.

Warner: Senator Metsger, I asked the Department of Revenue to give a general look at revenue from the industry and—so that to not get into any individual company, of course, which they cannot do under our disclosure laws. But just to give you a sense of the amount of revenue that's generated by the industry, this would be the utilities in question. They all do file as consolidated companies, so we know that—that there is a consolidated group. There's a wide range in terms of what proportionate comes back to Oregon, so it varies a lot as to what the percentages are. But in terms of the revenue from that industry group over the 2000 to 20002 tax years, it varied from 1.5 to 5 million for the industry as a whole.

Metsger: That was collected by the state?

Warner: That was collected by the state, right, from those returns.

Metsger: From all of them?

Warner: From that industry as a total filing as consolidated returns.

Metsger: And that's four tax years?

Warner: That would be three tax years.

Warner: It varies from 1.5 to 5 million.

Metsger: Mr. Graham, we talked about PGE has built in a 14—you said roughly 14 million in state taxes.

Graham: I think that's right.

Metsger: Could you just give me a ballpark of what PacifiCorp and Northwest Natural had built in into their rates? Because these are the ones that we know—1.5 to 5 million total was collected over a three-year period, what on an annual basis would a PacifiCorp have built into their rates or a Northwest Natural, for example?

Graham: I don't know, but I can get those figures those figures, I think.

Metsger: Would they be commensurate at all? We're talking ballpark figures similar here or...?

Graham: Well, Northwest Natural I'm sure would be below that, it's a, much more of a company, and PacifiCorp, if you look at the entire operation, is bigger but within the state it's smaller, so my guess is that would small as well too, but I think we could get those figures. By the way, the way we estimate the taxes is that when you set rates you really have two buckets of money. You're coming up with what's called a revenue requirement and one of the buckets is the return on investment, the utilities make investments to serve ratepayers and you have an authorized return, that's the return on debt, on preferred and on equity, and that's where the profit of the utility comes from. The other bucket is recovery of estimated expenses, and the key word is "estimated" and the expenses include things like power costs and wages and depreciation and operations and maintenance on the plant and one of them is taxes, and the way the taxes are figured is that at the end of the rate case we look to see what the net revenue of the utility will be and then apply the federal and state tax rates to the net revenue, and then that's added on to revenue requirement. I'm over-simplifying because there are a few other bells and whistles involved, but that's basically what's done when you estimate taxes for a stand-alone utility. That's the approach that's used, so you're determining the estimated net revenues that the revenue requirement will generate and then applying the federal and state tax rates to an estimate of net revenue, so you're looking just at the regulated operations of the utility, not the total operations, just regulated operations of the utility.

Metsger: Mr. Chair, I'll conclude, I just would like to make one comment though. We'd be interested to have those figures of what was built into the rates because clearly, just with the information we have, I think it's important to talk about the theory and then the reality. What this bill attempts to do is get to the reality, not just the theory and in this three-year period just with the PGE alone, if you've billed and they've collected \$42 million in, over a three-year period at 14 a year—is that right?—yes, that's \$42 million, and pays, and then the total energy collection was 1½ to 5 for all of them, so even if you collected nothing from, you know, PacifiCorp or Northwest Natural, I just say that for an example, this is a huge discrepancy and when we find out what that rate structure is, clearly the theory which bring testimony but on the ground the fact of the matter is this is, this does not actually, we don't have those big bumps and spikes in which, golly gee whiz,

the ratepayer had to pay more because they really got an advantage. You know, that, I had asked the committee in Business Committee, Mr. Chair, with, you know, if any of them in the last ten years could find a time in which they actually paid more than they actually collected, and I did hear back a representative of PacifiCorp that they did find a year. They found one year in which they actually paid more in taxes than they collected, and that was the only year out of 30 tax years that I have heard from, so I just want to kind of put that on the record and I would be interested, so we can get an idea of what the collections have been for the energy companies. We know now they've, only 1½ to 5 million according to Department of Revenues, have been collected. There is that huge discrepancy. Thank you Mr. Chair.

George: Mr. Chairman?

Chair: Yes. Senator George.

George: Do we have an answer to this question, and it's that, of the states that collect income tax, how many of them prohibit filing consolidated income taxes here?

Chair: Do you know that Mr....?

Graham: I don't know.

George: Do any of them prohibit filing consolidated?

Graham: I don't know, it'd be a question for someone with a background in taxation. I'm a regulatory lawyer. I have no idea what the answer is.

George: My thought being is, if we are going to be the only one doing this, that we'll see a flight of capital for investment, and we're asking that to happen in a state where they have to put forward legislation that encourages this. I don't know, I'd like to have an answer to that question.

Chair: Um-hmm, and I don't know, I mean, I have a guess at it, but I don't want to render it because I think there are very few that require a deconsolidated, which this bill proposes.

Man: But we wouldn't be the first and the only.

Chair: Well, other states do, I mean, we've heard a lot about Pennsylvania, who does a true-up. We can get that, I mean, there are other states. I want to say 41 states have the consolidated form on their regulated utilities. Mr. Graham, why are we, why, when we do the rate setting are we missing the mark so greatly, where, as Senator Metsger was just saying, we factor in the taxes for our businesses and our residential customers and there seems to be just such an incredible discrepancy between what we think the tax liability and what actually becomes the tax liability.

Graham: Well, there's an argument about whether the PUC is missing the mark. I mean, the idea in rate setting is to estimate the cost for the utility, not for the parent, it's for the utility, and when you say that taxes didn't get paid, I think we do have data that would show that, let's take PGE again, it actually made tax payments to Enron, so it incurred a cost, and I think if you look at some of the numbers you'll find that the PUC's estimates were not all that inaccurate.

Chair: When it made its tax payments to Enron, because my understanding is that when you factor those taxes in, you look at the Oregon laws, so you factor in the Oregon tax laws and you say, PGE customers are going to pay X based on the Oregon laws. When those monies are, were taken and distributed to Enron, where the Oregon tax liability end up?

Graham: Because of Oregon tax law, the parent corporation, Enron, is allowed to file a consolidated return, offset gains and losses, and pay no tax. That's a tax problem, it's not a regulatory problem. Again, our job at the PUC is to estimate what it costs an electric utility to provide a Kwh of electricity and it's to estimate what a natural gas company is going to incur in providing a therm of gas, and you use the stand-alone approach to do that. That's what virtually all states do, that's what the federal government does because that's the actual cost to the utility and that's what you're reflecting, is the cost to the utility. An example might be, I know you see a distinction between regulated and unregulated prices, but, you know, I buy an *Oregonian* for 35 cents, I'm sure some of that is estimated federal and state taxes, let's say it's a nickel, and the *Oregonian* is owned by Knight-Ridder, and let's say Knight-Ridder has a bad year, estimates and it pays no taxes. Does that mean that I should've paid 30 cents for the *Oregonian* rather than 35 cents? It's the same issue here on the regulated side.

Chair: But are they the same animal, and that's the fundamental question because if you agree, I mean, and if you guys want to revisit your recommendations I think you should, but the question we have before us is: Are they the same animal? When you purchase that *Oregonian*, do you have other options available to yourself? And I would pose the same question as: When you go home tonight and you flip that light switch, do you have options available to you? So.

Graham: Well, I think the response would be that, first of all, we're just trying to propose a solution here, and the solution we think is you could simply have them file a state, deconsolidated state tax returns and then people wouldn't worry about the issue that I've raised with respect to the *Oregonian* or the issue that has been on the table with respect to PGE and Enron. You would make sure that the money that is in rates is something that will be paid to the taxing authority, although as I said earlier, it may not be the same amount. It may be more and it may be less. But is there a difference? Well, it depends. If you want to draw a distinction between regulated and unregulated price setting, you can do that. On the other hand, you can say that the way to judge the fairness of a commodity is to look at the costs that are necessary to produce the commodity, whether it's a regulated commodity or an unregulated commodity.



Well, that's the argument on the flip side, that there really shouldn't be any distinction between regulated and unregulated, but again, I'm not here to get into that debate, I'm simply here to say that the PUC's proposed solution, at least with respect to state taxes, we can't propose anything with respect to federal taxes because we don't have authority, is that a utility can file a deconsolidated state tax return and again, that may not get you exactly what's in rates. Every single estimate we make in rate-setting, every one, guaranteed, is going to be wrong. It's going to be too high, it's going to be too low. Taxes are no different. They're always going to be off, and that's why all the federal cases that look at rate making say: Don't look at cases on an issue-by-issue basis. Rate making is holistic. In fact, I have supervised a group of attorneys and I tell them there are three rules they need to learn about rate making. Rule number one is rate making is holistic, number two is holistic, and number three is the same as the first two: It's holistic. One cannot judge the fairness of rates by selecting one item and saying: Aha! Somebody got ripped off. The issue is whether the rates as a whole are just and reasonable. A number of Supreme Court cases set that precedent, the most recent one is one called *Duquesne Power & Light*. The precedent originally came from the *Hope Natural Gas* case in 1944, but that's a key issue in rate making and what one needs to understand is that one cannot judge the fairness of rates by looking at one issue. There are a number of elements that go into rate making. We're always going to be wrong in every one of our estimates, but overall are the rates fair? That's the real question.

Chair: Well, we're needed on the floor. I'm willing to stay. Senator George, do you have another, want to ask a question?

George: No, it's okay, but this holistic thing, as far as I'm concerned, includes also, and looking at the whole utility, no matter where they're located, in other words, if you have a holding in Oregon and you have holdings somewhere else, I think you're almost going to have to measure that, [inaudible] company in setting a rate. And so we could take it out here, aren't you going to, aren't the, isn't that utility going to come back and say: I need to make it up in some other area with some additional consideration for my costs.

Graham: Well, we look at utility, we're just looking at the regulated operations, we're not looking at anything that's unregulated, so utility may have a subsidiary that's outside this state that's doing something unregulated, we ignore that for rate setting purposes. But again, what we're attempting to do is to take a snapshot of the utility's estimated expenses and a snapshot of the appropriate return on equity and setting our rates based on that. We know our snapshot is going to be wrong. We hope it overall provides for a fair rate.

Chair: Thank you. Thank you. I'd like to, if we could, get Dan Meek and Liz Trojan, just so we finish the folks who came down here today. Please just come up quickly and we'll, we don't have much time because we're voting on the Senate floor right now. Thank you Mr. Graham, you're [inaudible].

Graham: Thank you.

Chair: And we are, as you can see...

Man: We'll hurry.

Chair: ...they're calling the roll on us. Please. Good morning.

Meek: Good morning, my name is Dan Meek, I live in Portland, Oregon. I'm an attorney, I've represented ratepayers before Oregon and other state PUCs for about 23 years. I've distributed written testimony and an editorial from the *Oregonian* entitled "True Up Utility Taxes" from February 26th of this year and unfortunately, SB 171A does not true up utility taxes. It's being portrayed as the solution to the fact that utilities are charging us hundreds of millions of dollars, in fact, the amount is about \$150 million a year now, we're paying these utilities for their alleged costs of state and federal income taxes that in fact they're not paying. This bill does not solve the problem, it would not accomplish the true up that the *Oregonian* and others call for. As my testimony states, in fact it would accomplish virtually nothing except to authorize the Oregon PUC to continue its abusive practice of allowing utilities to charge rate payers for income taxes that neither the utility nor its corporate parent, ever pays. First, it requires a public utility not to file a consolidated state return. Well, PGE is fully, and the other utilities as well, have fully complied with this for the entire period that they have been consolidated with their corporate parents, such as Enron. PGE filed no consolidated state return, so this provision is meaningless. This provision does not require the public utility to file any state tax return at all, and PGE filed none for 1998, '99, 2000, 2003 and 2004, perhaps 2001 as well, so this provision doesn't accomplish anything. Second, it would allow a public utility to file a modified consolidated state return on behalf of an affiliated group that is limited to includible corporations that are located in the state and that primarily conduct energy-related activities in the state. Well, as Mr. Lynch pointed out, there isn't any definition of "located in this state." Further, the charging of phony state income taxes to rate payers is in no way prevented by this provision. PGE filed, actually filed, non-consolidated state income tax returns in 2002. It charged rate payers, the actual number is not 14 million, it's 15.6 million in rates for state income taxes, charged us 15.6 million for state income taxes and paid \$10. Mr. Graham said, "well, PGE has had," I don't even have time to respond to the various incorrect statements that have been made so far today. PGE alone has charged rate payers on a per rate payer basis since 1997 \$1,000 per rate payer in state and federal income taxes that PGE and Enron have not paid. The other utilities are performing the same practice, the, and I can tell you the approximate amounts if you like. Third, the bill applies the provisions only to tax years starting on or after January 1st, 2006, thus allowing the utilities to retain all of the money they have already charged to rate payers for phony taxes in the past. Fourth, it requires a utility to show every five years why it should not have a general rate case. This doesn't solve the problem or even address it. Utilities have general rate cases at various intervals now. The PUC can require a utility to

file a general rate case any time it wants to under existing law. It doesn't solve the problem. Fifth, it allows the PUC to authorize the incorporation into rates of estimated federal and state taxes. Well, that's the problem. That's exactly what the PUC is doing now. This authorizes the PUC to continue the problem and doesn't tell the PUC to stop. It then states: In determining estimated federal and state taxes, the Commission shall take into account the effects of filing federal returns on a consolidated basis. This doesn't mean anything because it doesn't state how the PUC is supposed to take that into account. The PUC's current practices can be easily, would easily pass muster if this statute were enacted. It wouldn't change anything. Also, the proposal does not even look at what state, it does not even state which federal returns the PUC is supposed to look at. PGE filed no federal returns in the years mentioned above, so there's no federal return to look at. Finally, the bill is based on the assumption that the problem occurs only because of consolidation of returns with corporate parents, but that's not the case. PGE was not consolidated with Enron in 2002, charged the 15.6 million, paid \$10. Consolidation is not the only problem. It is a part of the problem, but it's not the entire one. Instead of this bill, the committee should return to Senate Bill 408, which would solve the problem entirely. It is a true up, it is what the *Oregonian* has called for: truing up tax payments, truing up what you charge rate payers for income taxes, what the utility really paid for income taxes and it would be a fine solution if you simply changed one word from "is" to "has been" Senate Bill 408, but Senate Bill SB 171A would not. I appreciate the opposition of the Pacific witness. It had a little bit of the flavor of Brer Rabbit and the briar patch, however, because this bill wouldn't accomplish the solution that you're seeking. Thank you.

Chair: Dan Meek joining the utilities in opposition to this bill. Ms. Trojan, and we literally are, we're missing votes.

Trojan: I'll be really fast. My name is Liz Trojan. I'm not an attorney or a tax expert. I have a brief comment on Senate Bill 171. I'm with the Oregon Public Power Coalition. We're a community group dedicated to creating public ownership of our local utility, Portland General Electric. We're concerned about, I'm sorry, we believe that any regulated utility that collects taxes in their rates should be paying those taxes, not pocketing them. We're concerned about tax monies collected through our local utility, monies that have not made it into the state or local coffers, money to the tune of \$92.6 million currently total \$740 million. In our opinion, Senate Bill 171A does not adequately address this issue. Senate Bill 408 does directly address this issue in the form of the true up. We cannot, should not, allow \$730 million in taxpayer money to evaporate into thin air. We need this money for schools, police and other government services. We encourage you to drop Senate Bill 171 and move forward with Senate Bill 408. Thank you.

