



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 408

SB 408 C-Eng

By Senator WALKER; Senator METSGER

- 1-26 (S) Introduction and first reading. Referred to President's desk.
- 2-1 Referred to Business and Economic Development.
- 4-7 Public Hearing and Work Session held.
- 4-15 Recommendation: Do pass with amendments. (Printed A-Eng.)
- 4-18 Second reading.
- 4-19 Carried over to 04-20 by unanimous consent.
- 4-20 Motion to rerefer to Business and Economic Development carried on voice vote.
- 4-28 Public Hearing held.
- 5-26 Work Session held.
- 5-31 Work Session held.
- 6-6 Recommendation: Do pass with amendments to the A-Eng. (Printed B-Eng.)
Atkinson, Starr, B. not concurring.
- 6-6 Minority Recommendation: Do pass with different amendments to the A-Eng.(Printed B-Eng.
Minority)
- 6-8 Motion to substitute Minority Report for Committee Report failed.
Ayes, 13; Nays, 17--Bates, Brown, Burdick, Carter, Deckert, Devlin, Gordly, Metsger, Monnes
Anderson, Morrisette, Prozanski, Ringo, Schrader, Shields, Verger, Walker, President Courtney.
- 6-8 Third reading. Carried by Metsger, Walker. Passed.
Ayes, 26; Nays, 4--Atkinson, Beyer, Kruse, Nelson.
- 6-8 Burdick declared potential conflict of interest.
- 6-9 (H) First reading. Referred to Speaker's desk.
- 6-13 Referred to State and Federal Affairs with subsequent referral to Budget.
- 6-30 Public Hearing held.
- 7-15 Work Session held.
- 7-26 Work Session held.
- 7-28 Recommendation: Do pass with amendments, be printed C-Engrossed, and subsequent
referral to Budget be rescinded.
- 7-28 Subsequent referral to Budget rescinded by order of Speaker.
- 7-29 Rules suspended. Second reading.
- 7-30 Third reading. Carried by Boquist. Passed.
Ayes, 54; Nays, 6--Avakian, Butler, Gilman, Jenson, Krummel, Macpherson.
- 7-30 Potential conflict(s) of interest declared by Macpherson.
- 8-1 (S) Rules suspended. Senate concurred in House amendments and repassed bill.
Ayes, 30.



MEASURE HISTORY FOR SB 408

8-4	President signed.
8-4	(H) Speaker signed.
9-2	(S) Governor signed.
9-8	Effective date, September 2, 2005.
9-8	Chapter 845, 2005 Laws.

Senate Bill 408

Sponsored by Senator WALKER; Senator METSGER

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.

Provides that Public Utility Commission may authorize public utility to include state or federal taxes in rates chargeable to customers only to extent that taxes are actually paid to state or federal government by reason of revenues generated in state.

A BILL FOR AN ACT

Relating to rates of public utilities.

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

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 757.

SECTION 2. (1) The Public Utility Commission may authorize a public utility to include in the rates of the public utility amounts for payment of state or federal taxes only to the extent that state or federal taxes are actually paid to the state or the federal government by reason of revenues generated in this state.

(2) If the rates of a public utility are based on estimated amounts payable as state or federal taxes and the estimate is incorrect, the commission shall make adjustments in the rates collectible thereafter by the public utility to recover:

(a) For the public utility, any amounts in excess of the estimated amount of taxes that were paid by the public utility; or

(b) For the ratepayers, any amounts included in the estimated amount that were not paid by the public utility.

SECTION 3. As soon as possible after the effective date of this 2005 Act, the Public Utility Commission shall commence hearings to ensure that the rates of public utilities comply with section 2 of this 2005 Act.

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.

SENATE AMENDMENTS TO SENATE BILL 408

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

April 15

1 Delete lines 4 through 19 of the printed bill and insert:

2 **"SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 757.**

3 **"SECTION 2. (1) For the purposes of this section:**

4 **"(a) 'Electric company' has the meaning given in ORS 757.600; and**

5 **"(b) 'Qualifying forest biomass project' means an electricity generating plant with a ca-**
6 **capacity between 5 and 20 megawatts that is located on tribal lands and that primarily uses**
7 **forest fuels.**

8 **"(2) Notwithstanding ORS 758.525, if an electric company enters into a contract to pur-**
9 **chase electricity from a qualifying forest biomass project, the electric company may agree**
10 **to pay for the electricity at the price necessary to make the project economically feasible.**
11 **The electric company may determine the price necessary to make the project economically**
12 **feasible by considering the projected useful life of the project, capital costs, operating ex-**
13 **penses, taxes, the value of renewable energy credits and other economic considerations the**
14 **electric company finds to be relevant.**

15 **"(3) Notwithstanding ORS 757.612 (3)(g), an electric company that purchases electricity**
16 **from a qualifying forest biomass project shall include the costs of the electricity in the costs**
17 **used to set the rates of the electric company.**

18 **"(4) In setting the rates of an electric company, the Public Utility Commission shall allow**
19 **recovery of any costs associated with the purchase of electricity under a contract subject**
20 **to this section. The commission shall allow the recovery of those costs from all classes of**
21 **ratepayers."**

22

A-Engrossed Senate Bill 408

Ordered by the Senate April 15
Including Senate Amendments dated April 15

Sponsored by Senator WALKER; Senator METSGER

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.

[Provides that Public Utility Commission may authorize public utility to include state or federal taxes in rates chargeable to customers only to extent that taxes are actually paid to state or federal government by reason of revenues generated in state.]

Allows electric company entering into contract to buy electricity from forest biomass project located on tribal lands to determine price necessary to make project economically feasible. Requires company to include costs of electricity purchased in costs used to set rates of company.

Requires Public Utility Commission, in setting rates of electric company, to allow recovery of costs associated with purchase of electricity from forest biomass project and to allow company to recover costs from all classes of ratepayers.

A BILL FOR AN ACT

Relating to rates of public utilities.

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

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 757.

SECTION 2. (1) For the purposes of this section:

(a) "Electric company" has the meaning given in ORS 757.600; and

(b) "Qualifying forest biomass project" means an electricity generating plant with a capacity between 5 and 20 megawatts that is located on tribal lands and that primarily uses forest fuels.

(2) Notwithstanding ORS 758.525, if an electric company enters into a contract to purchase electricity from a qualifying forest biomass project, the electric company may agree to pay for the electricity at the price necessary to make the project economically feasible. The electric company may determine the price necessary to make the project economically feasible by considering the projected useful life of the project, capital costs, operating expenses, taxes, the value of renewable energy credits and other economic considerations the electric company finds to be relevant.

(3) Notwithstanding ORS 757.612 (3)(g), an electric company that purchases electricity from a qualifying forest biomass project shall include the costs of the electricity in the costs used to set the rates of the electric company.

(4) In setting the rates of an electric company, the Public Utility Commission shall allow recovery of any costs associated with the purchase of electricity under a contract subject to this section. The commission shall allow the recovery of those costs from all classes of ratepayers.

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.

SENATE MINORITY REPORT AMENDMENTS TO A-ENGROSSED SENATE BILL 408

June 6

President Courtney:

A minority of your Committee on Business and Economic Development, to whom was referred A-engrossed Senate Bill 408, having had the same under consideration, respectfully reports it back with the recommendation that it do pass with the following amendments:

In line 2 of the printed A-engrossed bill, after "utilities" insert "; and declaring an emergency".

Delete lines 4 through 23 and insert:

"SECTION 1. (1) Within 60 days following the effective date of this 2005 Act, the Public Utility Commission shall convene a working group to study and evaluate appropriate methods to account for taxes collected from public utility ratepayers in order to ensure that the amounts collected for taxes from a utility's ratepayers match the amounts of taxes paid to units of government by the utility, or by the affiliated group of corporations of which the utility is a member and that are properly attributed to the regulated operations of the utility.

"(2) The working group shall be composed of representatives of:

"(a) The commission;

"(b) Electric and natural gas utilities;

"(c) Residential utility consumers;

"(d) Commercial utility consumers; and

"(e) Industrial utility consumers.

"(3) The working group shall prepare a written report of the group's evaluation and findings, and shall present the report to the Seventy-fourth Legislative Assembly.

"SECTION 2. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage."

/s/ Bruce Starr
Senator

/s/ Jason Atkinson
Senator

SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 408

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

June 6

1 In line 2 of the printed A-engrossed bill, after "utilities" insert "; creating new provisions;
2 amending ORS 757.210; and declaring an emergency".

3 Delete lines 4 through 23 and insert:

4 "SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS
5 chapter 757.

6 "SECTION 2. The Legislative Assembly finds and declares that:

7 "(1) The alignment of taxes collected by public utilities from utility customers with taxes
8 actually paid to units of government by utilities, or affiliated groups of corporations that
9 include utilities, is of special interest to this state.

10 "(2) Taxes are a unique utility cost because the actual tax liability is affected by the op-
11 erations or tax attributes of the parent company or other affiliates of the utility.

12 "(3) The Public Utility Commission permits a utility to include costs for taxes that as-
13 sume the utility is not part of an affiliated group of corporations for tax purposes.

14 "(4) The parent company of a utility may employ accounting methods, debt, consolidated
15 tax return rules and other techniques in a way that results in a difference between the tax
16 liability actually paid to units of government by the public utility, or the affiliated group of
17 corporations of which the utility is a member, and the amount of taxes collected, directly
18 or indirectly, from customers.

19 "(5) Tax uncertainty in the ratemaking process may result in collecting taxes from
20 ratepayers that are not paid to units of government.

21 "(6) Utility rates that include amounts for taxes should reflect the taxes that are actually
22 paid to units of government to be considered fair, just and reasonable.

23 "SECTION 3. (1) Every public utility shall file a tax report with the Public Utility Com-
24 mission annually, on or before October 15 following the year for which the report is being
25 made. The tax report shall contain the information required by the commission, including:

26 "(a) The amount of taxes that was paid by the utility in the three preceding years, or
27 that was paid by the affiliated group and that is properly attributed to the regulated oper-
28 ations of the utility, determined without regard to the tax year for which the taxes were
29 paid; and

30 "(b) The amount of taxes authorized to be collected in rates for the three preceding
31 years.

32 "(2) The tax report shall be made publicly available at the time it is filed.

33 "(3) The commission shall review the tax report and make the determinations described
34 in this section within 90 days following the filing of the report. If the commission determines
35 that the amount of taxes assumed in rates or otherwise assessed to ratepayers for any of

1 the three preceding years differed from the amount of taxes actually paid to units of gov-
2 ernment by the public utility, or by the affiliated group and properly attributed to the regu-
3 lated operations of the utility, the commission shall require the utility to implement an
4 automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of
5 the commission's determinations under this section. The automatic adjustment clause shall
6 apply only prospectively, and shall account for all taxes paid to units of government by the
7 utility, or by the affiliated group that are properly attributed to the regulated operations of
8 the utility, and all taxes that are charged to ratepayers of the utility through rates, so that
9 ratepayers are not charged for more tax than:

10 "(a) The utility actually pays to units of government; or

11 "(b) In the case of an affiliated group, the affiliated group pays to units of government
12 that is properly attributed to the regulated operations of the utility.

13 "(4) The automatic adjustment clause described in subsection (3) of this section may not
14 be used to make adjustments to rates that are properly attributable to any other affiliate
15 of the utility or to the parent of the utility.

16 "(5) Notwithstanding subsections (1) to (3) of this section, the commission may authorize
17 a public utility to include in rates deferred taxes resulting from accelerated depreciation or
18 other tax treatment of utility investment. Deferred taxes that are subsequently paid by a
19 utility to a unit of government may not be charged to ratepayers.

20 "(6) If the commission determines that implementing an automatic adjustment clause
21 under subsection (3) of this section would have a material adverse effect on customers of the
22 public utility, the commission may not require the utility to implement the clause.

23 "(7) The commission must conduct a hearing under ORS 757.210 prior to making a de-
24 termination under subsection (6) of this section that an automatic adjustment clause would
25 have a material adverse effect on customers of the public utility.

26 "(8) As used in this section and section 2 of this 2005 Act:

27 "(a) 'Affiliated group' means an affiliated group of corporations of which the utility is a
28 member, and that files a consolidated federal income tax return.

29 "(b) 'Public utility' or 'utility' does not include a water utility.

30 "(c) 'Tax':

31 "(A) Means a federal, state or local tax or fee that is imposed on or measured by income
32 and that is paid to units of government.

33 "(B) Does not include any amount that is refunded by a unit of government as a tax re-
34 fund.

35 "(d) 'Three preceding years' means the three most recent consecutive fiscal years pre-
36 ceding the date the tax report is required to be filed.

37 "SECTION 4. The tax report that, under section 3 of this 2005 Act, is required to be filed
38 on or before October 15, 2005, shall set forth the information required to be reported under
39 section 3 of this 2005 Act for the three most recent consecutive fiscal years of the public
40 utility that concluded prior to the date of the filing of the tax report or January 15, 2006,
41 whichever is earlier.

42 "SECTION 5. ORS 757.210 is amended to read:

43 "757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate
44 or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing
45 rate or schedule of rates, the commission may, either upon written complaint or upon the commis-

1 sion's own initiative, after reasonable notice, conduct a hearing to determine *[the propriety and*
2 *reasonableness of such rate or schedule]* **whether the rate or schedule is fair, just and**
3 **reasonable.** The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the
4 utility, its customer or customers, or any other proper party within 60 days of the utility's filing;
5 provided that no hearing need be held if the particular rate change is the result of an automatic
6 adjustment clause. At *[such]* **the** hearing the utility shall bear the burden of showing that the rate
7 or schedule of rates proposed to be established or increased or changed is *[just and reasonable]* **fair,**
8 **just and reasonable. The commission may not authorize a rate or schedule of rates that is**
9 **not fair, just and reasonable.** *[The term]*

10 "(b) As used in this subsection, 'automatic adjustment clause' means a provision of a rate
11 schedule *[which]* **that** provides for rate increases or decreases or both, without prior hearing, re-
12 flecting increases or decreases or both in costs incurred, **taxes actually paid to units of govern-**
13 **ment** or revenues earned by a utility and *[which]* **that** is subject to review by the commission at
14 least once every two years.

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

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

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

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

23 "(C) **Does not include the recovery of amounts collected as taxes that are not actually**
24 **paid to units of government by the public utility or, if the utility is part of an affiliated group**
25 **of corporations, by the group and properly attributed to the regulated operations of the**
26 **utility;**

27 "[C)] (D) Is consistent with maintenance of safe, adequate and reliable service; and

28 "[D)] (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

29 "(c) As used in this subsection, 'alternative form of regulation plan' means a plan adopted by the
30 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets
31 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-
32 service rate regulation.

33 "(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility
34 shall present a report that demonstrates the calculation of any proposed rate change at a public
35 meeting of the commission.

36 "(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to ap-
37 pear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this
38 section are in conformity with the plan and are just and reasonable. Except as provided in ORS
39 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also
40 shall be subject to complaint under ORS 756.500.

41 "(4) Periodically, but not less often than every two years after the implementation of a plan
42 referred to in subsection (2) of this section, the commission shall submit a report to the Legislative
43 Assembly that shows the impact of the plan on rates paid by utility customers.

44 "(5) The commission and staff may consult at any time with, and provide technical assistance
45 to, utilities, their customers, and other interested parties on matters relevant to utility rates and

1 charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based
2 on the record made at the hearing.

3 **SECTION 6. This 2005 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
5 **on its passage."**

6

B-Engrossed Senate Bill 408

Ordered by the Senate June 6
Including Senate Amendments dated April 15 and June 6

Sponsored by Senator WALKER; Senator METSGER

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.

[Allows electric company entering into contract to buy electricity from forest biomass project located on tribal lands to determine price necessary to make project economically feasible. Requires company to include costs of electricity purchased in costs used to set rates of company.]

[Requires Public Utility Commission, in setting rates of electric company, to allow recovery of costs associated with purchase of electricity from forest biomass project and to allow company to recover costs from all classes of ratepayers.]

Declares legislative findings regarding public utility taxes. Requires public utilities to file annual tax report with Public Utility Commission. Requires report to provide information concerning amount of taxes paid by utility during specified time period and amount of taxes authorized to be collected in rates.

Requires commission to review report and determine if amount of taxes assumed in rates or otherwise assessed to ratepayers differs from amount of taxes paid by utility to units of government. Directs commission, upon finding difference in amounts, to require utility to implement rate schedule automatic adjustment clause accounting for difference. Provides exceptions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to rates of public utilities; creating new provisions; amending ORS 757.210; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 757.

SECTION 2. The Legislative Assembly finds and declares that:

(1) The alignment of taxes collected by public utilities from utility customers with taxes actually paid to units of government by utilities, or affiliated groups of corporations that include utilities, is of special interest to this state.

(2) Taxes are a unique utility cost because the actual tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

(3) The Public Utility Commission permits a utility to include costs for taxes that assume the utility is not part of an affiliated group of corporations for tax purposes.

(4) The parent company of a utility may employ accounting methods, debt, consolidated tax return rules and other techniques in a way that results in a difference between the tax liability actually paid to units of government by the public utility, or the affiliated group of corporations of which the utility is a member, and the amount of taxes collected, directly or indirectly, from customers.

(5) Tax uncertainty in the ratemaking process may result in collecting taxes from

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 ratepayers that are not paid to units of government.

2 (6) Utility rates that include amounts for taxes should reflect the taxes that are actually
3 paid to units of government to be considered fair, just and reasonable.

4 **SECTION 3.** (1) Every public utility shall file a tax report with the Public Utility Com-
5 mission annually, on or before October 15 following the year for which the report is being
6 made. The tax report shall contain the information required by the commission, including:

7 (a) The amount of taxes that was paid by the utility in the three preceding years, or that
8 was paid by the affiliated group and that is properly attributed to the regulated operations
9 of the utility, determined without regard to the tax year for which the taxes were paid; and

10 (b) The amount of taxes authorized to be collected in rates for the three preceding years.

11 (2) The tax report shall be made publicly available at the time it is filed.

12 (3) The commission shall review the tax report and make the determinations described
13 in this section within 90 days following the filing of the report. If the commission determines
14 that the amount of taxes assumed in rates or otherwise assessed to ratepayers for any of
15 the three preceding years differed from the amount of taxes actually paid to units of gov-
16 ernment by the public utility, or by the affiliated group and properly attributed to the regu-
17 lated operations of the utility, the commission shall require the utility to implement an
18 automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of
19 the commission's determinations under this section. The automatic adjustment clause shall
20 apply only prospectively, and shall account for all taxes paid to units of government by the
21 utility, or by the affiliated group that are properly attributed to the regulated operations of
22 the utility, and all taxes that are charged to ratepayers of the utility through rates, so that
23 ratepayers are not charged for more tax than:

24 (a) The utility actually pays to units of government; or

25 (b) In the case of an affiliated group, the affiliated group pays to units of government
26 that is properly attributed to the regulated operations of the utility.

27 (4) The automatic adjustment clause described in subsection (3) of this section may not
28 be used to make adjustments to rates that are properly attributable to any other affiliate
29 of the utility or to the parent of the utility.

30 (5) Notwithstanding subsections (1) to (3) of this section, the commission may authorize
31 a public utility to include in rates deferred taxes resulting from accelerated depreciation or
32 other tax treatment of utility investment. Deferred taxes that are subsequently paid by a
33 utility to a unit of government may not be charged to ratepayers.

34 (6) If the commission determines that implementing an automatic adjustment clause
35 under subsection (3) of this section would have a material adverse effect on customers of the
36 public utility, the commission may not require the utility to implement the clause.

37 (7) The commission must conduct a hearing under ORS 757.210 prior to making a deter-
38 mination under subsection (6) of this section that an automatic adjustment clause would
39 have a material adverse effect on customers of the public utility.

40 (8) As used in this section and section 2 of this 2005 Act:

41 (a) "Affiliated group" means an affiliated group of corporations of which the utility is a
42 member, and that files a consolidated federal income tax return.

43 (b) "Public utility" or "utility" does not include a water utility.

44 (c) "Tax":

45 (A) Means a federal, state or local tax or fee that is imposed on or measured by income

1 and that is paid to units of government.

2 (B) Does not include any amount that is refunded by a unit of government as a tax re-
3 fund.

4 (d) "Three preceding years" means the three most recent consecutive fiscal years pre-
5 ceding the date the tax report is required to be filed.

6 **SECTION 4.** The tax report that, under section 3 of this 2005 Act, is required to be filed
7 on or before October 15, 2005, shall set forth the information required to be reported under
8 section 3 of this 2005 Act for the three most recent consecutive fiscal years of the public
9 utility that concluded prior to the date of the filing of the tax report or January 15, 2006,
10 whichever is earlier.

11 **SECTION 5.** ORS 757.210 is amended to read:

12 757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or
13 schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing
14 rate or schedule of rates, the commission may, either upon written complaint or upon the commis-
15 sion's own initiative, after reasonable notice, conduct a hearing to determine *[the propriety and*
16 *reasonableness of such rate or schedule]* **whether the rate or schedule is fair, just and**
17 **reasonable.** The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the
18 utility, its customer or customers, or any other proper party within 60 days of the utility's filing;
19 provided that no hearing need be held if the particular rate change is the result of an automatic
20 adjustment clause. At *[such]* **the** hearing the utility shall bear the burden of showing that the rate
21 or schedule of rates proposed to be established or increased or changed is *[just and reasonable]* **fair,**
22 **just and reasonable. The commission may not authorize a rate or schedule of rates that is**
23 **not fair, just and reasonable. [The term]**

24 (b) **As used in this subsection,** "automatic adjustment clause" means a provision of a rate
25 schedule *[which]* **that** provides for rate increases or decreases or both, without prior hearing, re-
26 flecting increases or decreases or both in costs incurred, **taxes actually paid to units of govern-**
27 **ment** or revenues earned by a utility and *[which]* **that** is subject to review by the commission at
28 least once every two years.

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

31 (b) Any alternative form of regulation plan shall include provisions to ensure that the plan op-
32 erates in the interests of utility customers and the public generally and results in rates that are just
33 and reasonable and may include provisions establishing a reasonable range for rate of return on
34 investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

35 (A) Promotes increased efficiencies and cost control;

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

37 (C) **Does not include the recovery of amounts collected as taxes that are not actually paid**
38 **to units of government by the public utility or, if the utility is part of an affiliated group of**
39 **corporations, by the group and properly attributed to the regulated operations of the utility;**

40 *[(C)]* (D) Is consistent with maintenance of safe, adequate and reliable service; and

41 *[(D)]* (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

42 (c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the
43 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets
44 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-
45 service rate regulation.

1 (d) Prior to implementing a rate change under an alternative form of regulation plan, the utility
2 shall present a report that demonstrates the calculation of any proposed rate change at a public
3 meeting of the commission.

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

9 (4) Periodically, but not less often than every two years after the implementation of a plan re-
10 ferred to in subsection (2) of this section, the commission shall submit a report to the Legislative
11 Assembly that shows the impact of the plan on rates paid by utility customers.

12 (5) The commission and staff may consult at any time with, and provide technical assistance to,
13 utilities, their customers, and other interested parties on matters relevant to utility rates and
14 charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based
15 on the record made at the hearing.

16 **SECTION 6. This 2005 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
18 **on its passage.**

Minority Report

B-Engrossed

Senate Bill 408

Ordered by the Senate June 6
Including Senate Amendments dated April 15 and Senate Minority
Report Amendments dated June 6

Sponsored by nonconcurring members of the Senate Committee on Business and Economic Development: Senators
B STARR, ATKINSON

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.

[Allows electric company entering into contract to buy electricity from forest biomass project located on tribal lands to determine price necessary to make project economically feasible. Requires company to include costs of electricity purchased in costs used to set rates of company.]

[Requires Public Utility Commission, in setting rates of electric company, to allow recovery of costs associated with purchase of electricity from forest biomass project and to allow company to recover costs from all classes of ratepayers.]

Directs Public Utility Commission to convene working group to study and evaluate methods to account for taxes collected from public utility ratepayers in order to ensure that amounts collected match amounts of taxes paid by utility to units of government. Requires working group to report findings and evaluation to Seventy-fourth Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to rates of public utilities; and declaring an emergency.

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

SECTION 1. (1) Within 60 days following the effective date of this 2005 Act, the Public Utility Commission shall convene a working group to study and evaluate appropriate methods to account for taxes collected from public utility ratepayers in order to ensure that the amounts collected for taxes from a utility's ratepayers match the amounts of taxes paid to units of government by the utility, or by the affiliated group of corporations of which the utility is a member and that are properly attributed to the regulated operations of the utility.

(2) The working group shall be composed of representatives of:

(a) The commission;

(b) Electric and natural gas utilities;

(c) Residential utility consumers;

(d) Commercial utility consumers; and

(e) Industrial utility consumers.

(3) The working group shall prepare a written report of the group's evaluation and findings, and shall present the report to the Seventy-fourth Legislative Assembly.

SECTION 2. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

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.

HOUSE AMENDMENTS TO B-ENGROSSED SENATE BILL 408

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 28

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and delete pages 2 through
2 4 and insert:

3 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS**
4 **chapter 757.**

5 **"SECTION 2. (1) The Legislative Assembly finds and declares that:**

6 **"(a) The alignment of taxes collected by public utilities from utility customers with taxes**
7 **paid to units of government by utilities, or affiliated groups that include utilities, is of special**
8 **interest to this state.**

9 **"(b) Taxes are a unique utility cost because the tax liability is affected by the operations**
10 **or tax attributes of the parent company or other affiliates of the utility.**

11 **"(c) The Public Utility Commission permits a utility to include costs for taxes that as-**
12 **sume the utility is not part of an affiliated group of corporations for tax purposes.**

13 **"(d) The parent company of a utility may employ accounting methods, debt, consolidated**
14 **tax return rules and other techniques in a way that results in a difference between the tax**
15 **liability paid to units of government by the utility, or the affiliated group of corporations of**
16 **which the utility is a member, and the amount of taxes collected, directly or indirectly, from**
17 **customers.**

18 **"(e) Tax uncertainty in the ratemaking process may result in collecting taxes from**
19 **ratepayers that are not paid to units of government.**

20 **"(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to**
21 **units of government to be considered fair, just and reasonable.**

22 **"(g) Tax information of a business is commercially sensitive. Public disclosure of tax in-**
23 **formation could provide a commercial advantage to other businesses.**

24 **"(2) The definitions in section 3 of this 2005 Act apply to this section.**

25 **"SECTION 3. (1) Every public utility shall file a tax report with the Public Utility Com-**
26 **mission annually, on or before October 15 following the year for which the report is being**
27 **made. The tax report shall contain the information required by the commission, including:**

28 **"(a) The amount of taxes that was paid by the utility in the three preceding years, or**
29 **that was paid by the affiliated group and that is properly attributed to the regulated oper-**
30 **ations of the utility, determined without regard to the tax year for which the taxes were**
31 **paid; and**

32 **"(b) The amount of taxes authorized to be collected in rates for the three preceding**
33 **years.**

34 **"(2) Every public utility shall be required to obtain and provide to the commission any**
35 **other information that the commission requires to review the tax report and to implement**

1 and administer this section and ORS 757.210.

2 “(3) The commission may disclose, or any intervenor may obtain and disclose, the
3 amount by which the amount of taxes that units of government received from the public
4 utility or from the affiliated group differs from the amount of costs for taxes collected, di-
5 rectly or indirectly, as part of rates paid by customers, including whether the difference is
6 positive or negative.

7 “(4) The commission shall review the tax report and any other information the commis-
8 sion has obtained and make the determinations described in this section within 90 days fol-
9 lowing the filing of the report, or within a further period of time that the commission may
10 by rule establish for making determinations under this section that does not exceed 180 days
11 following the filing of the report. If the commission determines that the amount of taxes
12 assumed in rates or otherwise collected from ratepayers for any of the three preceding years
13 differed by \$100,000 or more from the amount of taxes paid to units of government by the
14 public utility, or by the affiliated group and properly attributed to the regulated operations
15 of the utility, the commission shall require the utility to establish an automatic adjustment
16 clause, as defined in ORS 757.210, within 30 days following the date of the commission’s de-
17 terminations under this section, or by a later date that the commission may by rule pre-
18 scribe for establishing an automatic adjustment clause that does not exceed 60 days following
19 the date of the commission’s determinations under this section.

20 “(5) If an adjustment to rates is made under an automatic adjustment clause established
21 under this section, the automatic adjustment clause shall remain in effect for each succes-
22 sive year after an adjustment is made and until an order terminating the automatic adjust-
23 ment clause is made under subsection (9) of this section.

24 “(6) The automatic adjustment clause shall account for all taxes paid to units of gov-
25 ernment by the public utility that are properly attributed to the regulated operations of the
26 utility, or by the affiliated group that are properly attributed to the regulated operations of
27 the utility, and all taxes that are authorized to be collected through rates, so that ratepayers
28 are not charged for more tax than:

29 “(a) The utility pays to units of government and that is properly attributed to the regu-
30 lated operations of the utility; or

31 “(b) In the case of an affiliated group, the affiliated group pays to units of government
32 and that is properly attributed to the regulated operations of the utility.

33 “(7) An automatic adjustment clause established under this section may not be used to
34 make adjustments to rates for taxes paid that are properly attributed to any unregulated
35 affiliate of the public utility or to the parent of the utility.