Chair: Thank you very much. Commissioner Beyer, I have a question for you. Why not, why don't we just, the thought occurs to me because you have this taxpayer versus rate payer issue, if you could please come up. Why don't we just, I know how we can definitely benefit the rate payers, let's just ameliorate the tax burden

altogether and just say that rate payers of regulated utilities will pay no state taxes, therefore the utility doesn't charge them, doesn't factor it into the PUC holdings and everyone wins there. The utility wins, the rate payer wins and the whole tax issue is gone.

Beyer: And your question is?

Chair: Well, you guys spent a couple years on this. To me, that was just the first time that occurred to me but that might be a possible solution where, then I don't know where your opposition comes from, that you just would, the state would say...

Beyer: All the other corporations have to pay taxes. Mr. Chair, I'm Lee Beyer, Chairman of the Oregon Public Utility Commission. Having spent many years on your side of the table, I think the issue is the one that Senator Metsger just raised. [Inaudible] the issue of who's paying what, I recall that, I believe a study or a review, that Paul's office did a couple years ago in 2001, we went out and looked and I think there were 17,000, I believe, corporations that paid \$10 and I suspect that none of them reduced their prices, so it's a legitimate issue and the problem in taxation as you well know is that you set a tax rate on one side and then you set a lot of other public policies that, for various public goods, you allow offsets or credits against them, so that's where you get there. The reality is that none of these companies that we're talking about have violated the law.

Man: I agree with that.

Beyer: They're all doing, filing their taxes legally and paying less, they're paying the amount of tax that the legislature and Congress has determined is appropriate. The problem in the rate setting side for us, and it sort of gets to your question is, we don't know how all those things are going to fly up front. I suppose one way to get at that would, as Mr. Meek suggested, the true up, but our legal counsel and the Attorney General's office, says we can't do that. It's problematic. Now, there are, obviously there are differences of legal opinion on what you can do and can't do, but I, as an administrative or state agency are bound by what the Attorney General advises us, so we have a legal dilemma there, and I guess you're as the, you get the short straw. You're the legislature and you get to decide what the policy is and what the laws of this state are, so I'm going to turn it back to you. One answer would be, it's going fully around to your question, is if you didn't require taxes to be paid at all by utilities, that would certainly solve the problem and frankly in the rate setting process we would reduce the return on equity commensurate with that.

Man: So it [inaudible] to the rate payer.

Chair: Thank you. Marge, thank you very much. Last to Ms. Kafoury and Mr. Delmazo.

Kafoury: Thank you Mr. Chairman, members of the committee. I'm Marge Kafoury representing the City of Portland and I will be very brief. The clerk is bringing

you a letter that the city council wrote to the Public Utility Commission on March 4th of this year, urging that the utility commission change its practices of allowing tax to be collected in rates and then not having them paid. The policy objectives that the city is interested in having accomplished here is that, if a utility does collect the tax dollars in its rates, that those tax dollars must be remitted to the taxing jurisdiction, and you've talked about this, of course, a lot. I think the expectation of a customer who pays a bill that has tax on that bill is that the expectation from that customer is that those taxes are actually paid to the taxing jurisdiction, so I think that is what the City Council is trying to address. You've heard different opinions as to whether the language before you in Senate Bill 171A actually accomplishes that or not, and I'm certainly not able to tell whether we think it does, but that is the policy objective that they hope that you will achieve through legislation this session. Thank you for your [inaudible].

Chair: Thank you, and Mr. Delmazo, we are now are formally are starting to vote and so...

Delmazo: It'll, it's just some brief comments Mr. Chair. Chair, members of the committee, my name is Ernie Delmazo, I'm president of Dell Information Services, I'm a paralegal. I had a few comments on some of the statements made. Commissioner Beyer, for one, brought forth this statement that businesses, other businesses basically also did not pay taxes or paid the minimum. I might add that those other businesses were not monopolies and they did not specifically charge their customers for taxes that were never paid. Other comments that the PUC currently has authority to get tax records directly from the utilities. We don't understand their statement. Yes, Enron did receive our money, but the end fact is that rate payers paid these taxes and we did not receive them. One noteworthy fact that many aren't aware of is during the years that Enron owned PGE, '97 at least till its bankruptcy in 2001, Enron actually received net tax rebates of \$387 million. It kept our money and actually got rebates from the federal government. Of course, that was for federal taxes. Obviously, since bankruptcy it hasn't paid taxes and continues to collect almost \$2 million a week from us. The PUC has continually allowed PGE to charge income taxes and has actually sided against consumer advocate groups who've gone to court in defense of rate payers. This bill does absolutely nothing except perhaps give PGE legal cover to keep the \$730 million it's already charged rate payers, and I might add that that \$730 million divided by 175,000 rate payers, again, \$1,000 per rate payer on average. It's a substantial amount of money, and I do thank you for your time.

Chair: Thank you. Thank you...

Metsger: Just one comment before we conclude, and thank you for your testimony. As you know, Senate Bill 408 was the one that I sponsored with Senator Walker originally and, to get this, and we heard from, more extensively previously, from the both, PUC, and former commissioner Ron Euchus, who were detailing the issues of why they said the true up wouldn't work. You know, part of the, I think the difficulty we have had with this legislation over the last two years is not only

the warring attorneys but the warring philosophies, which I guess at the very end does come to one conclusion, and that is you reach no conclusion and so nothing gets done, and that's one of the problems we face, and I think we're facing that again, that nothing will change because of that. I think it would be very, very interesting for the members of the Public Utility Commission, from a legal standpoint, is to, and Mr. Meek, I would suggest also would be a great contributor to this, if in fact the arguments regarding the original 408, which Mr. Chair is also in this committee, on the true up, we're talking about legal authorities, if that could be clarified once and for all, I mean, that was all to give us guidance on 171, and because that was the original intention and I realize the utilities didn't like that one either, but I was particularly impressed with the testimony of Mr. Euchus, who I think has a good broad view of these things, who had issues with that, so I think that would be a good research, if Mr. Warner could again revisit those issues and find out why is it again that we are limited in the true up position and maybe clearly articulate that to the Committee, and I think that would just kind of help us sort this issue out, because I think it's too important of an issue to just let sit again for another session with no activity.

Man: Mr. Chairman?

Chair: Senator [inaudible].

Man: I know we need to hurry. Forty-two states do allow consolidated. If, in fact, we were to withdraw from that, my question is this: Does anyone have an opinion as to whether or not that might impact investment in Oregon?

Chair: It's a good question. I don't know who the right person, but I mean, I would look to Gary Bauer at Northwest Natural or someone at PacifiCorp or someone, or Teresa at PGE and it's going to be the parent company, you're going to have to look at where the parent company has other operations. PacifiCorp is the easiest to look at because they have significant operations outside the borders of Oregon. I'm not as sure in terms of PGE and Northwest Natural, but hope Teresa or Gary might be able to meet with us and talk with us about that because we're going to reschedule next week.

Clerk: We have it scheduled for Monday, Mr. Chair.

Chair: And that's going to be too early [inaudible], so we'll revisit whether Monday is the day to conduct this. Thank you very much. Close the work session, Senate Revenue till 9 a.m. Monday.

[End of Public Hearing on Senate Bill 171.]

REVENUE: May have a revenue impact, statement not yet issued  
FISCAL: No fiscal impact

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Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Revenue
Vote:	3 - 0 - 2
Yeas:	Monnes Anderson, Starr B., Metsger
Nays:	0
Exc.:	Atkinson, Deckert
Prepared By:	Theresa Van Winkle, Administrator
Meeting Dates:	2/8; 3/24; 4/7

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MEASURE: SB 171  
EXHIBIT: 2  
SENATE REVENUE COMMITTEE  
DATE: 4-14-05 PAGES: 2  
SUBMITTED BY: Waxner

**WHAT THE MEASURE DOES:** Exempts certain cogeneration facilities and small power production facilities from regulation as public utilities. Makes changes to current statute regarding the tax returns for public electric utilities.

**ISSUES DISCUSSED:**

- Provisions of the measure
- Overview of Public Utility Commission recommendations to the Legislature regarding utility income taxes

**EFFECT OF COMMITTEE AMENDMENT:** Adds provisions to better match taxes collected and taxes paid by regulated utilities: require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon; direct the commission to consider consolidated tax benefits when it includes federal income taxes to customer rates; require regulated utilities to file a general rate case at least once every five years.

**BACKGROUND:** SB 171-A corrects an error in ORS 757.055 related to the definition of a public utility. It reinstates an exemption for certain cogeneration facilities and small power production facilities from regulation as public utilities by adding a reference to the federal laws.

The measure is also a response to a recent recommendation from the Public Utility Commission (PUC) regarding the treatment of income taxes in utility ratemaking. The PUC currently sets a utility's rates on a stand-alone basis, with income taxes included in rates being based on the revenues and costs of the utility's regulated service. Customer rates do not include income taxes related to the utility's unregulated activities and rates do not reflect the operations of the utility's parent or other affiliated companies.

Concerns have been raised from consumer groups and other interests about the mismatch between taxes collected and taxes actually paid. Most of that concern is directed at the effects of filing consolidated tax returns. When the utility's parent company files taxes on a consolidated basis, losses in other unregulated operations can offset the utility's taxable income and reduce the parent's overall tax liability.

4/8/2005 12:00 PM

*This summary has not been adopted or officially endorsed by action of the committee.*

Chair:  
Sen. Rick Metsger

Vice-Chair:  
Sen. Bruce Starr

Staff:  
Theresa Van Winkle, Committee Administrator  
James Goulding, Committee Assistant

Members:  
Sen. Jason Atkinson  
Sen. Ryan Deckert  
Sen. Laurie Monnes Anderson



73rd LEGISLATIVE ASSEMBLY  
SENATE COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

State Capitol  
900 Court St. NE, Rm. 334  
Salem, OR 97301  
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April 7, 2005

Honorable Peter Courtney  
President of the Senate  
State Capitol  
900 Court St. NE, Room S-203  
Salem, OR 97301

Dear President Courtney:

Your Senate Business and Economic Development Committee recently completed hearings on SB 171 and recommends passage with amendments and that a subsequent referral to the Revenue Committee is added.

The Committee adopted amendments, replacing the bill, which modifies current statute and Public Utility Commission policy regarding tax returns for electric utilities. Thus, the committee agrees that review by the Revenue Committee is necessary.

Thank you for your consideration.

Sincerely,

*Rick Metsger*

Senator Rick Metsger  
Chair

*approved 4-11-05*  
*Peter Courtney*





# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

550 Capitol Street NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

March 22, 2005

TO: Sen. Ryan Deckert, Chair, Senate Revenue Committee  
Sen. Rick Metsger, Chair, Senate Business & Economic Development Committee

RE: Recommendation on treatment of utility income taxes

### SUMMARY:

We recommend three changes in Oregon law to better match taxes collected and taxes paid by regulated utilities:

1. Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon.
2. Direct the Commission to consider consolidated tax benefits when it includes federal income taxes in customer rates.
3. Require regulated utilities to file a general rate case at least once every five years.

### DISCUSSION:

Last month, we provided you a staff "white paper" discussing options for the treatment of income taxes in utility ratemaking. Since that time, we have obtained a legal review of the options from the Department of Justice, invited written comments on the white paper and legal memorandum, and held a public workshop to discuss the issues with interested parties. The legal memorandum and all the written comments we received are attached.

Today, we set a utility's rates on a stand-alone basis. The income taxes included in rates are based on the revenues and costs of the utility's regulated service. Customer rates do not include income taxes related to the utility's unregulated activities. Rates do not reflect the operations of the utility's parent or other affiliated companies.

Use of the stand-alone approach is long-standing regulatory practice in Oregon and in most other states. It protects utility customers from bearing the costs of other businesses run by the parent and affiliates. However, we recognize that it is widely perceived as unfair that taxes collected in utility rates aren't always paid to the taxing authorities.

MEASURE: SB 171  
EXHIBIT: 3  
SENATE REVENUE COMMITTEE  
DATE: 4-14-05 PAGES: 1  
SUBMITTED BY: Metzger

## TESTIMONY ON SB 171 A

before the Senate Committee on Revenue

April 14, 2005

Daniel Meek  
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SB 171 A is portrayed as a solution to the problem that Oregon private utilities are currently charging Oregon ratepayers over \$100 million per year for "federal income taxes" and "state income taxes" that in fact those utilities are not paying. PGE alone has been charging ratepayers \$92.6 million per year for such phony "taxes," which neither PGE nor its corporate parent, Enron, has paid to any level of government.

SB 171 A would not accomplish that at all. In fact, it would accomplish virtually nothing, except to authorize the Oregon Public Utility Commission (OPUC) to continue its abusive practice of allowing utilities to charge ratepayers for income taxes that neither the utility nor its corporate parent ever pays.

First, it requires a public utility not to file a consolidated state return. PGE fully complied with this for the entire period it was consolidated with Enron; it filed no consolidated state return. The provision does not require the public utility to file any state tax return at all, and PGE filed none for 1998, 1999, 2000, 2003, and 2004 (and perhaps 2001 as well). Thus, this accomplishes nothing.

Second, it would allow a public utility to file a "modified consolidated state return on behalf of an affiliated group that is limited to includible corporations that are located in this state and that primarily conduct energy-related activities in this state." There is no definition of

"located in this state." Enron is incorporated in Oregon. Further, the charging of phony "state income taxes" to ratepayers is in no way prevented by this provision.

Third, it applies this provision only to tax years starting on or after January 1, 2006, thus allowing PGE to retain the \$730 million it has already charged to Oregon ratepayers for phony taxes since 1997.

Fourth, it requires a utility to show, every 5 years, why it should not have a general rate case. This does not in any way solve the problem or even address it. And the Oregon Public Utility Commission (OPUC) can require a utility to file a general rate case anytime it wants under current law.

Fifth, it allows the OPUC to "authorize the incorporation into rates of estimated federal and state taxes." That is the problem, not the solution. That is what the OPUC has been doing. Of course, the "estimated federal and state taxes" turn out to be completely wrong. It continues: "In determining estimated federal and state taxes, the commission shall take into account the effects of filing federal returns on a consolidated basis." This means nothing, because it does not state how the OPUC is supposed to take that into account. Also, it does not even state what federal returns the OPUC is supposed to look at. PGE filed no federal returns in the years mentioned above.

Also, the bill seems to be based on the assumption that the problem occurs only because of consolidation of returns. But PGE was not consolidated with Enron in 2002. That year, PGE charged Oregon ratepayers \$15.6 million for "state income taxes" and in fact paid ten dollars in state income taxes. Consolidation is not the only problem.

Instead of this bill, this Committee should return to SB 408, which would solve this problem with the amendment of two words in that bill.