36 “(8) Notwithstanding subsections (1) to (7) of this section, the commission may authorize
37 a public utility to include in rates:

38 “(a) Deferred taxes resulting from accelerated depreciation or other tax treatment of
39 utility investment; and

40 “(b) Tax requirements and benefits that are required to be included in order to ensure
41 compliance with the normalization requirements of federal tax law.

42 “(9) If the commission determines that establishing an automatic adjustment clause un-
43 der this section would have a material adverse effect on customers of the public utility, the
44 commission shall issue an order terminating the automatic adjustment clause. The order
45 shall set forth the reasons for the commission’s determination under this subsection.

1 “(10) The commission shall conduct a hearing under ORS 757.210 prior to making a de-
2 termination under subsection (9) of this section that an automatic adjustment clause would
3 have a material adverse effect on customers of the public utility.

4 “(11) The commission may not use the tax information obtained by the commission under
5 this section for any purpose other than those described in subsections (1) to (10) of this
6 section. An intervenor in a commission proceeding to review the tax report or make rate
7 adjustments described in this section may, upon signing a protective order prepared by the
8 commission, obtain and use the information obtained by the commission that is not other-
9 wise required to be made publicly available under this section, according to the terms of the
10 protective order.

11 “(12) For purposes of this section, taxes paid that are properly attributed to the regulated
12 operations of the public utility may not exceed the lesser of:

13 “(a) That portion of the total taxes paid that is incurred as a result of income generated
14 by the regulated operations of the utility; or

15 “(b) The total amount of taxes paid to units of government by the utility or by the affil-
16 iated group, whichever applies.

17 “(13) As used in this section:

18 “(a) ‘Affiliated group’ means an affiliated group of corporations of which the public utility
19 is a member and that files a consolidated federal income tax return.

20 “(b) ‘Public utility’ or ‘utility’ means:

21 “(A) A regulated investor-owned utility that provided electric or natural gas service to
22 an average of 50,000 or more customers in Oregon in 2003; or

23 “(B) A successor in interest to an entity described in subparagraph (A) of this paragraph
24 that continues to be a regulated investor-owned utility.

25 “(c) ‘Regulated operations of the utility’ means those activities of a public utility that
26 are subject to rate regulation by the commission.

27 “(d) ‘Tax’:

28 “(A) Means a federal, state or local tax or fee that is imposed on or measured by income
29 and that is paid to units of government.

30 “(B) Does not include any amount that is refunded by a unit of government as a tax re-
31 fund.

32 “(C) Does not include franchise fees or privilege taxes.

33 “(e) ‘Taxes authorized to be collected in rates’ means the product determined by multi-
34 plying the following three values:

35 “(A) The revenues the utility collects from ratepayers in Oregon, adjusted for any rate
36 adjustment imposed under this section;

37 “(B) The ratio of the net revenues from regulated operations of the utility to gross re-
38 venues from regulated operations of the utility, as determined by the commission in estab-
39 lishing rates; and

40 “(C) The effective tax rate used by the commission in establishing rates.

41 “(f) ‘Taxes paid’ means amounts received by units of government from the utility or from
42 the affiliated group of which the utility is a member, whichever is applicable, adjusted as
43 follows:

44 “(A) Increased by the amount of tax savings realized as a result of charitable contribu-
45 tion deductions allowed because of charitable contributions made by the utility;

1 “(B) Increased by the amount of tax savings realized as a result of tax credits associated
2 with investment by the utility in the regulated operations of the utility, to the extent the
3 expenditures giving rise to the tax credits and tax savings resulting from the tax credits
4 have not been taken into account by the commission in the utility’s last general ratemaking
5 proceeding; and

6 “(C) Adjusted by deferred taxes related to the regulated operations of the utility.

7 “(g) ‘Three preceding years’ means the three most recent consecutive fiscal years pre-
8 ceding the date the tax report is required to be filed.

9 “SECTION 4. (1) The tax report that, under section 3 of this 2005 Act, is required to be
10 filed on or before October 15, 2005, shall set forth the information required to be reported
11 under section 3 of this 2005 Act for the three most recent consecutive fiscal years of the
12 public utility that concluded prior to the date of the filing of the tax report.

13 “(2) If an automatic adjustment clause is established under section 3 of this 2005 Act,
14 notwithstanding any other provision of section 3 of this 2005 Act, the automatic adjustment
15 clause shall apply only to taxes paid to units of government and collected from ratepayers
16 on or after January 1, 2006.

17 “SECTION 5. ORS 757.210 is amended to read:

18 “757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate
19 or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing
20 rate or schedule of rates, the commission may, either upon written complaint or upon the commis-
21 sion’s own initiative, after reasonable notice, conduct a hearing to determine *[the propriety and*
22 *reasonableness of such rate or schedule]* **whether the rate or schedule is fair, just and**
23 **reasonable.** The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the
24 utility, its customer or customers, or any other proper party within 60 days of the utility’s filing;
25 provided that no hearing need be held if the particular rate change is the result of an automatic
26 adjustment clause. At *[such]* **the** hearing the utility shall bear the burden of showing that the rate
27 or schedule of rates proposed to be established or increased or changed is *[just and reasonable. The*
28 *term]* **fair, just and reasonable. The commission may not authorize a rate or schedule of rates**
29 **that is not fair, just and reasonable.**

30 “(b) As used in this subsection, ‘automatic adjustment clause’ means a provision of a rate
31 schedule *[which]* **that** provides for rate increases or decreases or both, without prior hearing, re-
32 flecting increases or decreases or both in costs incurred, **taxes paid to units of government** or
33 revenues earned by a utility and *[which]* **that** is subject to review by the commission at least once
34 every two years.

35 “(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alterna-
36 tive form of regulation plan, including a resource rate plan under ORS 757.212.

37 “(b) Any alternative form of regulation plan shall include provisions to ensure that the plan
38 operates in the interests of utility customers and the public generally and results in rates that are
39 just and reasonable and may include provisions establishing a reasonable range for rate of return
40 on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

41 “(A) Promotes increased efficiencies and cost control;

42 “(B) Is consistent with least-cost resources acquisition policies;

43 “(C) **Yields rates that are consistent with those that would be obtained following appli-**
44 **cation of section 3 of this 2005 Act;**

45 “*[(C)]* (D) Is consistent with maintenance of safe, adequate and reliable service; and

1 “[(D)] (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

2 “(c) As used in this subsection, ‘alternative form of regulation plan’ means a plan adopted by the
3 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets
4 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-
5 service rate regulation.

6 “(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility
7 shall present a report that demonstrates the calculation of any proposed rate change at a public
8 meeting of the commission.

9 “(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to ap-
10 pear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this
11 section are in conformity with the plan and are just and reasonable. Except as provided in ORS
12 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also
13 shall be subject to complaint under ORS 756.500.

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

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

21 “**SECTION 6. This 2005 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
23 **on its passage.”.**

24

C-Engrossed Senate Bill 408

Ordered by the House July 28
Including Senate Amendments dated April 15 and June 6 and House
Amendments dated July 28

Sponsored by Senator WALKER, Representative BUTLER; Senator METSGER

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.

Declares legislative findings regarding public utility taxes. Requires public utilities to file annual tax report **and other tax information** with Public Utility Commission. Requires report to provide information concerning amount of taxes paid by utility during specified time period and amount of taxes authorized to be collected in rates.

Requires commission to review report and determine if amount of taxes assumed in rates or otherwise assessed to ratepayers differs **by at least \$100,000** from amount of taxes paid by utility to units of government. Directs commission, upon finding difference in amounts, to require utility to implement rate schedule automatic adjustment clause accounting for difference. **Directs commission to terminate automatic adjustment clause upon determination that clause has material adverse effect on customers.** Provides other exceptions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to rates of public utilities; creating new provisions; amending ORS 757.210; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 757.

SECTION 2. (1) The Legislative Assembly finds and declares that:

(a) The alignment of taxes collected by public utilities from utility customers with taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state.

(b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

(c) The Public Utility Commission permits a utility to include costs for taxes that assume the utility is not part of an affiliated group of corporations for tax purposes.

(d) The parent company of a utility may employ accounting methods, debt, consolidated tax return rules and other techniques in a way that results in a difference between the tax liability paid to units of government by the utility, or the affiliated group of corporations of which the utility is a member, and the amount of taxes collected, directly or indirectly, from customers.

(e) Tax uncertainty in the ratemaking process may result in collecting taxes from ratepayers that are not paid to units of government.

(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to

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.

units of government to be considered fair, just and reasonable.

(g) Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.

(2) The definitions in section 3 of this 2005 Act apply to this section.

SECTION 3. (1) Every public utility shall file a tax report with the Public Utility Commission annually, on or before October 15 following the year for which the report is being made. The tax report shall contain the information required by the commission, including:

(a) The amount of taxes that was paid by the utility in the three preceding years, or that was paid by the affiliated group and that is properly attributed to the regulated operations of the utility, determined without regard to the tax year for which the taxes were paid; and

(b) The amount of taxes authorized to be collected in rates for the three preceding years.

(2) Every public utility shall be required to obtain and provide to the commission any other information that the commission requires to review the tax report and to implement and administer this section and ORS 757.210.

(3) The commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the public utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative.

(4) The commission shall review the tax report and any other information the commission has obtained and make the determinations described in this section within 90 days following the filing of the report, or within a further period of time that the commission may by rule establish for making determinations under this section that does not exceed 180 days following the filing of the report. If the commission determines that the amount of taxes assumed in rates or otherwise collected from ratepayers for any of the three preceding years differed by \$100,000 or more from the amount of taxes paid to units of government by the public utility, or by the affiliated group and properly attributed to the regulated operations of the utility, the commission shall require the utility to establish an automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of the commission's determinations under this section, or by a later date that the commission may by rule prescribe for establishing an automatic adjustment clause that does not exceed 60 days following the date of the commission's determinations under this section.

(5) If an adjustment to rates is made under an automatic adjustment clause established under this section, the automatic adjustment clause shall remain in effect for each successive year after an adjustment is made and until an order terminating the automatic adjustment clause is made under subsection (9) of this section.

(6) The automatic adjustment clause shall account for all taxes paid to units of government by the public utility that are properly attributed to the regulated operations of the utility, or by the affiliated group that are properly attributed to the regulated operations of the utility, and all taxes that are authorized to be collected through rates, so that ratepayers are not charged for more tax than:

(a) The utility pays to units of government and that is properly attributed to the regulated operations of the utility; or

(b) In the case of an affiliated group, the affiliated group pays to units of government and that is properly attributed to the regulated operations of the utility.

(7) An automatic adjustment clause established under this section may not be used to make adjustments to rates for taxes paid that are properly attributed to any unregulated affiliate of the public utility or to the parent of the utility.

(8) Notwithstanding subsections (1) to (7) of this section, the commission may authorize a public utility to include in rates:

(a) Deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment; and

(b) Tax requirements and benefits that are required to be included in order to ensure compliance with the normalization requirements of federal tax law.

(9) If the commission determines that establishing an automatic adjustment clause under this section would have a material adverse effect on customers of the public utility, the commission shall issue an order terminating the automatic adjustment clause. The order shall set forth the reasons for the commission's determination under this subsection.

(10) The commission shall conduct a hearing under ORS 757.210 prior to making a determination under subsection (9) of this section that an automatic adjustment clause would have a material adverse effect on customers of the public utility.

(11) The commission may not use the tax information obtained by the commission under this section for any purpose other than those described in subsections (1) to (10) of this section. An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

(12) For purposes of this section, taxes paid that are properly attributed to the regulated operations of the public utility may not exceed the lesser of:

(a) That portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility; or

(b) The total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies.

(13) As used in this section:

(a) "Affiliated group" means an affiliated group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

(b) "Public utility" or "utility" means:

(A) A regulated investor-owned utility that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003; or

(B) A successor in interest to an entity described in subparagraph (A) of this paragraph that continues to be a regulated investor-owned utility.

(c) "Regulated operations of the utility" means those activities of a public utility that are subject to rate regulation by the commission.

(d) "Tax":

(A) Means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to units of government.

(B) Does not include any amount that is refunded by a unit of government as a tax refund.

(C) Does not include franchise fees or privilege taxes.

1 (e) "Taxes authorized to be collected in rates" means the product determined by multi-
 2 plying the following three values:

3 (A) The revenues the utility collects from ratepayers in Oregon, adjusted for any rate
 4 adjustment imposed under this section;

5 (B) The ratio of the net revenues from regulated operations of the utility to gross re-
 6 venues from regulated operations of the utility, as determined by the commission in estab-
 7 lishing rates; and

8 (C) The effective tax rate used by the commission in establishing rates.

9 (f) "Taxes paid" means amounts received by units of government from the utility or from
 10 the affiliated group of which the utility is a member, whichever is applicable, adjusted as
 11 follows:

12 (A) Increased by the amount of tax savings realized as a result of charitable contribution
 13 deductions allowed because of charitable contributions made by the utility;

14 (B) Increased by the amount of tax savings realized as a result of tax credits associated
 15 with investment by the utility in the regulated operations of the utility, to the extent the
 16 expenditures giving rise to the tax credits and tax savings resulting from the tax credits
 17 have not been taken into account by the commission in the utility's last general ratemaking
 18 proceeding; and

19 (C) Adjusted by deferred taxes related to the regulated operations of the utility.

20 (g) "Three preceding years" means the three most recent consecutive fiscal years pre-
 21 ceding the date the tax report is required to be filed.

22 **SECTION 4.** (1) The tax report that, under section 3 of this 2005 Act, is required to be
 23 filed on or before October 15, 2005, shall set forth the information required to be reported
 24 under section 3 of this 2005 Act for the three most recent consecutive fiscal years of the
 25 public utility that concluded prior to the date of the filing of the tax report.

26 (2) If an automatic adjustment clause is established under section 3 of this 2005 Act,
 27 notwithstanding any other provision of section 3 of this 2005 Act, the automatic adjustment
 28 clause shall apply only to taxes paid to units of government and collected from ratepayers
 29 on or after January 1, 2006.

30 **SECTION 5.** ORS 757.210 is amended to read:

31 757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or
 32 schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing
 33 rate or schedule of rates, the commission may, either upon written complaint or upon the commis-
 34 sion's own initiative, after reasonable notice, conduct a hearing to determine *[the propriety and*
 35 *reasonableness of such rate or schedule]* **whether the rate or schedule is fair, just and**
 36 **reasonable.** The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the
 37 utility, its customer or customers, or any other proper party within 60 days of the utility's filing;
 38 provided that no hearing need be held if the particular rate change is the result of an automatic
 39 adjustment clause. At *[such]* **the** hearing the utility shall bear the burden of showing that the rate
 40 or schedule of rates proposed to be established or increased or changed is *[just and reasonable. The*
 41 *term]* **fair, just and reasonable. The commission may not authorize a rate or schedule of rates**
 42 **that is not fair, just and reasonable.**

43 (b) **As used in this subsection, "automatic adjustment clause" means a provision of a rate**
 44 **schedule** *[which]* **that provides for rate increases or decreases or both, without prior hearing, re-**
 45 **flecting increases or decreases or both in costs incurred, taxes paid to units of government or**

1 revenues earned by a utility and [which] **that** is subject to review by the commission at least once
2 every two years.

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

5 (b) Any alternative form of regulation plan shall include provisions to ensure that the plan op-
6 erates in the interests of utility customers and the public generally and results in rates that are just
7 and reasonable and may include provisions establishing a reasonable range for rate of return on
8 investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

9 (A) Promotes increased efficiencies and cost control;

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

11 (C) **Yields rates that are consistent with those that would be obtained following applica-**
12 **tion of section 3 of this 2005 Act;**

13 [(C)] (D) Is consistent with maintenance of safe, adequate and reliable service; and

14 [(D)] (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

15 (c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the
16 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets
17 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-
18 service rate regulation.

19 (d) Prior to implementing a rate change under an alternative form of regulation plan, the utility
20 shall present a report that demonstrates the calculation of any proposed rate change at a public
21 meeting of the commission.

22 (3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to ap-
23 pear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this
24 section are in conformity with the plan and are just and reasonable. Except as provided in ORS
25 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also
26 shall be subject to complaint under ORS 756.500.

27 (4) Periodically, but not less often than every two years after the implementation of a plan re-
28 ferred to in subsection (2) of this section, the commission shall submit a report to the Legislative
29 Assembly that shows the impact of the plan on rates paid by utility customers.

30 (5) The commission and staff may consult at any time with, and provide technical assistance to,
31 utilities, their customers, and other interested parties on matters relevant to utility rates and
32 charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based
33 on the record made at the hearing.

34 **SECTION 6. This 2005 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
36 **on its passage.**

Enrolled Senate Bill 408

Sponsored by Senator WALKER; Senator METSGER

CHAPTER

AN ACT

Relating to rates of public utilities; creating new provisions; amending ORS 757.210; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 757.

SECTION 2. (1) The Legislative Assembly finds and declares that:

(a) The alignment of taxes collected by public utilities from utility customers with taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state.

(b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

(c) The Public Utility Commission permits a utility to include costs for taxes that assume the utility is not part of an affiliated group of corporations for tax purposes.

(d) The parent company of a utility may employ accounting methods, debt, consolidated tax return rules and other techniques in a way that results in a difference between the tax liability paid to units of government by the utility, or the affiliated group of corporations of which the utility is a member, and the amount of taxes collected, directly or indirectly, from customers.

(e) Tax uncertainty in the ratemaking process may result in collecting taxes from ratepayers that are not paid to units of government.

(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable.

(g) Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.

(2) The definitions in section 3 of this 2005 Act apply to this section.

SECTION 3. (1) Every public utility shall file a tax report with the Public Utility Commission annually, on or before October 15 following the year for which the report is being made. The tax report shall contain the information required by the commission, including:

(a) The amount of taxes that was paid by the utility in the three preceding years, or that was paid by the affiliated group and that is properly attributed to the regulated operations of the utility, determined without regard to the tax year for which the taxes were paid; and

(b) The amount of taxes authorized to be collected in rates for the three preceding years.

(2) Every public utility shall be required to obtain and provide to the commission any other information that the commission requires to review the tax report and to implement and administer this section and ORS 757.210.

(3) The commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the public utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative.

(4) The commission shall review the tax report and any other information the commission has obtained and make the determinations described in this section within 90 days following the filing of the report, or within a further period of time that the commission may by rule establish for making determinations under this section that does not exceed 180 days following the filing of the report. If the commission determines that the amount of taxes assumed in rates or otherwise collected from ratepayers for any of the three preceding years differed by \$100,000 or more from the amount of taxes paid to units of government by the public utility, or by the affiliated group and properly attributed to the regulated operations of the utility, the commission shall require the utility to establish an automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of the commission's determinations under this section, or by a later date that the commission may by rule prescribe for establishing an automatic adjustment clause that does not exceed 60 days following the date of the commission's determinations under this section.

(5) If an adjustment to rates is made under an automatic adjustment clause established under this section, the automatic adjustment clause shall remain in effect for each successive year after an adjustment is made and until an order terminating the automatic adjustment clause is made under subsection (9) of this section.

(6) The automatic adjustment clause shall account for all taxes paid to units of government by the public utility that are properly attributed to the regulated operations of the utility, or by the affiliated group that are properly attributed to the regulated operations of the utility, and all taxes that are authorized to be collected through rates, so that ratepayers are not charged for more tax than:

(a) The utility pays to units of government and that is properly attributed to the regulated operations of the utility; or

(b) In the case of an affiliated group, the affiliated group pays to units of government and that is properly attributed to the regulated operations of the utility.

(7) An automatic adjustment clause established under this section may not be used to make adjustments to rates for taxes paid that are properly attributed to any unregulated affiliate of the public utility or to the parent of the utility.

(8) Notwithstanding subsections (1) to (7) of this section, the commission may authorize a public utility to include in rates:

(a) Deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment; and

(b) Tax requirements and benefits that are required to be included in order to ensure compliance with the normalization requirements of federal tax law.

(9) If the commission determines that establishing an automatic adjustment clause under this section would have a material adverse effect on customers of the public utility, the commission shall issue an order terminating the automatic adjustment clause. The order shall set forth the reasons for the commission's determination under this subsection.

(10) The commission shall conduct a hearing under ORS 757.210 prior to making a determination under subsection (9) of this section that an automatic adjustment clause would have a material adverse effect on customers of the public utility.

(11) The commission may not use the tax information obtained by the commission under this section for any purpose other than those described in subsections (1) to (10) of this

section. An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

(12) For purposes of this section, taxes paid that are properly attributed to the regulated operations of the public utility may not exceed the lesser of:

(a) That portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility; or

(b) The total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies.

(13) As used in this section:

(a) "Affiliated group" means an affiliated group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

(b) "Public utility" or "utility" means:

(A) A regulated investor-owned utility that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003; or

(B) A successor in interest to an entity described in subparagraph (A) of this paragraph that continues to be a regulated investor-owned utility.

(c) "Regulated operations of the utility" means those activities of a public utility that are subject to rate regulation by the commission.

(d) "Tax":

(A) Means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to units of government.

(B) Does not include any amount that is refunded by a unit of government as a tax refund.

(C) Does not include franchise fees or privilege taxes.

(e) "Taxes authorized to be collected in rates" means the product determined by multiplying the following three values:

(A) The revenues the utility collects from ratepayers in Oregon, adjusted for any rate adjustment imposed under this section;

(B) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, as determined by the commission in establishing rates; and

(C) The effective tax rate used by the commission in establishing rates.

(f) "Taxes paid" means amounts received by units of government from the utility or from the affiliated group of which the utility is a member, whichever is applicable, adjusted as follows:

(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed because of charitable contributions made by the utility;

(B) Increased by the amount of tax savings realized as a result of tax credits associated with investment by the utility in the regulated operations of the utility, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the commission in the utility's last general ratemaking proceeding; and

(C) Adjusted by deferred taxes related to the regulated operations of the utility.

(g) "Three preceding years" means the three most recent consecutive fiscal years preceding the date the tax report is required to be filed.

SECTION 4. (1) The tax report that, under section 3 of this 2005 Act, is required to be filed on or before October 15, 2005, shall set forth the information required to be reported under section 3 of this 2005 Act for the three most recent consecutive fiscal years of the public utility that concluded prior to the date of the filing of the tax report.

(2) If an automatic adjustment clause is established under section 3 of this 2005 Act, notwithstanding any other provision of section 3 of this 2005 Act, the automatic adjustment clause shall apply only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006.

SECTION 5. ORS 757.210 is amended to read:

757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine *[the propriety and reasonableness of such rate or schedule]* **whether the rate or schedule is fair, just and reasonable.** The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At *[such]* **the** hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is *[just and reasonable. The term]* **fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.**

(b) **As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule** *[which]* **that** provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, **taxes paid to units of government or revenues earned by a utility and** *[which]* **that** is subject to review by the commission at least once every two years.

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

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

(A) Promotes increased efficiencies and cost control;

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

(C) **Yields rates that are consistent with those that would be obtained following application of section 3 of this 2005 Act;**

[(C)] (D) Is consistent with maintenance of safe, adequate and reliable service; and

[(D)] (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

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

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.

(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and

73rd OREGON LEGISLATIVE ASSEMBLY - 2005 Regular Session
STAFF MEASURE SUMMARY
Senate Committee on Business and Economic Development

MEASURE: SB 408 A
CARRIER: Sen. Westlund

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	3 - 1 - 1
Yeas:	Atkinson, Starr B., Metsger
Nays:	Monnes Anderson
Exc.:	Deckert
Prepared By:	Theresa Van Winkle, Administrator
Meeting Dates:	4/7

WHAT THE MEASURE DOES: Authorizes the Public Utilities Commission (PUC) to approve a new demonstration biomass power plant on tribal lands with a capacity between 5 and 20 megawatts that primarily uses hazardous forest fuel diverted from potential wildfires. Allows electric company entering into a contract to purchase electricity from the project to determine the price necessary to make the project economically feasible by considering costs and other relevant economic considerations. Requires an electric company purchasing electricity from the project to include the costs of the electricity in the costs used to set rates. Requires PUC to allow recovery of costs associated with the purchase of electricity under such contract and for a company to recover costs from all classes of ratepayers.

ISSUES DISCUSSED:

- ☐ How demonstration plant can be used to contain wildfires by reducing the reduction of hazardous forest fuel
- ☐ Benefits of creating the demonstration plant in regards to renewable electric energy
- ☐ Economic development to Confederated Tribes of the Warm Springs Reservation
- ☐ Process in how utilities purchase power
- ☐ What could occur if no one buys electricity produced by the demonstration plant
- ☐ Potential rate increases for ratepayers whose company chooses to purchase power from the demonstration plant

EFFECT OF COMMITTEE AMENDMENT: Replaces the bill.

BACKGROUND: Over the past decade, the Confederated Tribes of the Warm Springs Reservation of Oregon, along with many other areas in the state, have been faced with large wildfires. One of the concerns that have risen is the large amount of hazardous fuel in the state's forests, such as dead and down timber. SB 408 A establishes a new approach to fuel reduction by allowing the Tribe to operate a small biomass power plant using "wood waste."

The Tribe is in a unique situation to establish such a project regarding renewable energy generation and reducing hazardous timber fuel. They currently own business enterprises which generate power and manufacture lumber. They are also actively involved in managing forest lands within the Reservation and have earned Forest Stewardship Council certification as a green forest manager. The project will involve fuel reduction projects on tribal forests at the rate of approximately 2,000 to 3,000 acres each year and 8,000 to 10,000 acres per year on adjoining public and private lands. "Wood waste" will be used to fire a boiler to create steam, used to spin turbines which not only produces electricity, but generates heat to dry lumber.

4/14/2005 8:53:00 AM

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

Committee Services Form – 2005 Regular Session

REVENUE: Revenue statement issued
FISCAL: No fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed
Vote: 3 - 2 - 0
Yeas: Deckert, Monnes Anderson, Metsger
Nays: Atkinson, Starr B.
Exc.: 0
Prepared By: Theresa Van Winkle, Administrator
Meeting Dates: 4/7; 4/28; 5/26; 5/31

WHAT THE MEASURE DOES: Establishes legislative findings regarding public electric utility taxes. Requires public utilities to file an annual tax report to the Public Utility Commission (PUC) on or before October 15 following the year for which the report is being made. Outlines required report information, such as the amount of taxes paid by the utility or the affiliated group attributed for the utility's regulated operations, and the authorized amount of taxes to be collected, for the three proceeding years to the year for which the report is filed. Within 90 days after receiving the report, the PUC is required to review the report and determine whether the amount of taxes assumed in rates or otherwise assessed to ratepayers differs from the amount of taxes actually paid to units of government. If a difference occurs, the PUC is directed to require the utility to implement an automatic adjustment clause, defined under current statute, within 30 days of its findings. Establishes that the automatic adjustment clause is applied prospectively, and is to account for all taxes paid to government units and all taxes charged to ratepayers of the utility. States that the automatic adjustment clause may not be used to make rate adjustments that are properly attributable to any other affiliate of the utility or its parent company. Allows the PUC to authorize a public utility to include deferred taxes resulting from accelerated depreciation or other tax treatment of a utility tax in its rates, but ratepayers cannot be charged for deferred taxes that are subsequently paid by a utility to a unit of government. Allows the PUC to not require the utility to implement the automatic adjustment clause if it would have a "material adverse effect" on its customers. Prevents the PUC from authorizing a rate or schedule of rates that is not "fair, just and reasonable." Amends current statute to include provisions of the measure to the definition of "automatic adjustment clause." Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- ☐ Background behind the measure
- ☐ Recommendations from the Public Utility Commission regarding consolidated tax returns
- ☐ Current methods of estimating income taxes and how they are factored into utility rate decisions
- ☐ Informal workgroup who developed amendments
- ☐ How utilities use funds which are generated due to overestimated taxes for projects such as
- ☐ Examples of tax "true-up"
- ☐ Definition of fairness as it applies to utility taxes

EFFECT OF COMMITTEE AMENDMENT: Replaces the bill.

BACKGROUND: The Public Utility Commission (PUC) currently sets utility 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. Current statute requires consolidated entities to file corporate income taxes as a consolidated group instead of a separate subsidiary of the parent corporation. Because of this, there is often a difference between the hypothetical calculation used to set rates and taxes actually paid. Concerns have been raised from consumer groups and other interests about this mismatch, particularly the effects of filing consolidated tax returns. SB 408-B establishes mechanisms to close the gap between the amount of taxes that are collected from utility customers and what is actually paid to state, federal, and local governments.

Under ORS 757.210, an "automatic adjustment clause" is defined as "a provision of a rate schedule which provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred or revenues earned by a utility and which is subject to review by the commission at least once every two years."

6/3/2005 4:36 PM

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

73rd OREGON LEGISLATIVE ASSEMBLY - 2005 Regular Session
STAFF MEASURE SUMMARY
Senate Committee on Business and Economic Development

MINORITY REPORT
MEASURE: SB 408 A
CARRIER: Sen. Atkinson

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed

Signers to Minority Report: Atkinson and B. Starr

Prepared By: Theresa Van Winkle, Administrator

Meeting Dates: 4/7; 4/28; 5/26; 5/31

WHAT THE MINORITY REPORT DOES: Requires the Public Utility Commission to convene a work group to study and evaluate appropriate methods to account for taxes collected from public utility ratepayers to ensure that the amounts collected from ratepayers match amounts in which the utility or the affiliated corporation(s) properly attributed to the utility's regulated operations pay to units of government. Establishes membership of the work group and for the group to convene within 60 days following the effective date of the measure. Requires the work group to prepare a written report of their evaluation and findings to be presented to the 74th Legislative Assembly. Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- ☐ Background behind the measure
- ☐ Recommendations from the Public Utility Commission regarding consolidated tax returns
- ☐ Current methods of estimating income taxes and how they are factored into utility rate decisions
- ☐ Informal workgroup who developed amendments
- ☐ How utilities use funds which are generated due to overestimated taxes for projects such as
- ☐ Examples of tax "true-up"
- ☐ Definition of fairness as it applies to utility taxes

EFFECT OF MINORITY AMENDMENT: Replaces the bill.

BACKGROUND: The Public Utility Commission (PUC) currently sets utility 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. Current statute requires consolidated entities to file corporate income taxes as a consolidated group instead of a separate subsidiary of the parent corporation. Because of this, there is often a difference between the hypothetical calculation used to set rates and taxes actually paid.

6/3/2005 4:37 PM

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

Committee Services Form – 2005 Regular Session

LEGISLATIVE REVENUE OFFICE
STATE CAPITOL BUILDING
900 COURT ST NE, ROOM H-197
SALEM, OREGON 97310-1347
PHONE (503) 986-1266 — FAX (503) 986-1770
<http://www.leg.state.or.us>
Paul Warner, Legislative Revenue Officer

REVENUE IMPACT OF PROPOSED LEGISLATION
2005 73rd Oregon Legislative Assembly

BILL NUMBER	REVENUE AREA	ECONOMIST	DATE
SB 408 B	Utility Fees	Martin-Mahar	6/3/05

MEASURE DESCRIPTION: Outlines the importance in determining an accurate amount of income taxes paid by public utility companies each year. Requires public utilities to file an annual tax report to the Public Utility Commission (PUC) on or before October 15th on the following year for which the report is being made. Specifies the items that must be included in the tax report to the PUC: the amount of taxes that was actually paid by the utility in the three preceding years, the amount of taxes authorized to be collected in rates for the three preceding years. Requires the tax report to be made public and that the commission review the report within 90 days and make utility rate change recommendations. Mandates that the utility implement the new utility rates within 30 days following the date of the PUC's determination of rate adjustments. Specifies that the rate adjustments be made prospectively and that ratepayers not be charged more tax than was actually paid by the utility. Allows the commission to determine if the rate adjustment would have an adverse effect on customers of the public utility in which case the PUC is not required to make a rate adjustment. Requires the tax report to be filed on or before Oct. 15, 2005 for the three most recent consecutive fiscal years of the public utility that concluded prior to the date of the filing of the tax report or January 15, 2006, whichever is earlier. Prevents the PUC from authorizing a rate or schedule of rates that is not "fair, just and reasonable." Declares an emergency, effective on passage.

REVENUE IMPACT:

STATE: This Act will have no impact on state general fund revenue.

It will allow additional adjustments in utility fees to compensate Oregon consumers for differences between the PUC projections of public utilities' payment of corporate excise taxes to the state versus the actual corporate tax payments. Given the difference between prior years' PUC projections versus actual state corporate excise taxes paid, the PUC would be lowering utility fees to Oregon consumers in the future. The amount of the utility fee adjustment for consumers is indeterminate and in the future utility rate adjustments could be a decrease or increase over the current rate setting calculation taken by the PUC.

LEGISLATIVE REVENUE OFFICE
STATE CAPITOL BUILDING
900 COURT ST NE, ROOM H-197
SALEM, OREGON 97310-1347
PHONE (503) 986-1266 — FAX (503) 986-1770
<http://www.leg.state.or.us>
Paul Warner, Legislative Revenue Officer

REVENUE IMPACT OF PROPOSED LEGISLATION
2005 73rd Oregon Legislative Assembly

BILL NUMBER	REVENUE AREA	ECONOMIST	DATE
SB 408 C	Utility Fees	Martin-Mahar	7/27/05

MEASURE DESCRIPTION: Outlines the importance the legislature places on determining an accurate amount of income taxes paid by public utility companies each year. Requires public utilities to file an annual tax report to the Public Utility Commission (PUC) on or before October 15th on the following year for which the report is being made. Specifies the items that must be included in the tax report to the PUC: the amount of taxes that was actually paid by the utility or the amount of taxes from the affiliated group and the amount of taxes authorized to be collected in rates in the three preceding years. Allows the Commission to disclose the actual amount of taxes that units of government have received from public utilities or the affiliated group and difference from the tax amount estimated in the customer utility rates. Requires the Commission to review the tax report within 90 days or a longer time period established by the Commission, not to exceed 180 days, and make utility rate change recommendations. Authorizes the Commission to establish a rate adjustment within 30 days following the date of the determination or a later date not to exceed 60 days if the Commission determines that the amount of taxes assumed in utility rates for any of the three preceding years differed by \$100,000 or more from the amount of taxes paid to government units. Specifies that the rate adjustment clause shall remain in effect for each successive year until an order terminating the automatic adjustment clause shall be made. Requires that the automatic adjustment clause account for all taxes paid to units of government by the public utility that are attributed to the regulated operations of the utility so that ratepayers are not charged for more tax than the utility or the affiliated group pays to government. Requires the commission to conduct a hearing prior to a rate adjustment if the adjustment would have an adverse effect on customers of the public utility. Prohibits the Commission from using the public utilities' tax information for other purposes other than setting rate adjustments. Provides definitions. Requires the tax report to be filed on or before Oct. 15, 2005 for the three most recent consecutive fiscal years of the public utility that concluded prior to the date of the filing of the tax report. Specifies that the automatic adjustment clause applies only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006. Prevents the PUC from authorizing a rate or schedule of rates that is not "fair, just and reasonable." Declares an emergency, effective on passage.

REVENUE IMPACT:

STATE: This Act will have no impact on state general fund revenue.

It will allow additional adjustments in utility fees to compensate Oregon consumers for differences between the PUC projections of public utilities' payment of corporate excise taxes to the state versus the actual corporate tax payments. Given the difference between prior years' PUC projections versus actual state corporate taxes paid, the PUC would be lowering utility fees to Oregon consumers in the future. The amount of the utility fee adjustment for consumers is

indeterminate and in the future utility rate adjustments could be a decrease or increase over the current rate setting calculation taken by the PUC.

REVENUE: Revenue statement issued

FISCAL: No fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed and Rescind the Subsequent Referral to the Committee on Budget

Vote: 4 - 1 - 0

Yeas: Barker, Boquist, Flores, Krieger

Nays: Macpherson

Exc.: 0

Prepared By: Cletus Moore, Administrator

Meeting Dates: 6/30, 7/15, 7/26

WHAT THE MEASURE DOES: Establishes legislative findings regarding public electric utility taxes. Requires public utilities to file an annual tax report to the Public Utility Commission (PUC). Outlines required report information, such as the amount of taxes paid by the utility or the affiliated group attributed for the utility's regulated operations, and the authorized amount of taxes to be collected during specified time period and amount of taxes authorized to be collected in rates. Requires the PUC to review the report and determine whether the amount of taxes assumed in rates or otherwise assessed to ratepayers differs from the amount of taxes actually paid to units of government. If a difference occurs, the PUC is directed to require the utility to implement an automatic adjustment clause, defined under current statute. Directs commission, upon finding difference in amounts, to require utility to implement rate schedule automatic adjustments clause accounting for difference. Establishes that the automatic adjustment clause is applied prospectively, and is to account for all taxes paid to government units and all taxes charged to ratepayers of the utility. Allows the PUC to not require the utility to implement the automatic adjustment clause if it would have a "material adverse effect" on its customers. Prevents the PUC from authorizing a rate or schedule of rates that is not "fair, just and reasonable". Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- ☐ Allowances of return on investments and disallowances under tax provisions
- ☐ Use of tax as a profit center and tax benefits and investments
- ☐ Issue of fair, just and reasonable rates
- ☐ Rate recovery and fairness to the consumer
- ☐ Impact on charitable adjustments
- ☐ Methods of estimating income taxes and factors that effect utility rates
- ☐ Effect on rates by provisions of the measure
- ☐ Work group efforts and compromise on issues in development of amendments

EFFECT OF COMMITTEE AMENDMENT: Replaces the bill.

BACKGROUND: SB 408C addresses publicly held (investor owned) energy utility companies of substantial size. The public utility files with the Public Utility Commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state. The public utility also files copies of interstate rate schedules and rules and regulations issued by it or to which it is a party. Currently the Public Utility Commission (PUC) sets utility 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. Current statute requires consolidated entities to file corporate income taxes as a consolidated group instead of a separate subsidiary of the parent corporation. Because of this, there is often a difference between the hypothetical calculation used to set rates and taxes actually paid.

Concerns have been raised from consumer groups and other interests about this mismatch, particularly the effects of filing consolidated tax returns. This measure offers a compromise in establishing a mechanism to determine a rate that is "fair, just and reasonable" for utility customers and a more realistic balance between taxes collected from utility customers and amount actually paid to state, federal, and local governments. Under ORS 757.210, an "automatic adjustment clause" is defined as "a provision of a rate schedule which provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred or revenues earned by a utility and which is subject to review by the commission at least once every two years."

7/28/2005 11:51 AM/lah

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

**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

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.

TAPE/#	Speaker	Comments
<hr/>		
TAPE 56, A		
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
Hearing no objection, declares the motion CARRIED.
- 022 Chair Metsger **MOTION: Moves SB 579 to the floor with a DO PASS AS**
Sen. Atkinson **AMENDED recommendation.**
- 024 **VOTE: 3-0-2**
EXCUSED: 2 – Deckert, Monnes Anderson
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 **VOTE: 5-0-0**
Chair Metsger **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 Metgser 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 **EXCUSED: 2 - Atkinson, Deckert**

383 Sen. B. Starr **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**

Chair Metsger **EXCUSED: 2 - Atkinson, Deckert**

390 Chair Metsger **Hearing no objection, declares the motion CARRIED.**

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 **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**
- Hearing no objection, declares the motion CARRIED.**
- 193 Chair Metsger **SEN. BATES will lead discussion on the floor.**
- 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 **MOTION: Moves SB 408 to the floor with a DO PASS AS**
Sen. B. Starr **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**
Chair Metsger **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.

133

Chair Metsger

VOTE: 4-0-1**EXCUSED: 1 - Atkinson****Hearing no objection, declares the motion CARRIED.****SEN. B. STARR will lead discussion on the floor.**

140

Chair Metsger

Closes work session on SB 997. Opens a work session on SB 949.

SB 949 – WORK SESSION

143

Van Winkle

Explains the provisions of the measure. Notes there are -2 amendments to the measure (**EXHIBIT S**).

153

Neil Jackson

Oregon Trial Lawyers Association. Discusses the method of reaching an agreement through the -2 amendments.

167

Steve Murrell

Claim Attorney, State Farm Insurance. Concurs they have reached an agreement through the -2 amendments.

177

Chair Metsger

Asks if they are comfortable to move this forward.

180

Murrell

Replies they are.

185

Sen. B. Starr

MOTION: Moves to ADOPT SB 949-2 amendments dated 4/4/05.

187

VOTE: 4-0-1**EXCUSED: 1 - Atkinson****Hearing no objection, declares the motion CARRIED.**

190

Chair Metsger

Sen. B. Starr

MOTION: Moves SB 949 to the floor with a DO PASS AS AMENDED recommendation.

193

VOTE: 4-0-1**EXCUSED: 1 - Atkinson****Hearing no objection, declares the motion CARRIED.****SEN. DECKERT will lead discussion on the floor.**

Chair Metsger

195

Chair Metsger

Closes the work session on SB 949. Opens a work session on SB 950.

SB 950 – WORK SESSION

197

Van Winkle

Describes the provisions of the measure. Points out the -2 amendment before the committee (**EXHIBIT T**).

203

Murrell

Provides and summary of prior testimony. Testifies in favor to the -2 amendment, aside from some minor technical issues.

237

Chair Metsger

Appreciates their efforts to clarify the law. Wonders if there is any trouble moving this forward.

243

Murrell

Offers that he has no concerns with this measure moving forward. Notes there may be additional issues to be addressed in the other chamber.

249

Sen. Deckert

MOTION: Moves to ADOPT SB 950-2 amendments dated 4/7/05.

253

VOTE: 3-0-2**EXCUSED: 2 - Atkinson, B. Starr****Hearing no objection, declares the motion CARRIED.**

Chair Metsger

257

Sen. Deckert

MOTION: Moves SB 950 to the floor with a DO PASS AS AMENDED recommendation.

260

VOTE: 3-0-2**EXCUSED: 2 - Atkinson, B. Starr****Hearing no objection, declares the motion CARRIED.**

Chair Metsger

SEN. METSGER will lead discussion on the floor.

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 down. 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
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
Hearing no objection, declares the motion CARRIED.
- 263 **Chair Metsger** **MOTION: Moves SB 385 to the floor with a DO PASS AS**
Sen. B. Starr **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 **VOTE: 3-0-2**
EXCUSED: 2 - Atkinson, Deckert
 Chair Metsger **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 Associated General Contractors. Notes her support of the measure.
 Adamson

TAPE 58, B

003 Sen. B. Starr **MOTION: Moves SB 173 to the floor with a DO PASS recommendation.**
 005 **VOTE: 3-0-2**
EXCUSED: 2 - Atkinson, Deckert
 Chair Metsger **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
Chair Metsger **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 408 PUBLIC HEARING AND WORK SESSION**

April 7, 2005

- Chair: Okay. Now we are going to move on, Committee, is that correct?
- Woman: Yes, sir.
- Chair: Senate Bill 408 and I'm going to ask that Benjamin, Senator Benjamin Westlund and Michael Mason come forward.
- Man: Oh, this is [inaudible]?
- Chair: Yes. 408. Colleagues, we have amendments before us which gut and stuff, Senate Bill 408, so the original bill is not in play here and Senator Westlund will kick off what we now have before us.
- Westlund: Thank you, Mr. Chair. For the record, Senator Ben Westlund, District 27. I am here to humbly ask your distinguished committee to consider the -3 amendments to Senate Bill 408. I sought the -3s because I believe very sincerely that it is the best way our state can serve Oregonians in rural areas in working closely with our Native American partners to address a very important issue facing Oregon. The conditions of our forest in central Oregon are that pressing issue and one that will become, and I give full credit to Michael Mason for this phrase, one that will become a hotly burning issue if not addressed very soon: threat of wildfires. It's just not a concern of my constituents, it is a terror that they live with every summer. And if I can editorialize just a wee-bit, if it was not for the dab of Weyerhaeuser-managed timber that was between Black Butte and the Cache Mountain Fire three years ago, Black Butte would be much blacker today. We would have lost the whole resort. Anyway, for decades, first with the leadership of Representative Vic Atiyeh, then Senator, then Governor Atiyeh, our relations with the Native American people of Oregon have been some of the very finest in the nation. That good work has only strengthened the tribes and their neighbors. The Warm Springs tribes have been incredible partners in progress with our other communities in central Oregon. They're expanding this partnership by embarking on a solution to our fuel-choked forest that will generate power while reducing the risk of catastrophic wildfires. Amending Senate Bill 408 to allow the PUC with a willing utility to take into account the benefit of not having to fight these fires is the least we can do to not only help the tribes, but also help all of us solve the forest fuel crisis facing not just central Oregon, but many parts of Oregon. This should be an absolute no-brainer when it comes to the present leaders throughout Oregon that are urgently seeking solutions. This is just not a state of Oregon issue, but this is a state of Oregon solution that you're proposing. The Confederated

Tribes of Warm Springs have demonstrated a long and proven management history to manage the biomass project work and, if I go so far, they could probably do it without this bill, but this bill would certainly help in that cause. I would strongly urge the committee to adopt the -3s and give the bill a due pass recommendation. I'd be happy to answer any questions.

Chair: Okay, Senator, why don't we go ahead and proceed with our other witnesses.

Mason: Thank you, Chair Metsger. Members of the Business and Economic Development Committee. Michael Mason, lobbyist for the Confederate Tribes of Warm Springs. I'm here today mainly to introduce to you Larry Potts, the general manager of Warm Springs Forest Products Industries, the mill that's been running over at Warm Springs for many years now, and he has some comments to make in support of these amendments. I wanted to thank you for your consideration. I know your schedule's very hectic, but this is an important issue as the senator has pointed out. So, I turn it over to Mr. Potts.

Potts: Chairman Metsger, members of the committee, thank you for allowing me to be here today. Over the past decade tribal forest of joining national forest in the Bureau of Land Management lands have been subjected to repeated catastrophic wildfires, many of which have originated on federally managed forests. There is now widespread public recognition and acceptance that a new management regime is necessary to protect Oregon's forest eco systems regardless of the ownership and over the long term. The tribe is uniquely situated to develop a new approach to fuel reduction, one that is sustainable without substantial government funding. First, the Confederated Tribes of Warm Springs and their own business enterprises are currently generating power, manufacturing lumber and are actively involved with managing forest lands on the Warm Springs reservation. Thus, demonstrating all the skills necessary to carry out this new approach. Second, the tribes who's perpetual management of its own extensive forest have earned forest directship council certification as a greed forest manager, has the necessary credibility to be entrusted with the long term forest fuel reduction [inaudible] forest health through mediation efforts on public lands. Our project has the following benefits: long term improvement of forest health in the most vulnerable stands, treatment of hazardous fuels immediately to rural communities at risk from catastrophic wildfire, improved air quality due to their net reduction in open burning and a reduction in air emissions from wildfire, utilization of urban woodways will reduce the amount of waste deposited in landfills thus extending the life of the municipal landfills, improve forest health will help to assure continued or enhanced public benefits derived from forest eco systems such as watershed health, water yields, water quality and fish habitat and recreational opportunities. Our project will produce

renewable electrical energy. Our project will demonstrate a net reduction in greenhouse gas, carbon emissions resulting from cleaner burning of fuel and offsetting thermal plants which produce greater volumes of greenhouse gasses and approximately 60 to 70 new living wage jobs in an economically depressed area. Warm Springs Forest Products Industries is collaborating with groups supporting reduction of hazardous forest fuels in central Oregon. These groups involve the Tribes' agencies, conservation groups, local citizenry and industry on issues and projects focused on developing solutions for hazardous forest fuels. Warm Spring Forest Products is participating in the Metolius Pilot Stewardship Project, the Prineville Collaborative and the Business Alliance for Sustainable Energy. Of note is the Coordinated Resource Offering Protocol, or we call it CROP. CROP is an effort by the Forest Service, BLM, state agencies, conservation groups and Warm Springs Forest Products to develop protocols for offering small diameter trees and biomass in a stable, even-flow manner so as to stimulate investment in industries that commutualize material from hazardous forest fuels reduction projects. CROP is designated as an Oregon Solutions Project by Governor Kulongowski and the Warm Springs Forest Products project has been selected as a pilot to demonstrate the protocols. We are in the process of finishing initial feasibility study of the project under \$195,000 grant from the BIA. We are hopeful that we can develop sufficient revenues from a varieties of sources that we are able to enter into a long term power sale contract at market prices with a public or private utility for the sale of the electrical output of the project. Production packed credits, business energy tax credits, renewable energy credits, grants from the Energy Trust of Oregon, low interest loans from the Oregon Department of Energy and USDA, and carbon offset credits are some of the ways in which we hope to supplement project income. Number three amendments allows us some flexibility in the event that we cannot bring the project in or at below current market rates by allowing the Public Utilities Commission to direct utilities to incorporate above-market pricing for a biomass demonstration project into the utility rate base. We believe that this is appropriate for two reasons. First, this biomass project is unlike any other renewable energy project in that it provides numerous public benefits to the citizens of Oregon, including the protection of its state's forests. Finding a sustainable way of carrying out fuel reduction in our forest while creating new living wage jobs is important for all Oregonians. This model is sustainable, not requiring significant federal or state appropriations. Secondly, the two utilities likely to purchase the power will be recipients of an additional major project benefit. Both PGE and PacifiCorp have very important hydroelectric generation assets. Healthy forests are a key to healthy hydroelectric systems. Without intact fire resilient forests, water quality, water quantity and timing of water delivery are very much at risk. Finally, the Warm Springs Project is a market approach. We believe it is sustainable. We believe that the lessons we learned in

developing stewardship contracts, marketing renewable energy and carbon credits, developing power sales contracts, engaging both public and private forest owners, tapping other federal and state programs, and other aspects will be usable by many other forest managers and energy developers. What is very important now is that one significant project be put together so Oregon citizens can see first hand that there is a sustainable environmentally beneficial economic means of dealing with Oregon's wildfire crisis. Thank you.

Chair: Thank you. And I appreciate you bringing this bill forward. I think your points are very well taken and I think it also allows an opportunity through this demonstration project, too, as the senator pointed out, to address issues that we're concerned about with forest health and the forest fires, while creating a good out of that and perhaps a demonstration project that upon successful operation, can help find other solutions for other forests and other agencies that may want to adopt this methodology to solve a lot of problems. So, I appreciate it very much. And I'm grateful that I had a bill that you could hijack from me, because I've been having so much fun hijacking everybody else's.

Man: Well, we were going to point out, Mr. Chair, that we do notice the name at the top of the bill and we are very appreciative for your...

Chair: Well, I was welcome to let you have it. Questions from the committee? Senator Monnes Anderson.

Anderson: Yeah, the problem I have, I like the general idea, except you are going to be able to sell electricity above market value and I have an issue with that because when you're able to sell, and who knows how this will grow, if you're going to be able to sell above market value to cover your costs, that in a sense is going to raise rates, as far as I'm concerned raise consumer rates. So, that's the one issue I have with it.

Chair: Would you like to respond to that?

Westlund?: Mr. Chair, Senator Monnes-Anderson, two points: it's a may and the PUC has to approve the rates and you have to have a willing utility to buy the power. So, the market forces are at work here and I know that there are many subsidized green power efforts throughout the state and I would submit that this falls in the no different category than any of those and that we are talking about a de minimus amount of power production [inaudible] to 20 megawatts. Is that right?

Potts: Yes.

Westlund: That's right.

Mason: That you put that in the entire grid and well, it's a diminis...

Anderson: You couldn't find it.

Mason: I understand your concern. I wish that gas was dollar fifty, not two-fifty, but in a commodity driven market with electricity fortunately is not in the Pacific Northwest, I think your concern I understand. I don't think its impacting [inaudible].

Potts: Mr. Chairman, Senator Anderson, there is anecdotal information that states that the public benefit of treating hazardous fuels and converting that into a saleable product far outweighs any, the cost of doing this, but it's all anecdotal. There has not been any firm quantification of this public benefit. That is one of the aspects that we want to accomplish in our pilot demonstration, is being able to quantify what the public benefit is of going out and doing the fuels treatment, investment in local communities, creating the family wage jobs, the collaboration which between all of the entities may not have a monetary value, but it does have a very strong social value. So, we believe that with this pilot demonstration that we would have the opportunity to quantify that public benefit and it could be that the public benefit is greatly over the cost of the above-market piece.

Anderson: Just follow-up?

Chair: Yes.

Anderson: No, I understand where you're coming from on that issue, but there is the risk that the technology will be far more expensive than you had realized and although I think Senator Westlund was correct, you have to have a buyer, but if you are proceeding with development and the costs are so great and you cannot find a buyer, I just have some questions about that.

Westlund?: If I could make one other comment? I would submit that if this just prevents one fire, keeps a hundred acre fire a hundred acre fire, as opposed to a 10,000 or greater acre fire, the cost to the public would be many multiple times reduced and we haven't gotten into air quality, loss of life, loss of habitat, loss of hydroelectric generation capacity. I do not have specific cost benefit analysis, that's one of the purposes of this project, but it has to be multiple times better than a de minimus increase in a de minimus amount of fire power production.

Chair: Further questions? Okay, we're in work session on Senate Bill 408 with the -3 amendment.

Starr: [Inaudible] to Senate Bill 408?

Chair: Senator Starr's moved the -3 amendments to Senate Bill 408. Further discussion?

Anderson: Yes, I will object.

Chair: Okay, so noted, Senator Monnes-Anderson has objected. Senator Starr?

Starr: I move Senate Bill 408 as amended by the –3 amendments to the senate floor with a due pass recommendation.

Chair: Senator Starr's moved Senate Bill 408 as amended to the floor with a due pass recommendation. Further discussion? Objection to the motion, Senator Monnes-Anderson?

Anderson: Yes.

Chair: Any others? So, moved and Senator Westlund, would you carry the bill, please.

Westlund: I would be honored. Thank you, Mr. Chair.

[End of discussion on Senate Bill 408.]

SB 408-3
(LC 819)
4/4/05 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 408**

1 Delete lines 4 through 19 of the printed bill and insert:

2 **"SECTION 1. Section 2 of this 2005 Act is added to and made a part**
3 **of ORS chapter 757.**

4 **"SECTION 2. (1) For the purposes of this section:**

5 **"(a) 'Electric company' has the meaning given in ORS 757.600; and**

6 **"(b) 'Qualifying forest biomass project' means an electricity gener-**
7 **ating plant with a capacity between 5 and 20 megawatts that is located**
8 **on tribal lands and that primarily uses forest fuels.**

9 **"(2) Notwithstanding ORS 758.525, if an electric company enters into**
10 **a contract to purchase electricity from a qualifying forest biomass**
11 **project the electric company may agree to pay for the electricity at**
12 **the price necessary to make the project economically feasible. The**
13 **electric company may determine the price necessary to make the**
14 **project economically feasible by considering the projected useful life**
15 **of the project, capital costs, operating expenses, taxes, the value of**
16 **renewable energy credits, and other economic considerations the**
17 **electric company finds to be relevant.**

18 **"(3) Notwithstanding ORS 757.612 (3)(g), an electric company that**
19 **purchases electricity from a qualifying forest biomass project shall**
20 **include the costs of the electricity in the costs used to set the rates**
21 **of the electric company.**

22 **"(4) In setting the rates of an electric company, the Public Utility**
23 **Commission shall allow recovery of any costs associated with the**
24 **purchase of electricity under a contract subject to this section. The**

1 commission shall allow the recovery of those costs from all classes of
2 ratepayers.”.

3

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

MEASURE: SB 408

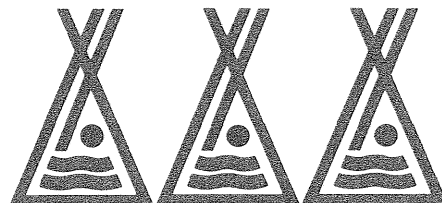
EXHIBIT: K

Senate Business and Economic Development

DATE: 4/07/2005 PAGES: 4

SUBMITTED BY: Michael Mason

Warm Springs, Oregon 97761 / 541 553-1161



Testimony of Ron Suppah

For

The Confederated Tribes of the Warm Springs Reservation of Oregon

In support of SB 408

Before the Senate Business and Economic Development Committee

Thursday, April 7, 2005

Forest Fuel Reduction Program and Demonstration Biomass Electrical Generation Facility

Good afternoon Chairman Metsger and members of the Committee. My name is Ron Suppah. I am Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I have asked Larry Potts, the General Manager of Warm Springs Forest Products Industries, a tribal enterprise to present my testimony for me today. I am testifying today in support of SB 408-3 amendments.

Over the past decade tribal forests, adjoining national forests and Bureau of Land Management lands have been subjected to repeated catastrophic wildfires, many of which originated on federally managed forests. There is now widespread public recognition and acceptance that a new management regime is necessary to protect Oregon's forest ecosystems – regardless of ownership, over the long term. This management regime will involve the reduction of hazardous forest fuel, including dead and down timber and thinning of unnaturally dense and overcrowded stands.

This project is also of special importance to the Tribe because it has unique hunting, fishing, gathering, pasturing and cultural rights on public lands within the Tribe's treaty ceded area and the health of these off-Reservation lands is important to protect and preserve those rights.

Over 43% of Oregon's landscape is forested¹ and after a century of successful fire suppression efforts, much of Oregon's forests are in dire need of help. But fuel reduction efforts are expensive and it is unlikely that sufficient appropriated funds (state or federal) will be available over the long-term to carry out the necessary and sustained efforts needed to return Oregon's forest to a healthy condition. The Tribe is uniquely situated to develop a new approach to fuel reduction, one that is sustainable without substantial government funding. First, the Confederated Tribes of Warm Springs own business enterprises are currently generating power, manufacturing lumber and are actively involved (with the Tribe's Natural Resources Department and the Bureau of Indian Affairs) managing forest lands on the Warm Springs Reservation, thus demonstrating all the skills necessary to carry out a new approach. Second, the Tribe, whose professional management of its own extensive forests have earned it Forest Stewardship Council certification as a green forest manager, has the necessary credibility to be entrusted with long-term forest fuel reduction/forest health remediation efforts on public lands.