## 'True up' utility taxes

Oregon utility regulators look at ways to beat an Enron tax tactic; legislators should address the issue, too

Saturday, February 26, 2005

Enron's stewardship of Portland General Electric was such a disaster that it's hard to identify a single outrage that rises above the others. But the parent company's handling of PGE's federal and state income taxes is a pretty good candidate.

You'll recall that, under Enron, the accountants at PGE regularly noted the amounts set aside for taxes in their financial statements. But Enron was able to consolidate its corporate taxes and balance profitable businesses such as PGE against unprofitable enterprises. Thus, even though PGE's ratepayers were charged for taxes, Enron didn't necessarily pay them. The practice has sent an estimated \$720 million from ratepayer pockets to Enron's bottom line since 1997.

The practice has been one of the lightning-rod issues in the battle about the Texas Pacific Group's proposed takeover of PGE. Opponents use it effectively as an argument against the deal. It's more complicated than the opponents think it is, as is the case with many of their arguments. But they are right on the basic point: Private owners of utilities shouldn't be allowed to slip away unnoticed with that money.

Of course, using a vagary of tax law as an excuse to overturn the TPG-PGE deal leaves two problems: The local utility remains in limbo and the tax law remains in place and applicable to many future ownership scenarios.

Oregon legislators began asking about the problem of tax treatment well before the TPG-PGE deal got under way and, last week, the state Public Utility Commission staff outlined some of its findings. They hint at just how complicated the question is likely to become.

After all, if you think it's difficult to sort through the details of a change in utility ownership, try taking on a tax law that affects a good portion of the American economy. Then add to that the implications to Oregon's economy of addressing this problem in isolation as part of the state tax code.

Utility regulators in Oregon and most other states treat companies such as PGE as if they were stand-alone entities. But as the Enron experience underlined, that's a false picture of reality. Regulators should be able to consider the impact of consolidated tax returns when they calculate a utility's actual rate of return, then apply that knowledge to the rates they allow utilities to charge consumers.

The PUC staff looked at five approaches, only one of which required extensive changes in state tax laws. The others looked at ways to "true up" the accounts of utilities that are subsidiaries of parent companies, after taxes are paid.

The utility commission expects to offer recommendations to the Legislature in the next couple of weeks, and Chairman Lee Beyer says he's not sure what they will be.

Whatever the PUC says, legislators must tackle the problem. Some sort of after-the-fact adjustment to reconcile consumer rates and utility taxes seems like the most promising approach.

In any case, one thing is clear: Ratepayers should not be charged for taxes that the owners of a utility don't pay.



CITY OF  
**PORTLAND, OREGON**

1221 SW Fourth Avenue Portland, Oregon 97204  
[www.portlandonline.com](http://www.portlandonline.com)

Tom Potter, Mayor  
Sam Adams, Commissioner  
Randy Leonard, Commissioner  
Dan Saltzman, Commissioner  
Erik Sten, Commissioner

March 4, 2005

VIA EMAIL TO: [puc.taxwhitepaper@state.or.us](mailto:puc.taxwhitepaper@state.or.us)

Oregon Public Utility Commission  
P.O. Box 2148  
Salem, OR 97308-2148

Re: Comments on Department of Justice Memo  
Recognizing Tax Liabilities in Setting Utility Rates.

Dear Commissioners:

The City of Portland, Oregon appreciates the opportunity to provide comments to the Public Utility Commission on the regulatory treatment of taxes in setting utility rates.

The Department of Justice has advised you that the Commission has the discretion to decide how to address this issue. We are writing to you to urge that you use that discretion and stop allowing utilities to collect monies from Oregon businesses and residents under the guise of collecting taxes while the utilities pocket the monies.

This sleight of hand is simply indefensible on a policy basis. If nothing else, the utilities characterization of these collections as "taxes" is deceptive, and should be stopped.

As reported in the Oregonian, for Portland General Electric alone, the current regulatory scheme may have cost ratepayers as much as \$720 million since 1997.<sup>1</sup> As reported in Willamette Week, Multnomah County has already lost about \$7 million as a result of this scheme<sup>2</sup>. As far as can be ascertained, these amounts represent funds that do not go to the taxing jurisdictions but instead go to Enron, the current owner of PGE. This is at a time when state and local governments are under significant pressure to cut budgets and important public services are in jeopardy.

Taxpayers view the monies given to the utilities for payment of taxes as taxes. This is understandable because that is how the monies are characterized on their bills and in the Commission's rate regulations. We would expect that the community would be as shocked as we were to learn that these monies never end up in state or local coffers but are deposited in corporate accounts—with the Commission's blessing.

<sup>1</sup> Steve Duin, "The Cost of Unregulated Madness", *The Oregonian* (February 27, 2005)  
[http://www.oregonlive.com/news/oregonian/steve\\_duin/index.ssf?/base/news/1109423869115390.xml](http://www.oregonlive.com/news/oregonian/steve_duin/index.ssf?/base/news/1109423869115390.xml)

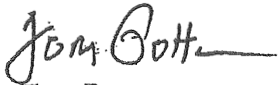
<sup>2</sup> Nigel Jaquiss, "Enron's Tax Holiday: The county taxes you paid to PGE went to Texas", *Willamette Week* (January 19, 2005).

MEASURE: SB 171  
EXHIBIT: 6  
SENATE REVENUE COMMITTEE  
DATE: 4-14-05 PAGES: 2  
SUBMITTED BY: Kafooy

Currently, the Legislature is struggling with how to adequately fund schools and much-needed social services. The Portland City Council is struggling with how to balance its budget over the next biennium how to avoid closing fire stations, how to keep parks open, and how to keep adequate police protection on the streets to respond to an epidemic of methamphetamine abuse. In time such as these, to have utilities collecting monies from Oregon ratepayers under the guise of paying "taxes" that are never proffered to the government should cause you significant concern, as it does us.

The City has no quarrel with balancing ratepayer interests and ability of utilities to make a reasonable profit. However, balance seems to have been lost in a setting where the Commission defends the diversion of significant tax dollars away from our local community into the hands of out of state entities. We urge you to modify this practice immediately.

Very truly yours,



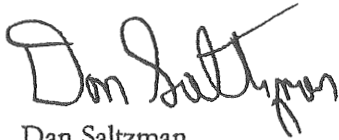
Tom Potter  
Mayor



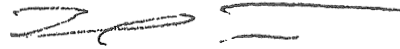
Sam Adams  
Commissioner



Randy Leonard  
Commissioner



Dan Saltzman  
Commissioner



Erik Sten  
Commissioner

**SENATE REVENUE COMMITTEE**  
**APRIL 18, 2005 9:00 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Debra Buchanan, Oregon Dept. of Revenue

Staff Present: Paul Warner, Legislative Revenue Officer  
Lizbeth Martin-Mahar, Economist  
Barbara Guardino, Committee Assistant

**TAPE 98, SIDE A**

005 Chair Deckert Calls meeting to order at 9:11 a.m.

**PUBLIC HEARING, SB 171**

015 Chair Deckert Asks if anyone wants to testify on SB 171-A, which was heard April 14. Asks Paul Warner to comment on the idea of requiring regulated electric utilities to pay no taxes. Would that be legal?

031 Paul Warner Responds, the taxes would be state only so utilities would still file federal income taxes. The key issue on different tax rates, as counsel has told us, is that there has to be some distinct class that can be measured and objectively laid out so there's not a discriminatory issue. If this is met, there should not be a legal problem. PUC's rate decisions could be adjusted to reflect it.

035 Chair Deckert Comments, this might be one clean way of resolving this issue. The true-up is perhaps another. Closes public hearing on SB 171-A.

**PUBLIC HEARING, HB 2453**

060 Lizbeth Martin-Mahar Begins review of HB 2453 (EXHIBIT 1). Extends the current late time period for taxpayers to claim a refund or be given a notice of deficiency for income. Revenue impact is minimal (EXHIBIT 2).

081 Debra Buchanan Explains, HB 2453 was requested by the Dept. of Revenue due to a mismatch between statutes of limitations for individuals who may own an interest in a pass-through entity and the entity itself. See written testimony (EXHIBIT 4). Look at this as matching of statutes of limitations and allowing for adjustments to take place.

**WORK SESSION, HB 2453**

119 Sen. Metsger **MOTION: MOVES HB 2453 TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION**  
**VOTE: 5-0-0**  
**VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**

**PUBLIC HEARING, HB 2454**

- 127 Martin-Mahar Gives overview of HB 2454. Codifies into law a Dept. of Revenue rule. It specifies the allocation procedure in statute for pass through entities' income, gain, loss, deduction or credit for part-year residents and non-residents. See Staff Measure Summary (**EXHIBIT 5**). Applies to tax years beginning January 1, 2002. There is no revenue impact.
- 145 Buchanan See written testimony (**EXHIBIT 7**). Oregon Tax Court rendered a decision regarding allocation of income for a person who moved into Oregon during the tax year. Gives example of a pass-through entity.
- 185 Chair Deckert Guesses there would be a sizeable revenue impact.
- 190 Buchanan Responds yes, but there will be winners and losers. Explains.
- 207 Martin-Mahar Clarifies, Buchanan has described the revenue impact on the court ruling (see exhibit 7), not from this bill. Without this bill, DOR's current law is an administrative rule. That's why there is no revenue impact.

**WORK SESSION, SB 2454**

- 225 Vice Chair C. Starr **MOTION: MOVES HB 2454 TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 228 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS.  
VOTE: 5-0-0  
VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**
- 239 Chair Deckert Closes work session for HB 2454. Adjourns meeting at 9:23 a.m.

Tape Log Submitted by,



Barbara Guardino, Committee Assistant

**Exhibit Summary:**

1. HB 2453, Staff Measure Summary, Martin-Mahar, 4/18/05, 1 pp.
2. HB 2453, Revenue Impact of Proposed Legislation, Martin-Mahar, 2/17/05, 1 pp.
3. HB 2453, Staff Measure Summary for House Revenue Committee on 2/17/05, Martin-Mahar, 1 pp.
4. HB 2453, testimony of Debra Buchanan, 4/18/05, 1 pp.
5. HB 2454, Staff Measure Summary, Martin-Mahar, 4/18/05, 1 pp.
6. HB 2454, Staff Measure Summary for House Revenue Committee on 2/17/05, Martin-Mahar, 1 pp.
7. HB 2454, testimony of Debra Buchanan, 4/18/05, 6 pp.



**SENATE REVENUE COMMITTEE  
SENATE BILL 171 PUBLIC HEARING**

|April 18, 2005|

Chair: Here's what we're going to do today. I'm going to open a hearing on Senate Bill 171. If anybody got cut off on Thursday, give them the opportunity. And that will be all we do on that bill which should effectively clear out this—what is at this room when we do that. Open to public hearing on Senate Bill 171 and is there any testimony or anyone who wants to testify on what was in the bill when we got cut off. Great.

So we were talking so do you know if we went to the idea of just requiring regulated electric utilities to pay no taxes at all, do you know, is that an option or is that—and then just saying that those savings would be passed on to ratepayers. Is that—is that something that you could legally do, to your knowledge?

Man: Mr. Chair, keep in mind, of course, that the taxes would be state only so they would still be filing federal income taxes and there would be some decision as to how those would be—how rates would be adjusted for those. The key issue on different tax rates as counsel has told us is there has to be some distinct class. So there has to be a distinct class that can be measured and seen and objectively laid out so that there's not a discriminatory issue. But I think if it met that, there shouldn't be a legal problem with—with adjusting tax rates with a zero or higher based on that clearly defined class.

Chair: Hmm.

Man: And then in terms of the PUC, they would—their rate decisions could be adjusted to reflect that.

Man: To reflect that.

Chair: Well, if the PUC is listening and, I don't know, Senator Metsger, it's your proposal, so if there's any interest in that, that to me might be one—one clean way—I'm sure there's things I don't see, but one clean way of getting at it pretty much in the [inaudible] office or perhaps another. We'll just keep this in Committee and allow any ideas to come forward. Any other discussion on Senate Bill 171?

Close the public hearing. There won't be a work session on Senate Bill 171 and open then a public hearing on House Bill ...

[End of Public Hearing on Senate Bill 171.]

**SENATE REVENUE COMMITTEE**  
**APRIL 28, 2005 9:00 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Rick Willis, PUC  
Lincoln Cannon, Oregon Forest Industries Council

Staff Present: Paul Warner, Legislative Revenue Officer  
Lizbeth Martin-Mahar  
Barbara Guardino, Committee Assistant

**TAPE 106, SIDE A**

005 Chair Deckert Calls meeting to order at 9:04 a.m.

**WORK SESSION, SB 171**

- 016 Paul Warner Gives overview of SB 171-A, which came from the Business and Economic Development Committee with 3 recommendations from the Public Utility Commission. Those recommendations appear in Section 3 of the bill:  
Recommendation 1 – regarding consolidation of federal returns  
Recommendation 3 – five-year time period for the commission to order a new filing for general rate revision  
Recommendation 2 – additional information the PUC would receive and incorporate into its decisions. This is in section 8 of the bill.
- 030 Warner Explains SB 171-A7 amendment (**EXHIBIT 1**), which cleans up the language in Section 3 and excludes consideration of water districts.
- 042 Warner Explains SB 171-A8, deletes pages 3-5 of the bill (**EXHIBIT 2**). Explains SB 171-A9, (**EXHIBIT 3**) which replaces A8 and adds a section. It also deletes recommendations 2 and 3.
- 061 Sen. Prozanski Discovers SB 171-A9 is missing page 3.
- 077 Sen. Metsger Explains key elements of SB 171-A9, of which he is a sponsor. Eliminates recommendations 2 and 3 for the PUC. Included now is the requirement that when PUC sets the rates for utilities, it looks at them as stand-alone corporations with no unregulated business interests. The bill will allow them to collect taxes based only on their regulated activities in Oregon. Currently, when they file their returns they are allowed to consolidate with other unregulated business interests. They use Oregon tax dollars to offset those, so Oregon State Treasury never gets paid.
- 113 Sen. Metsger Explains why he put the net benefits standard in this bill.