The demonstration project will involve fuel reduction projects on tribal forests at the rate of approximately 2,000 to 3,000 acres each year and 8,000 to 10,000 acres per year on adjoining public and private lands. Wood waste from forest fuels reduction activities will be chipped on site and trucked to the generation facility located adjacent to the Tribe's lumber mill (Warm Springs Forest Products Industries). There it will be used to fire a boiler to create steam used to spin turbines to produce electricity and generate heat to dry lumber. Power from the generation facility will be sold under a long-term contract to a public or private utility. The project will produce approximately 15-20 MW of net generation available for sale.

The project has the following benefits:

- Long-term improvement of forest health in the most vulnerable stands.
- Treatment of hazardous fuels immediately adjacent to rural communities at risk from catastrophic wildfire.
- Improved air quality, due to a net reduction in open burning, and a reduction in air emissions from wildfire.
- Utilization of urban wood waste will reduce the amount of waste deposited in landfills thus extending the useful life of municipal landfills.
- Improved forest health will help to assure continued or enhanced public benefits derived from forested ecosystems such as watershed health, water yields (power production, residential), water quality, wildlife and fish habitat, and recreational opportunities.
- Renewable electric energy.
- A net reduction of greenhouse gas (GHG) carbon emissions resulting from cleaner burning of fuel and offsetting thermal plants which produce greater volumes of GHG.
- Approximately 60 - 70 new, living wage jobs in an economically depressed area.

¹ Oregon Dept of Forestry, 1988 Vegetation Cover Map

Warm Springs Forest Products Industries is collaborating with groups supporting reduction of hazardous forest fuels in Central Oregon. These groups involved the Tribes, agencies, conservation groups, local citizenry, and industry on issues and projects focused on developing solutions for hazardous forest fuels. WSFPI is participating in the Metolius Pilot Stewardship Project, the Prineville Collaborative (a group looking for solutions to overstocked and out of range Juniper stands), and the Business Alliance for Sustainable Energy (a Central Oregon organization looking for ways to develop a renewable energy sector). Of note is the Coordinated Resource Offering Protocol (CROP). CROP is an effort by the US Forest Service, BLM, State agencies, conservation groups and WSFPI to develop protocols for offering small diameter trees and biomass in a stable, even flow manner so as to stimulate investment in industries that can utilize material from hazardous forest fuel reduction projects. CROP is designated as an Oregon Solutions Project by Oregon Governor Kulongoski. Warm Springs Forest Products Industries has been selected as a pilot to demonstrate the protocols.

We are in the process of finishing an initial feasibility study of the project under a \$195,000 grant from the Bureau of Indian Affairs. We are hopeful that we can develop sufficient revenues from a variety of sources that we are able to enter into a long term power sale contract at market prices with a public or private utility for the sale of the electric output from the project. Production tax credits, Business Energy tax credits, renewable energy credits, grants from the Energy Trust of Oregon, low interest loans from Oregon Department of Energy/US Department of Agriculture and carbon offsets credits are some of the ways in which we hope to supplement project income. SB 408 allows us some flexibility in the event that we cannot bring the project in below current market rates by allowing the Public Utility Commission to direct utilities to incorporate above market pricing for a biomass demonstration project into the utility rate base.

We believe this is appropriate for two reasons. First, this biomass project is unlike any other renewable energy project in that it provides numerous public benefits to the citizens of Oregon – including the protection of the state's forests. Finding a sustainable way of carrying out fuel reduction in our forests while creating new, living wage jobs is important for all Oregonians. This model is sustainable, not requiring significant federal or state appropriations. Secondly, the two utilities likely to purchase this power will be the recipients of an additional major project benefit. Both PGE and PacifiCorp have very important hydroelectric generation assets. Healthy forests are key to healthy hydroelectric systems. Without intact fire resilient forests water quality, water quantity and timing of water delivery are very much at risk to the potentially devastating impacts of catastrophic wildfire.

Finally, I would like to focus on the demonstration nature of this project. This bill is narrowly crafted to ensure that the PUC, the legislature and other policy makers can consider the actual results of a demonstration project before making longer term, broader policy decisions surrounding these issues. The Warm Springs project is a market approach. We believe it is sustainable. We believe that the lessons we learn in developing stewardship contracts, marketing renewable energy and carbon credits, developing power sales contracts, engaging both public and private forest owners,

tapping other federal and state programs, and other aspects will be usable by many other forest managers and energy developers. What is very important now is that one significant project be put together so Oregon's citizens can see first hand that there is a sustainable, environmentally beneficial, economic means of dealing with Oregon's wildfire problem that works. And it can work anywhere in the state. The same principles apply whether it is eastside or westside forest. Thank you for your consideration.

INDUSTRIAL
CUSTOMERS OF
NORTHWEST
UTILITIES

KEN CANON
EXECUTIVE DIRECTOR

MEASURE: SB 408
EXHIBIT: M
Senate Business and Economic Development
DATE: 4/07/2005 PAGES: 1
SUBMITTED BY: Mark Nelson

MEMBERS OF INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

Air Liquide
Air Products
BPB Gypsum, Inc.
Blue Heron Paper Company
Boeing
Boise Cascade
CNC Containers, Northwest
Chemi-Con Materials Corporation
Dyno Nobel, Inc.
ConAgra Foods
Eka Chemicals, Inc.
Evanite Fiber
Georgia-Pacific
Grays Harbor Paper, L.P.
Hewlett-Packard
Inland Empire Paper Co.
Intel
J.R. Simplot
Kimberly-Clark Corporation
Longview Fibre
Microsoft Corporation
Norpac Foods
Noveon Kalama, Inc.
Oregon Steel Mills
PCC Structural, Inc.
Ponderay Newsprint Co.
Shell Oil Products US
Simpson Paper
Simpson Timber
Solar Grade Silicon LLC
Tesoro Refining and Marketing Co.
Wah Chang
West Linn Paper Company
Weyerhaeuser

**SENATE COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

April 28, 2005
1:00 P.M.

Hearing Room B
Tapes 68 - 69

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:
 HB 2604A – Public Hearing
 SB 408A – Public Hearing
 SB 922 – Public Hearing
 SB 572 – Public Hearing and Work Session

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.

TAPE/#	Speaker	Comments
TAPE 68, A		
003	Chair Metsger	Calls the committee to order at 1:15 p.m. Opens a public hearing on HB 2604A.
<u>HB 2604A – PUBLIC HEARING</u>		
010	Chair Metsger	Summarizes previous discussion of this measure in the prior committee meeting.
030	Emily Cedarleaf	Executive Director, Multifamily Housing Council of Oregon. Testifies in regards to her concern with section 3 of HB 2604A.
060	Cedarleaf	Describes complaints of tenants against property owners. Outlines her concerns with the definition of "negligence" and "gross negligence".
085	Tim Pfau	Oregon AFSCE, Council 75. Presents written testimony in opposition to HB 2604A (EXHIBIT A).
120	Pfau	Relates the progress made in the work group in addressing the problems with the measure as drafted. Feels the definitions of "negligence" and "gross negligence" are the primary point of contention.
150	Pfau	Talks about the investigation process for charges of misconduct.
175	Troy Costales	Citizen representative, Real Estate Board. Testifies in regard to the reaction of the Oregon Real Estate Board to HB 2604.

210	Costales	Observes concerns with changes the measure would make. Feels the -A4 amendments (EXHIBIT B) would resolve those concerns.
240	Sen. B. Starr	Points out his concern with the process. Observes the agency being neutral with the measure in the House and then opposing it in the Senate.
261	Costales	Replies that in the intervening time a different interpretation was made as the measure went to another chamber. Feels all parties were not actively involved, and that they have now had a chance to look at the measure.
290	Sen. Atkinson	Wonders if any other board members testified in the House.
292	Costales	States he cannot speak for other board members, but notes he did not testify.
293	Sen. Atkinson	Details his frustration with the agency over this issue.
303	Chair Metsger	Shares concerns with Sen. Atkinson. Feels the main issue is crafting good public policy. Invites Mr. Conley to speak about the measure.
327	Harrison Conley	Legislative Counsel. Offers legal insight on the drafting of HB 2604 and the amendments.
365	Conley	Details the changing of legal standard within the language of the measure.
395	Conley	Talks about the lack of clarity in establishing some of the standards in the measure.
405	Sen. Monnes Anderson	Observes this measure could only move forward with the -A4 amendments.

TAPE 69, A

005	Sen. Monnes Anderson	Feels they should proceed with caution as she is concerned about consumer protection.
020	Sen. B. Starr	Questions if there is anything a realtor could be punished for in this bill that they wouldn't be punished for presently.
030	Conley	Replies he doesn't currently see how this measure raises any standards. Offers in some ways it lowers standards.
035	Sen. B. Starr	Points out the current language covers this already.
038	Conley	Responds that it does lower the standard of conduct.
048	Sen. Deckert	Asks if there is a practical example to differentiate "negligence" and "gross negligence".
057	Conley	Observes the difference is the amount of disregard for a professional standard.
065	Sen. Monnes Anderson	Illustrates an example.
076	Conley	Replies he cannot make a definitive judgment, but feels her example would be considered "gross negligence".
094	Sen. Atkinson	Relates examples of extreme "negligence" penalties in Ashland. Feels an additional standard is needed to differentiate error from a deliberate act.

111	Conley	Clarifies the details of the story.
116	Sen. Atkinson	Reiterates the specific points of the story.
118	Conley	Considers the distinction. Points out it is "simple negligence".
128	Chair Metsger	Feels these issues were not adequately expressed in the House. Asks Mr. Taylor to respond on this issue.
152	Scott Taylor	Commissioner, Oregon Real Estate Agency. Presents written testimony to the committee (EXHIBIT C). Details the misinterpretations of his Agency's position of the bill.
190	Chair Metsger	Observes this bill has divided the committee. Wishes to have the issues surrounding this measure solved, before bringing it back for additional work. Closes public hearing on HB 2604A. Opens a public hearing on SB 408A.

SB 408A – PUBLIC HEARING

235	Louie Pitt Jr.	Director Government Affairs and Planning, Confederated Tribes of Warm Springs. Defers to his colleagues to detail the measure.
247	Chair Metsger	Details the time constraint they are working under. Requests they summarize their position.
254	Jim Noteboom	Tribal Attorney, Confederated Tribes of Warm Springs. Supports the measure with the -A4 amendments. Explains the proposed -A4 amendments (EXHIBIT D).
270	Mark Nelson	Industrial Customers of Northwest Utilities (ICNU). Notes ICNU continues to oppose SB 408 even with the -A4 amendments. Explains the points of contention.
305	Nelson	Outlines his concerns with the measure.
318	Sen. Atkinson	Wonders how they can satisfy both parties.
325	Nelson	Feels there are mechanisms in place with the Oregon Public Utilities Commission (PUC) to accomplish this now.
348	Noteboom	Describes their intent to bring this project in under market. Clarifies the intent of the measure.
375	Sen. Atkinson	Considers the addition of a "safety brake" to the measure. Wants to find some middle ground.
379	Noteboom	Offers they have asked for suggestions on what it will take to move this forward.
401	Chair Metsger	States the PUC would have authority to regulate the process.
405	Jeff Bissonnette	Citizens Utility Board (CUB). Talks about the work done to satisfy their concerns about language in the bill.

TAPE 68, B

003	Bissonnette	Explains his perspective on the measure.
018	Chair Metsger	Asks for input from the committee.
020	Sen. Deckert	Feels that they shouldn't pass the legislation at this time.
033	Sen. B. Starr	Expresses his preference for finding a compromise.
038	Sen. Atkinson	Advocates having the various parties reach an agreement.
041	Sen. Monnes	Describes her concern with rate payers subsidizing this project.

Anderson
 045 Chair Metsger Feels it is a great proposal, but the details are not yet to a point where it can be moved forward. Closes the public hearing on SB 408A. Opens a public hearing on SB 922.

SB 922 – PUBLIC HEARING

062 Jim Gardner Hertz Corporation. Notes Hertz's approval of the -2 amendments (**EXHIBIT E**).

085 Chair Metsger Asks Mr. Elkins to describe the contentions with the -2 amendments.

087 Al Elkins Car and Truck Rental Leasing Association of Oregon. Details the reasons he opposes the amendments.

109 Neil Jackson Oregon Trial Lawyers. Discusses the changes in the language.

123 Steve Murrell State Farm Insurance. Explains what they were trying to do with the -2 amendment language.

129 Chair Metsger States that many parties are in agreement. Wonders what Mr. Elkins is specifically objecting to.

133 Al Elkins Replies in regard to the concerns of those he presents. Offers he does not yet have return correspondence to the exact objections in the measure.

140 Sen. Monnes Anderson Considers the language to the -2 amendment that is being objected to.

151 Jackson Expresses his view on the measure and the amendment that was crafted.

170 Murrell Explains the problem they set out to solve. Details the crafting of the insurance coverage language in the bill.

191 Chair Metsger Discusses his support for this measure and that more work is needed. Closes public hearing on SB 922.

SB 572 – PUBLIC HEARING

215 Chair Metsger Notes the proposed -7 amendments now before the committee (**EXHIBIT F**). Declares a potential conflict of interest as his firm works with nurses that would be impacted by this measure.

230 Brian DeLashmutt Oregon Nurses Association (ONA). Presents two memos and an e-mail to the committee (**EXHIBIT G**, **EXHIBIT H**, and **EXHIBIT I**).

260 DeLashmutt Describes the changes made with the -7 amendments.

290 DeLashmutt Details the compromises reached with the various parties.

325 DeLashmutt Talks about the process of crafting new language to the measure.

350 Chair Metsger Thanks Mr. DeLashmutt for his testimony. Applauds his work on this issue.

385 Bruce Bishop Oregon Association of Hospitals and Health Systems (OAHHS). Provides written testimony in opposition to SB 572 (**EXHIBIT J**).

410 Bishop Continues to discuss his problems with the language of the -7 amendments.

TAPE 69, B

005 Sen. Monnes Ask what part of the amendment he is referring to.

	Anderson	
006	Bishop	Clarifies. Continues his testimony in opposition to SB 572.
037	Bishop	Feels some of the provisions are overly broad.
050	Dave Fiskum	Providence Health System. Testifies in opposition to the measure. Submits a letter from Kathy Johnson (EXHIBIT K).
070	Fiskum	Notes police reports are already made when incidents occur.
092	Sarah Reeder	Oregon Association for Home Care (OAHC). Presents written testimony (EXHIBIT L). Expresses her concerns with the measure. Addresses the changes in the -7 amendments.
125	Reeder	Relays the difficulties facing the home health industry in rural areas. Talks about the additional constraints this legislation would place on them. Notes the previous effort to remove home health care from the bill in the -1 amendments (EXHIBIT M).
141	Fiskum	Mentions his concerns over the penalties included in the measure.
145	Bob Joondeph	Executive Director, Oregon Advocacy Center. Presents written testimony in opposition to SB 572 (EXHIBIT N).
167	Chair Metsger	Asks that as the measure moves through the process there will be a chance to further refine the language.
170	Marvin Fickle	Superintendent, Oregon State Hospital. Opposes the measure as drafted and the -7 amendments. Asks if the state police will be testifying.
174	Chair Metsger	Notes their previous testimony and that they are working with Rep. Olson on that component.
176	Fickle	Comments on the difficulty of implementing this measure.
200	Chair Metsger	Wonders if he has read the changes made in the -7 amendments. Points out the language changes.
218	Fickle	Appreciates the attempts to address this issue, but feels it does accomplish enough.
225	Chair Metsger	Expresses his intent to move this measure forward. Acknowledges there are refinements to be made in the other chamber. Closes the public hearing on SB 572. Opens a work session on SB 572.

SB 572 – WORK SESSION

244	Sen. B. Starr	MOTION: Moves to ADOPT SB 572-7 amendments dated 4/28/05.
246	Sen. Monnes Anderson	Expresses her concern for patient safety as well as hospital staff safety.
266	Sen. Atkinson	Declares a potential conflict of interest as his wife serves on a nursing board. Offers he does not like moving policy ahead knowing there is still work needing to be done. Acknowledges they are running out of time and that this is an important issue.
269	Sen. Deckert	Expresses his desire to find a way to compromise on the home health care portion of the measure.
279	Sen. Monnes Anderson	Agrees with Sen. Deckert's statement. Relays some of her personal experience in the home health care profession.
296		VOTE: 5-0-0

297	Chair Metsger	Hearing no objection, declares the motion CARRIED.
	Sen. B. Starr	Wonders if they wish to further discuss the -1 amendments.
299	Chair Metsger	Feels they are not consistent with the rest of the measure.
304	Sen. B. Starr	MOTION: Moves SB 572 to the floor with a DO PASS AS AMENDED recommendation.
308	Sen. B. Starr	Concurs with earlier statements that there is more work to be done on this measure.
315	Chair Metsger	Agrees that there is additional work to be done. Feels in the interest of time it is important to move it forward.
330		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.
332	Chair Metsger	Closes the work session on SB 572. Adjourns the committee at 3:03 p.m.

EXHIBIT SUMMARY

- A. HB 2604A, Written testimony, Tim Pfau, 10 pp
- B. HB 2604A, -A4 amendments, staff, 1 p
- C. HB 2604A, Written testimony, Scott Taylor, 2 pp
- D. SB 408A, -A4 amendments, staff, 2 pp
- E. SB 922, -2 amendments, staff, 1 p
- F. SB 572, -7 amendments, staff, 7 pp
- G. SB 572, Memo dated 4-7-05, Brian DeLashmutt, 2 pp
- H. SB 572, Memo dated 4-19-05, Brian DeLashmutt, 1 p
- I. SB 572, E-mail correspondence, Brian DeLashmutt, 1 p
- J. SB 572, Written testimony, Bruce Bishop, 10 pp
- K. SB 572, Letter from Kathy Johnson, Dave Fiskum, 2 pp
- L. SB 572, Written testimony, Sarah Reeder, 7 pp
- M. SB 572, -1 amendments, staff, 1 p
- N. SB 572, Written testimony, Bob Joondeph, 2 pp

**SENATE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
SENATE BILL 408 PUBLIC HEARING**

April 28, 2005

Chair: And we're gonna open up a—I'm gonna move ahead to Senate Bill—and open up Senate Bill 408 public hearing. And let's see, I had it here before me. Did I lose it already?

Woman: No.

Chair: Okay, I'm gonna—we've had this bill before us. We brought it back. I'm going to ask Mr. Pitt to come forward, Mr. Nelson to come forward. Is Mark not here? Okay, Mr. Pitt, we'll proceed with you.

Pitt: For the record, I'm Louis Pitt, Jr., Director of Government Affairs and Planning for the Confederated Tribes of Warm Springs. Chair and Committee, with your indulgence, could I please invite some people that can supply some of the details to this. We have—

Chair: Well, what I'd like Mr. Pitt, and I'm sorry. I need, and I apologize, we're in that rush committee again. If we're gonna get the bill, then we need to move on. We've had this bill before. We had some dispute on a few areas. And we have now got an amendment for those few areas. That's what I would like to have addressed and what has changed in this bill before, and then Mr. Nelson who has signed up against the bill for his comments on that. So if that's you, Mr. Pitt, that's great, or if you have somebody else, please ask them to come forward, yes.

Pitt: Yes. Jim, could you? Mr. Chair, we have Jim Notebloom who is the tribal attorney and enterprise attorney for the biomass project and he's here and he's kind of the legalist that looked at the words "shall" and "may" and wordage like that.

Chair: Great, thank you, Mr. Pitt. Thank you, Mr. Notebloom. Welcome again.

Notebloom: Thank you. My name is Jim Notebloom. I'm tribal attorney for the Warm Springs tribe and we support the bill as amended. And there were several things done. One, there was a—

Chair: Well, what you mean, the proposed amendment.

Notebloom: Yeah, the proposed amendment. There were legislative intent or findings included that make clear what the intent of the legislature is in this. In addition, there was a change with regard to the PUC and it now as written gives the PUC discretion as to whether or not to allow any above-market

costs. And it also limits the amount of the subsidy to a sum that is over for a five-year period, 1/3 of one percent of the annual revenues of the utility.

Chair: Okay. As you recall, Committee, there was some concern when this bill came to the floor about some of those limitations. Mr. Nelson, welcome.

Nelson: Mr. Chairman, members of the committee, my name is Mark Nelson, representing Industrial Customers of Northwest Utilities. ICNU still opposes the legislation as the amendment is proposed. While we're happy to see the word "may" come for the "shall", there are still other concerns with the bill. As we indicated previously, the bill says the electric company may agree to pay for the electricity at a price necessary to make the project economically feasible. It then requires that the electric company that purchased the electricity shall include the cost of the electricity in the cost used to set rates. It is correct that they have changed and allowed the PUC discretion in terms of whether they shall allow the recovery. We still believe that this particular subsidy, whether it was offered for the tribes or offered for any other cogeneration plan is still that—it would be a subsidy. I want to point out that in the new language it says if either of the two electric companies with the highest number of customers in Oregon enter into a contract under this section, the amount of the costs recovered may not exceed an amount equal to one-third of one percent of the annual revenue. What one-third of one percent means, is it's \$3-5 million a year. And it is correct that they have limited this subsidy to a five-year period of time, but that is a \$9-15 million subsidy that will be borne by all three classes of ratepayers, commercial, residential and industrial. Because the language still remains in the bill the commission shall allow the recovery of those costs from all classes of ratepayers. I just would submit, Mr. Chairman and members of the committee, that we have cogeneration plants all over this state. They have to meet market rates. If this bill was extended to all cogeneration plants in the state, then that would be something that we would look at. But it would still mean somebody that you could operate those plants inefficiently and somebody else is going to pay for that inefficient operation. Our cogeneration plants, you could substitute this for, and say, for example, Weyerhaeuser, instead of tribal lands, and that would not be something that would be acceptable to you. Our point here is that no class of customer should subsidize to the tune of \$9-15 million, and in this case all three customers will have to do that subsidy.

Chair: Thank you. Questions for the tribal representatives or Mr. Nelson? Senator Atkinson.

Atkinson: Thanks. I gotta say, I really like this bill and I'm glad that we're working on it, but is there any way to satisfy both sides on this. Is there any to take, to not have a bill put onto ratepayers? I mean, is there any way to do this?

Nelson: Mr. Chairman, Senator Atkinson, I believe there is. That's what the Energy Trust is there for. The PUC is working on a voided cost case right now which may, in fact, set the rate higher, and they may qualify with this project. And the Energy Trust is set there to help subsidize programs that aren't market-based. So we believe there are mechanisms within the PUC today and the Energy Trust that you've set up and endorsed, and that's what they're there for. They can apply for loans from the Department of Energy. They can put together a package which others have done to make this thing economically feasible for them. But to come in with a piece of legislation that simply pushes all of it off on somebody else. The tribe, and we're supportive of what their goal is, but to say that we're going to pay the tribes in effect \$9-15 million above market, it's all gonna come from us. We just don't think that's right. And again, there are places to go for this project, and it's a legitimate project, but not this way.

Chair: Please respond to that.

Notebloom: It's our intent to bring this project in under market. That's what we want to do. But we're putting this project together; we don't know that we're going to be able to do that. We will go to the Energy Trust. We will go to lots of other entities. We will work with the utility as a partner, and we're going to do everything in our power to bring it in under market. But that may not be possible. We may not be able to get there. What this bill does, is give the utility and the PUC considering the larger benefits of this project, and it's quite unlike other cogeneration projects. This is really a forest health project with an ancillary benefit of the cogeneration, of a biomass facility. We believe that working in partnership with the utility, with state agencies and others, that there's a good chance we can bring it in under market, and that is our goal. This is not, the intent of this is not that it's a check for \$9-15 million. The intent is that if the PUC believes that it's appropriate—and we understand we have to make a case for that—that they could allow some costs above market. And this puts a cap on what those could be. But the case has to be made.

Atkinson: Would it be appropriate to put in one more safety break before that would happen, into the bill?

Notebloom: Depends what safety break is, I suppose.

Atkinson: Well, I'm just trying to, I'm wondering if there isn't a middle of the road here that we could get to. I mean I really like the bill, I really like, especially on the forest cleanup side, I like what it does on Warm Springs. I mean I like the bill. I'm just trying to, on the policy side get to where the middle is. Is it possible? Let me ask.

Notebloom: I don't know. We've asked for, we've asked others for suggestions as what it would take to do this, because this is not something we're trying to

ram down people's throat. We think it's good for the forest, good for all citizens. There's a lot of reasons to do this bill, and we're certainly willing to work with anybody to try and do that.

Chair: On that point, correct me if I'm wrong, but as I read the amendment, the PUC will make that decision. I mean you may ask for a certain recovery and they could say no.

Notebloom: That's right. That's correct.

Chair: Okay. And that's the public process. Gentlemen, I'd like to ask— Mr. Bissonnette had signed up as a neutral party. Is he still here? And then I'll see what the Committee wants to do, and then we're gonna move ahead. Welcome.

Bissonnette: Mr. Chair, members of the Committee. My name is Jeff Bissonnette, representing the Citizens Utility Board and representing residential customers and we had serious concerns about the bill as it passed out of Committee before and we appreciated the proponents' willingness to bring the bill back to Committee and work with our attorney and our rate staff to settle our concerns. And we were primarily concerned about the discretion of the PUC being taken away and that that has been solved by having the language of "may" in the bill. We share some of our industrial fellow customers' concerns about the amount, but we also understand that that is an amount that we don't know what the amount is, and that's something we're willing to argue about over the PUC, if the tribe feels necessary to come to the PUC, we'll go through that process and argue about that amount there. Hopefully by the time they get there it will be a small enough amount that we won't even feel the need to show up, but that's an argument to be saved for a later day. So for this piece of legislation, with the changes that are in the –A4 amendments, so we will be neutral on the bill.

Chair: Questions for Mr. Bissonnette. Okay, thank you very much. We are falling a little bit behind schedule. We are in public hearing. [Inaudible] go to work session? Or do you want to give me some indication?

Man: I can tell you, Mr. Chair. I would be, and it pains me to do it, but I would be a no because I just think it's bad policy and bad precedence. As good of a project it is, and as important as it is, to me it's just the precedence of this is, we fought this through, we set out a strategic system for the state, and that's how we set up the Energy Trust. And I'd be willing to sign a letter to the Energy Trust to say give every consideration to good projects like this. This is what their intent and purpose is for, but to me, for us to come in on particular projects that we're very, very interested intrigued by, and to pass legislation, to me alters the basic framework that we have in place. As good as an idea as it is, and as warm as feelings I have for the

Warm Springs Tribe, it's just, for me it would violate. So, I guess, Senator Atkinson asked if there's a middle ground, and I kept thinking is there. And to me that's what the whole 1149 process was that, trying to get that middle ground in place.

Chair: Thank you, Senator. Senator Starr, your thoughts?

Starr: Well, I'd love to see a compromise that accomplished what Senator Atkinson was trying to accomplish. That would be my preference. We're on a tight time schedule, and I don't know if the Chair is willing to hold this bill and see if the Tribe and Mr. Nelson and others might be able to define that. If the Chair really would like to move the bill, I would more than likely support the amendment to the bill and leave in the bill, but I guess my first preference and first choice would be not to have to have a fight.

Chair: Senator Atkinson.

Atkinson: I like pressure. Send them out in the hall for 30 minutes, see what they can do.

Chair: Senator Monnes Anderson.

Anderson: I do have a concern regarding the ratepayers. The amount, I thought it was \$3-5 million, but now it's \$9-15 ratepayers would have to subsidize. So I would like a compromise. I'd like something that would protect the ratepayers a little bit better.

Chair: Okay. You've heard the wishes of the Committee. I share that sentiment. I think this is a great project. I think it does things that we want to accomplish. But we've had this bill on the floor once before; it is clearly not ripe, as they say in the legal phrase, right? So I'm going to close the hearing on Senate Bill 408 and rather than move the bill forward at this moment, I am going to ask that, as Senator Atkinson first suggested, that you folks, the Tribe, and particularly with both Mr. Bissonnette and ICNU work together and solve that issue. If there is some elasticity in which this Committee has to make the final decision, we will do that. But I would like to ask you to work a little bit harder on that issue, and we'll ask the Senate President to bring this bill back. Thank you very much. Okay, we're gonna close the public hearing and open a public hearing on Senate Bill 922.

[End of public hearing on Senate Bill 408.]

SB 408-A4
(LC 819)
4/28/05 (DH/ps)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 408**

1 After line 2 of the printed A-engrossed bill, insert:

2 "Whereas forested lands in the State of Oregon are increasingly jeopard-
3 ized by the risk of catastrophic fires fed by excess hazardous forest fuels, and
4 reducing the risk of catastrophic forest fires through proper forest manage-
5 ment is in the interest of all residents of this state; and

6 "Whereas the Legislative Assembly desires to facilitate the development
7 of market-based solutions to the risk of catastrophic forest fires that is not
8 dependent on the appropriation of large amounts of public funds; and

9 "Whereas the development of a biomass electricity generating plant fired
10 by hazardous forest fuels from forests within this state may provide the basis
11 for a sustainable, market-based means of protecting Oregon's forests; now,
12 therefore,".

13 In line 8, after "megawatts" insert "that is owned by an Indian tribe, as
14 defined in ORS 97.740,".

15 Delete lines 20 through 23 and insert:

16 "(4) In setting the rates of an electric company, the Public Utility Com-
17 mission may allow recovery of any costs associated with the purchase of
18 electricity under a contract subject to this section. The commission shall
19 allow the recovery of those costs from all classes of ratepayers. If either of
20 the two electric companies with the highest number of customers in Oregon
21 enters into a contract under this section:

22 "(a) The amount of the costs recovered may not exceed an amount equal
23 to one-third of one percent of the annual revenue requirement of the electric
24 company; and

1 “(b) The commission may allow recovery of any costs associated with the
2 purchase of electricity under the contract for no more than five years.”.