- 117 Rick Willis Testifies in support of SB 171-A on behalf of PUC. Commission supports: 1) requiring utilities to file stand-alone returns 2) codifying in state statute the net benefit standard, and 3) exempting small cogeneration facilities.
- 144 Sen. George Asks if anyone supports the bill besides the PUC.
- 147 Sen. Metsger Responds, everyone involved supports the cogeneration piece; net benefit standard had no opposition; deconsolidated tax return was opposed by Northwest Natural and PacifiCorp. PGE never officially went on the record for deconsolidation but is neutral.
- 159 Sen. Prozanski Asks for more information about the parameters of the cogeneration section of the bill.
- 162 Willis Responds, this provides an incentive for small power facilities under 50 megawatts to generate power and not have them under the full authority of the PUC.
- 182 Sen. Metsger **MOTION: MOVES ADOPTION OF SB 171-A9 AMENDMENTS.**
- 185 Sen. Prozanski Asks follow-up questions on regulation of the smaller cogeneration plants.
- 189 Willis Responds, they would not come under full regulation of the PUC, but the PUC would still exercise some safety regulations. Any citing of a new facility would go through a public process through the Dept. of Energy.
- 219 Warner Comments in regard to the revenue impact of SB 171-A9. Will release a statement that it is indeterminate. There will be years when revenue is positive and when it is negative.
- 232 Chair Deckert **ROLL CALL VOTE: 3-2-0**  
**MEMBERS VOTING AYE: METSGER, PROZANSKI, DECKERT**  
**MEMBERS VOTING NO: GEORGE, C. STARR**
- 236 Sen. Metsger **MOTION: MOVES SB 171-A AS AMENDED TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 239 Sen. Prozanski Will support this motion but will check on the cogeneration issue pertaining to smaller facilities.
- 244 Sen. George Does not see any advantage for ratepayers and is concerned this would have a chilling effect on investments. Will vote no.
- 250 Chair Deckert **ROLL CALL VOTE: 3-2-0**  
**MEMBERS VOTING AYE: METSGER, PROZANSKI, DECKERT**  
**MEMBERS VOTING NO: GEORGE, C. STARR**

**PUBLIC HEARING, HB 2542**

- 285 Linc Cannon Testifies in support of HB 2542-A on behalf of OFIC (**EXHIBIT 4**). His accountants repeatedly express concerns that not reconnecting would be costly and cumbersome because they would have to keep two sets of books. His written testimony contains an example of this. Also, regarding the American Jobs Creation Act of 2004, qualified production activities income and extraterritorial income should be considered separately. The 2004 AJCA consists of nine titles. The first title deals with this exclusively, so it is clear Congress intended a tradeoff. Under this, OFIC members are both winners and losers.
- 355 Cannon A total reconnect is a wash between positive and negative revenue impact. Believes this bill is good tax policy. Urges the committee to pass it.
- 358 Chair Deckert Asks Cannon to respond to the health savings account issue.
- 360 Cannon Cannot respond to this.
- 366 Sen. George Asks if OFIC has seen the minority report filed in the House Revenue Committee.
- 370 Cannon Responds, OFIC opposes the minority report.
- 380 Sen. Prozanski Asks Cannon to elaborate on his testimony concerning seeing this reconnect package as an overall plus. (inaudible)
- 387 Cannon Responds, adding up the pluses and minuses could result in a varied revenue impact. It's bad tax policy. It makes sense to reconnect to the entire federal tax code. There are other ways to raise revenue, and cherry picking doesn't work very well.
- 410 Sen. Prozanski Asks if Cannon believes this body should look at alternative tax expenditures (inaudible) raising revenues through review of those that are on the books now.
- 415 Cannon Responds, a lot of those are on the books for good reasons. In 1999 the House Revenue Committee went through an exhaustive review of tax expenditures and got rid of one. A review is always a good idea, but most of these reconnects are there because previous legislatures thought they were a good idea.
- 442 Chair Deckert Does not buy the notion that just because Congress enacts something that Oregon automatically must be connected to it. These are policy decisions.
- 453 Cannon Congress carefully thinks out and balances these policy decisions. OFIC believes it is good policy to stay fully connected to the federal tax code.

**TAPE 107, SIDE A**

- 027 Chair Deckert If Congress increased taxes on forest owners, would OFIC support that reconnect?
- 039 Willis Responds, Congress did increase forest owners' taxes by eliminating the extraterritorial income exclusion and passing the production activities tax. As an industry we may or may not be gainers and losers, but as individual companies there are gainers and losers.
- 047 Lizbeth Martin-Mahar Refers committee to exhibit 6 distributed to the committee on April 26: HB 2542A – Reconnect Bill: Section by Section Description. A common component is that the current law is being changed. The connection date will be moved from December 31, 2002 to December 31, 2004 to connect to federal legislations in the CPA report. In addition, a rolling reconnect to federal law will be reestablished. Last session members temporarily delayed that reconnect on specific items.
- 083 Chair Deckert Asks if there is any major tax legislation in play, and when is the end date for reconnection.
- 090 Martin-Mahar Responds, under current law, if this legislation were passed without reestablishing a rolling reconnect, Oregon would be disconnected from federal changes throughout the rest of 2005. That was put into play so lawmakers would have this discussion this session. Also, there is some pending legislation concerning military death benefits.
- 105 Martin-Mahar Returns to discussion on April 26 exhibit 6.  
Section 1: Changes Oregon's date reference for statute pertaining to the definitions of S-corporations.  
Section 2: Date references  
Sections 3-11, and sections 13 and 15, update dates from December 31, 2002 to December 31, 2004.  
Section 12: Connects to Oregon's definition for a qualifying child.
- 127 Chair Deckert Asks, what is the Oregon fiscal impact on that component?
- 130 Martin-Mahar Refers to April 26 exhibit 1, Revenue Estimates of the Major Components of Federal Legislation, Recommendation C, page 2, near the bottom, entitled Expansion of Definition of Qualifying Child.
- 142 Martin-Mahar Section 14: Connects Oregon's definition for the disabled child to the federal definition. There is no federal age restriction, while in Oregon the age is 18. This is a policy change because it eliminates the age restriction.
- 157 Martin-Mahar Sections 14(a) and 14(b): Requires personal income taxpayers to elect the same deduction on their Oregon tax returns as was claimed on their federal tax returns. This would be an additional revenue. Refers to April 26 exhibit 1 under American Jobs Creation Act,

middle of page 2, Civil rights tax relief. Mostly low income people would benefit from this add back.

- 211 Martin-Mahar Section 15(a) and (b): Requires corporate excise taxpayers to elect the same deduction.  
Page 2, section 16: Establishes an implementation date, lists legislation that Oregon will connect to.
- 245 Martin-Mahar Dividend Received Deduction  
Section 17, 18 (a-c): Directs members' attention to diagram (EXHIBIT 5), Current Law Dividends Deduction Calculations. The Dept. of Revenue looked at dividends received, and in particular, Real Estate Investment Trusts (REITS). That led to consideration of all the dividends and the connection between federal and Oregon law deduction liability. Explains Box H on page 1, Dividends not receiving a federal deduction.
- 284 Chair Deckert Asks for clarification concerning a REIT or corporation receiving dividends.
- 293 Martin-Mahar Responds, it would be like a C-corporation receiving dividends from a REIT. The Oregon dividends received deductions do not always parallel the federal deduction. Box H clearly has a big disconnect. On the federal level there is no dividend deduction, but Oregon allows a 70-80% dividend deduction.
- 338 Martin-Mahar Continues explanation of Box H with reference to page 2. On the federal level, that deduction is 85%. With the 2004 AJCA, Oregon has to decide whether it is going to reconnect. Oregon under current law is already giving a 70-80% dividend deduction for foreign earnings that are repatriated back to their parent corporations.
- 386 Chair Deckert Asks Martin-Mahar to review items 1-9 (box H page 2). Follow-up questions on Box H.
- 396 Martin-Mahar
- 1) Dividends received from a REIT
  - 2) Income from controlled foreign corporations
- 422 Martin-Mahar DOR does not know what type of dividend they have received when they look at their data. They rely somewhat on federal data. They believe REITs are the majority of that dividend deduction. The others are not significant.
- 481 Chair Deckert Summarizes, items 3-9 don't create a great deal of activity.

**TAPE 106, SIDE B**

033 Martin-Mahar

Refers to the pink box items at the bottom of Box H. No. 8, Foreign dividend gross-up for taxes paid; and No. 9, Certain taxable distributions from DISC. They do not receive a dividend deduction under current law.

- 048 Chair Deckert Asks for an example of a DISC.
- 052 Martin-Mahar Sales corporations are created to deal with just the sales overseas. It is a way to have sales categorized. Oregon has never recognized this for an exclusion or a dividends deduction. DOR has been examining this disconnect.
- 073 Martin-Mahar Refers to April 26 exhibit 1, page 2: Recommendation C, Tax reform and Simplification for Business. This additional revenue is brought in because the federal government gives a huge incentive for corporations to bring earnings back to the U.S. It has to be above a base level that firms have already repatriated back to their parent corporations. Federal revenue impact indicates a loss of revenue in the outer years.
- 092 Sen. George The Legislative Revenue Office report on the revenue impact didn't even attempt to forecast what that increased investment in manufacturing would do for the overall ability to raise money from the jobs created by that reinvestment.
- 097 Martin-Mahar That is correct. There has been no analysis for this provision. Continues with overview: This bill also deals with income tax benefits from tsunami relief contributions. Allows Oregon taxpayers to claim their contributions up through January 2005. This is a wash; there is no revenue impact. Concludes, this bill takes effect 90 days after the end of session.
- 117 Martin-Mahar Returns to Components, April 26 exhibit 1, page 1. Begins overview with Corporate Tax Revenue: Changes with Automatic Connection to Oregon Law – American Jobs Creation Act of 2004: Business Tax Incentives (Depreciation Changes)  
Depreciation changes initially cause a net loss, but then in the outer years it becomes positive.
- 142 Chair Deckert Asks, since the federal bonus depreciation was a three-year temporary component, what would Oregon be connecting to? Isn't it phased out?
- 142 Martin-Mahar That is correct. It would be very difficult to change it.
- 146 Chair Deckert Why is there a positive fiscal impact to this? Does not see how it would factor into the committee's discussion because it's gone from the federal books.
- 149 Martin-Mahar The important thing to think about with depreciation is that it is when the cost of the property is going to be taken as a depreciation expense. This just changes the timing.
- 160 Martin-Mahar This just changes the timing. Positives will never be bigger than the negatives. Look at the overall impact.

- 178 Chair Deckert Persists in wondering why this would be a positive fiscal for Oregon.
- 193 Warner Explains, these numbers are not part of a revenue impact from the bill. This is the result of federal legislation. Page 1 of April 26 exhibit 1 is background information; page 2 is the bill. Some of these provisions have been automatically connected, and the committee has to decide whether to continue them.
- 213 Martin-Mahar Continues, the sales tax deduction wasn't part of HB 2542 at first, so she originally put it on the front of the sheet. Once an add back was added in, it was placed on side 2. Highlights items on side 1, the corporate side, first section: Corporate Tax Revenue.
- 233 Martin-Mahar Discusses Medicare Pres. Drug, Improvement and Modernization Act of 2003. Indirect tax effect from reductions in employer costs. This component will be incorporated into the May forecast.
- 260 Martin-Mahar PERSONAL INCOME TAX REVENUE: Changes with Automatic Connection to Oregon Law. Deals with small companies. Medicare Pres. Drug, Improvement and Modernization Act of 2003. The major component is establishing health savings accounts. This appeared in the March revenue forecast as a reduction.
- 286 Martin-Mahar Working Family Tax Relief Act of 2004 OFFERS extended child care tax credit and marriage penalty relief. This is incorporated into the March forecast.
- 307 Martin-Mahar Page 2, Recommendations C & HB 2542A: CORPORATE TAX REVENUE: Changes Which Need Legislation. The 2004 AJCA repeals the ETI exclusion. This exclusion is phased in through 2007. This is the big tradeoff in Congress as far as needing an ETI exclusion repeal. Congress then allowed an additional deduction. This is the major component in the House Revenue Committee minority report. Full implementation occurs in the 2009-11 biennium.
- 362 Martin-Mahar Business Tax Incentives: S-corporation law changes. The impact is less than \$1 million.  
Tax Reform and Simplification for Business: Incentives to reinvest foreign earnings in U.S.  
Misc. tax reform provisions  
Discusses positive revenue provisions, to total \$10.7 million in 2005-07 biennium.
- 399 Martin-Mahar Medicare Pres. Drug, Improvement and Modernization Act of 2003. A major component that is part of the minority report is excluding federal subsidies for certain drug plans from income from employers. Allows employers to receive subsidies for keeping their prescription drug plans for retirees. They no longer have to report these subsidies on their corporate taxable income.



**TAPE 107, SIDE B**

025 Martin-Mahar

PERSONAL INCOME TAX REVENUE: Changes Which Need Legislation. Civil rights tax relief has very little revenue impact. Attorney fees for civil rights cases are a deduction.

Military Family Tax Relief Act of 2003: Connects with additional death benefits death benefits.

Expansion of Definition of Qualifying Child. This allows grandparents and step-parents to claim the working family tax credit.

043 Chair Deckert

Committee will lay this bill aside for about a month. Closes public hearing on HB 2542-A. Adjourns meeting at 10:30 a.m.

Tape Log Submitted by,



Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 171-A, Amendment SB 171-A7, 4/18/05, Legislative Counsel, 1 pp.
2. SB 171-A, Amendment SB 171-A8, 4/25/05, Legislative Counsel, 1 pp.
3. SB 171-A, Amendment SB 171-A9, 4/27/05, Legislative Counsel, 1 pp.
4. SB 171-A, testimony of Lincoln Cannon, Oregon Forest Industries Council, 4/28/05, 2 pp.
5. HB 2542, Current Law Dividends Deduction Calculations, 4/26/05, Martin-Mahar, 2 pp.

SENATE REVENUE COMMITTEE  
SENATE BILL 171 WORK SESSION

April 28, 2005

Chair: [Begins mid-sentence] ... so let's go ahead and get started on 171 and request Senator George and Senator Prozanski, if they can hear us, that we're going to open a work session on Senate Bill 171. Paul, do you want to talk to us and then I'll hand it off to Senator Metsger?

Graham: Okay. Mr. Chair, the A-engrossed bill that you have before you came over to you from Senator Metsger's Committee with—incorporating the three recommendations of the PUC. And those recommendations appear in Section 3 of the bill. It's actually the first recommendation regarding consolidated federal returns. Recommendation number 3 is the five-year time period for the commission to order a new filing for general rate revision; that was recommendation number 3. And then recommendation number 2 was the additional information that the PUC would get and would incorporate into its decisions. Actually it shows up most explicitly right at the end of the bill, the end of Section 8, that upon application, the PUC may authorize incorporation into rates of estimated federal and state taxes. So that was recommendation number 2 of the three recommendations from the PUC.

Now, you have before you three amendments. The -7 amendment cleans up the language in Section 3 but does not change the content other than excluding from consideration water districts. We have a list of a large number of water companies that would fit under the definition of ORS 757.05. So essentially what this would do is relegate the bill to utilities that are involved in electricity or natural gas. So that's the -7s.

The -8s do that same thing regarding the elimination of the water utilities, but it also eliminates pages 3 through 5 of the bill, deletes them, which in effect limits the bill to just recommendation number 1 regarding the consolidated returns.

Chair: This is your amendment?

Man: A9 actually.

Graham: This the A8 and—which is—and then the A9 replaces the A8 and then adds a section that—

Man: Oh, yeah.

Graham: So it also does the same thing as the A8 does and the A7, for that matter. And it then deletes the recommendations 2 and 3. And then has some language on

page 3 regarding the acquisitions and factors that the PUC should take into account in those applications for acquisitions.

Man: Mr. Chair ...

Chair: Paul, you said page 3 on the A9?

Graham: Yes.

Chair: I've got a page 1, page 2 and a page 4. So is there actually a page 3?

Graham: Yeah.

Chair: Oh, you're talking about utility deletes.

Graham: Right. Oh, I'm sorry.

Chair: Okay.

Graham: But the A9 should have a page 3, though, too.

Chair: No, I don't have a page 3.

Man: Trust us. It's a good—good language.

Man: You want to give him—he could have my copy.

[Multiples voices discussing missing page 3.]

Chair: Senator Metsger, please.

Metsger: Thank you, Mr. Chair. And I would ask Mr. Willis of the PUC to come up while I'm talking. Colleagues, I just want to go over just real briefly what these do. Mr. Willis, maybe you want to talk about the base bill. I know we haven't talked about that. We moved that policy decision out of business on the cogen facilities which was a department bill and there was no opposition to that. The key elements that have been added here after our last hearing is that—that are reflected in the –A9s as Mr. Warner pointed out, was I decided to eliminate recommendations 2 and 3 from the PUC because I felt all that did was add more objections to the issue regarding the federal tax considerations, regarding the five-year mandatory look for a rate hearing and includable in that now is simply the requirement that—for electric utility companies—all the water companies are eliminated, so we're just talking about the electric utilities in the A9 and you heard from the discussion we had before and that is when the PUC sets the rates for these utilities, they look at the utility as if it is a standalone corporation with no unregulated business interests either here or outside the state of Oregon. And they look at it as a standalone company and they're allowed to collect taxes from the ratepayers based on only their regulated activities in Oregon. But what hasn't

happened is that—while they are allowed to collect from taxpayers those taxes, when they go to file their returns, they are then allowed to consolidate with other business interests, unregulated interests they may have in other states, and essentially use Oregon tax dollars to offset those and so that the treasury never gets the money that the taxpayers paid. So this simply says you are allowed to collect taxes based on a standalone company; we want you to file them as a standalone company. And then the other element in the A9 that was added is the—essentially the ruling by the PUC that if anybody wants to acquire an electric utility, that they have to have a net benefit to the ratepayer with no harm to the public at large. That is a ruling by the PUC. We felt it was good to put it into statute because it hadn't been challenged yet. It was used very effectively, you might remember, Colleagues, in the TPG case. And we feel by having a new statute would give the PUC the proper legal authority for their ruling. So this is good customer and ratepayer, you know, legislation and I think it's—it's the right thing to do. And the reason, by the way, we put the net benefit standard in this bill, I had had that in Senate Bill 671, which you know the folks from the Oregon Mutual Utility are working because of the feature that is uncertain, I didn't want that in this important public benefit statute to get lost in that discussion, and that's why I included it here, Mr. Chair.

Chair: Thank you. Well, any questions for Senator Metsger since he's put together the three amendments that are before the Committee before we turn it over to the good Mr. Willis. Good Mr. Willis.

Willis: Thank you Mr. Chair. Well, I think the bill has been explained fairly well. Just to walk through it quickly and give you the Commission's perspective on it. The first piece is requiring the utilities to file standalone deconsolidated state returns. The commission supports that. That was part of the recommendation that the Commission had made on this tax issue. It would then have the monies that customers paid in the rates actually go to the state treasury for state taxes.

The second part is kind of codifies—

Chair: Would you give the Chair your name for the record.

Metsger: Forgive me. Rick Willis for the Public Utility Commission.

Willis: The second piece of it codifies in the state's statutes the net benefit standard and, as Senator Metsger mentioned, that is a standard that we currently use. It's an administrative rule, administrative law that we use. And we think it would be helpful to have it put in the state statutes so that it's very clear that this is a standard that we follow. And again this Commission supports that piece.

And the third part of the bill is the part that started out in 671 and that is to correct the—it's a ministerial error and it reinstates an exemption for small cogen—co-generation facilities and small power plants—from regulation by the PUC. And obviously we support that as well.

Chair: Right.

Willis: So we are supportive of the bill.

Chair: And you've seen all the A7s, A8, A9s and you're very familiar, it sounds like. Thank you.

Metsger: Mr. Chair, we have a couple [inaudible].

Chair: Great. Questions for the PUC? Senator George.

George: I'm looking through this file and I don't see—is there anyone else supporting this bill besides the PUC? Is there anyone else?

Willis: Is that question for me?

[Laughter.]

Mr. Chair, Senator George, I'm not sure.

Metsger: Well, I can answer Senator George.

Chair: Senator Metsger.

Metsger: We have three parts here. We had—the cogen piece was supported by everyone in the Business Committee including the testimony. The UM 1011 net benefit standard had no opposition. The—I'm a supporter of that. The other—the third area, the deconsolidated tax return, was opposed by the two energy companies, Northwest Natural and PacifiCorp, and the City of Portland?

Voice: [Inaudible.]

Metsger: Oh, okay. And the City of Portland supports it all, I'm sorry. And we never had officially had PGE on the record. If PGE would like to go on the record—my understanding was they were neutral on that provision. And the nod is yes, PGE is not—

Man: Once again neutral.

Metsger: --opposed, but neutral on that provision.

Prozanski: Mr. Chair.

Chair: Yes, Senator Prozanski.

Prozanski: I wonder if we can get just a little bit more information about the cogen part as to what the parameters are or what type of facilities we're talking about.

Chair: Yes, good point. Sir?

Willis: Mr. Chair, Senator Prozanski, this came out of Senate Bill 1149 from the 1999 session and is part of that huge bill. Unfortunately, this piece got tweaked. And what these are are small, like, cogens, small power facilities under 50 megawatts and the idea is to provide an incentive for these small utilities to generate power and not have them under the full authority of the PUC.

Prozanski: So they're smaller generating plants.

Chair: Are there questions or comments for the PUC? Thank you very much. Anyone else before—we're in work session but if you'd like, since these are new amendments, we definitely debated most of these issues a great deal, but anyone else that would like to say anything to us before we—great, Senator Metsger.

Metsger: Senator Deckert, I move the –A9 amendments to Senate Bill 171.

Chair: Senator Metsger has moved the –A9 amendments to Senate Bill 171. Discussion.

Prozanski: Mr. Chair.

Chair: Senator Prozanski.

Prozanski: Just on the cogen, I understand that those smaller plants wouldn't be regulated at all or just—or would have different regulations on the PUC?

Chair: I'm trying to remember from the—Mr. Willis, would you like to—

Willis: Retreated too soon. Mr. Chair, Senator Prozanski, they would not come under the full rate regulation of the PUC. We would still exercise some safety regulation over those smaller plants ...

Prozanski: Okay.

Willis: ...to be sure that there's not a public safety issue.

Prozanski: And if these are plants that are coming online, is there a process for the public to be heard from and giving testimony at any type of hearings?

Willis: Mr. Chair, Senator Prozanski, for any siting of a new facility, yes, there is a public process that goes through the Department of Energy and their energy siting facilities route that has a public process for that, yes.

Prozanski: One last question. Regarding these facilities—I should say this component that's within the bill what I heard you say earlier, Mr. Willis, was that this is something that may have not been fully included or levered on the 1149 in 1999 bill?

Willis: Mr. Chair, Senator, yes, that's correct. They had not been regulated previously. Through an error in 1149 that, if you recall, that was a huge bill and just nobody caught it, they inadvertently fell under regulation.

Prozanski: Complete?

Willis: Yes. And so this bill takes them back to where they were originally.

Prozanski: Okay.

Chair: Other discussion or questions? Paul?

Graham: Mr. Chair, I just wanted to make a comment regarding the revenue impact. I will release a statement for you basically that it's indeterminate given that the—that the taxpayers involved are—all file consolidate returns so there will be years in which obviously the revenue would be positive, but there could be years where its negative, too, depending on the overall profitability of the consolidated group. So in terms of revenue impact itself, I'll issue one that discusses that issue, but there won't be any numbers assigned to it because of that, that uncertainty given the number of companies that are—that are currently filing under that same return.

Chair: Great. Maybe this is absolution to the budget gap that's taxing us so [inaudible]. Other questions or—okay. Thank you, Mr. Willis.

Barbara, will you call the roll on the –A9 amendments to Senate Bill 171.

Barbara: Senator George.

George: No.

Barbara: Senator Metsger.

Metsger: Aye.

Barbara: Senator Prozanski.

Prozanski: Aye.

Barbara: Vice Chair Starr.

Vice Chair: No.

Barbara: Chair Deckert.

Chair: That's aye. Votes are adopted.

Metsger: Senator, Mr. Chair, I move the House—Senate Bill 171, as amended, to the floor for do pass recommendation.

Chair: Senator Metsger has moved Senate Bill 171, as amended, to the floor with a do pass recommendation. Discussion.

Man: Mr. Chair.

Chair: Yes.

Man: I'm going to be supporting the motion on this, but I also—one thing I do want to check is on the cogeneration part. I know that there's some smaller—these facilities that are coming up online are going to propose somewhere in my community and I just want to make sure that it's not going to have some type of adverse effect that they would be more concerned with. But I think it sounds fine from what I've heard. I just want to say I'll move it now. I'll let the Chair and Senator Metsger know if anything should change. [Inaudible.]

Chair: Right, right. Other discussion on—yes, Senator George.

George: Mr. Chairman, I'm still concerned that I don't—even as amended, don't see any advantage to ratepayers and I'm really concerned that what this may do is have a chilling effect on anyone who may want to invest in power generation in Oregon and distribution so I'll be a no vote.

Chair: Uh-huh. Okay. Any other discussion.

Barbara, please call the roll.

Barbara: Senator George.

George: No.

Barbara: Senator Metsger:

Metsger: Aye.

Barbara: Senator Prozanski.

Prozanski: Aye.

Barbara: Vice Chair Starr.

Vice Chair: No.

Barbara: Chair Deckert.

Chair: Vote's aye. The bill passes to the Senate floor and Senator Metsger will carry that bill.

[End of Work Session on Senate Bill 171.]



MEASURE: SB 171  
EXHIBIT: \_\_\_\_\_  
SENATE REVENUE COMMITTEE  
DATE: 4-28-05 PAGES: 1  
SUBMITTED BY: W. G. SNEY

PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 171

1 On page 2 of the printed A-engrossed bill, delete lines 26 through 36 and  
2 insert:

3 **“SECTION 3. (1) As used in this section:**

4 **“(a) ‘Affiliated group’ has the meaning given that term in section**  
5 **1504 of the Internal Revenue Code.**

6 **“(b) ‘Includible corporation’ has the meaning given that term in**  
7 **section 1504 of the Internal Revenue Code.**

8 **“(c) ‘Public utility’ has the meaning given that term in ORS 757.005,**  
9 **except that ‘public utility’ does not include a utility engaged in the**  
10 **production, delivery or furnishing of water or an association described**  
11 **in ORS 757.063.**

12 **“(2) Notwithstanding any other provision of law, a public utility**  
13 **that elects or is required to file a consolidated federal return or be an**  
14 **includible corporation reported on a consolidated federal return may**  
15 **not file a consolidated state return.**

16 **“(3) Notwithstanding subsection (2) of this section, a public utility**  
17 **may elect to file a modified consolidated state return on behalf of an**  
18 **affiliated group that is limited to includible corporations that are lo-**  
19 **cated in this state and that primarily conduct energy-related activities**  
20 **in this state.**

21 **“(4) The Department of Revenue may adopt rules to further define**  
22 **terms used in this section and to implement the provisions of this**  
23 **section.”.**

SB 171-A8  
(LC 434)  
4/25/05 (DJ/ps)

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 171**

MEASURE: SB 171  
EXHIBIT: 2  
SENATE REVENUE COMMITTEE  
DATE: 4-28-05 PAGES: 1  
SUBMITTED BY: WASHBY

1 On page 1 of the printed A-engrossed bill, line 2, after "ORS" delete the  
2 rest of the line and insert "757.005".

3 On page 2, delete lines 30 through 34 and insert:

4 "(2) Subsection (1) of this section does not apply to a water utility, as  
5 defined in ORS 758.300."

6 Delete lines 39 through 45 and delete pages 3 through 5.  
7 \_\_\_\_\_

MEASURE: SB 171  
EXHIBIT: 3  
SENATE REVENUE COMMITTEE  
DATE: 4-28-05 PAGES: 4  
SUBMITTED BY: WASHNET

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 171**

1 On page 1 of the printed A-engrossed bill, line 2, after "ORS" delete the  
2 rest of the line and insert "757.005, 757.506 and 757.511."

3 On page 2, delete lines 30 through 34 and insert:

4 "(2) Subsection (1) of this section does not apply to a water utility, as  
5 defined in ORS 758.300."

6 Delete lines 39 through 45 and delete pages 3 through 5 and insert:

7 "**SECTION 5.** ORS 757.506 is amended to read:

8 "757.506. (1) The Legislative Assembly finds and declares that:

9 "(a) The protection of customers of public utilities [*which*] **that** provide  
10 heat, light or power is a matter of fundamental statewide concern;

11 "(b) Existing legislation requires the Public Utility Commission's ap-  
12 proval of one public utility's acquisition of another public utility's stocks,  
13 bonds and certain property used for utility purposes, but does not require the  
14 commission's approval of such acquisitions by persons not engaged in the  
15 public utility business in Oregon; and

16 "(c) An attempt by a person not engaged in the public utility business in  
17 Oregon to acquire the power to exercise any substantial influence over the  
18 policies and actions of an Oregon public utility [*which*] **that** provides heat,  
19 light or power could result in harm to [*such*] **the** utility's customers, in-  
20 cluding but not limited to the degradation of utility service, higher rates,  
21 weakened financial structure **of the utility** and diminution of utility assets.

22 "(2) It is, therefore, the policy of the State of Oregon to regulate acqui-  
23 sitions by persons not engaged in the public utility business in Oregon of the  
24 power to exercise any substantial influence over the policies and actions of

1 an Oregon public utility [*which*] that provides heat, light or power in the  
2 manner set forth in this section and ORS 757.511 [*in order to prevent unnec-*  
3 *essary and unwarranted harm to such utilities' customers*].

4 **"SECTION 6.** ORS 757.511 is amended to read:

5 "757.511. (1) [*No person, directly or indirectly, shall*] A **person may not**  
6 **directly or indirectly** acquire the power to exercise any substantial influ-  
7 ence over the policies and actions of a public utility [*which*] that provides  
8 heat, light or power without first securing from the Public Utility Commis-  
9 sion, upon application, an order authorizing [*such*] **the acquisition** [*if such*  
10 *person is, or by such acquisition would become, an affiliated interest with such*  
11 *public utility as defined in ORS 757.015 (1), (2) or (3)*] **of that power.**

12 "(2) The application required by subsection (1) of this section shall set  
13 forth detailed information regarding:

14 "(a) The applicant's identity and financial ability;

15 "(b) The background of the key personnel associated with the applicant;

16 "(c) The source and amounts of funds or other consideration to be used  
17 in the acquisition;

18 "(d) The applicant's compliance with federal law in carrying out the ac-  
19 quisition;

20 "(e) Whether the applicant or the key personnel associated with the ap-  
21 plicant have violated any state or federal statutes regulating the activities  
22 of public utilities;

23 "(f) All documents relating to the transaction giving rise to the applica-  
24 tion;

25 "(g) The applicant's experience in operating public utilities providing  
26 heat, light or power;

27 "(h) The applicant's plan for operating the public utility;

28 "(i) How the acquisition will serve the public utility's customers in the  
29 public interest; and

30 "(j) [*Such*] **Any** other information [*as*] **that** the commission may require

1 by rule.