3 _____

**SENATE COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

May 26, 2005
1:00 P.M.

Hearing Room B
Tapes 74 – 75

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

MEMBER EXCUSED: Sen. Ryan Deckert

GUEST MEMBER: Sen. Vicki Walker

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

MEASURES/ISSUES HEARD:

HB 2604A – Work Session
SB 955 – Work Session
HB 2071 – Public Hearing and Work Session
HB 2200 – Public Hearing and Work Session
HB 2579 – Public Hearing and Work Session
HB 2069 – Public Hearing and Work Session
SB 408 – Work Session

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.

TAPE/#	Speaker	Comments
TAPE 74, A		
003	Chair Metsger	Calls the meeting to order at 1:08 p.m. Opens a work session on HB 2604A.
<u>HB 2604A – WORK SESSION</u>		
012	Chair Metsger	Mentions the -A6 amendments (EXHIBIT A) .
021	Dave Heynderickx	Acting Legislative Counsel. Explains the provisions of the measure. Talks about the differences in standards between “negligence” and “gross negligence”.
051	Heynderickx	Explains the changes made in the –A6 amendments.
078	Scott Taylor	Oregon Real Estate Commissioner. Concurs with Mr. Heynderickx’s analysis of the –A6 amendments and states support for them.
085	Jana Jarvis	Oregon Association of Realtors. States support for the –A6 amendments.
090	Sen. B. Starr	MOTION: Moves to ADOPT HB 2604A-A6 amendments dated 5/18/05.

VOTE: 4-0-1

EXCUSED: 1 - Deckert

Hearing no objection, declares the motion CARRIED.

092 Chair Metsger
Sen. B. Starr **MOTION: Moves HB 2604A to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 4-0-1

EXCUSED: 1 - Deckert

Hearing no objection, declares the motion CARRIED.

096 Chair Metsger **SEN. B. STARR will lead discussion on the floor.**
Closes the work session on HB 2604A. Opens a work session on SB 955.

SB 955 – WORK SESSION

091 Theresa Van Winkle Committee Administrator. Notes the -5 amendment (**EXHIBIT B**) to SB 955.

098 Brian DeMarco Oregon Real Estate Agency. Notes the original objections to the measure. Talks about the compromise reached in the -5 amendments.

110 Barry Pack Committee for the Protection of Condominium Owners and Builders. Explains the changes made by the -5 amendments.

125 Sen. B. Starr Asks who was represented in the negotiations that resulted in the amendments.

129 Pack Lists the parties involved in the compromise discussion.

135 Sen. B. Starr **MOTION: Moves to ADOPT SB 955-5 amendments dated 5/24/05.**

VOTE: 4-0-1

EXCUSED: 1 - Deckert

Hearing no objection, declares the motion CARRIED.

140 Chair Metsger
Sen. B. Starr **MOTION: Moves SB 955 to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 4-0-1

EXCUSED: 1 - Deckert

Hearing no objection, declares the motion CARRIED.

147 Chair Metsger **SEN. B. STARR will lead discussion on the floor.**
Closes the work session on SB 955. Opens a public hearing on HB 2071.

HB 2071 – PUBLIC HEARING

150 Teresa Van Winkle Committee Administrator. Introduces HB 2071.

155 Bill Boyd Dispute Resolution Manager, Construction Contractors Board. Submits and summarizes prepared testimony in support of HB 2071 (**EXHIBIT C**).

180 Chair Metsger Closes the public hearing and opens a work session on HB 2071.

HB 2071 – WORK SESSION

180 Sen. B. Starr **MOTION: Moves HB 2071 to the floor with a DO PASS recommendation.**

VOTE: 4-0-1

EXCUSED: 1 - Deckert

Chair Metsger

Hearing no objection, declares the motion CARRIED.**SEN. MONNES ANDERSON will lead discussion on the floor.**

190

Chair Metsger

Closes the work session on HB 2071. Opens a public hearing on HB 2200.

HB 2200 – PUBLIC HEARING

200

Bill Boyd

Dispute Resolution Manager, Construction Contractors Board (CCB). Submits and summarizes prepared testimony in support of HB 2071 **(EXHIBIT D)**.

255

Sen. B. Starr

Asks what administrative issues led to the move away from four-year licenses.

261

Kristie Patton

Licensing Section Manager, CCB. Explains the licensing process and the associated administrative challenges.

273

Sen. B. Starr

Asks how many contractors are administered by CCB.

277

Patton

Answers approximately 40,000.

279

Sen. B. Starr

Wonders how many contractors per month change their business status.

280

Patton

Answers that it is approximately 60 per month.

287

Sen. B. Starr

Remarks that the number of contractors affected is small and wonders if it is necessary to change the law to accommodate them.

303

Boyd

Explains the hope that the bill will make business operations move more smoothly. Notes that expenses would be reduced for the CCB.

316

Sen. B. Starr

Asks what licensing options contractors have.

319

Patton

Answers that there is a mandatory two-year license and an optional four-year license.

325

Chair Metsger

Closes the public hearing and opens a work session on HB 2200.

HB 2200 – WORK SESSION

328

Sen. B. Starr

MOTION: Moves HB 2200 to the floor with a DO PASS recommendation.**VOTE: 4-0-1****EXCUSED: 1 - Deckert**

Chair Metsger

Hearing no objection, declares the motion CARRIED.**SEN. METSGER will lead discussion on the floor.**

335

Chair Metsger

Closes the work session on HB 2200. Opens a public hearing on HB 2579.

HB 2579 – PUBLIC HEARING

340

Don Miner

Executive Director, Oregon Manufactured Housing Association. Submits and summarizes prepared testimony in favor of HB 2579 **(EXHIBIT E)**.

360

Joan Fraser

Building Codes Division, Department of Consumer and Business Services. Testifies in support of HB 2579. Notes the similar legislation HB 2389.

375

Chair Metsger

Closes the public hearing and opens a work session on HB 2579.

HB 2579 – WORK SESSION

380 Sen. B. Starr **MOTION: Moves HB 2579 to the floor with a DO PASS recommendation.**

VOTE: 4-0-1

EXCUSED: 1 - Deckert

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

390 Chair Metsger **SEN. B. STARR will lead discussion on the floor.**

Closes the work session on HB 2579. Opens a public hearing on HB 2069.

HB 2069 – PUBLIC HEARING

410 Michael Snyder Administrator, Landscape Contractors Board (LCB). Testifies in support of HB 2069.

TAPE 75, A

005 Snyder Submits a packet of testimony and information (**EXHIBIT F**).

045 Bill Cross Oregon Landscape Contractors Association. Submits written testimony in favor of HB 2069 (**EXHIBIT G**).

085 Chair Metsger Notes the difference between the proposed -A2 amendments (**EXHIBIT H**), -A3 amendments (**EXHIBIT I**), and -A4 amendments (**EXHIBIT J**).

085 Sen. Monnes Anderson Asks about fees associated with continuing education for landscape contractors.

090 Snyder Replies that no fees for continuing education would be charged by the LCB because it is part of the licensing fees.

096 Sen. Monnes Anderson Asks if continuing education issues could be reported online.

097 Snyder Answers yes.

098 Sen. Atkinson Asks about the composition of the LCB.

101 Snyder States that the board is made up of five industry-related members and two public members.

103 Sen. Atkinson Asks for a further clarification of the composition of the LCB industry-related members.

106 Snyder Offers further clarification of the industry-related members of the LCB.

110 Sen. Atkinson Expresses skepticism about education credits. Feels that industry boards can present barriers-to-entry to an industry. Cites a similar issue faced by the used car industry in the past.

125 Snyder Explains that the initial landscape contractor examination is the first standard of competency and the continuing education would enhance the knowledge of landscape contractors. Expresses the desire to have the examination certified by the national organization of accreditation certification.

154 Sen. B. Starr Asks for a comparison of the state requirements in HB 2069 to the requirements for LCB licenses.

163 Snyder Highlights the differences between the two.

193 Brian McDermott Legislative Assistant, Office of Senator Charles Starr. Explains the -A2 amendments, -A3 amendments, and -A4 amendments. Presents the

written testimony of Rep. Kim Thatcher (**EXHIBIT K**) and Rep. Linda Flores (**EXHIBIT L**) regarding HB 2069.

- 265 Wes Butler Silverton Licensed Landscaper. Testifies in regard to the importance to the amendments of the measure. Observes the heavy regulations on the landscape contracting industry in Oregon.
- 299 Mike Schrock Business Contractor. Expresses concerns over additional regulations regarding continuing education and standards of professional conduct.
- 330 Schrock Elaborates on the subjective nature of the landscaping industry.
- 369 Chair Metsger Asks Mr. Cross about moving forward without sections 2 and 3 of the bill.
- 380 Cross Asks for additional time to work out a compromise on the continuing education portion of the bill.
- 410 Chair Metsger Explains that the bill can be passed with the -A4 amendments or held over until the next meeting to work out a compromise.

TAPE 74, B

- 013 Sen. Monnes Anderson Addresses the importance of the professional conduct portion of the bill.
- 023 Sen. B. Starr Offers there are elements of the bill that are very positive that should be passed.
- 035 Snyder States support for the bill.

The following material is submitted for the record without public testimony:

- Patrick Griffiths Water Resources Coordinator, City of Bend. Submits written testimony and information in support of HB 2069 (**EXHIBIT P**).
- 040 Chair Metsger Notes the concerns expressed by Mr. Cross. Closes the public hearing and opens a work session on HB 2069.

HB 2069 – PUBLIC HEARING

- 042 Sen. B. Starr **MOTION: Moves to ADOPT HB 2069-A4 amendments dated 5/25/05.**
- 045 Sen. Monnes Anderson Argues that the consumer protection provisions should remain in the bill.
- VOTE: 3-1-1**
AYE: 3 - Atkinson, Starr B., Metsger
NAY: 1 - Monnes Anderson
EXCUSED: 1 - Deckert
The motion CARRIES.
- 055 Chair Metsger **MOTION: Moves HB 2069 to the floor with a DO PASS AS AMENDED recommendation.**
 Sen. B. Starr
- VOTE: 4-0-1**
EXCUSED: 1 - Deckert
 Chair Metsger **Hearing no objection, declares the motion CARRIED.**
SEN. B. STARR will lead discussion on the floor.
- 060 Chair Metsger Closes the work session on HB 2069. Opens a work session on SB 408.

SB 408 – WORK SESSION

- 065 Chair Metsger Introduces SB 408.

075	Dexter Johnson	Office of Legislative Counsel. Explains the –A7 amendments (EXHIBIT M) .
100	Johnson	Explains the provisions for rate filing of a utility.
117	Chair Metsger	Asks for a clarification of the tax reporting provisions.
119	Johnson	Offers clarification of tax reporting. Continues his description of the amendments.
150	Johnson	Discusses deferred taxes in relation to depreciation.
175	Johnson	Details section 5 of the amendments.
186	Sen. Vicki Walker	Senate District 7. Asks if there is precedent for the automatic adjustment clause.
190	Johnson	Answers that there is a precedent and clarifies the automatic adjustment clause.
199	Mark Nelson	Industrial Customer of Northwest Utilities. Testifies in support of SB 408 and the –A7 amendments.
237	Jeff Bissonette	Citizens Utility Board (CUB). Testifies in support of SB 408.
254	Sen. B. Starr	Asks how the measure will affect rate stability.
274	Bissonette	Observes the importance of rate stability and rate adjustments. Notes that the bill includes provisions that allow tax issues to be examined.
301	Nelson	Concurs with Mr. Bissonette's comments. Talks about rate changes over time.
325	Dan Meek	Attorney, Utility Reform Project. Testifies in support of SB 408. Describes problems with the bill related to the charges to ratepayers and the elimination of tax practices. States support for the –A7 amendments.
360	Meek	Proposes that deadlines for PUC review of rates and operations be included in the measure.
390	Meek	Objects to the limitation of the definition of "tax" in the measure. Argues that the definition should be further refined.
412	Pamela Lesh	Vice President for Regulatory Affairs, Portland General Electric (PGE). Notes she came prepared to address the –A6 amendments (EXHIBIT N) . Expresses uncertainty about the –A7 amendments and the one-way adjustment clause.

TAPE 75, B

005	Lesh	Admits some concerns over the –A7 amendments. Submits and summarizes Tax True-up examples (EXHIBIT O)
033	Sen. Monnes Anderson	Asks for a clarification of the figures in Ms. Lesh's examples.
040	Lesh	Explains Oregon's Minimum Corporate Tax and offers a clarification of the figures. Continues describing the scenario in which PGE would receive more revenue than anticipated.
080	Lesh	Provides additional rate-setting scenarios.
120	Scott Bolton	PacificCorp. Testifies that SB 408 will hurt ratepayers and utilities. Explains regulations and taxes.

136	Chair Metsger	Clarifies attributable taxes related to utilities and affiliated groups.
143	Bolton	Asks for a clarification of the changes in the amendments.
149	Chair Metsger	Clarifies the changes in the -A7 amendments.
154	Lesh	Asks if losses would be impacted as well.
158	Chair Metsger	Answers that only utilities would be affected.
163	Bolton	Argues that the tax responsibility provisions in the measure are unclear.
168	Chair Metsger	Offers further clarification of the provision.
170	Gary Bauer	NW Natural. Describes the rate-setting process and tax liability.
200	Bauer	Discusses the shifts in tax liabilities and costs. Notes an issue of language related to deferred taxes paid and charges to ratepayers.
230	Chair Metsger	Offers clarification of the bill language.
240	Sen. B. Starr	Asks about the underlying issue of fairness regarding utilities' ability to add taxes into their rates even if they don't pay taxes.
249	Lesh	Explains the setting of utility rates and taxes.
280	Melinda Davison	Industrial Customers of Northwest Utilities. Notes that the examples Ms. Lesh provided are not considering the "Enron impact" related to Enron not paying the appropriate taxes.
314	Sen. Monnes Anderson	Asks if the amount of taxes would be so significant as to keep businesses from operating in Oregon.
320	Davison	Replies that SB 408 will not create a business disincentive, but will resolve the tax issues.
336	Chair Metsger	States that Pete Shepherd was involved in the discussions on the issue and asks if the Attorney General has taken a position on the issue.
345	Pete Shepherd	Deputy Attorney General. States that Attorney General Hardy Myers would like the law to connect the actual taxes received by governments to the amounts that utilities are recovering as that element of their cost. Notes the constitutional limitations of the legislature in addressing the issue.
378	Julie Brandis	Associated Oregon Industries (AOI). Notes AOI's previous neutral position on the measure. Concurs with Sen. Starr's observation on fairness on tax collection and payments.
415	Chair Metsger	Closes the work session on SB 408. Adjourns the meeting at 3:02 p.m.

EXHIBIT SUMMARY

- A. HB 2604A, -A4 amendments, staff, 1 p**
- B. SB 955, -5 amendments, staff, 14 pp**
- C. HB 2071, written testimony, Bill Boyd, 6 pp**
- D. HB 2200, written testimony, Bill Boyd, 35 pp**
- E. HB 2579, written testimony, Don Miner, 1 p**
- F. HB 2069, written testimony and information, Michael Snyder, 31 pp**
- G. HB 2069, written testimony, Bill Cross, 2 pp**
- H. HB 2069, -A2 amendments, staff, 1 p**

- I. HB 2069, -A3 amendments, staff, 1 p
- J. HB 2069, -A4 amendments, staff, 1 p
- K. HB 2069, written testimony, Rep. Kim Thatcher, 1 p
- L. HB 2069, written testimony, Rep. Linda Flores, 1 p
- M. SB 408, -A7 amendments, staff, 7 pp
- N. SB 408, -A6 amendments, staff, 4 pp
- O. SB 408, Tax True-up Examples, Pamela Lesh, 4 pp
- P. HB 2069, written testimony and information, Patrick Griffiths, 7 pp

**SENATE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
SENATE BILL 408 WORK SESSION**

|May 26, 2005|

Chair: Now we are going to open up public ... We have scheduled a work session on Senate Bill 408, but I have asked for people to sign up and we do need Dexter so we will get Legislative Counsel in here. I think I will start by asking Mark Nelson and Jeff Bissonnette to come forward, if they are here. Maybe we are moving too quickly for them. They are outside. So, let's stand at ease for a sec 'til we get everybody back in the room.

Woman: Which bill are we on?

Chair: 40 ... 408. Mr. Nelson, welcome. Once we get organized here. Mr. Bissonnette. Senate Bill 408 colleagues, we heard quite a while ago in its original form which is dealing with rates of public utilities and we did change that bill to the Warm Springs Bill for a while. Now we have it back with the same original topic, but with different amendments going back to our original topic and I ... when Mr. Johnson gets here, from Legislative Counsel, gets here, we will have him walk through what is essentially the new bill. In fact, here he is now. I will ask Mr. Johnson to come forward to kind of walk us through the A-engrossed Senate Bill 408 amendment that has been completed. Go through that and then we will begin with testimony from Mr. Nelson, Mr. Bissonnette and others. So welcome, I have to apologize to Mr. Johnson. He was up all night long working on this again. We do appreciate that. Mr. Johnson, welcome, and if you could walk us through the bill that we have before us in the -A7 amendment.

Johnson: Okay, Mr. Chair, members, Dexter Johnson, Legislative Counsel Office. The amendment is basically a gut and stuff of the bill so I'll just concentrate on the amendment.

Chair: Yes.

Johnson: Basically, Section 2 is the first substantive section of the bill and it is a findings and declarations piece. It's fairly self explanatory. It describes the concerns regarding how taxes are currently—the current practices regarding taxes and how the cost for taxes are determined for ratemaking purposes and expresses the legislatures concern with those practices. Section 3 is a basically, basically adds a definition of tax to the public utility chapters. It is a broad definition that includes income taxes and any other excise essentially that a public utility or any other entity would pay on behalf of a public utility to a unit of government whether it is federal, state, or local. Section 4 is really the guts of the amendment. It provides

basically in subsection 1, it provides a direction that the utility should—I have a paperwork problem here—a utility may not collect more through rates than it pays in ultimately, it or, if it is a member of an affiliated group, the group pays in taxes. Subsection 2, establishes a new reporting requirement that utilities must file a tax report with the Public Utility Commission that sets forth certain tax information that the utility has basically concerning taxes that the utility has paid during the previous fiscal year. I want to note here that that is not tied to tax years, so if you are paying as a utility or an affiliated, a parent of a utility, if you are paying taxes as a result of an audit from a prior year or estimated taxes for a future year, those are all treated the same and refunds are all subtracted out from that if you file an amended return as a utility and get a refund, that is a minus. It really looks at the actual dollars that are paid during the previous, during the utility's fiscal year. The Commission then directs in Subsection 3, the report is a public document.

Chair: Just if I can interrupt just for a moment, Mr. Johnson. This is an issue we discussed just to make it clear. This is not their income tax forms that they will be providing the Commission, but rather a report that will contain the information that they will certify.

Johnson: That is correct, Chairman. That is correct. It is not the income tax returns themselves. It is other information. There is some direction here as to what the information is precisely, but also there is the authority to the PUC to establish other information that the Commission determines is useful to be reported on that return—that report. Subsection 3, directs that the report be made public. Subsection 4, which is really the core of this whole amendment, I will go through in a little bit more detail, directs the Commission to review the report and make a determination as to whether their amount of taxes assumed in the rates that the Commission has authorized, if that amount of taxes is greater than the amount of taxes actually paid for any one of three previous years, then it directs that the utility establish what is called an automatic adjustment clause in the rates that are approved by the Commission. In the automatic adjustment clause, it is essentially an automatic adjustment to rates to take into account this difference between the amount collected and the amount actually paid, either by the utility or by the affiliated group in which the utility is a member. Then, Subsection 5, is a bit of an exception from that rule. There currently is something that is authorized in rates called deferred taxes, which are taxes that are collected that are not paid and are instead put into a deferred account. It is to basically take into the account that utilities may claim accelerated depreciation on certain depreciable property. The effect of accelerated depreciation is that you get a larger deduction earlier on and then eventually it switches over and you get a smaller deduction than you otherwise would and then deferred taxes are designed to be the source for paying the tax when the depreciation deduction is smaller than it normally would be. This is a current practice

and Subsection 5 preserves that practice. Subsection 6 is another exception. It basically allows the Commission to not require that an automatic adjustment clause be attached to the rates if the Commission determines that it causes a materially adverse effect on customers of the utility. That material adverse effect is a defined term. Actually, you will see that in lines 18-21; it sets forth with some precision the situations in which the Commission determines that in fact this is a negative consequence for rate payers then it will not require the automatic adjustment clause to be put into place. Section 5 is an amendment to existing law, essentially to include cost for taxes in the definition of automatic adjustment clauses, which is set forth in 757.210. It makes consistent the standard of fair, just, and reasonable that appears elsewhere in the draft. And, Section 6 is the effective date, which is the emergency clause.

Chair: Thank you, Mr. Johnson. Questions of Mr. Johnson on the mechanics of the bill before we get into the advocacy and opposition?

Walker: Mr. Chair.

Chair: Senator Walker.

Walker: Thank you. I am going to have to leave at 2:30 today, so I just wanted to get a couple of questions in. Mr. Johnson, is there precedent for the automatic adjustment clause. That just didn't come out of thin air. We didn't just make that up, did we?

Johnson: Mr. Chair, Senator Walker, no there is an automatic adjustment clause. There is precedent for that. In fact, it is a term that is in existing law. You will see it there in lines, page 5, lines 10-15 in the light face. That is existing law. Really, all we are doing is adding the words "taxes actually paid" to that definition.

Walker: Thank you, Mr. Chair. I just wanted to make that clear.

Chair: Thank you. Mr. Nelson.

Nelson: Mr. Chair, members of the Committee. My name is Mark Nelson. I represent Industrial Customers of Northwest Utilities. ICNU, as we are known, really appreciates the tremendous time and efforts that has gone into, by all parties, to try and develop this draft. As many of you know that the previous draft dealt with consolidated, the consolidated tax returns and I think the objections that were raised to that were somewhat legitimate in terms of concerns of segregating six utilities and treating them differently in the process. The fact remains that I think we have a very unique opportunity here to correct what we believe is an injustice in terms of what has occurred over the years. Fundamentally the premise that rate payers should not be paying in their rates for taxes that weren't

paid. The Chair and many of the parties have worked very hard to try and put this draft together to address this in a way that reflects the actual reality of rate setting in this state so that it is not onerous either on the customers or on the utilities. We welcome this particular draft. We think it is excellent. It is going right in the direction that we want to go. We are continuing to work with counsel on, I think in particular, Section 4, sub 1 that you find on the bottom of page 2, as to whether or not that particular section is really necessary based on some of the other provision that you find. In particular, Section 4, sub 4. But again, we are continuing that conversation and that is going forward. In addition to that, on page 4, lines 18-21 the definition of material adverse effect. Again, we want the opportunity to continue to discuss that with counsel as to how that should be worded and how the Commission might deal with that particular situation. We believe in that concept that you find in there as an exception. We think that should be there for the benefit of really both parties in this process. We welcome the further discussions we are going to have over the next day or two. Our understanding is that we will be moving with a final draft on Tuesday and assuming that all of these issues are discussed, we will be supporting the bill. At this point, we want to commend the process and the draft you have up to this point.

Chair: Thank you, Mr. Nelson. Let's go to Mr. Bissonnette.

Bissonnette: Mr. Chair and members of the Committee. My name is Jeff Bissonnette, representing the Citizens Utility Board on behalf of residential customers. There is not a whole lot that I can add from the comments that Mr. Nelson just made. We, too, appreciate the opportunity to be involved in the process and to figure out how to effectively address very important policy issues that have been vexing repairs for a while. We want to make sure that there is something that is done that does protect rate payers, but at the same time makes it withstand legislative scrutiny. We think of this as heading in the right direction and we, too, look forward to continuing the conversation over the next day or two. We are hopeful that on Tuesday, we will have a bill that is ready to move.

Chair: Thank you. Questions for this panel? Senator Starr.

Starr: Thank you. I want to have your comments on rate stability. Could you comment on this bill as it relates to rate stability and the effect that in some years the utilities may be highly profitable and then in that case their taxes go up and in that case you have some sort of opportunity that they do their tax report. Basically they say that they will have to pay more in taxes. Do they then have the opportunity to have their rates go up to cover that cost? The other side of the coin is...they come to the situation that for whatever reason their costs go the other way, doesn't that affect the stability of the rates overall and that part of the process of having the PUC regulate utilities is to at least have some stability in the rates at least for

the period of time that the rates under which the utility is regulated is there?

Bissonette: Mr. Chair, Senator Starr, rate stability is important but there are a variety of instances where there are rate adjustments and costs adjustments between rate cases and so there, what we are trying to set up is a process where there is some ability to look at the tax issue on an ongoing basis and there's a symmetry there, sometimes the risk is taken by the rate payer, sometimes the risk is taken by the shareholder. What we are trying to do is figure out a mechanism to make sure that what's collected in rates specifically for taxes actually makes it to the taxing authority, which hasn't been happening. As I think Senator Metsger and Senator Walker have discovered, it is a complex process and we are trying to get something that is, not to use too much of a clichéd phrase, but a fair and balanced process on how to get there. So, yes, it is important that rate stability is a driving factor in this, but at the same time, we need to make sure that people have confidence that the taxes that are part of rates make it to the taxing authority for which those taxes are intended.

Nelson: Mr. Chair, Senator Starr, I would concur in that and just add that rates decrease or change every year. For a variety of factors. One of those factors certainly has been the taxes allegedly owed by the utility and in many cases, not paid. In 2004, in the rate case that we are doing right now, before the PUC, a PacifiCorp rate case. We just had testimony entered that PacifiCorp is charging about \$27 million for 2004 for taxes that were never paid. So, that too impacts the rates. We believe with the three-year language in there, you are going to be able to see some of the leveling out. One, we won't be paying taxes that were never paid in our rates, but we will see some consistency that will come based upon how this has been drafted.

Chair: Thank you very much. Stand by. Mr. Meek. Dan Meek, please. Regulating books in hand, it looks like. Welcome.

Meek: Thank you, Mr. Chairman and members of the committee. My name is Dan Meek. I am a PGE rate payer and an attorney representing the Utility Reform Project. To put this in context, the major regulated energy utilities in Oregon appear to be currently charging rate payers significantly over \$100 million per year for income, just for income taxes that those utilities are not paying to any taxing authority. PGE alone is charging \$93 million to rate payers for that purpose and since 1997 has charged rate payers over \$750 million on their electric bills supposedly for state and federal income taxes but in fact that amount has not been paid by PGE or by Enron to any government authority. I think the legislature should ban this practice immediately. These amendments are the result of substantial discussion over the past several weeks and every provision in this current draft is needed in order to have a solution to this problem. I support the current

draft, if it is not amended. However, of course, it is not perfect. Nothing is perfect and there are a couple of problems with this draft. The first problem is that it needs deadlines for the annual report function being required of the Oregon Public Utility Commission. As you are aware, the PUC has resisted solving this problem for several years. I filed a complaint to the PUC about this over two years ago and it took an order of the Marion County Circuit Court to get the PUC to even recognize this as a cognizable issue before the Commission. So, if you assign functions to this PUC, they have to be assigned with deadlines. The function of having this annual report and creating an automatic adjustment needs several deadlines. For example, the bill contains no deadline for requiring the first annual report. It contains no due date for the first annual report. By the way, the first annual report, there is no reason that that shouldn't cover the three years by itself. That is, the utilities certainly have their tax data for the past three years, so the first annual report should cover the past three years. There is also no deadline for the Commission to review the report after it is submitted to the PUC. There is no deadline for the Commission to make the determination on whether the utility has been charging rate payers more for income taxes than it has actually paid. There is nothing in the bill that requires a prompt effective date for the automatic adjustment clause. It just says that the PUC shall establish an automatic adjustment clause with an effective date of its choosing. The PUC could choose to set an effective date that is months or even years into the future. I think the lack of statutory deadlines could allow this really indefensible practice to go on for years. In the current draft however, Section 4, subsection 1 makes the practice of charging rate payers for taxes that the utilities don't actually pay unlawful from the outset so that provision is absolutely necessary. The second perhaps lesser problem is the definition of tax contained in this bill. It defines tax as monetary charges by government but only those going for, quote, general government operations. Well, what if there is a tax that applies to corporations generally or including utilities and the tax proceeds are specified for a particular purpose, such as schools. Does that mean the utility can charge that tax to ratepayers and then not actually remit those amounts to the taxing authority? I don't see any reason to limit the definition of tax to the monetary payments to government units that are only for, quote, general government operations. So I very much appreciate the work of the Committee on this bill and I hope that it proceeds and it does need a little bit of tweaking, very minor, and I certainly would not be in a position to support this bill if it were significantly weakened.

Chair: Thank you Mr. Meek. Questions? Okay, thank you. Okay. Let's ask Pamela Lesh, Scott Bolton and Gary Bauer to come forward.