2 “(3) The commission **shall** promptly [*shall*] examine and investigate each  
3 application received pursuant to this section and shall issue an order dis-  
4 posing of the application within 19 business days of its receipt. [*If the com-*  
5 *mission determines that approval of the application will serve the public*  
6 *utility's customers in the public interest, the commission shall issue an order*  
7 *granting the application.*] In addition to any other factors the commis-  
8 sion considers relevant to making a determination under this section,  
9 the commission is authorized to consider the reasonableness of the  
10 anticipated profits of the applicant following the acquisition in relation  
11 to the anticipated benefits and liabilities to be borne by the public  
12 utility's customers following the acquisition. The commission shall  
13 issue an order approving the application if the commission determines  
14 that the acquisition:

15 “(a) Will constitute a net benefit to the customers of the public  
16 utility; and

17 “(b) Will do no harm to the interests of the public in general.

18 “(4) The commission may condition an order **approving the application**  
19 **and** authorizing the acquisition upon the applicant's satisfactory perform-  
20 ance or adherence to specific requirements.

21 “(5) The commission [*otherwise*] shall issue an order denying the appli-  
22 cation **if the commission is unable to make the determination described**  
23 **in subsection (3) of this section.** The applicant shall bear the burden of  
24 showing that [*granting the application is in the public interest*] the require-  
25 ments of subsection (3) of this section will be satisfied by the  
26 applicant.

27 “[~~(4)~~] (6) Nothing in this section shall prohibit dissemination by any party  
28 of information concerning the acquisition so long as such dissemination is  
29 not otherwise in conflict with state or federal law.

30 “SECTION 7. The amendments to ORS 757.506 and 757.511 by

1 sections 5 and 6 of this 2005 Act apply to applications for Public Utility  
2 Commission approval under ORS 757.511 for which the commission is-  
3 sues an order disposing of the application on or after the effective date  
4 of this 2005 Act.”.

5

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**SENATE REVENUE COMMITTEE**  
**MAY 18, 2005 9:00 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Justin Martin, Defenders of Wildlife  
Cheryl Hummond, Defenders of Wildlife  
Kay Teisl, Oregon Cattlemen's Assoc.  
Cheryl Livingston, Oregon Cattlemen's Assoc., Pendleton  
Gil Riddell, Association of Oregon Counties

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

**TAPE 123, SIDE A**

004 Vice Chair C. Starr Calls meeting to order at 9:07 a.m.

009 Chair Deckert Opens work session on SB 171-B.

**WORK SESSION, SB 171-B**

012 Sen. Metsger Hopes to have a revised bill next week. After the bill came out of committee there was a lot of confusion regarding the approach in dealing with income tax for utilities. The primary point of discussion was consolidation/deconsolidation. A group met Monday and developed an approach that it is working on with Legislative Counsel. They are attacking it as a rate-setting issue. Public Utility Commission, when it sets liability, will mirror what taxpayers owe. It will more closely reflect the liability of the company. If those liabilities are less than what customers pay, PUC will take that into account. Believes this could have a significant tax reduction for businesses and individuals collectively which will return to the Oregon economy. Attorneys representing the interested parties, Sen. Vicki Walker and Sen. Metsger were involved in this discussion group.

061 Sen. Prozanski Sounds like consolidated returns would still be permitted but the PUC would take under consideration a utility company's obligations. If they consolidated with other components of their parent corporation and their actual tax was less, is there some type of offset as to future rates?

067 Sen. Metsger It won't have any impact on how they file tax returns. PUC will look at historical liabilities. Tax rates are an estimate of that liability, created by multiple corporations. This bill will have PUC measure the liabilities against rates, and adjust the allowable collection of taxes

based on that figure.

- 084 Sen. Prozanski Follows up. Will there be more discussion as to how a utility may try to justify a rate increase in an attempt to offset an adjustment? People who paid the taxes in the past may no longer be in the system to benefit from the adjustments.
- 104 Sen. Metsger Responds, the adjustments are ongoing. PUC will look at the last three years and see what has been collected and whether that amount reflects the liability. The PUC will credit collections until those taxes are achieved.
- 124 Sen. Prozanski Could PUC look back and see what the liability was and make that adjustment? Is concerned that there will be a need to reflect back on what the actual liability was in order to make those adjustments.
- 134 Sen. Metsger They will be doing this on a regular basis.
- 137 Sen. George Basically, we're saying, "don't collect more in taxes than you pay or we'll be back." This puts everything back on the real numbers – if you collect it, pay it.
- 148 Chair Deckert This seems to be the easiest way to get at this issue. This bill will return. Closes work session on SB 171-B.

**WORK SESSION, HB 2197**

- 163 Mazen Malik Refreshes members' memory on HB 2197-A. It attempts to complete the circle on the transient lodging tax passed in 2003 session. That language omitted certain lodging facilities. The tax is 1% dedicated to tourism. This bill increases what would be collected under the previous bill by 1.5%. Clarifies confusion about numbers discussed in an earlier committee meeting. The bill was amended in the House.
- 235 Vice Chair C. Starr **MOTION: MOVES HB 2197-A TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 237 Sen. George Does not see a relationship between this bill and tourism, so will vote no.
- 239 Chair Deckert **ROLL CALL VOTE: 4-1-0**  
**MEMBERS VOTING AYE: METSGER, PROZANSKI, C. STARR, DECKERT**  
**MEMBERS VOTING NO: GEORGE**

**PUBLIC HEARING, SB 593-A**

- 250 Mary Ayala Notes, SB 593-A2 (**EXHIBIT 1**) and SB 593-A3 (**EXHIBIT 2**) correct errors discovered over the last few days. The corrected items are trivial. Summarizes, the bill establishes a property tax special assessment program for land subject to a conservation easement (**EXHIBIT 3**). This bill is important because it pertains to owners of



property that are designated as farmland and forestland. However, some owners have not declared that they have given conservation easements to portions of their property because under current law the properties might lose their designations and be taxed at a higher rate.

- 298 Ayala Discusses revenue impact (**EXHIBIT 4**) and how she arrived at the estimate.
- 315 Justin Martin Submits written testimony (**EXHIBIT 7**). Urges support of SB 593 which resolves a minor technical problem in current statutes. It allows landowners to enter into a conservation easement without being penalized by back taxes. There is minor-to-no revenue impact. Would like to sit down with county officials and work with them on their concerns over this bill.
- 334 Cheryl Hummond This bill came out of an interim work group in 2002, which met to review Oregon's conservation incentive programs and develop recommendations. This bill had broad support from a wide group of stakeholders. They are ironing out details with amendments. Points out, counties attended part of the interim work group.
- 355 Hummond At Chair Deckert's request, explains that this bill allows a landowner who has a conservation easement to retain a special assessment they already had for property taxes, but still move into a new category.
- 383 Chair Deckert Asks for an example of who could benefit from this.
- 388 Hummond Gives an example of a landowner in Lincoln County with scenic property in a forestry special assessment, which requires the forest be used for timber harvest. She prefers to have a conservation easement on the property. Currently, she would lose her forestry special assessment and would owe back taxes based on the full market value.
- 443 Sen. George The reason for timber tax breaks is to keep farmers in business. The anticipation is, eventually they make the harvest. Here, the product is only the scenic value. How do we justify the potential revenue loss?
- 467 Hummond Responds, land that is used for conservation does provide economic value – for example, clean water, fish and wildlife. Second, conservation incentive bills passed in 2001 and 2003 recognize conservation as a legitimate land use in Oregon. Goals 3 and 4 of Oregon's land use planning system, which address farming and forestry, are very important.

**TAPE 124, SIDE A**

038 Sen. George

About 56% of Oregon is already owned by government. Expresses concern that the productive portion of Oregon continues to be

diminished. Resents the idea that good forestry results in dirty water. It is the cities that are polluting the rivers. Has a problem with granting the same status of tax break as would be granted for commercial purposes.

- 053 Hummond Responds, this assessment would involve only a dozen or so landowners each year. It is a very complex tool. Having this special assessment is another tool for a private landowner to make choices for their property without being penalized. Also, this does not necessarily take land out of production. Easements are at times used to retain the current use of the land.
- 084 Sen. George Asks, how do you get out of an easement if that land is needed?
- 089 Hummond It is usually a permanent agreement, and it takes a lot of work.
- 102 Vice Chair C. Starr Objects to Hummond's definition of conservation. It is a figment of the environmental movement's imagination that setting aside property is conserving. Conserving is using property that brings added value through management and use. Setting it aside is preservation, not conservation. Nature has a way of destroying what we don't use and manage well – e.g. insects, disease and fires. Conservation is managed use that benefits mankind. Is disturbed to see this term used to tie up property from beneficial uses.
- 130 Hummond The word "conservation" in this context follows the federal definition and is in the Oregon statutes.
- 140 Chair Deckert It seems that the definition gets in the way of the program itself. Wonders if there is a way to change the name so it won't provoke strong feelings.
- 149 Hummond Adds, the definition of conservation as a voluntary tool is between the landowner and the holder. We don't determine the definition.
- 184 Kay Teisl Testifies against the bill. See written testimony verbatim (**EXHIBIT 8**). Encourages the committee to vote against the bill.
- 210 Cheryl Livingston Testifies against the bill. Gives an example of why OCA is opposing this bill. There are several conservation easements in Umatilla County, and it has lost a great deal of land. The region is a depressed area. This is a poor use of state funds. It locks up property that could be used for production.
- 256 Sen. George Discusses a fire that occurred on a conserved property because the grass was allowed to grow tall and decay. The fire was started by lightning. Eventually the fire burned through the countryside, caused great erosion, and then headed for the federally owned timberlands.

- 276 Livingston Her property borders a national forest. She logs her land and keeps her timber thinned. She can't ride a horse through the national forests because the vegetation is so thick. "When the fire comes next door," she hopes her efforts will save her property from destruction.
- 299 Chair Deckert Grapples with situations such as in Lincoln County where a landowner wants to do an easement. In that case the state should not stand between the landowner and the public trust. Question is, why not allow them the same tax treatment as if they were using that land for production?
- 326 Livingston Responds, she conserves her property because it's the right thing to do, not for money. Don't take land out of production and expect our county to struggle. There are two sides to every issue.
- 339 Chair Deckert Is it accurate to say that you believe if it's not in production an exemption should not be given?
- 349 Livingston Responds, why should we pay them to take it out of production and also reduce their taxes? Take the easement money, put it in a fund and pay your taxes. They want both – to keep their land and to have reduced taxes.
- 360 Sen. George What happens to the tax deferral if this land is sold?
- 365 Livingston The back taxes must then be paid.
- 375 Sen. Prozanski Wouldn't that scenario play out that it would be logged and taxes would be paid at that time?
- 389 Sen. George They would capture some of it back, but developers try to keep the trees standing.
- 402 Gil Riddell Testifies in regard to fiscal impact/cost of service issues. Conferred with Washington County Assessor Jerry Hanson who told him the filing process for this is different from a normal assessment and taxation process. There are two sets of responsibilities: 1) process the application; 2) periodic review. Requests amendments to this bill.

**TAPE 123, SIDE B**

- 030 Sen. George Asks if anyone has calculated the actual tax loss.
- 035 Riddell That is revenue impact, not fiscal. AOC has stayed out of this issue because it doesn't know which direction to go. Times change and this program seems to have evolved into this area. Proponents mentioned that easements can include harvesting and managing. That's the kind of easement that AOC supports. There is certainly a revenue impact.
- 061 Sen. George State has created a lot of wetland areas and now West Nile virus has

infested them. Has anyone determined the cost of fighting this?

- 075 Riddell Responds, no.
- 078 Hummond Most discussion she's heard assumes conservation easements are used only for conservation and not for production. This is untrue. Many landowners are interested in multiple uses of their land. In addition, very few conservation easements occur in Oregon and not many would take advantage of this new tool. Conservation easements are not causing wildfires or diseases; they require active management by the landowner or holder. Responds to Riddell's comments on the growing uses of special assessments.
- 109 Sen. George If counties were to be compensated for lost revenues, he's fine with this concept, but does not want any more land taken away from counties and cities that are hurting.
- 117 Sen. Prozanski Wonders if witnesses have information where these properties are benefiting the areas economically.
- 123 Hummond Does not have specific examples, but scenic value is important to tourism, hunting and fishing, and provides economic benefits to Oregon.
- 129 Chair Deckert Closes public hearing. Adjourns meeting at 10:12 a.m.

Tape Log Submitted by,



Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 593-A, Amendment SB 593-A2, Leg. Counsel, 5/10/05, 1 pp.
2. SB 593-A, Amendment SB 593-A3, Leg. Counsel, 5/17/05, 1 pp.
3. SB 593-A, Staff Measure Summary, Ayala, 5/18/05, 1 pp.
4. SB 593-A, Revenue Impact of Proposed Legislation, Ayala, 5/18/05, 1 pp.
5. SB 593-A, Staff Measure Summary for SB 593-A2, Ayala, 5/18/05, 1 pp.
6. SB 593-A, Staff Measure Summary for SB 593-A3, Ayala, 5/18/05, 1 pp.
7. SB 593-A, Removing barriers to voluntary land conservation agreements, Martin, 1 pp.
8. SB 539-A, testimony of Kay Teisl, 5/13/05, 1 pp.

**Senate Revenue Committee  
Senate Bill 171 Work Session**

**May 18, 2005**

Metsger: [begins mid-sentence] ... we were talking Mr. Chair about the possibility of getting an update on Senate Bill 171.

Chair: That's a good idea.

Metsger: I had not opened the work session, but if you would like to do that . . .

Chair: That's a great idea. Let's open a work session on Senate Bill 171. Senator Metsger, you've been working extremely hard on this bill. Where are you at?

Metsger: Okay, thank you Mr. Chair, members. We hope that we will have a revised bill for you next week on 171 and after, you know, some of the discussion after the bill came out of Committee there was, you know, a lot of session confusion and different points of view regarding the approach of dealing with income taxes of utilities and as you know the primary issue of contention in that bill, that discussion, was the consolidated or deconsolidated tax return issue and what impact it does/doesn't have, etc. And so, we met, a group of us met on Monday, including the Department of Justice and business and residential consumer interests who pay those taxes, and developed an approach that we are working on right now in Legislative Council to attack the issue not as a tax issue, as a tax filing issue, so that companies can file any way they want to file, do anything they want to do, but rather as a rate setting issue which is kinda how we originally started looking at this. And, to see to it that the Public Utility Commission, when it sets the rates for utilities and it assesses tax liability that that liability actually mirrors the taxes that the taxpayer will actually owe and we believe this is a good approach and it will more closely reflect the actual liabilities of the company and if a tax payer, whether it's a residential taxpayer, like ourselves, or a business taxpayer knows that the amount of taxes that are included in their rates do in fact reflect the liability of that the energy company will actually be having as a result of their operation. And, if those liabilities are less than what the tax rate that customers have had to pay for that, that the PUC will take that into account when they allow those taxes to be included in rates. We believe, based on history, that this could have a significant tax reduction for businesses and individuals, collectively, for the investor owned utilities that we see in our tax bills. It may be a little bit for each bill for each of us, but collectively it's a lot of money that would be back into the Oregon economy. So, that's the approach that we're taking on that and we hope to have that for our discussion some time next week.