Lesh: Thank you. Good afternoon Mr. Chairman, members of the committee, thank you for giving us some time to address you today. I'm going to start

off and then my two colleagues will come in and join me. And for the record, I'm Pamela Lesh, Vice President for Regulatory Affairs for Portland General Electric Company. We did come prepared today to address the -6 amendments that we got yesterday, and I would still like to do that but let me start off by expressing some confusion over the -7 amendments. As described by Legislative Counsel, it appeared that it was a one way true-up in the taxes, that there would be a refund to customers if the taxes were less than what was estimated in the utilities test year, but there would not be a charge to customers if the taxes were more than what was estimated in the test year. We would have significant concerns about a one way only adjustment clause, and that would be unprecedented. Adjustment clauses that track either changes in cost or changes in revenues for utilities are traditionally and I think probably under constitutional law two way. They track the changes up, the changes down. It's done for policy by the Commission and we are not aware of any instance where it's ever one way. But, as I said, it's unclear the answers given by panelists shortly after the amendments were explained seem to indicate that the changes would be two way and the material adverse affect clause seems to suggest charges to customers as well, so let me note for the record we're confused and if that gets clear, we'll probably have some more to say on the subject.

So let me talk about the true-up generally, because that is what we wanted to do today now that the bill has surfaced with that provision. And what I've put together is some examples just to tell you the practical effects of a true-up and then I do have a suggestion in concept for how we might limit some of these practical effects. [Exhibit.] And I see that Teresa is getting that to you. We drew these examples from our last general rate case so in general terms the numbers are right, but I rounded and got rid of unnecessary dollars and cents that were simply confusing. So let me just orient you for a moment to a base picture where we, Portland General Electric, have a billion and a half in revenue that's approved to be modeled into rates, we have operating expenses without taxes of about a billion 275, taxes are 75, so total expenses are 1,350, and that gives us an operating income of 150. So the income taxes are due on that 150. That's the base case. Now I'm going to have you turn the page. Question?

Anderson: So if you had an operating income of 150, for this particular year, what would have been your tax that you would have paid?

Lesh: 75 million.

Anderson: 75?

Chair: That's what it's assuming.

Anderson: So... okay. So where do we get into this 10 dollar business? Just for the record, to clarify.

Lesh: Mr. Chairman and Senator Monnes Anderson, the 10 dollars, that's currently Oregon's minimum corporate tax payment that must be paid regardless of what your tax return says and the federal government has something similar for individuals, I believe it's called the alternative minimum tax. So that is the payment that was made by Enron as the result of the consolidation of all the positive income and negative income among the corporate family, and the resulting income tax owed being nothing, so the minimum kicks in.

So in this first scenario, let's assume this was 2002. We last did a general rate case in 2001, so this could easily have been 2002. What we assumed was that it was a cold winter. Now we haven't seen one of those for quite some time, but you never know, it could happen. So customers have paid us more revenue than we expected when we set rates and that does happen from time to time, so you can see that the revenue line went up and we assume that at an average rate of 7 and one half cents a kilowatt hour. Now our operating expenses would also have gone up because we would have had to buy that power to sell the customers and so there would have been more power than we assumed in the rate case, and we assumed that that cost us about five cents, so our expenses didn't go up as much as our revenue. That means that we had more operating income and you can see it was just a little over \$13 million higher, then we had more income taxes. With a total true-up of the taxes customers would now owe us another \$8.8 million. Unfortunately it doesn't stop there because that increases our income. That increases our taxes and so there would be another increment owed. We iterated that through to produce this example for you and that is the \$5.3 million. So in total for that year that had a cold winter, meaning customer's bills were already higher, customers would owe us another \$14 million.

In the next example, we worked with the cost side rather than the revenue side, and we see changes all the time in both sides. Nothing is ever quite as we assumed it in the rate case and we all expect that and know that we're just trying to get it as close as possible. This is an example that we also haven't seen for some time but we are hopeful. We have assumed there was lots of rainfall and that there's good snow pack in the mountains, and our hydro projects produced more power than we expected. That power is worth on the market say five cents, so what happened is our revenue line is the same but our costs went down significantly because we were able to sell off that power and that gets netted against our cost. Our income taxes are now higher by 17 and a half million, and that's the effect of that 44 million dollar reduction in the expenses. So our operating income is higher by about 25 million, but we go back again, the true-up on taxes if it is going to the customers,

customers have to contribute another 17 and a half million, and iterate it through. It comes up to a total of 28.

The last example I also worked with the cost side just to take you through something that shows a higher cost to the utility. We do experience higher costs and unlike the prior two examples that's happened with fairly great regularity, at least recently. So here the revenue stays the same but our operating expenses go up 15 million, and this indicates that would be a common cost increase for employee benefit costs, and I know you've heard about that in many other forums. That cost increase lowers our income tax bill by about 6 million. So taxes, tax policy offsets part of the cost increases we see, and it also mitigates the income effects of greater revenues. So our expenses are up, our operating income is down, and we now owe customers a refund even though we have low operating income of \$6 million. And by the time we iterate that through we owe another \$3.6 million, so we have to give customers back \$9.6 million because of the \$9 billion cost increase that we experienced in providing them service.

Those are just pretty general examples of what could easily happen with the true-up approach. Conceptually if the Commission not only tracks the tax changes but the underlying cost and revenue changes that have caused that tax to change, then you can offset the two effects and you can make everything match again. Right now you have costs and benefits totally disconnected but if the utility is benefiting customers are paying a cost, and if the customers are benefiting it's because the utility is paying the cost. You can realign them by having at least a partial tracking of those underlying changes in the costs and revenues and we started work this morning on language that would attempt to do that. That would not address in any circumstance the other issue of the corporate family and changes in the income that relate to that corporate family, that never had costs or revenues reflected in the utilities' rates at all, but it would at least prevent this perverse result from happening with respect to utility cost of service, and of course then probably help preserve our credit ratings and enable us to continue to raise money on behalf of customers and should the -7 amendments actually be two-way prevent customers from paying higher costs simply because of this approach to handling the issue that everyone has spoken to which is of the combined effects of shareholder losses in other ventures with the utility's income. I thank you.

Chair: [Inaudible.] Can I go to the other two panelists first? Scott, you want to...

Bolton: Thank you Chair. For the record, my name is Scott Bolton, I represent PacifiCorp. Very simply, Senate Bill 408 will hurt ratepayers and hurt utilities. In the most simplest explanation, it's because this bill will erode the fundamental regulatory ring fencing that the Oregon Public Utility Commission and 41 other state public service or public utility

commissions have employed for years. Ratepayers would pay more if the consolidated group is profitable. Section 4 of this bill says that if a public utility's actual taxes are more than estimated, the PUC shall adjust the rates the utility recovers with interest any amount of tax actually paid that is greater than the estimated amount of taxes. Income taxes generally are tied to profits. Actual taxes generally will exceed estimated taxes if the consolidated group is more profitable than anticipated. The results of this can be Oregon ratepayers would pay more because profits earned by affiliates, even those in other states, regardless of the cost of providing electric utility service, would occur.

Chair: I'm going to interrupt you right there. Um, because on page 3 I think you're reading about the taxes, it's talking about the affiliated group that is properly attributed to the utility, not the consolidated other affiliates that you're referring to.

Bolton: So, I'm not sure I understand the question.

Chair: Do you have the memo, on page 3, lines 12 through 15, the amount of taxes paid by the utility in the previous fiscal year that was paid by the affiliated group and that is properly attributed to the utility. Not, you're talking about hurting taxpayers because of other nonaffiliated groups, but these are the taxes that are only attributed to that utility, even if they are part of a consolidated group.

Bolton: So then the effect of this amendment Chair, if I may ask a question, is that the Oregon Department of Revenue will no longer collect any taxes attributed to a consolidated group that has a utility affiliate?

Chair: No, what it means is, in adjusting the rates for taxes, that when they file the report with the commission, it will be those taxes which are attributable only to the operations of that utility, even if you have multiple other affiliates. That's going to have to be figured in the tax report that in this case PacifiCorp would have to file, is to then break that down.

Lesh: Mr. Chairman, if I could ask a question. Would that work for the losses then as well if the other corporations had had losses and those are offset, would this tax report...

Chair: It has nothing to do with other corporations, it's only the utility itself. No other affiliations are affected by this. It would be your responsibility to delineate the utility in filing the report with the PUC, what their actual costs were, what their taxes are. It has nothing to do with any other affiliates you have. And that would be your responsibility is to have to extract that cost just like you did in your scenarios, but to actually be able to do that. I'm sorry to interrupt but I wanted to bring that out.

- Bolton: That's fine, this is a good discussion, Senator Metsger. I guess our thoughts on this would be is that it is very unclear as Oregon taxpayers what our responsibility would be under the current consolidated tax rules with the -7 amendments.
- Chair: You can consolidate all you want, but you're not going to be allowed to collect other than the taxes that you owe on this particular, in this case, in the rates that you are collecting for the operation of actually that utility. File anywhere you want. I'll go to Mr. Bauer and then I have questions and then... Mr. Bauer?
- Bauer: Thank you Mr. Chair, Gary Bauer with Northwest Natural. Appreciate the opportunity to appear this afternoon. Northwest Natural does not have a holding company, so we don't have the same issues as you were just discussing but we do file our returns and we do have various tax treatments we take and one of those in particular is the issue of accelerated appreciation. We just completed our largest capital project last year and that had a definite effect on taxes. If I can just step back for a second though. As we talked about the rate process earlier, when you do those, you basically develop a test year. Take 12 months and you, I'm going to oversimplify this, but you look at all your costs and out of that I think as the Commission has testified on your previous discussions, they then determine the tax liability from that. And then they basically just say okay, here's the amount of money you can charge per therm or per kilowatt hour as a utility as you go forward figuring out then how you address all of those costs for that amount of money. So it's not that they identify X number of cents for taxes, X number of cents for the cost of gasoline, X number of cents for doing some other activity, because they know that there is going to be changes, it's a test year, it's just a snapshot in time in which they use to develop what that rate will be. So I think that's one of the concerns we're trying to raise is that as you go forward, you're trying to manage your company as best you can for all of those. Your taxes are directly affected by all of the other costs that were in that rate case, so if those costs go up, it will definitely lower the tax liability. In the end, you still only get so many cents per therm or kilowatt hour though to try to manage all those costs.
- I'll use one as example that's been frustrating us recently. Utilities are required to relocate their facilities when a governmental entity asks us to do that and we do that, quote, free of charge. As development grows, that's also becoming one of our increasing expenses that we're not sure how to estimate because we'll go into a rate case, we'll put an amount in the process, but we don't know the next year if there's a large Bridgeport Village or something like that that may cost us hundreds of thousands of dollars that we didn't anticipate. There's no way to recoup those yet those costs may well affect the tax rate and may cause the tax rate to go down. So I think that's what we're trying to just comment on that a little bit.

The other couple of quick things, if this does go in the way it is, one of the things that utilities do is we will use the Energy Business Tax Credit, we've used that to work with various entities, Washington County and others, to try to do some alternative energy activities. We've put in distributive generation systems. If this goes into effect there's no reason at all for us to basically take their tax liability, we basically buy their tax liability. And so it is kind of a wash, but you're helping those customers move further along the path of finding alternative resources. There's just no incentive and in fact it would cost us twice if we did that going forward.

And then, I know you're short on time, I've asked a number of our folks to look at the earlier version, but I think the language is still the same. On page 4 when they try to cover in lines 5 through 10 the discussion about deferred taxes, and I got 4 different answers. So I'll use my simple way of looking at this, which is in the first sentence, it reads to me that the Commission may authorize a utility to include in rates deferred taxes. Then the last sentence in that paragraph says deferred taxes that are paid may not be charged to ratepayers. It may just be a terminology issue, it may not, it may be triggering off of something else, but...

Chair: I believe it was to eliminate the double counting, of where you put them in, and then you take them out.

Bauer: For those of us who thought this was taking care of exactly what we do today, thought that was the case, someone else came back and said, what you've got deferred taxes in and deferred taxes not in, and so again, I think, confusion, and with that I'll just stop and

Chair: Thank you. Senator Monnes Anderson, do you have a question?

Anderson: Well, I think if you want testimony I can wait.

Chair: Okay, I think what I'd like to do... yes, Senator Starr?

Starr: ...very very, kind of 10 thousand foot level question. Isn't there an underlying issue of fairness here that this Committee and this legislature I think is trying to get at is that utilities have the opportunity to put taxes in their rates and for whatever reason based on your examples somehow don't pay those taxes, isn't there some underlying on its face, something unfair about that particular issue?

Lesh: Mr. Chairman and Senator Starr, if the taxes were different because the costs or revenues were different, I don't think so. If we did a mini rate case to reflect what we then knew were going to be the costs or going to be the revenues, the tax number would have changed. We don't do rate cases all the time. And so we all live with the assumptions until we do do the next rate case when everything is internally consistent so the taxes

relate to the revenues that have been estimated as well as all the costs, so within that context fairness is actually interrupted if you say no, we'll pluck out this effect of the changes in costs and revenues, which is the taxes, and we'll treat that differently than the underlying costs and revenues themselves. We think that doesn't work and will actually, it either exacerbates losses the utility is already seeing or gains the utility is already making. You will find returns varying much more widely than you would have had you left taxes alone because taxes act as a damper on those changes. If it's a cost, taxes frankly the feds absorb part of the cost increase. If it's a revenue increase, the feds get part of it as does the state. So it's a damper on the effects on us.

Chair: Ratepayers are thinking they're the ones that are the damper that's being applied. Thank you very much. I appreciate this very much. We are running short of time. I'm going to ask Melinda Davison to come forward for a moment. Welcome, state your name for the record and you've been back there listening to the scenarios that were presented. If you would identify who you are, who you represent, I would be curious because of your reaction to the scenarios that were presented to us.

Davison: Thank you Chair, my name is Melinda Davison and I am an attorney for the Industrial Customers of Northwest Utilities. I do have a reaction to the scenarios that were handed out by Portland General Electric. I would say there's a couple of things that immediately come to mind. The examples that you have in front of you assume that PGE is a standalone utility and is not owned by Enron and we know that the reason why we're here today is because that's not the case, and so what is missing from these examples is the Enron impact, which is that year after year after year Enron is paying zero for the various tax, income tax scenarios that PGE has listed here. That is the crux of the problem, so while these examples may be interesting I would submit that they are irrelevant because they do not reflect the Enron aspect of it and I would just add to that in response to what Ms. Lesh just said about the fairness question that the fundamental problem that we have is that, and Ms. Lesh is absolutely right, that for most aspects of ratemaking, if PGE comes in, files a rate case, and you see for 5 years that ratepayers have been paying the cost, let's say it's \$10 million, and that for 5 years the actual cost has been zero, when you set the new rates on a going-forward basis you would then put zero in, not the \$10 million that we've been paying, and the income tax is just a glaring discrepancy or exception to that rule and that's why we believe that there does need to be a legislative change to fix that problem.

Anderson: Mr. Chair?

Chair: Senator Monnes Anderson.

- Anderson: But then really there is a disincentive for corporations to want to have expansions or be affiliated with utilities within Oregon. I mean is this, is the amount of tax, would that be so significant that PacifiCorp wouldn't want to do business in Oregon. Do you see where I'm going with this?
- Davison: Yes Senator, and I do not believe that this bill will create that kind of disincentive. I think that what this bill is trying to do is take away the incentive to collect all of these dollars and have those extra dollars going to shareholders that are never paid to a taxing authority. I don't believe, and certainly we're very open to having discussions with the utilities if this has created some unintended consequences, because I don't believe that as written that this would create that kind of disincentive and it certainly is not the intent.
- Chair: Thank you very much. I see Mr. Lindberg walked into the room. You guys want to talk about utility taxes by chance? Before we can conclude, I'm going to ask Mr. Shepherd to come forward and I apologize for all of you who I've been calling up who hadn't signed up. But Mr. Shepherd in the Attorney General's Office was involved in the discussions that we had. Can you identify yourself for the record? I'm curious if the Attorney General has taken a position on this issue at this point at all.
- Shepherd: Mr. Chair, members of the committee, I'm Pete Shepherd, I'm the Deputy Attorney General. We appreciate the Chair's invitation to participate to an extent in the workgroup and we're interested in the progress that is being made. Are you asking me whether we have anything to offer the Committee about the constitutional limitations, or ... ?
- Chair: No, I'm just curious about this issue that we're dealing with. I know your office has been talking about this and I would be curious, I think the Committee would be curious as to whether the Attorney General's Office is forming an opinion on this issue.
- Shepherd: Yes, I've consulted with the Attorney General and Attorney General Myers would like to see the law move in a direction that more closely connects the actual taxes received by governments to the amounts that utilities are recovering as that element of their cost. And that needs to proceed within, there are some constitutional limitations on this body's authority to achieve that policy goal, and those are real limitations and need to be taken into account, and in addition we're very much aware that the Department of Justice doesn't have specialized expertise to help this Committee answer the kind of question that Senator Monnes Anderson was addressing to the previous witness, namely what are the economic consequences in the marketplace of these decisions. But as a general principal, Attorney General Myers does believe that the law ought to be moved in the direction, that you are interested in trying to steer.

Chair: Thank you Mr. Shepherd. Thank you for your counsel too as well. My final person I'd like to ask up is Associated Oregon Industries. If you're in the room you might get called up too so if you don't you can escape now. Ms. Brandis, identify yourself for the record, and things have been moving, late at night, early morning, but I think the Committee would be interested where AOI may be at this moment and what we may expect to hear in the future from AOI on this issue.

Brandis: Mr. Chair and members of the Committee, for the record, Julie Brandis with Associated Oregon Industries. The last time our energy committee had an opportunity to take a look at the issue before you was a couple of weeks ago. It was a different bill. I think our committee if I could articulate it and reflect it, they took a neutral position. There was a group of our members who evidently felt very strongly towards the question that Senator Starr asked. There is a certain element of fairness involved if you are collecting taxes, if the company is indeed collecting taxes but not paying taxes. There was another element and actually a very strong element within the committee who felt the initial proposal that they looked at would be awkward for a broad based business organization to take a position on. What right would they have to sort of come down and say some types of companies can indeed follow, file consolidated tax forms while others cannot. So they ended up taking a neutral position. This is a different proposal. I'd be willing to ship it to them over the Memorial Day weekend and see if I can get a response or a call together.

Chair: That would be appreciated. Thank you very much. Just to let everybody know, we'll be meeting at one o'clock on Tuesday. We'll build a work session at that time. I think the information that was conveyed in the hearing was very, very helpful and they'll be some modifications. I don't think a lot of modifications, but they could be significant ones in terms of the impact. I thought there was some good information that was brought forth today and we'll have that bill back and we'll also then, members, we will try and conclude our business on Tuesday. If not, we can come back on Thursday, but the goal will be this Committee will conclude its business on Tuesday and appreciate you guys being very attentive. With that we'll close the work session on Senate Bill 408.

[End of Work Session on Senate Bill 408.]

Andrus Stephanie

From: SCHWARTZ Lisa C
Sent: Thursday, September 29, 2005 9:59 AM
To: TATOM Bonnie; SPARLING Lee; ANDRUS Stephanie; GALBRAITH Maury; ZIMMERMAN Ken; KITTILSON Lynn
Subject: RE: UM 1056 draft reply comments

Here's an addition to p. 6 of our reply comments, in response to a question from Bonnie about whether there would be an action plan update in August 2005 in the example cited in the bottom row of the table:

In addition, staff recommends that utilities not file an action plan update if they will be filing a final IRP within six months of the due date for the annual action plan. Especially considering that the utilities file a draft IRP before the final IRP, there is no need for an update on the previous year's IRP within six months of filing the next IRP.

I've also added this to our proposed requirements:

This requirement is waived if the utility will be filing its next IRP in final form within six months of the update's due date.

For context, that part of the guideline would read:

* Each year the utility must submit an update for its most recently acknowledged plan. The update is due on or before the acknowledgment anniversary date. The utility must file an update before that date if it is planning to deviate significantly from its acknowledged action plan due to circumstances such as loads, resource costs or new information. This requirement is waived if the utility will be filing its next IRP in final form within six months of the update's due date. [Continues about content of update]

I thought about changing "each year," but because the utility can request a waiver to deviate from the mandated IRP filing schedule, I left it as is.

SB 408-A7
(LC 819)
5/26/05 (DJ/ps)

MEASURE: SB 408
EXHIBIT: M
Senate Business and Economic Development
DATE: 5-26-05 PAGES: 7
SUBMITTED BY: STAFF

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 408**

1 In line 2 of the printed A-engrossed bill, after "utilities" insert "; creating
2 new provisions; amending ORS 756.010 and 757.210; and declaring an emer-
3 gency".

4 Delete lines 4 through 23 and insert:

5 **"SECTION 1. Sections 2 and 4 of this 2005 Act are added to and**
6 **made a part of ORS chapter 757.**

7 **"SECTION 2. The Legislative Assembly finds and declares that:**

8 **"(1) The alignment of taxes collected by public utilities from utility**
9 **customers with taxes actually paid to units of government by utilities,**
10 **or affiliated groups of corporations that include utilities, is of special**
11 **interest to this state.**

12 **"(2) Taxes are a unique utility cost because the actual tax liability**
13 **is affected by the operations or tax attributes of the parent company**
14 **or other affiliates of the utility.**

15 **"(3) The Public Utility Commission permits a utility to include costs**
16 **for taxes that assume the utility is not part of an affiliated group of**
17 **corporations for tax purposes.**

18 **"(4) The parent company of a utility may employ accounting**
19 **methods, debt, consolidated tax return rules and other techniques in**
20 **a way that results in a difference between the tax liability actually**
21 **paid to units of government by the public utility, or the affiliated**
22 **group of corporations of which the utility is a member, and the**
23 **amount of taxes collected, directly or indirectly, from customers.**

24 **"(5) Tax uncertainty in the ratemaking process may result in col-**

1 **lecting taxes from ratepayers that are not paid to units of government.**

2 **“(6) Utility rates that include amounts for taxes that are not actu-**
3 **ally paid to units of government are not fair, just and reasonable.**

4 **“SECTION 3. ORS 756.010 is amended to read:**

5 **“756.010. As used in ORS chapters 756, 757, 758 and 759, except as other-**
6 **wise specifically provided or unless the context requires otherwise:**

7 **“(1) ‘Commission’ means the Public Utility Commission of Oregon.**

8 **“(2) ‘Commissioner’ means a member of the Public Utility Commission of**
9 **Oregon.**

10 **“(3) ‘Customer’ includes the patrons, passengers, shippers, subscribers,**
11 **users of the service and consumers of the product of a public utility or**
12 **telecommunications utility.**

13 **“(4) ‘Municipality’ means any city, municipal corporation or quasi-**
14 **municipal corporation.**

15 **“(5) ‘Person’ includes individuals, joint ventures, partnerships, corpo-**
16 **rations and associations or their officers, employees, agents, lessees,**
17 **assignees, trustees or receivers.**

18 **“(6) ‘Public utility’ has the meaning given that term in ORS 757.005.**

19 **“(7) ‘Rate’ means any fare, charge, joint rate, schedule or groups of rates**
20 **or other remuneration or compensation for service.**

21 **“(8) ‘Service’ is used in its broadest and most inclusive sense and includes**
22 **equipment and facilities related to providing the service or the product**
23 **served.**

24 **“(9) ‘Tax’ means a monetary charge paid to a unit of government,**
25 **the revenue from which is public revenue used to support general**
26 **government operations, but does not include any amount that is re-**
27 **funded by the unit of government to the taxpayer.**

28 **“[(9)] (10) ‘Telecommunications utility’ has the meaning given that term**
29 **in ORS 759.005.**

30 **“SECTION 4. (1) Except as provided in subsections (5) and (6) of this**

1 section, a public utility may not directly or indirectly charge or collect
2 through rates any amounts for taxes, unless:

3 “(a) If the utility is not a member of an affiliated group, the utility
4 actually pays the amount of tax to units of government; or

5 “(b) If the utility is a member of an affiliated group, the affiliated
6 group pays the amounts of tax, as amounts of tax properly attributed
7 to the utility, to units of government.

8 “(2) Every public utility shall file a tax report with the Public Util-
9 ity Commission annually, on a date determined by the commission.
10 The tax report shall contain the information required by the commis-
11 sion, including:

12 “(a) The amount of taxes that was paid by the utility in the previ-
13 ous fiscal year, or that was paid by the affiliated group and that is
14 properly attributed to the utility, determined without regard to the tax
15 year for which the taxes were paid; and

16 “(b) The amount of taxes authorized to be collected in rates for the
17 preceding fiscal year.

18 “(3) The tax report shall be made publicly available at the time it
19 is filed.

20 “(4) The commission shall review the tax report. If the commission
21 determines that the amount of taxes assumed in rates for any of the
22 three preceding years exceeded the amount of taxes actually paid to
23 units of government by the public utility, or by the affiliated group
24 and properly attributed to the utility, the commission shall require the
25 utility to implement an automatic adjustment clause, as defined in
26 ORS 757.210, and shall establish an effective date for the clause. As of
27 the effective date of the automatic adjustment clause, the clause shall
28 account for all taxes paid to units of government by the utility, or by
29 the affiliated group that are properly attributed to the utility, and all
30 taxes that are charged to ratepayers of the utility through rates, so

1 that ratepayers are not charged for more tax than:

2 “(a) The utility actually pays to units of government; or

3 “(b) In the case of an affiliated group, the affiliated group pays to
4 units of government that is properly attributed to the utility.

5 “(5) Notwithstanding subsections (1) to (4) of this section, the
6 commission may authorize a public utility to include in rates deferred
7 taxes resulting from accelerated depreciation or other tax treatment
8 of utility investment. Accumulated deferred taxes shall be deducted
9 from the rate base of the utility. Deferred taxes that are paid by a
10 utility to a unit of government may not be charged to ratepayers.

11 “(6) If the commission determines that implementing an automatic
12 adjustment clause under subsection (4) of this section would have a
13 material adverse effect on customers of the public utility, the com-
14 mission may not require the utility to implement the clause.

15 “(7) As used in this section:

16 “(a) ‘Affiliated group’ means an affiliated group of corporations of
17 which the utility is a member.

18 “(b) ‘Material adverse effect’ means an increase in rates of 10 per-
19 cent or more, or a reduction of 20 percent or more in the total amount
20 of funds available to the public utility to cover the costs of providing
21 safe and reliable service at fair, just and reasonable rates.

22 “(c) ‘Three preceding years’ means the three most recent years for
23 which the tax report required under this section has been filed.

24 “SECTION 5. ORS 757.210 is amended to read:

25 “757.210. (1)(a) Whenever any public utility files with the Public Utility
26 Commission any rate or schedule of rates stating or establishing a new rate
27 or schedule of rates or increasing an existing rate or schedule of rates, the
28 commission may, either upon written complaint or upon the commission’s
29 own initiative, after reasonable notice, conduct a hearing to determine [*the*
30 *propriety and reasonableness of such rate or schedule*] **whether the rate or**

1 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
2 *a*] **the** hearing upon written complaint filed by the utility, its customer or
3 customers, or any other proper party within 60 days of the utility's filing;
4 provided that no hearing need be held if the particular rate change is the
5 result of an automatic adjustment clause. At [*such*] **the** 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*] **fair, just**
8 **and reasonable. The commission may not authorize a rate or schedule**
9 **of rates that is not fair, just and reasonable. [*The term*]**

10 **"(b) As used in this subsection, 'automatic adjustment clause' means**
11 **a provision of a rate schedule [*which*] that provides for rate increases or**
12 **decreases or both, without prior hearing, reflecting increases or decreases**
13 **or both in costs incurred, taxes actually paid or revenues earned by a**
14 **utility and [*which*] that is subject to review by the commission at least once**
15 **every two years.**

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

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

25 **"(A) Promotes increased efficiencies and cost control;**

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

27 **"(C) Does not include the recovery of amounts collected as taxes**
28 **that are not actually paid to units of government by the public utility**
29 **or, if the utility is part of an affiliated group of corporations, by the**
30 **group and properly attributed to the utility;**

1 “[(C)] (D) Is consistent with maintenance of safe, adequate and reliable
2 service; and

3 “[(D)] (E) Is beneficial to utility customers generally, for example, by
4 minimizing utility rates.

5 “(c) As used in this subsection, ‘alternative form of regulation plan’
6 means a plan adopted by the commission upon petition by a public utility,
7 after notice and an opportunity for a hearing, that sets rates and revenues
8 and a method for changes in rates and revenues using alternatives to cost-
9 of-service rate regulation.

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

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

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

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

28 “**SECTION 6.** This 2005 Act being necessary for the immediate
29 preservation of the public peace, health and safety, an emergency is
30 declared to exist, and this 2005 Act takes effect on its passage.”.

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 408**

1 In line 2 of the printed A-engrossed bill, after "utilities" insert "; creating
2 new provisions; amending ORS 756.010; and declaring an emergency".

3 Delete lines 4 through 23 and insert:

4 **"SECTION 1. Sections 2, 4 and 5 of this 2005 Act are added to and
5 made a part of ORS chapter 757.**

6 **"SECTION 2. The Legislative Assembly finds and declares that:**

7 **"(1) It is of special interest to this state that public utility custom-
8 ers not be subject to the collection, through rates or charges, of taxes
9 that are not actually paid to units of government.**

10 **"(2) Taxes are a unique utility cost because the actual tax liability
11 is affected by the operations or tax attributes of the parent company
12 or other affiliates of the utility.**

13 **"(3) The accounting method used by the parent company or other
14 affiliates of the utility may hamper the accurate forecasting of utility
15 taxes in rates.**

16 **"(4) The parent company of a utility may employ accounting
17 methods, debt, consolidated tax return rules and other techniques in
18 a way that frustrates accurate ratemaking, leading to the collection
19 of taxes from customers that are not paid to units of government.**

20 **"(5) The effect of tax uncertainty in the ratemaking process is to
21 collect taxes from customers that are not paid to units of government.**

22 **"(6) The practice of the Public Utility Commission of estimating
23 future income taxes by applying nominal corporate income tax rates
24 to expected utility net income often results in rates that will raise**

1 more for income taxes than is actually paid by the utility, or by an
2 affiliated group of corporations of which the utility is a member, as
3 income taxes.

4 “(7) Collecting unpaid taxes from ratepayers has the effect of sig-
5 nificantly increasing the utility’s rate of return on investments beyond
6 a reasonably authorized level.

7 “(8) Utility rates that include amounts for taxes that are not actu-
8 ally paid to units of government are not fair, just and reasonable.

9 “(9) Utility rates should be based on the lawfully recognized costs
10 of providing utility service to customers.

11 “(10) Utility customers should not be charged for taxes that are not
12 actually paid to units of government.

13 “SECTION 3. ORS 756.010 is amended to read:

14 “756.010. As used in ORS chapters 756, 757, 758 and 759, except as other-
15 wise specifically provided or unless the context requires otherwise:

16 “(1) ‘Commission’ means the Public Utility Commission of Oregon.

17 “(2) ‘Commissioner’ means a member of the Public Utility Commission of
18 Oregon.

19 “(3) ‘Customer’ includes the patrons, passengers, shippers, subscribers,
20 users of the service and consumers of the product of a public utility or
21 telecommunications utility.

22 “(4) ‘Municipality’ means any city, municipal corporation or quasi-
23 municipal corporation.

24 “(5) ‘Person’ includes individuals, joint ventures, partnerships, corpo-
25 rations and associations or their officers, employees, agents, lessees,
26 assignees, trustees or receivers.

27 “(6) ‘Public utility’ has the meaning given that term in ORS 757.005.

28 “(7) ‘Rate’ means any fare, charge, joint rate, schedule or groups of rates
29 or other remuneration or compensation for service.

30 “(8) ‘Service’ is used in its broadest and most inclusive sense and includes

1 equipment and facilities related to providing the service or the product
2 served.

3 “(9) ‘Tax’ means a monetary charge paid to a unit of government,
4 the revenue from which is public revenue used to support general
5 government operations, but does not include any amount that is re-
6 funded by the unit of government to the taxpayer.

7 “[9] (10) ‘Telecommunications utility’ has the meaning given that term
8 in ORS 759.005.

9 **“SECTION 4. (1) Except as provided in subsection (3) or (4) of this**
10 **section, a public utility may not, directly or indirectly, charge or col-**
11 **lect through rates any amount for the cost of a federal, state or local**
12 **tax, unless the public utility actually pays that amount in tax to a unit**
13 **of government.**

14 “(2) If the Public Utility Commission has previously authorized a
15 public utility to include in rates an estimate of federal, state or local
16 taxes and the estimate differs from the amount actually paid to units
17 of government by the utility, or by an affiliated group of corporations
18 of which the utility is a member, the commission shall adjust the rates
19 of the utility to recover, with interest determined at a rate that is
20 equal to the authorized rate of return on investment of the utility:

21 “(a) For the utility, any amount of tax actually paid by the utility
22 to a unit of government that is greater than the estimated amount of
23 taxes, the cost of which was previously authorized to be collected
24 through rates; or

25 “(b) For customers, any amount included in estimated federal, state
26 or local taxes, the cost of which was previously authorized to be col-
27 lected through rates, and that is not actually paid to units of govern-
28 ment by the utility, or by an affiliated group of corporations that
29 includes the utility.

30 “(3) The commission shall establish an automatic adjustment

1 clause, as defined in ORS 757.210, for the rate or schedule of rates of
2 each public utility that is authorized to include an estimated cost for
3 federal, state or local taxes in the rate or schedule of rates.

4 “(4) The commission may authorize a public utility to include in a
5 rate, or a schedule of rates, deferred income taxes that result from
6 accelerated depreciation or other tax treatment of utility investment
7 in capital assets or depreciable property. Accumulated deferred in-
8 come taxes shall be deducted from the rate base of the utility. De-
9 ferred income taxes that are paid by a utility to a unit of government
10 may not be charged to customers.

11 “SECTION 5. (1) Notwithstanding any other provision of law, the
12 Public Utility Commission may require a public utility, or a parent
13 company or other affiliate of the utility, to provide those federal, state
14 and local tax returns to the commission that are necessary to enable
15 the commission to make the rate adjustments described in section 4
16 of this 2005 Act.

17 “(2) The commission may not use the tax information the commis-
18 sion has obtained under subsection (1) of this section for any purposes
19 other than those described in section 4 of this 2005 Act. An intervenor
20 in a commission proceeding to make rate adjustments under section
21 4 of this 2005 Act may, upon signing a protective order prepared by the
22 commission, examine the tax information described in subsection (1)
23 of this section only to verify the accuracy of rate adjustments made
24 by the commission. An intervenor may not make copies or otherwise
25 disclose any information described in this section to any other person.

26 “SECTION 6. This 2005 Act being necessary for the immediate
27 preservation of the public peace, health and safety, an emergency is
28 declared to exist, and this 2005 Act takes effect on its passage.”.

Portland General Electric Company
Tax True-up Examples
Page 1 of 4

Base

(Dollars in millions)

Revenue	\$1,500.0
Operating Expenses w/o Income Taxes	\$1,275.0
Income Taxes	\$75.0
Total Expenses	\$1,350.0
Operating Income	\$150.0

Scenario 1
Actuals w/ Loads
up 100 MW

(Dollars in millions)

Revenue	\$1,565.7
Operating Expenses w/o Income Taxes	\$1,318.8
Income Taxes	\$83.8
Total Expenses	\$1,402.6
Operating Income	\$163.1
Tax True-Up Collection (Refund)	\$8.8
Adjusted Operating Income	\$168.4
Iterative Impact of True-Up	\$5.3

Scenario 2
Actuals w/ Hydro
up 100 MW

(Dollars in millions)

Revenue	\$1,500.0
Operating Expenses w/o Income Taxes	\$1,231.2
Income Taxes	\$92.5
Total Expenses	\$1,323.7
Operating Income	\$176.3
Tax True-Up Collection (Refund)	\$17.5
Adjusted Operating Income	\$186.8
Iterative Impact of True-Up	\$10.5

Scenario 3
Actuals w/Higher
Employee Benefit Costs

(Dollars in millions)

Revenue	\$1,500.0
Operating Expenses w/o Income Taxes	\$1,290.0
Income Taxes	\$69.0
Total Expenses	\$1,359.0
Operating Income	\$141.0
Tax True-Up Collection (Refund)	-\$6.0
Adjusted Operating Income	\$137.4
Iterative Impact of True-Up	-\$3.6

**SENATE COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT**

May 31, 2005
1:00 P.M.

Hearing Room B
Tapes 76 - 79

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

MEASURES/ISSUES HEARD:

HB 2017A – Public Hearing and Work Session
SB 408A – Work Session
HB 3273A – Public Hearing and Work Session
SB 572 – Work Session
SB 672 – Work Session

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.

TAPE/#	Speaker	Comments
TAPE 76, A		
003	Chair Metsger	Calls the committee to order at 1:05 p.m. Opens a public hearing on HB 2017A.
<u>HB 2017A – PUBLIC HEARING</u>		
013	Darrell Fuller	Oregon Automobile Dealers Associations. Presents written testimony in favor of HB 2017A (EXHIBIT A).
030	Chair Metsger	Closes public hearing on HB 2017A. Opens a work session on HB 2017A.
<u>HB 2017A – WORK SESSION</u>		
034	Sen. B. Starr	MOTION: Moves HB 2017A to the floor with a DO PASS recommendation.
036	Chair Metsger	VOTE: 3-0-2 EXCUSED: 2 - Atkinson, Deckert Hearing no objection, declares the motion CARRIED. SEN. B. STARR will lead discussion on the floor.

039 Chair Metsger Closes the work session on HB 2017A. Opens a work session on SB 408A.

SB 408A – WORK SESSION

049 Chair Metsger Explains the prior commentary on SB 408A. Reiterates the discussion of Portland General Electric (PGE) and the regulatory powers of the Oregon Public Utility Commission (PUC).

058 Dexter Johnson Staff, Legislative Counsel. Discusses the provisions of the –A8 amendment (**EXHIBIT B**).

083 Johnson Discusses the sections of the amendment.

098 Chair Metsger Asks Mr. Johnson to explain where the changes came about.

106 Johnson Replies in detail to the changes from the previous –A7 amendment heard during the last meeting.

140 Johnson Talks about the tax structure changes.

160 Johnson Relates income taxes paid by a utility.

188 Chair Metsger Observes that the previous language worked, but is now more clearly stated.

192 Johnson References the clarifying changes made from the previous version. Points out that no retroactive rate making is going on.

230 Johnson Discusses subsection 5 of the –A8 amendments.

249 Chair Metsger Considers if the changes solve the depreciation issue.

255 Johnson Observes putting into law current practices.

259 Chair Metsger Points out rate setting and taxation scenarios.

263 Johnson Concurs with his examples. Begins outlining subsection 6 of the amendment.

290 Chair Metsger Summarizes the functioning of the automatic adjustment clause.

297 Sen. Vicki Walker Senate District 7. Wonders if there is a definition for “material adverse affect”.

303 Johnson Replies there is not an existing definition in statute.

307 Sen. Walker Relates the difficulty of trying to define it in statute.

315 Johnson Remarks on the definitions.

322 Chair Metsger Asks if all the definitions were in the prior amendment.

327 Johnson Provides that the definition of “tax” is new. Continues his explanation of the provisions in the measure.

340 Sen. Walker Wonders why they couldn’t ask for the tax report to be filed immediately.

345 Johnson States it would be a new report. Talks about the need for the PUC to have time to assess the situation.

367 Johnson Concludes his description of the –A8 amendments.

387 Chair Metsger Applauds Dexter Johnson’s long hours of work on this measure. Talks about the various approaches they have taken to address this problem. Notes the intense difficulty in creating any kind of consensus on a solution.

TAPE 77, A

003	Chair Metsger	Notes the presence of a –A9 amendment authorized by Sen. Bruce Starr (EXHIBIT C). States they will discuss it later in the hearing. Asks Mr. Meek to testify.
007	Dan Meek	Attorney, Portland. Testifies in regard to the changes made in the –A8 amendment.
035	Meek	Observes various purchase scenarios of a utility.
063	Meek	Relates his interpretation of the sections of the measure.
077	Meek	Talks about the definition of “tax” provided in the –A8 amendment.
097	Chair Metsger	Offers the importance of Mr. Meek’s comments for the legislative record.
103	Meek	Relays he has no further comments at this time.
109	Melinda Davison	Industrial Customers of Northwest Utilities. Voices her support for the measure as amended by the –A8 amendments. Explains why she feels this is a good solution to the problem.
133	Chair Metsger	Asks for her view on the –A9 amendment.
136	Davison	Relates strong disagreement to the –A9 amendments. Voices the stark contrast between the –A8 and –A9 amendments.
160	Davison	Feels the –A9 would create a true-up out of all utility costs. Offers this would be a fundamental change in utility regulation.
185	Sen. Atkinson	Requests clarification of her previous comment of “politically sustainable”.
193	Davison	Notes the political component of citizens voicing objection to rate and tax practices.
200	Sen. Walker	Considers if there is any other language in the –A8 amendment that needs refinement.
203	Davison	Feels there are some minor details that could be cleaned up. Reiterates that she supports –A8 the amendments as they are.
210	Chair Metsger	Wonders if her industrial customers will be better off under this measure.
219	Davison	Offers the “loop hole” will be fixed and benefits will be passed on to ratepayers.
233	Teresa Miller	PGE. Feels the –A9 addresses the tax issue in a fairer way than the –A8. Explains the tax structure differences. Notes PGE does not support the –A8 amendments.
254	Randy Dahlgren	PGE. Offers his observation that there are strong ties between revenues, costs, and income taxes paid. Feels the –A9 amendments better reflect those ties.
265	Gary Bauer	Northwest Natural. Voices opposition to the –A8 amendments. States that tax liabilities are influenced by other costs.
280	Chair Metsger	Asks about the current mechanism to enable the PUC to adjust rates based on costs.
290	Dahlgren	Talks about the mechanism to adjust costs.

312 Chair Metsger Relays the public view on taxes and rates. Offers taxes should be treated differently than others costs.

337 Bauer Shares Sen. Metsger's frustration on the income tax issue. Offers that income taxes are part of a larger formula and not itemized.

356 Miller Points out a lot of these problems originated with PGE's ownership by Enron. Offers that PGE will soon be deconsolidated from Enron and subject to paying state taxes.

365 Chair Metsger Voices that they can't predict what will occur with PGE. Feels some rules need to be in place to protect the public interest.

375 Sen. Atkinson Wishes to understand the concept of "fairness" previously offered.

390 Dahlgren Relates the situation to filing personal income taxes after an unanticipated expenditure.

392 Sen. Atkinson Clarifies that he wants to understand it from a business standpoint.

396 Dahlgren Notes the unforeseen expenses and taxability of a utility business.

412 Sen. Atkinson Wonders if under the -A8 amendments a publicly regulated company could increase costs to decrease tax liability.

TAPE 76, B

012 Dahlgren Observes the company responsible for extra costs, would need tax benefits. Replies he is unsure of the financial benefit.

020 Sen. Atkinson Asks that with the -A8 amendments, could a company drive up expenses to lower tax liability.

024 Bauer States that a company could do that but it would not make financial sense. Points out the tax rate would be set by revenue earned.

035 Sen. Walker Considers how much PGE ratepayers contribute for taxes Enron doesn't even have to pay.

038 Miller Replies that she doesn't know the figure offhand.

039 Sen. Walker Notes it is a considerable amount of money. Wonders about their objection to the automatic adjustment clause.

045 Miller Notes the change in language to the -A8, and that they no longer object to that portion of the amendment.

047 Sen. Walker Contends that the main issue is collecting for taxes that aren't owed.

053 Sen. B. Starr Describes the contentions of the measure. Wishes for an explanation of why the -A8 amendments aren't "fair" and the -A9 are.

072 Dahlgren Outlines the changes of revenues and costs affected. Feels the -A8s aren't fair to utilities or customers.

081 Sen. B. Starr Feels this problem is resolved in the -A8.

085 Dahlgren Discusses the potential economic effects on rates. Expresses that the -A9 amendments take revenue changes into account.

098 Sen. B. Starr Points out under the -A9 amendments the customers would not have to pay higher rates for both increased utility costs and increased tax rates.

103 Dahlgren Concurs.

105 Sen. Deckert Outlines that he hasn't heard the full explanation of this argument. Feels the customers are being clear on their wishes.

135	Dahlgren	Replies the entity that incurs the costs should get the appropriate taxation based on those costs.
140	Sen. Deckert	Replies he is grappling with the tax issue in regards to rate setting.
148	Miller	States that taxes are derived from costs and revenues. Feels that taxes can't be examined separately.
157	Bauer	Expound upon previous statements and changes in costs.
172	Sen. Monnes Anderson	Brings up the shareholder issue. Considers the correlation between shareholders and taxes.
193	Dahlgren	Defines balancing expense levels with the recovery of debt and equity financing.
221	Sen. Monnes Anderson	Observes the costs not included in rates.
227	Dahlgren	States there is a component in rate setting related to shareholders.
230	Chair Metsger	Asks Ms. Fisher and Mr. Eisdorfer to come forward and comment on the -A8 and -A9 amendments.
238	Anne Fisher	Building Owners and Manager's Association of Portland. Talks about the problem of rate collection not paid to any governmental entity. Details the rate setting scenario.
290	Fisher	Supports the -A8 amendments, notes some potential tweaks that could be implemented from the -A9 amendments.
330	Fisher	Voices her proposed changes to the -A8 amendments.
370	Fisher	Talks about how the PUC would have greater ability to regulate the taxation.
385	Jason Eisdorfer	Citizens Utility Board (CUB). Supports the -A8 amendments and feels that it has all the elements needed. Testifies in opposition to the -A9 amendments.

TAPE 77, B

005	Eisdorfer	Relates the big differences observed between the -A8 and -A9 amendments.
030	Eisdorfer	Feels the -A9 amendments force the customer to take on all the risk.
040	Sen. Walker	Appreciates the clarification on the -A9 amendments.
048	Sen. B. Starr	Asks if Ms. Fisher was present at the last committee meeting.
050	Fisher	Replies she wasn't, but heard the testimony.
051	Sen. B. Starr	References Pamela Lesh's rate scenarios provided during the previous hearing.
055	Fisher	Offers her observations on Ms. Lesh's testimony.
080	Fisher	Relates that the -A8 amendments should correct many of Ms. Lesh's concerns.
083	Chair Metsger	Invites further comments from Mr. Meek.
087	Dan Meek	Comments on the -A9 amendment. Feels there are relations between the -A7 and -A9 amendments. Notes the -A8 removed elements that were comparing estimates to actuals. Observes the scenarios for income tax payment based on what rate payers actually pay.

- 120 Meek Reserves judgment on –A9 amendments, as he is still looking them over.
- 123 Chair Metsger Remarks on the need to move this forward. Summarizes the debate on the measure. Feels this is a crucial component for protecting the ratepayer.
- 137 **Sen. Monnes Anderson** **MOTION: Moves to ADOPT SB 408A-A8 amendments dated 5/31/05.**
- 145 Sen. Deckert Believes they should move this measure forward. Concedes the –A8 amendments may not be perfect, but fix a number of current problems.
- 155 Sen. Atkinson Wonders why they would move this forward when it is not technically accurate. Asks that they not move bills forward when they know there is still work to be done.
- 157 Chair Metsger Observes that the measure accomplishes the task. Feels that some have a different opinion on the matter.
- 160 **VOTE: 3-2-0**
AYE: 3 - Deckert, Monnes Anderson, Metsger
NAY: 2 - Atkinson, Starr B.
The motion CARRIES.
- 163 **Chair Metsger** **MOTION: Moves SB 408A to the floor with a DO PASS AS AMENDED recommendation.**
Sen. Monnes Anderson
- 165 **VOTE: 3-2-0**
AYE: 3 - Deckert, Monnes Anderson, Metsger
NAY: 2 - Atkinson, Starr B.
Chair Metsger The motion CARRIES.
SEN. METSGER will lead discussion on the floor.
- 167 Sen. Atkinson Serves notice of a possible minority report.
- 173 Chair Metsger Closes the work session on SB 408A. Opens a public hearing on HB 3273A.

HB 3273A – PUBLIC HEARING

- 176 Jerod Broadfoot Plumbing and Mechanical Contractors Association. Testifies in favor of the measure with the -A3 amendments (**EXHIBIT D**). Observes the technical fixes made by the amendments.
- 190 Chair Metsger Closes the public hearing on HB 3273A. Opens a work session on HB 3273A.

HB 3273A – WORK SESSION

- 211 **Sen. B. Starr** **MOTION: Moves to ADOPT HB 3273A-A3 amendments dated 5/26/05.**
- 213 **VOTE: 5-0-0**
Chair Metsger Hearing no objection, declares the motion CARRIED.
- 215 **Sen. B. Starr** **MOTION: Moves HB 3273A to the floor with a DO PASS AS AMENDED recommendation.**
- 217 **VOTE: 5-0-0**
Chair Metsger Hearing no objection, declares the motion CARRIED.
SEN. B. STARR will lead discussion on the floor.
- 219 Chair Metsger Closes work session on HB 3273A. Opens a work session on SB 572.

SB 572 – WORK SESSION

224	Theresa Van Winkle	Committee Administrator. Explains the measure and the provisions of the -14 (EXHIBIT E) and -15 (EXHIBIT F) amendments. Notes the amendments are identical with the exception that the -15 amendments would remove home health care from the measure.
235	Chair Metsger	Reiterates the difference between the amendments.

TAPE 78, A

005	Brian DeLashmutt	Oregon Nurses Association. Explains the elements deleted and revised from previous amendments. Notes the measure no longer has the law enforcement component.
040	DeLashmutt	Offers that it allows the nurse involved to call law enforcement as necessary. Advocates the -14 amendments be adopted.
055	Sarah Reeder	Oregon Association for Homecare. Opposes the -14 amendments and supports the -15 amendments. Talks about the difficulties associated with the home health component.
072	DeLashmutt	Relates a membership poll describing incidents in home health care situations. Supports the -14 amendments.
080	Sen. Atkinson	Asks for clarification on the section that is different between the -14 and -15 amendments.
085	DeLashmutt	Clarifies the differences.
090	Sen. Atkinson	Wonders who is going to read the incident reports when they are filed.
095	DeLashmutt	Offers it will be the employee and employer primarily, but it could be a variety of law enforcement or state officials.
115	Chair Metsger	Asks Mr. Bishop for his opinion.
117	Bruce Bishop	Oregon Association of Hospitals. Discusses the changes made in the -14 and -15 amendments. Feels these amendments substantially lighten the burden. States his belief that hospitals are already taking the needed steps. Believes this measure is not needed, but notes his objections have been reduced.
140	Chair Metsger	Solicits opinions from the committee members.
147	Sen. Monnes Anderson	Relays her experiences in both public and home health. Feels the inclusion of home health is needed. Supports the adoption of the -14 amendments.
165	Sen. Atkinson	Supports the -15 amendments.
175	Sen. B. Starr	Notes he also prefers the -15 amendments.
180	Sen. Deckert	Concurs with Senator Monnes Anderson's support for the -14 amendments.
190	Chair Metsger	Declares a potential conflict of interest as his company represents health industry workers.
195	Sen. B. Starr	MOTION: Moves to ADOPT SB 572-15 amendments dated 5/31/05.
197		VOTE: 2-3-0 AYE: 2 - Atkinson, Starr B. NAY: 3 - Deckert, Monnes Anderson, Metsger

200 Chair Metsger The motion FAILS.
 Sen. Monnes MOTION: Moves to ADOPT SB 572-14 amendments dated
 Anderson 5/31/05.

205 VOTE: 3-2-0
 AYE: 3 - Deckert, Monnes Anderson, Metsger
 NAY: 2 - Atkinson, Starr B.

209 Chair Metzger The motion CARRIES.
 Sen. Deckert MOTION: Moves SB 572 to the floor with a DO PASS AS
 AMENDED recommendation.

213 Sen. B. Starr Clarifies his preference to remove the home health portion. States that
 he will support moving the measure forward.

217 VOTE: 4-1-0
 AYE: 4 - Deckert, Monnes Anderson, Starr B., Metsger
 NAY: 1 - Atkinson

 Chair Metsger The motion CARRIES.
 Chair Metsger SEN. MONNES ANDERSON will lead discussion on the floor.
 223 Closes work session on SB 572. Opens a work session on SB 672.

SB 672 – WORK SESSION

220 Van Winkle Explains the provisions of the -5 amendments (**EXHIBIT G**) to SB
 672.

255 Chair Metsger Asks Mr. Carlson to further explain the amendments.

265 Eric Carlson Senate Majority Office. Details the provisions of the measure and the
 amendments worked out through the work group.

300 Carlson Explains the agreements and recommendation of the work group.

325 Richard Vial Attorney, Vial Fotheringham LLP. Notes the rapid growth of this
 sector of housing. Testifies in support of SB 672 with the -5
 amendments.

348 Chair Metsger Considers the importance of moving this measure forward.

350 Vial Discusses the clarification and changes made to statutes.

383 Sen. Monnes Asks about electronic voting and the potential for fraud.
 Anderson

388 Vial Notes there must be prior consent for anyone voting electronically.

400 Sen. B. Starr MOTION: Moves to ADOPT SB 672-5 amendments dated 5/31/05.

403 VOTE: 4-0-1
 EXCUSED: 1 - Deckert

 Chair Metsger Hearing no objection, declares the motion CARRIED.
 405 Sen. B. Starr MOTION: Moves SB 672 to the floor with a DO PASS AS
 AMENDED recommendation.

410 Sen. Atkinson Contends he doesn't feel they need legislation to allow condominium
 associations to act like governments.

415 Vial Notes his feelings that these associations are like mini-municipalities.
 Talks about the vast amount of homes covered by the association and
 the need for provisions supplied by this measure.

430 Chair Metsger States the committee is at ease for a moment due to technical issues.

TAPE 79, A

003	Chair Metsger	Observes the committee is back on the record. Reiterates the motion before them is to pass the measure as amended by the -5 amendments.
005		<p>VOTE: 3-1-1</p> <p>AYE: 3 - Monnes Anderson, Starr B., Metsger</p> <p>NAY: 1 - Atkinson</p> <p>EXCUSED: 1 - Deckert</p> <p>Chair Metsger</p> <p>The motion CARRIES.</p> <p>SEN. METSGER will lead discussion on the floor.</p>
012	Chair Metsger	<p>Makes concluding comments and an overview of the next meeting.</p> <p>Closes the work session on SB 672. Adjourns the committee at 3:15 p.m.</p>

EXHIBIT SUMMARY

- A. HB 2017A, Written testimony, Darrell Fuller, 1 p**
- B. SB 408A, -A8 amendments, staff, 6 pp**
- C. SB 408A, -A9 amendments, staff, 3 pp**
- D. HB 3273A, -A3 amendments, staff, 1 p**
- E. SB 572, -14 amendments, staff, 5 pp**
- F. SB 572, -15 amendments, staff, 4 pp**
- G. SB 672, -5 amendments, staff, 26 pp**

**SENATE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
SENATE BILL 408 WORK SESSION**

May 31, 2005

Chair: We'll open up a public work session on Senate Bill 408A. We were just calling you, Dexter, so you're here. Sorry, Jared. Mr. Brocklin, we almost got to you. Mr. Johnson, if you can come forward, please. Colleagues, this is House or Senate Bill 408 that we heard last a week and a half ago and what we heard last week that we started on a week and a half ago again back into this committee after being in Revenue. If you recall, there were a number of issues that were brought up in committee, specifically by the utilities wondering about whether this was a one-way or two-way. There were some other comments about some of the definitions in the bill, and so we asked for comment on that, and Senator Walker and I get endless comments that never end. [laughter] But we did our best to put those together and asked Dexter Johnson from legislative counsel, who again we wanna give kudos to; I know worked over the weekend. We were working at midnight some nights on this, him well after midnight on some nights, and we appreciate all that. What I'd like to have you do, specifically, Mr. Johnson. If you could walk through the – A8 amendment and then particularly highlight the changes that are in the amendment as a result of the hearing last week, that would be very much appreciative.

Starr: [inaudible], Mr. Chair.

Chair: Yeah, Senator Starr.

Starr: I'd like a copy of A8 amendment if there were copies.

Chair: You should have had one, here you go, take that one. Would you make sure, James, that everybody on the dais has copies of the A8?

Johnson: Mr. Chair, members, Dexter Johnson, Legislative Counsel office. The A8 amendment is based on the –A7 amendment with some changes. I'll just kind of go through and section-by-section describe what the bill, what the amendment does and highlight a few of the changes that have been made. Section 2 of the amendment sets forth legislative findings and declarations. It is largely the same as the A7 amendments with the exception of subsection 6, which more accurately reflects the current and apparently longstanding practice of utility regulation, which is that a finding of fair, just and reasonable, you'll see that line 3 there on page 2 is actually a factual finding made by the Public Utility Commission in the previous version. There was a per se declaration that taxes that are, estimated taxes and actual taxes paid if there was out of sync, that that's per se, not fair, just and reasonable, and there was a recognition that

that's—given the longstanding practice—that that's actually a factual determination, this language is modified to more accurately reflect that finding.

Chair: Just because not everybody in the audience may have a copy, I assume they do, but if you want to just read those changes to us, that would be really helpful for the record.

Johnson: Okay, subsection 6 used to read, "Utility rates that include amounts for taxes that are not actually paid to units of government are not fair, just and reasonable," and now subsection 6 reads, "Utility rates that include amounts for taxes should reflect the taxes that are actually paid to units of government to be considered fair, just and reasonable." The next substantive change is actually at the end of section—I'm going to talk about section 3 at length, but the previous amendments had a separate section defining the term "tax" and it defined it very broadly to include property taxes, municipal franchise fees and the like. In this, the A8 amendments, the definition of "tax" has been substantially narrowed and is not any longer a standalone section, but actually is a definition beginning on page 3, lines 29 and 30 and carrying forward onto the next page, and it basically makes it clear that, as used in this amendment, "tax" means income taxes, whether federal, state or local, and whether or not they are built into rates or otherwise assessed against ratepayers.

Chair: I think I'd like to interrupt you, Mr. Johnson, just because I think it's important, and you might even, for the sake of everyone in the committee, but also in the audience, as where possible, you know, how those changes came about, or where the input came from, I just think it would be helpful. Because on this one, I think this is one I remember, in particular, Mr. Meek brought up around the Multnomah County tax, which I think is where this revision came from. And if you could explain how you think that addresses that, etc., that would be helpful.