Chair: And who was in your, you have a work group . . . ?

Metsger: We had resident . . . we had . . . they were attorneys because I think we really got . . . we'll have a policy discussion in this Committee. So, I think was really important that we get the legal issue resolved and so we had attorneys representing residential customers, representing industrial customers, representing large commercial property customers, Legislative Counsel and the Department of Justice and Senator Walker and myself. Questions for Senator Prozanski.

Prozanski: Thank you Mr. Chair. Senator Metsger, based on what I'm hearing the work group worked on, it sounds like we would still permit consolidated returns to be done but the PUC would take into consideration that say utility company ABC had a \$1 million obligation on taxes. If they consolidated it with other components of their parent corporation or whatever and their actual tax was less than that, there's going to be some type of an offset as to what would be the future rates to . . . how's that gonna . . . I'm just trying to get a better . . .

Metsger: Well, the general concept is again, it won't have any impact on how they file tax returns, they can do whatever they want under this, it will maintain the status quo. What it will do is have the PUC look at the historical, the most recent 2 or 3 year historical liability, actual liabilities, as recall tax rates when they're put into the rate, is an estimate of what that liability is. And, we never look at whether that estimate was technically correct in terms of what the liability ended up being. However that liability was created by multiple corporations or whatever, whatever that liability turned out to be to the taxpaying entity. And so, what this will do, will be to have the Public Utility Commission, will look and see what the actual liabilities that were collected by the state and federal governments, measure that against what had been included in rates and then going forward would adjust the allowable collection of taxes based on what was actually the liability that was filed with whatever entity under however they decided to file it.

Prozanski: So in that process I assume that there was some discussion or will be more discussion as to how a utility may come back and try to justify a rate increase to offset or attempt to offset as say having an adjustment actually occur and that the PUC's fine with actually going back and getting a snapshot of the actual liability and having that as part of that discussion as to whether there's justification for maybe a rate increase. My only concern is that this is gonna be post-fact each time they come back for a rate adjustment, which is not annually, it's 3-5 years or whatever it might be. I mean to me, it looks like we're almost displacing the people who bear the taxes through their rates earlier may no longer be in the system to benefit from whatever adjustment occurs for future rate setting. That's the only thing I see as a possible disconnect. I mean clearly the whole system is going to benefit because you're going to make those adjustments hopefully according to whatever the actual liability was but the people who actually put the money out in the front end may not be a benefactor to the adjustments.

Metsger: I don't quite follow that but . . .

Chair: So, is it when a rate case . . .?

Metsger: ... but well, the way this will be, it won't necessarily be a rate case on the taxes, this will be an adjustment that would be ongoing because they collect ... it's estimate the taxes for future liabilities, for future taxes, not past taxes, and so they'll look at it, the effective date of the bill, they'll look at the last 3 years and see what has been collected based on the estimates and whether that amount of money actually reflects those liabilities. If the liabilities were substantially less than what was collected, then the PUC would essentially deem that those taxes are already there and would forbid future tax collections until that level of liability had been achieved. If, in fact, their liabilities were greater then certainly that would work that way as well. We have heard in testimony in both the Business Committee and the Revenue Committee, that theoretically you know, the profits could be such that the taxpayer would have to pay more in taxes and theoretically that is true, but as we have discussed in our 2 committees, in practice that never happens. You know, they're always collecting more taxes from customers than they have actually paid. But, it would be a fair reflection that if you owe \$5.00 and, or you come to me and I say I think I'm going to have to pay \$5.00 in taxes on this and I say okay then you are allowed to collect \$5.00, and it turns out that you only end up having a \$2.00 payment, then that \$3.00 would be considered as a taxes for future liabilities before I allow you to collect another \$5.00.

Prozanski: So, the only other question is, using the scenario ... say the bill goes into effect, passes and goes into effect on January 1 of '06, the PUC could look back let's say for the last 3 years, '03, '04 and '05, see what the actual liability was, factor that in as to what they actually were collecting, make that adjustment, as long as the PUC has the ability and its own initiative to look at that, my concern is as you move this forward there's going to be some need to reflect back as to what the actual liability was so you can make those adjustments. And, if it's only at a time when there's a request for a rate ...

Metsger: No, that won't be the case. It won't be a case where they have to have a rate case to look back. They'll be doing this on a regular basis.

Prozanski: Fair enough.

Chair: That's helpful, I wasn't clear on that. Any other questions for Senator Metsger? We don't have any language in front of us. Thank you for the update.

George: Mr. Chairman.

Chair: Yes Senator George.

George: [Inaudible] can have a shot at this thing. Basically, we're going to be saying is, don't collect more in taxes from the ratepayers than you're gonna pay or we'll be back and basically I think that will be a positive instruction that they shall not collect more than what they're going to pay. And I think that would be to everyone's benefit to have that be clear because it's, you know if you think about it, I've got a 10.5% guaranteed profit you know under the PUC and then all of the

sudden I'm able to pull off millions and millions of dollars by telling you I'm going to pay a tax which I'm allowed to collect from you and then not pay. So, I think it just puts everything back on the real of the real numbers. In other words, if you collect it, pay it.

Man: So, we'll try to get that to us as quickly as we can.

Chair: Senator George, it does seem like at least simplest as you put it way of getting at what I've found is the legitimate issue. Taxes collected but never actually make it where they're supposed to go. Anyone feel the burning need, we'll have this bill back so anyone with a burning need? Great. Close the work session on Senate Bill 171.

[End of Work Session on Senate Bill 171.]



**SENATE REVENUE COMMITTEE**  
**JUNE 1, 2005 9:00 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Tim Martinez, Oregon Bankers Assn.  
Debra Buchanan, Dept. of Revenue  
Senator Avel Gordly, District 23  
Sean Cruz, Gordly legislative aide  
Jim Craven, American Electronics Assn.

Staff Present: Paul Warner, Legislative Revenue Officer  
Lizbeth Martin-Mahar, Economist  
Barbara Guardino, Committee Assistant

**TAPE 129, SIDE A**

005 Chair C. Starr Calls meeting to order at 9:05 a.m. Opens work session on SB 171-B.

**WORK SESSION, SB 171-B**

012 Paul Warner SB 171-B is based on recommendations from the Public Utility Commission. The main element is the requirement that public utilities not file consolidated tax returns. There are some significant changes planned for this bill. Sen. Metsger is working on amendments.

020 Sen. Metsger Revenue Committee will return to the original bill which modifies the definition of cogeneration plants. Will add the net benefit standard for acquisition of public utilities.

029 Warner The bill has been posted for Friday.

040 Sen. Metsger Introduces a guest.

**WORK SESSION, HB 2452-A**

055 Lizbeth Martin-Mahar This is a Dept. of Revenue bill. It provides guidelines to allow pass-through entities to file a composite personal income or corporate excise tax return on behalf of nonresident owners who choose to be part of this composite return. Reads from Staff Measure Summary distributed May 5 (exhibit 11).

084 Martin-Mahar There is an amendment to this bill but LRO has not received it yet. Discusses revenue impact statement distributed May 5 (exhibit 12). The amendment will carve out provisions that certain trusts do not need to have taxes withheld.

- 106 Tim Martinez Oregon Bankers Association raised the issue of trusts. DOR worked with OBA on this issue. Will track down amendment from Chair Deckert's office. It says that trusts are not included under this bill unless DOR believes it is set up to avoid taxes.
- 125 Chair. C. Starr Summarizes, all trusts will be removed except when a trust is established to avoid taxes.
- 128 Debra Buchanan Amendment refers to ORS 128.005 trusts as defined there. It is limited in the category of trusts that are carved out. The original bill came from a multi-state tax commission. DOR is concerned about the potential for revenue loss.

**WORK SESSION, SB 315**

- 160 Warner SB 315 relates to streamlined sales tax agreement developed by states. Comments on section 5 of the bill. Adopting this legislation would not invalidate or amend any provision of the state. Adoption of the agreement does not modify any law of the state. This is the first step in a process set up by the state. Directs members' attention to Streamlined Sales & Use Tax handout (**EXHIBIT 1**) which details the states and their progress in enacting the compliance legislation.
- 186 Warner Two issues have come up since the last public hearing: fiscal implications and guidelines for local sales taxes.
- 195 Sen. Avel Gordly Testifies in support of SB 315. Thanks committee for considering this bill. Explains, this is an opportunity for Oregon to participate in this agreement.
- 222 Sean Cruz Begins review of Internet document concerning streamlined sales and use tax agreement (**EXHIBIT 2**). Page 1 lists 16 motions to amend various parts of the agreement. States that rely on sales tax are moving forward to get in line with this agreement, which changes taxation to one tax rate per state and one collection authority. There are a number of Oregon companies collecting sales taxes in other states. The streamlining agreement will eliminate a lot of the complexity.
- 266 Cruz Remaining pages contain a status report of action on legislation for every state, including Oregon. Without these guidelines, Oregon is being cut off (balkanized) from the rest of the country.
- 281 Sen. George Asks, who would need amnesty and why?
- 285 Warner Explains, if sellers have violated laws in the past, they will have amnesty if they volunteer to come into compliance. Interstate sellers are participating on a voluntary basis.
- 300 Sen. George Would this eliminate any incentive for a person to locate an Internet business in Oregon because it doesn't have a sales tax?

- 309 Warner Responds, if it is fully implemented, it could over time eliminate the advantage of operating in Oregon due to its absence of sales tax. The idea is to bring uniformity among the states.
- 323 Cruz Reads from a document from the National Conference of State Legislatures site.
- 370 Buchanan Discusses executive summary handout which describes the Streamlined Sales Tax Project (**EXHIBIT 3**). Speaks to information on page 3 in regard to how this would work in Oregon without a sales tax. First, states would adopt enabling legislation (SB 315). Second, states would amend or modify sales and use tax laws.
- 404 Sen. George Expresses concern for loss of tax competition among states. Would Oregon's advantage be gone? Follow-up questions and comments.
- 414 Buchanan Responds, if companies in a state can be compelled to collect on remote sales, then if there is an advantage to not having that provision, the advantage would go away. There is a threshold below which smaller retailers would not be required to collect on remote sales. Also, there are third-party vendors that can collect. They would not be required to invest in substantial amounts of software.

**TAPE 130, SIDE A**

- 027 Chair C. Starr Asks if DOR would be involved in out-of-state tax collection.
- 030 Buchanan Responds, because there is no statewide sales tax, DOR is not involved. If a company is required to collect a sales or "use" tax on a sale to an out-of-state resident, the business collects the tax from that out-of-state resident and remits it to the state where the person resides.
- 039 Chair C. Starr Verifies this does not change Oregon's taxation laws.
- 043 Buchanan That is correct.
- 050 Cruz The streamlining agreement does not require a state to enact a sales tax. Most of the provisions are voluntary. It won't create a nationwide sales tax system. Much of the agreement is on definitions. Gives example of a Twix candy bar, whether it is regarded as a food or candy because it contains flour. Much of the agreement is to come to a common understanding of what the definitions are. The U.S. Supreme Court bars collection of sales taxes if there is no physical presence in the state where the sale occurs. That will probably change once the streamlining agreement is fully enacted. Forty-two states are working to enact this in order to remove that bar. Lastly, this is a process that's going forward, and Oregon needs a seat at the table to understand what's going on in the rest of the country.
- 086 Sen. Gordly Thanks Mr. Cruz for his hard work on this measure.

- 093 Chair C. Starr Will hold this bill until Chair Deckert is present.
- 102 Jim Craven American Electronics Association has been tracking this issue on the federal level for several years. There is nothing negative in this bill for Oregon. The key issue in the multi-state agreement was to put enough pressure on Congress to change the U.S. Supreme Court decision. That decision says one state cannot compel a seller from another state to collect its sales tax unless it has substantial business activity in the destination state. Oregon's participation will be minimal, to prepare for the day when it enacts a sales tax.
- 159 Sen. George Comments, the National Taxpayers Union is antagonistic to this plan. They believe this will mean additional taxes.
- 181 Vice Chair C. Starr Will oppose SB 315.
- 184 Chair Deckert Committee will return to this bill. Closes work session. Reopens work session for HB 2452-A.

**WORK SESSION, HB 2452-A**

- 207 Martin-Mahar Explains HB 2452-A3 amendment (EXHIBIT 4) which is a compromise between Dept. of Revenue and Oregon Bankers Association. It allows pass-through entities for certain trusts, not all trusts.
- 225 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF HB 2452-A3 AMENDMENTS.**
- 229 Sen. George Asks if this amendment will have a negative impact.
- 231 Martin-Mahar Responds, it will be like current law.
- 245 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**
- 250 Vice Chair C. Starr **MOTION: MOVES HB 2452-A AS AMENDED TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 258 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**
- 263 Chair Deckert Closes work session. Adjourns meeting at 9:55 a.m.

Tape Log Submitted by,

*Barbara Guardino*

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 315, Streamlined Sales & Use Tax Agreement, 2003-2004, Warner, 1 pp.
2. SB 315, Proposed Amendments to the Streamlined Sales and Use Tax Agreement, Gordly, 5/31/05, 22 pp.
3. SB 315, Streamlined Sales Tax Project, Executive Summary, April 2004, Buchanan, 4 pp.
4. HB 2452-A, Amendment HB 2452-A3, Legislative Counsel, 5/31/05, 1 pp.

**SENATE REVENUE COMMITTEE  
SENATE BILL 171 WORK SESSION**

**June 1, 2005**

Man: [begins mid-sentence] ... Senate Revenue Committee to order this morning. Chair has given me the gavel, at least temporarily this morning. We have 3 bills scheduled for work session and we'll just go down in order of the way they're listed and we'll start with Senate Bill 171B. Paul ...

Graham: Mr. Chair, Senate Bill 171 is the bill that the Committee has worked over recent weeks. It is based on the recommendations from the Public Utility Commission and the main element was the requirement that public utilities not file a consolidated tax return. So, my understanding is there are some significant changes, a plan for that but we don't have those amendments yet. Senator Metsger is working on it.

Chair: Yes, that's correct. Senator Starr, we have dealt with that issue in business yesterday in a different manner through the rate setting process and so we won't be dealing with that issue here and the amendments that Mr. Warner has talked about is that we're going to go back to the original 171 bill, which is unrelated to our other discussion dealing with modifying the definition of cogeneration plants and adding simply the net benefit standard for acquisition of public utilities that was a part of the original bill and those will be the only elements that we'll deal with in 171 here and those should be ready by later today or tomorrow. Has the bill been posted or can we schedule that for tomorrow ...

Graham: Mr. Chair, I've posted it for Friday on Friday's agenda. We just posted for 8:30 a.m. on Friday and that's on the list.

Chair: Thank you.

Metsger: Mr. Chair, if I could just for a moment, I'd like to introduce Chris Heagans from Oregon State University who is job shadowing me today and Chris headed up the OSU team that evaluated the bridge program that we have with the state that helped determine how we could save money on the bridge rebuilding projects and he's gonna save us a lot of money and get a lot more bridges done and he headed that team and he's with me today. So, he's joining us today to kinda watch how we work up here and hopefully he'll have some suggestions as to how we can streamline other parts of government.

Chair: Well, welcome, appreciate having you join us today.

Heagans: Thank you.

Man: Mr. Chairman . . . when Senator Shields took our Committee down there and we went out and toured that facility, we looked at, you know, not only the tsunami but also this and when you look and you recognize the stress they were putting on those beams it's kinda like where we are though right now.

Chair: Alright. Well with that, if there are no other comments on 171, it's posted for Friday and so we'll be looking at the new amendments on Friday and appreciate that information. With that we're going to close the work session on Senate Bill 171.

[End of Work Session on Senate Bill 171.]

**SENATE REVENUE COMMITTEE**  
**JUNE 3, 2005 10:00 AM STATE CAPITOL BUILDING**

Members Present: Senator Ryan Deckert, Chair  
Senator Gary George  
Senator Rick Metsger  
Senator Floyd Prozanski  
Senator Charles Starr, Vice Chair

Witnesses Present: Rep. Tom Butler, District 60  
Rick Willis, Public Utility Comm.  
Mike McArthur, Association of Oregon Counties  
Art Fish, OECDD  
Brad Higbee, Renewable Northwest Project  
Dennis Day, Oregon State Assn. of County Assessors  
Norm Miller, Dept. of Revenue  
Kristina McNitt, Oregon Small Woodlands Assn.

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

**TAPE 133, SIDE A**

005 Chair Deckert Calls meeting to order at 10:07 a.m.

**WORK SESSION, HB 2511-A**

010 Rep. Butler Reviews HB 2511-A, which adds four service clubs to the list of fraternal organizations whose properties are exempt from property tax. Introduces HB 2511-A4 amendment (**EXHIBIT 1**).

025 Vice Chair C. Starr **MOTION: MOVES ADOPTION OF HB 2511-A4 AMENDMENT.**

027 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 3-0-2. VOTING AYE: GEORGE, C. STARR, DECKERT. EXCUSED: METSGER, PROZANSKI**

031 Vice Chair C. Starr **MOTION: MOVES HB 2511-A AS AMENDED TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**

037 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSTER, PROZANSKI, C. STARR, DECKERT**

**WORK SESSION, SB 171-B**

045 Sen. Metsger Explains, this bill has gone back to its original form. It was a vehicle

This tape log summarizes committees proceedings. Text enclosed in quotation marks reports the speakers exact words. For complete context of proceedings, please refer to the tape recording.



to talk about the issue of utility taxes. The direction changed to the rate-setting process, and that bill came out of the Senate Business Committee as SB 408. Now, it conforms to the federal definition for cogeneration facilities and adds in the benefit standard adopted by the Public Utility Commission. Suitors must now show a net benefit with no harm to the public.

- 059 Paul Warner Notes, SB 171-B11 amendment (**EXHIBIT 3**) contains the language that Sen. Metsger has referred to.
- 068 Rick Willis Has not seen the amendment, but based on Sen. Metsger's comments, PUC supports the bill.
- 081 Sen. Metsger **MOTION: MOVES ADOPTION OF THE SB 171-B11 AMENDMENT.**
- 084 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**
- 087 Sen. Metsger **MOTION: MOVES SB 171-B AS AMENDED TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 090 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**

**WORK SESSION, HB 3183**

- 095 Steve Meyer Reviews, HB 3183 deals with distribution of income from the Common School Fund to school districts. It makes the current process more direct.
- 104 Rep. Butler "Good bill, do pass."
- 110 Vice Chair C. Starr **MOTION: MOVES HB 3183 TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 112 Chair Deckert **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 5-0-0. VOTING AYE: GEORGE, METSGER, PROZANSKI, C. STARR, DECKERT**
- 115 Chair Deckert Announces, SB 427 will not be heard until next week.

**PUBLIC HEARING, HB 3350-B**

- 120 Rep. Butler Reads testimony for this bill (**EXHIBIT 4**), which pertains to the Small City Investment Program (SCIP). It is a state income tax incentive for new-to-Oregon businesses to locate and provide jobs in financially distressed communities.
- 180 Rep. Butler Explains the 2005 amendment (Section 5) in HB 3350-B.

- 223 Rep. Butler Directs members' attention to LRO list: Cities that are impacted by the small city business development income exemption (**EXHIBIT 5**).
- 236 Chair Deckert Thanks Rep. Butler for his hard work to put the SCIP together.
- 240 Rep. Butler Responds, he worked with the OECDD to make changes. There are four pending applications in the Port of Morrow industrial park.
- 255 Mike McArthur Testifies in support of HB 3350-B on behalf of AOC and as a former Sherman County judge. Tells why being able to offer this program is important for attracting new businesses to rural Oregon. Discusses Sherman County's development of wind farms.
- 286 Art Fish Testifies in favor of HB 3350-B. Is available to answer questions about the program. Tells where it is beginning to be used. The five-year period will give counties a chance to get it going and make it a powerful tool in addition to enterprise zones.
- 325 Sen. George Comments, people will go to some "remote" places based on positive incentives from the community. Asks, are these types of incentives important in attracting people?
- 336 Fish Responds yes, incentives have played a role in attracting people.
- 367 Sen. Prozanski Is there any requirement for these companies to stay in Oregon?
- 375 Fish To use this exemption they have to assure continued operation for at least 10 years. They don't get a benefit unless they pay income taxes. These taxes would not otherwise be collected in Oregon.
- 399 Sen. Prozanski Asks what types of offsets are in play.
- 426 Rep. Butler Explains two key issues:  
1) current law requires companies to make an investment in equipment  
2) companies must hire five or more full-time employees

**TAPE 134, SIDE A**

- 025 Brad Higbee Testifies in support of HB 3350-B. Renewable Northwest Project has worked closely with county officials in creating the Rural Renewable Energy Development (RRED) Zone. Concludes, it is an important tool because it is flexible, unlike an enterprise zone. It will increase the supply of clean energy and give some rural communities a big shot in the arm.
- 057 Acting Chair  
Metsger Closes public hearing on HB 3350-B. Opens public hearing on HB 2868-A.

**PUBLIC HEARING HB 2868-A**

- 060 Mary Ayala Gives overview of HB 2868-A (**EXHIBIT 9**). Simplifies the time

requirements for filers and clarifies the administrative process for handling a filer's application for continued qualification of a parcel as a small tract forestland (STF). Creates a \$200 late filing fee. Clarifies how additional taxes will be computed if a parcel is disqualified for a STF special assessment.

- 116 Dennis Day Testifies in favor of HB 2868-A (**EXHIBIT 10**). County assessors rather than landowners bear the responsibility of identifying sales or transfers of land in the Small Tract Forestland Option. Under the STF program, if new owners opt out, they can't come back in for five years. This bill gives them one last opportunity.
- 165 Kristina McNitt Explains, the STF is the option where non-industrial woodland owners pay their property taxes on a 20/80 program rather than paying 100% ad valorem tax every year. This encourages landowners to keep their land in forestland.
- 197 Norm Miller Notes, this bill is a cleanup of major legislation implemented last session. It strengthens the programs.
- 207 Sen. Prozanski Asks for a walk-through of the process. Follow-up questions.
- 222 Miller Responds, the STF option is another way to pay their property taxes. They pay 20% annually and 80% when they harvest timber.
- 266 Acting Chair Metsger Committee will stand at ease at 10:55 a.m. to await return of Paul Warner. Reopens committee. Opens work session for HB 2868-A.

**WORK SESSION, HB 2868-A**

- 280 Acting Chair Metsger **MOTION: SEN. DECKERT MOVES HB 2868-A TO THE SENATE FLOOR WITH A DO PASS RECOMMENDATION.**
- 284 Acting Chair Metsger **ORDER: THERE BEING NO OBJECTION THE CHAIR SO ORDERS. VOTE: 4-0-1. VOTING AYE: GEORGE, METSGER, PROZANSKI, DECKERT. EXCUSED: C. STARR**
- 290 Chair Deckert Closes work session on HB 2868. Committee will hold HB 3350-B until next week. Adjourns meeting at 11:00 a.m.

Tape Log Submitted by,



Barbara Guardino, Committee Assistant

**Exhibit Summary:**

1. HB 2511-A, Amendment HB 2511-A4, Legislative Counsel, 6/2/05, 1 pp.
2. HB 2511-A, Staff Measure Summary, Ayala, 6/3/05, 1 pp.
3. SB 171-B, Amendment SB 171-B11, Legislative Counsel, 6/2/05, 1 pp.

4. HB 3350-B, Small City Investment Program – HB 3350B, Butler, 1 pp.
5. HB 3350-B, Cities that are impacted chart, Martin-Mahar, 6/2/05, 4 pp.
6. HB 3350-B, Staff Measure Summary, Martin-Mahar, 6/3/05, 2 pp.
7. HB 3350-B, Revenue Impact of Proposed Legislation, Martin-Mahar, 5/9/05, 1 pp.
8. HB 3350-B, Staff Measure Summary, Martin-Mahar, 5/6/05, 2 pp.
9. HB 2868-A, Staff Measure Summary, Ayala, 6/3/05, 1 pp.
10. HB 2868-A, testimony of Dennis Day, 6/3/05, 1 pp.
11. HB 2868-A, Revenue Impact of Proposed Legislation, Ayala, 6/3/05, 1 pp.
12. HB 2868-A, Staff Measure Summary, Ayala, 5/4/05, 2 pp.

Senate Revenue Committee  
Senate Bill 171 Work Session

June 3, 2005

Chair: [Begins mid-sentence] ... open a work session on Senate Bill 171. Senator Mestger.

Metsger: Well thank you Mr. Chair. Colleagues, we've been a long ways with Senate Bill 171. It's kinda gone one direction and come back another and moved around and ironically it's kinda going back to where it started. 171 we were using as the vehicle for a couple of months to talk about the issue of taxes for utilities and as you are well aware, we have decided to change the direction on that, address that issue to the rate setting process and the bill came out Senate Bill 408 the other day out of Salem business so, this is no longer needed for that purpose. So, Senate Bill 171 is bill that came over originally from the House unanimously. Mr. Willis it might be good come forward just to speak for the PUC. It simply conformed the federal definition for COGEN facilities and then added in the net benefit standard that has been adopted UM 1011 by the PUC for any sutures for any of our public utilities that they have to, before they can get approval from the PUC, they have to show a net benefit for rate payers with no general harm to the public and that has been a rule of the PUC but it had been suggested that that should be put into statute to ensure its validity going forward and here Mr. Willis could just make a few comments on that and everything else has been deleted from the bill.

Chair: So, does anyone have any questions and Paul do you have anything you need to add to ...

Graham: Mr. Chair, the Dash B-11 amendment is before you and that's the one that has the language that Senator Metsger is referring to.

Chair: Any questions for Paul or Senator Metsger and anyone else wish to speak to this bill since it's changed a great deal before we go? I want to make sure everyone's had to time to look it over and think about it. Mr. Willis. . .

Willis: Mr. Chair and I have not seen the amendments but based on the description of Senator Metsger the Commission is supportive, the bill would codify those net benefits that we're currently using and so the commission is supportive that as well as the ministerial correction that was originally in 171 when we had it introduced and it corrected a little problem that came out of the Senate Bill 1149 from the, I believe, it's the 99 Section. So, the bill at this point as it sits right now is pretty close to what we introduced and the net benefits that we currently use, so the Commission is supportive of the bill.

Chair: Right. Anyone else? Net benefits? Net benefits going once. Okay, Senator Metsger do you want to . . .

Metsger: Mr. Chair, I move the –B11 amendments to Senate Bill 171.

Chair: Senator Metsger has moved the –B11 amendments to Senate Bill 171. Discussion on that motion? Any objections to that motion? So ordered. Senator Metsger.

Metsger: Senator Deckert and I move Senate Bill 171 as amended by the B11 amendments to the floor with a do pass recommendation.

Chair: Senator Metsger has moved Senate Bill 171 as amended by the B11s to the floor with a do pass recommendation. Any discussion? Any objections to that motion? So ordered. Senator Metsger, if you will ...

Metsger: Happy to do so and thank you Committee for the indulgence of the long journey with that bill number.

Chair: Sure. That thing changed with those B11s, they ran out of A and moved into B. Close that work session.

[End of Work Session on Senate Bill 171.]

SB 171-B11  
(LC 434)  
6/2/05 (DJ/ps)

**PROPOSED AMENDMENTS TO  
B-ENGROSSED SENATE BILL 171**

MEASURE: SB 171  
EXHIBIT: 3  
SENATE REVENUE COMMITTEE  
DATE: 6-3-05 PAGES: 1  
SUBMITTED BY: \_\_\_\_\_

1 On page 2 of the printed B-engrossed bill, delete lines 26 through 36 and  
2 insert:

3 **NOTE:** Sections 2 through 4 were deleted by amendment. Subsequent  
4 sections were not renumbered.”.

5 \_\_\_\_\_

**Senate Chamber**  
**Senate Bill 171**

**June 9, 2005**

Clerk: [Introducing] ...Senate Bill 171 relating to public utilities.

Chair: Would the clerk please read the next . . . I will now recognize Senator Rick Metsger please.

Metsger: Thank you Mr. President. Colleagues, Senate Bill 171, does that number sound familiar? No bill has probably taken a longer journey through this process, and 171 has been many things and it's kind of gone back to its original form. Senate Bill 1149 approved by the '99 Legislature marked a major change in the regulation of utilities in Oregon. The Legislation provided commercial electricity users direct access to competitive markets no later than October 1, 2001. The Bill also adopted transitions policies and certain consumer protections. It further established a public purpose charge, but following implementation of Senate Bill 1149, the PUC recognized that certain small cogeneration facilities, and we have some of those in Southern Oregon, were inadvertently included in some regulatory standards and so this just corrects the language that they are not subject to regulation by the PUC as per the Federal law. Secondly, what was added was the net benefits standard that was adopted by the PUC in 2001 so for any company that wants to come in and buy a public utility in Oregon has to demonstrate a net benefit to rate payers without no harm to the general public. I urge an Aye vote.

Chair: Thank you Senator Rick Metsger. Is there further discussion of the motion, excuse me, the Bill that is now before us? Senator Metsger, do you wish to close? [Inaudible] and the final passage of Senate Bill 171C. Those of the opinion the bill should pass say aye, all those opposed [inaudible]. Clerk, please call the roll.

Clerk: [Roll call.] 28 aye votes.

Chair: Thank you. Senate Bill 171C having received the constitutional majority is declared passed.