Johnson: Yes, Mr. Chair. Mr. Meek had pointed out that the Multnomah County business income tax is actually not built into the rates that are assessed for electricity consumption, but rather is a separately stated line item on customer bills, and the previous amendment had basically assumed that the only taxes we were talking about were taxes that were built into rates. This amendment recognizes that, in fact, there are some taxes that are assessed that are nevertheless estimates, but are assessed as a separate line. It actually does that not in a definition of tax, but rather in subsection 3 of section 3, line 20, "or otherwise assessed to ratepayers". That picks up taxes that are not, income taxes but that are not built into the rates, but rather are separately stated, and my understanding is that the Multnomah County business income tax is actually what's in mind there.

The other elements of the definition of tax, going back to page three that are significant, is now limited just to income taxes including the corporate excise tax that's measured by income, and it expressly excludes any amount that is ultimately refunded by a government unit to the utility, and that was another suggestion that was I believe Mr. Meek's.

Section 3 substantively is the substance of the bill and in the prior version there was it started out with a provision that basically directed that a utility may not directly or indirectly charge or collect through rates any amount for tax unless the utility actually pays that. There was objection to that language and as a result, as being a little bit too inflexible, and also suggesting that that would take into account retroactive taxes that were out of sync retroactively, and there's a prohibition against retroactive, essentially retroactive ratemaking, which that would be. So that section was removed, that subsection was removed in the -A8s, and basically it starts with the new reporting requirements that utilities must face.

In subsection 1 there, there is a—most of this is carried over from the previous draft, but I'll just go over it anyway. There is now a new tax report that utilities must file with the PUC. They must file it on or before October 15th of each year. And it sets forth in this report, it doesn't include the actual income tax returns, but it sets forth pertinent tax information, basically as required by the commission, but mandating that it include the amount of taxes paid by the utility during any of the previous three preceding years. And years there, I think it's important to understand, that that's fiscal years of the utility. A complex corporate income tax return often is amended for years to come, so you don't actually know what officially your income taxes are from any years. What this is asking that they report is the net amount of, that's actually paid, whether it's as estimated taxes as adjustments to a prior filed return, or as refunds from a prior filed return as a subtraction. The actual amount that is paid during the fiscal year period without regard to what tax year it is paid for. And that is to avoid the problem that a corporate income tax return may take years to finalize. The report is, as you can see in lines 13 and 14, for the three preceding years, and I want to return to that point in a minute to see what that is, but you basically look at the tax information for each of three preceding fiscal years. Subsection 2, lines 15 and 16, this is from the previous draft, the report is public. Subsection 3 directs the commission to take 90 days to review the report and then make a determination. This is a fairly significant change from the previous version. You see on line 21 it uses the word "differed" rather than "exceeded" and from the previous versions, so that there isn't a one-way street here. If in fact the utilities taxes that they collected through rates or otherwise, but the estimated taxes were actually less than the amount they paid, they will get an adjustment in their favor. So, the other language kind of assumed a one-way street, and that has now been eliminated. That was PGE I believe made that recommendation for that change.

Chair: Can I interrupt you, because as I understand it when that objection was raised in committee was that—our belief and understanding is that this was an actual two-way—you know—that we want them to be fair and accurate, and as I recall from our discussions, you did not believe that that was not that case—that it was the case to help clarify that whether there was an objections over that.

Johnson: Mr. Chair, that is correct. I think the previous language probably worked as is, but this makes it a little bit clearer on its face that it is a two-way street that we are talking about here.

Chair: OK.

Johnson: The language then goes on to direct the commission, if there is this difference, to establish an automatic adjustment clause for the utility. Unlike in the previous version, it establishes a specific date by which the commission must do this—that is within 30 days of the date they determine there in fact was a difference. The previous draft had kind of left it up to the commission as to when this would actually occur.

Finally, the new amendments makes it very clear that the automatic adjustment clause does not attempt to take into account, does not attempt to collect previous overages or refund previous overages or collect previous underages, but rather applies prospectively only. You can see that on line 27, so that it is very clear that there is no retroactive rate-making going on.

Subsection 4 is new language that expressly states that the automatic adjustment clause when it is imposed by the PUC may not be used to make adjustments to rates that are attributable to any other affiliate of the utility. So if the utility either is in a parent subsidiary relationship or is in fact the parent of subsidiaries, the automatic adjustment does not apply to the activities of other entities however they are related to the utility, but only to the utility itself.

Subsection 5 is basically carried forward from the previous amendment. It allows for the PUC to authorize amounts in excess of tax to be collected if they are for purposes of, if they are deferred taxes, which is kind of a complex concept, but basically the income tax code allows for a depreciable assets to be, the deduction for that to be claimed on an accelerated basis, which means you get a bigger deduction early on and then a smaller deduction when, as they, in the later portion of time for which you can deduct the depreciable asset. And, this is current practice. The PUC allows for deferred taxes to be collected and then they are put into a special account and then during that later period in time when the depreciation deduction is smaller than it otherwise would be, because it was accelerated in the beginning, the tax payment actually comes out of

this account rather than out of current rates. So this is a statement of existing practice. It was basically at the PUC's recommendation the language was modified slightly to eliminate the sentence "accumulated deferred taxes shall be deducted from the rate base of the utility."

Chair: Now, Mr. Johnson, if I can stop you there. So, in your estimation, then, has this section then solve that issue that we had months ago regarding which kind of short-circuited our earlier attempts on being able to handle the depreciation issue as opposed to the IRS rules? Do you believe that this addresses that issue?

Johnson: Mr. Chair, I do. I think this basically puts into law what my understanding the current practice is and the current practice from the PUC's and utility's perspective. This effectively deals with the depreciation issue.

Chair: So they can include these in rates for the depreciable asset, but then when they use that money then as they will to pay that, they won't be able to charge that to rate payers, that will have already been considered originally. So that balances out.

Johnson: That is correct. That is the second sentence deferred taxes that are subsequently paid may not be charged to rate payers, so that would permit I mean that would prohibit essentially a double counting of taxes.

Chair: OK. Thank you.

Johnson: Subsection 6 is modified from the previous version. Basically, Subsection 6 provides that. Let me restate that. Subsection 6 is carried forward from the previous amendment, but is also modified somewhat, and I want to talk a little bit about that. Subsection 6 basically says that if the commission determines that the automatic adjustment clause will in fact result in a material adverse affect on customers, then the automatic adjustment clause need not be applied. In the previous amendment, that term "material adverse affect" there was an express definition of what that meant. In this case in the new amendment, that definition is out. There was concern that that definition was too inflexible and so that definition has been omitted and in its place is a restriction on the PUC that they may not make the material adverse affect finding and therefore not impose an automatic adjustment clause unless they conduct a hearing as part of that determination that would allow rate payer advocates and utilities to in an adversarial context argue whether or not there is in fact a material adverse affect.

Chair: OK, and if I can interrupt you, again. Thank you, Mr. Johnson. So, the automatic adjustment clause will kick in unless there is a claim that the customers are going to be damaged, and then they would have the hearing

to see how the customers might be damaged by that clause, otherwise it would take place?

Johnson: Mr. Chair, that is correct.

Chair: OK.

Walker: Mr. Chair, I just want to really be clear on this. Is there a definition, a current definition in the statute for "material adverse affect" or is there case law that the PUC has previously used to determine that or have they even looked at that issue before?

Johnson: Mr. Chair, Senator Walker, there is not an existing statutory definition of "material adverse affect." I do not know whether that is a term of art that the PUC uses and has developed case law or rulings around. There may be someone else here that would be able to answer that.

Walker: I think, Mr. Chair, the reason we took it out is because no one could agree on what that really meant, and we would have been here until next year trying to figure that one out. So, I think that was why we went this way.

Chair: I think, as I recall, Senator Walker, the customers themselves were concerned about that definition.

Walker: All right. Thank you.

Chair: Thank you. Please proceed.

Johnson: The other definitions that you see there in Subsection 8 are basically I believe the same from the previous amendment. Section 4 is

Chair: Mr. Johnson, I can't remember, I know we on page 4, line 2, was that in the previous amendment or did we add that back from a previous version?

Johnson: Mr. Chair, the definition of "tax" is new. I did just discuss that.

Chair: Right. But I mean the (b), the sub (b) part.

Johnson: Right. Part of the new language and the definition of "tax" is the express exclusion of amounts that are subsequently refunded by units of government as tax refunds. Those are not considered tax for purposes of this section.

Section 4 is new. There is not a lot of substance there. It simply expressly provides that the first tax report is going to be due on October 15, 2005, and that in that report you, a utility will report the tax information for the three most recent consecutive fiscal years. So, that looks back, but the

automatic adjustment clause itself, as you recall, does not look back and only applies prospectively.

Walker: Mr. Chair.

Chair: Yes, Senator Walker.

Walker: And thank you. This is a good time to ask this question I think before it gets away from us. Why couldn't you ask for the tax report to be filed immediately upon passage of this measure? Because we have e-clause in the measure to make it effective immediately.

Johnson: Mr. Chair and Senator Walker, it is a new report. The PUC, while the legislation does state some items of information that are expected to be in the report, it also authorizes the PUC to identify other information, since it's new and since the PUC has to make some decisions, an immediate request for a report probably is not realistic and then I think there was some interest that actually the automatic adjustment clause go into effect immediately. That's even more problematic, because the PUC has to study the report and make some decisions as to whether in fact there is a difference between estimated taxes and actual taxes. So, that's why there is this 90 to, about six-month lag time before this is fully implemented.

Walker: Thank you Mr. Chair and thank you Mr. Johnson. I just wanted that explained for the record. That was your softball today.

Johnson: Other than that, the other Section 5 is pretty much a carry forward from the previous amendment, and Section 6 is the emergency clause that goes into effect on passage.

Chair: Thank you Mr. Johnson. Questions for Mr. Johnson before we move ahead? And if you could, if you are available, I know you have a lot of demands on your time, but it's been a culmination of months, so if you could stay around in case we have questions, I'd appreciate it. For the record, I again just want to thank Mr. Johnson. You have no idea how many hours he has spent on this, especially in the last two weeks, and with all the other demands that the other 90 members of the legislature has put on him, thank you so much. Another thing, too, and I asked some folks to come forward who have worked on this, but just you know kind of a statement of fact here. Senator Walker and I did take a little different approach here, but we felt we had to do this to bring conclusion to it, and we asked those legal representatives of the customers, the people who actually pay these rates, the businesses, the residents, and people who have advocated for those folks, to help us in drafting changes to this original bill from a couple of weeks ago. They are the ones that pay the bills, and it has been an enlightening experience. I think Senator Walker will agree. Maybe that might not be the word she would choose. But, this is a very

complicated issue and we felt that the only way we are going to get that is to get to the people who actually pay the rates, and we have learned that even in that scenario, this is not a consensus project, process. As we would make suggestions or people would make suggestions and we would incorporate, we just basically tried to referee these folks, others would object, and so I can see why nothing has ever happened over all these years, because it is very difficult to do. But, they have done a magnificent job. Even as we move today, there is not agreement on every issue, the flood of emails, I know Senator Walker was showing me hers from this weekend, you know, is that thick. So, they were working diligently over the holiday, too, and because realizing this deadline for at least this Senate committee, and I really want to just thank you for all your diligence on that. We are in work session, but I am going to ask people to come forward who have been involved with this, and then I will ask anybody else in the audience who wants to comment. So, I think the first thing I would like to do is ask Mr. Meek, Mr. Meek was one of the people who was participating in this email back and forth, to come forward and give his observations on this. I also want to point out, there is a –A9 that is not the product of this group. I believe Senator Starr, is that your product, the –A9.

Starr: I authorized it. It's not necessarily my product.

Chair: OK, so we will talk about that and have someone introduce that, but I think for right now we'll stay on point here. Mr. Meek, welcome.

Meek: Thank you, Mr. Chairman. The –8 version was made available only a few minutes ago, so my comments might not be complete about it. On Section 3, it requires the tax report by October 15th, this is an improvement over the –7, which did not have any deadlines for the commission to either require a tax report or to establish an automatic adjustment clause or for an effective date for the accounting to begin in the automatic adjustment clause. If there is any opportunity to urge any changes to this, I would say this could be done even sooner. The report simply asks whether the estimated taxes are different than the taxes actually paid, and we already know the answer to that. The answer will inevitably be yes, unless there is some incredible coincidence that the estimate in the rate case happens to be exactly correct, which I think has never happened, and it's mathematically almost impossible. So, I don't know that the report serves a purpose. We know that under this bill, the automatic adjustment clause will need to be adopted by the commission, because the difference between the estimate and the actual is there for every utility in every year, and so it is really a foregone conclusion.

Under this bill, the commission then has 90 days to review the report. I think that is too long. It could be done in 45. It then requires the commission to then base the fee if the amounts differed from the estimate,

is to establish the automatic adjustment clause. And, I think what this bill means is, when it says within 30 days following the date of the commission's determination under this section shall establish automatic adjustment clause, what I believe it means is that that is the starting date for the tax accounting to take place. That's the only way this makes any realistic sense. Conceivably, I suppose the commission could establish automatic adjustment clause on, this date would be about February 15, 2006, and then say we will begin accounting for the taxes as of, you know, March, April, May or some other future date, but I think what you mean is that that is when the accounting should start, because that is really the only thing that is going to make this bill effective is for the accounting for taxes in the automatic adjustment clause to start as soon as possible.

On page 4, pardon me, page 3, the first Subsection 4, I believe what the committee is trying to do here is to avoid the problem of potential double counting of taxes paid by a consolidated group that includes more than one utility, and that is the circumstance we may well face if Mid-America buys Pacific Power & Light. Let's say Pacific Power & Light charges rate payers \$80,000,000 for taxes, the Iowa subsidiary of Mid-America charges rate payers \$100,000,000 for taxes, the consolidated group pays actually \$80,000,000 in taxes. Who gets credit for the \$80,000,000 that was paid? Does Pacific get credit for it? Or, does the Iowa utility get credit for it? What I think you are trying to avoid here is a situation where both utilities get credit for the same \$80,000,000 that was paid, when in fact there was only one \$80,000,000 paid, and there wasn't two of them. I think what you are trying to accomplish here is that amounts that are paid by the parent or by the consolidated group to government are not to be double counted, and that in fact the tax liability of the group is to be assigned to or allocated to the individual members of the group in some reasonable way. States that have done these adjustments, for example, often use the, often allocate the tax liability to members of the group based upon each member of the group's contribution to the net taxable income of the group. That would be a reasonable way to do it, and I think that is what you are trying to get at here.

Subsection 5, what's changed from the -7 amendments is that you removed the sentence that accumulated deferred income taxes are to be deducted from rate base, which is the current practice of the commission, I don't know why the commission would ask that to be removed, because it is current practice, and if we are here enshrining current practice, that current practice does include removing the accumulated deferred income taxes from rate base, and that should continue, and this bill should, I think, not be taken to imply that that should in any way change.

On Subsection 6 on material adverse affect on customers, that is not a term of art in utility regulation, and surely what this bill must mean is that the commission must find a net material adverse affect on customers from the

automatic adjustment clause. If you view the automatic adjustment clause in isolation, you could probably come up with some—I can't think of one—but maybe someone could think of some material adverse affect. On the other hand, you have a very large material beneficial effect on rate payers, in the case of Portland General Electric alone, it would be about a \$93,000,000 beneficial effect on rate payers every year. So, I don't think the committee intends that the commission can find some adverse affect over here and not consider the massive beneficial affect on customers for the public utility in order to make this determination. Otherwise, Subsection 7 would not seem to make sense.

On page 4, the definition of "tax", since I was referred to as one of the sources for this change, I wanted to make absolutely sure that it is understood. Where Subsection (b) on the top of that page says that tax does not include any amount that is refunded by a unit of government as a tax refund, this means that taxes paid by the utility to government under this bill are to be calculated on a net basis, that is net taxes paid. So, if you pay some taxes, but then you get it back as a refund, you haven't paid the tax, and you can't charge that to rate payers simply because you got it back as a refund, that is not a legitimate cost to charge to rate payers. Now, this is a real consideration. In the late 1990's, Enron did file tax returns with the federal and state government that did have tax liabilities, and they did pay them, but Enron then filed amended returns that reduced the tax liabilities to zero and got all their money back. So, what we are talking about here, what can be charged to the rate payers, are the taxes that the utility pays permanently, and that is net of the amounts that are refunded to the utility, because anyone can arrange for a tax refund. All you have to do is overpay, and then get it back.

Chair: Mr. Meek, are you comfortable that that language addresses that now?

Meek: I am comfortable that it addresses it, but then again, I am sort of deeply into this and I just want to make sure that anyone coming at this without the background would understand what the point of that is.

Chair: Well, I appreciate that, and just as a pause on this for the moment, because we are building a legislative record, as well. So, I do appreciate that everyone who testifies on those comments, making those assumptions and what we do believe we have in the bill, that's important. Thank you, Mr. Meek, go ahead and proceed.

Meek: I don't think I have anymore comments on the -8 amendment.

Chair: We may have you back when we see the -A9, which I'm sure you will read over. So, any questions for Mr. Meek at the moment? OK, thank you very much. Ann Fisher and Melinda Davison, if you could come forward.

Woman: [Inaudible.]

Chair: Yes 'mam.

Woman: [Inaudible.]

Chair: OK. That would be fine. And you would have the opportunity to do that also anyway but that's [inaudible] cause I have not had time to even read the -A9 myself, as you can imagine.

Woman: [Inaudible.]

Chair: Ms. Davison, welcome. Please identify yourself for the record, please.

Davison: Good afternoon Mr. Chair, members of the committee. My name is Melinda Davison. I am outside legal counsel for the Industrial Customers of Northwest Utilities. ICNU supports the -8 amendments. As I testified last week, this is an extremely important issue for all rate payers to insure that we not have included in our rates on a going-forward basis taxes that not actually paid to taxing authorities. We believe that this bill as currently drafted in the -8 amendments is a very good solution to a very serious problem. Essentially, from our perspective, it is a solution that sticks within the parameters of existing OPUC mechanisms, the accelerated or the automatic adjustment clause. It is a solution that is narrowly crafted and very importantly, we think it is a balanced solution. This is not something that is lopsided in its approach. So, we think that it is crafted in such a way and we are very appreciative of the work the Legislative Council has done, that we think that this is a good, legally sustainable and politically sustainable solution that balances the interests of the utility and rate payers, and as a result, we are very supportive of that, and when it is an appropriate time, we would like to comment on the -9 amendment.

Chair: Well, why don't we go ahead. I haven't had a chance to read it. I have an idea what it is about, but why don't you go ahead and give us your view of how the -A9 will differ from the -A8.

Davison: The -A9 amendment is significantly different than the -A8 amendment, and ICNU would strongly oppose the -A9 amendment. This amendment does several things that are in stark contrast to the -A8 amendment. As I read it, and again, I have not had much time to review this, so if I am misinterpreting something, I will apologize in advance, but my reading of the -A9 amendments, first, it is a, in Section 2, a true-up of the utility taxes one way or the other. In other words, the problem that we are trying to address in the -A8 amendments is the situation in which the utility collects tens of millions of dollars in taxes and its parent, for a variety of reasons, does not pay those taxes, the -A9 amendment is not dealing with the issue of the parent. It is basically Section 2 is doing a true-up of what

the utility taxes might happen to be for a particular year. So, that isn't really the issue that we're concerned about here as rate payers. But, more importantly, where we are very concerned is that if you go on to the second page of the -A9 amendments, it talks about if there is a change in the amount of taxes that are paid, which there likely will be, then you look at the reasons for those changes, and you have a true-up of all the utility costs that contribute to that change. And, since we are talking about income taxes here, you are conceivably looking at a true-up of all utility costs. That is a very, very significant change in how utilities collect their dollars. This would just be a fundamental change in utility regulation. If you are inclined to go down a path of essentially keeping the utility whole for all of their costs, if you have a true-up at the end of the year for all of their costs, then you have essentially taken all risk out of the utility operation, and that would then require a corresponding significant change in the authorized level of ROE, in other words, currently PGE has a 10.5% ROE, which compensates them for the use of their money, as well as for the risk of the utility operation. If you take that major piece away, in other words, the utility no longer has any risks, they are going to recover all the dollars they expend that year, then you have to make a corresponding change to the authorized rate of return. So, this is a very significant change to the way utilities are regulated, and I think that if the committee is interested in going this direction, there needs to be a very full and complete debate of these issues, and a much more complete review of this. The -A8 amendment we consider to be very balanced. -A9 is incredibly lopsided and extremely only in the favor of the utility.

Chair: Thank you Ms. Davison, and again, thank you Ms. Davison for your very hard work, also one of our email buddies over the last two weeks. Questions for Ms. Davison? Senator Atkinson.

Atkinson: Thank you. Just one quick question. Thank you for your testimony on both amendments. You said a phrase that I haven't heard before, "politically sustainable", what does that mean?

Davison: I believe that when you are dealing with issues that, I think the tax issue has both a legal component, as well as a political component. I think that the public in general is certainly upset including costs in their rates that are not ultimately paid to the taxing authorities, and I think that when you look at the whole balance of the picture, it needs to be balanced both politically as well as legally.

Chair: Senator Walker.

Walker: Thank you, Mr. Chair. Ms. Davison, you testified that you support it. I'm so glad we're here at this point. Let me just ask you, is there any language at all in -A8 that you find objectionable that you want to continue working on? Are you satisfied with the way we figured it all out?

- Davison: I believe there are just a couple of little, minor things that are overlooked. They are not substantive, just a couple of very, very minor cleanups that are not substantive that I would recommend be made in at the appropriate time. Having said that, I believe this language is well written and we support the language as it currently appears.
- Walker: Thank you.
- Chair: One question for now for myself, and I may be asking the obvious, but since we are building a legislative record, also, I think that's important, and that is, you represent the large industrial customers who pay their rates to either PGE or PacifiCorp or maybe Northwest Natural. Do you believe by supporting the amendment to the bill that your customers, those who pay these rates to the utilities, will be better off, more fairly treated than they are currently in the current system?
- Davison: Yes, I think that is absolutely correct, and I think it is very important that we get back to the basics of utility rate making, which is that the utility should only collect those prudently incurred costs, that is the costs they incur, and then be able to pass those on to rate payers, and this is a very important fix to what many have called a loophole in that.
- Chair: OK, thank you Ms. Davison. What I'm going to do. We are going to have Ms. Fisher and CUB up, as well, but I think what I am going to do is shift gears for a moment and ask those who I have a funny feeling will not support the -A8 and may support the -A9 amendment to come forward. Again, we are in work session so I don't have a sign up sheet, but representatives I believe of the utility industry, if you would like to come forward, might as well come at once, and then we'll get back to Jason and Ann.
- Miller: Good afternoon Chair, members of the committee. My name is Teresa Miller. I am here representing PGE, and my comment on the -A9 would be from our perspective, the -A9 address the tax issue just as the -A8 amendment does, except it does it in a fairer way, because it essentially recognizes that taxes are derived directly from revenues and costs and our amendment reflects that connection by providing for a true-up of taxes, but it also provides for a true-up of the costs and revenues that result in those taxes. And, our new language in -A9, if you will look at the bottom of page 1, Sub B, Section 2, Sub B, that is essentially the language that provides for the true-up of the costs and revenues that directly affect taxes and how they end up. So, that is what I would say about the -A9.
- Chair: Do you have any comment on the -A8?
- Miller: We do not support the -A8. They are very similar to what we saw in the -A7 and Pamela was here last week to comment on those. So ...

Chair: OK. We'll make a round table, then we'll ask questions.

Dahlgren: I'm Randy Dahlgren and I'm with Portland General Electric and I'm a rate geek and am here to answer rate-making questions.

Chair: Do you any comments sir on any of the comments that have been made so far since you are the rate-making geek, self-described?

Dahlgren: Self-described, absolutely. Again, I think it is important that we recognize the tie between revenues and costs and income taxes that are paid, and to the -A9 amendments, I think more accurately reflect and fairly reflect the tie between those.

Chair: OK. Mr. Bauer.

Bauer: Thank you Mr. Chair, members of the committee, Gary Bauer with Northwest Natural. On the -A8, I guess I appreciated what Ms. Davison's comment that what you are trying to get at with those amendments was a holding company type of structure, and that those were the tax problems you were concerned about. Northwest Natural does not have a holding company, as I've mentioned before, yet we are utilities, we are included in this process, and, again, our concern is that our tax liability is directly affected by all our other costs. So, I think that's the folks that put together the -A9 were trying to at least recognize that, if not, you're back with -A8 where you basically if you have increased expense, it will lower your taxes, so you'll pay for the increased expense, and you will also refund money in the taxes, so you are paying twice. Thank you.

Chair: My first question is, and anyone can chime in on this one. In all fairness, all these issues in terms of whether it's power cost, transmission cost, anything that may, in your case as utility folks, exceed what you have based in rates what is extra-ordinary costs or whatever, you already have a mechanism—do you not—in the PUC, in fact, people are before the PUC right now—keeps them very busy—in which you can address an adjustment to accommodate those costs, but I am unaware of any time that any utility has ever gone before the PUC for an adjustment on the fact that they collected too much taxes, and I think, unless I'm missing something here, that adjustments for these other extra-ordinary costs, you have a process and exercise that on a regular basis.

Dahlgren: Mr. Chair, maybe I could address that a little bit. We do have some mechanisms that typically are forward looking. We have a mechanism that annually adjusts power costs, but they don't adjust for changes that actually occur—it's still a forecast—those actual changes, whether they be increase load, decrease load, that effects revenues and costs or better hydro. You always hope, and again we'll get to a situation where we have good hydro, lowers cost, would tend to increase taxes, would actually be

perverse, I think, to our customers' interest, but, again, the mechanisms that we typically have, again, are based on an estimate and look forward, whereas the automatic adjustment clause once established captures on an actual basis, not projected, so all of these additional changes the fact income taxes would run through that.

Chair: One follow-up, then I'll open it up to the committee for questions, is that do you understand why the public sees taxes differently than other costs, and the other costs—you do have the opportunity and you do go before the PUC to have those adjustments—people understand that that if there are extra costs, and there is a hearing process, and a lot of people in this room are involved with that. Taxes are viewed, and incorrectly viewed, as a liability to the state for services based on your net revenues, and that if they become as they have been simply a cushion to adjust other rates, then they have lost their meaning as a specific assessment for a specific purpose, which is to provide goods and services to the citizens of Oregon as taxes, they really aren't taxes, they become another cost in which, that the rate payer believes should in fact be the taxes actually paid to government. From a fairness issue, I mean do you understand why this is I think in many of our minds, I think most citizens' minds, should be treated differently than other costs, and that those other costs are being, that there are mechanisms to deal with those straight up rather than using a cushion of extra millions of dollars in taxes to internally adjust for that? I would just like your comment on that.

Bauer: Mr. Chair, Gary Bauer. We share with you the frustration, and particularly with our customers the frustration over income taxes, and I think again our frustration is that somehow it has been painted as if income taxes are a totally separate amount on the bill within your rates, and they're really not. It is part of the overall formula that a utility is given in terms of the amount that they can charge to cover all of their expenses. We don't have an automatic way of adjusting for all of our expenses. Northwest Natural does have a purchase gas adjustment, which we do adjust annually. The reason we do that is because we charge wholesale. Whatever we pay for gas, we pass on to our customers at the wholesale level. So there is not an adjustment, it is not a profit issue. The other expenses are dealt with in a rate case at the same time that taxes are dealt with.

Miller: Mr. Chair, can I just add one thing to that? The only other thing I would say in this debate, I think a lot of people have been talking about Enron and using that as an example, and I realize that that makes a fine example of this in the past, but I guess the only point I would make is that going forward right now PGE is on a path to become our own company, again, and April of next year at the latest, we will be deconsolidated from Enron, so from PGE's perspective, we will be paying taxes as a stand-alone company at that point.

- Chair: And I think that is understood, but what we are looking at is the legislature is broad-public policy, and we can't predict what is going to happen tomorrow. No one would have predicted that PacifiCorp would all of a sudden be approached by another mega-affiliated corporation, and looking after the public interests would require that we set broad public policy, not for a specific instance, even though it is clearly a specific instance surely brought this on the consciousness of the citizens. Questions from the committee? Senator Atkinson and then Senator Walker.
- Atkinson: I realize we've been committee-izing for five months on Enron and politically sustainable options, but two quick questions. No. 1: define for me, help me understand fairness. That's a big issue and that leads into my second question. Help me understand the fairness side one more time. I'm a simple country boy. It's the first time I've ever been in the big city.
- Dahlgren: I guess an example that comes to mind is I try to do my own personal income taxes and if I have a huge medical expense for whatever reason, I would expect to be able to put that in my Schedule A.
- Atkinson: But, in my personal, the PUC has nothing on me with my medical expenses. So, take me through fairness from a business standpoint in a regulated industry.
- Dahlgren: Just as I get to personally deduct unforeseen expenses whereas the utility have either unforeseen expenses or revenues that in fact are taxable, and I think it's fair if we're paying out, for example, an extra amount for costs as a utility that that tax impact, the entity that is bearing the additional cost, should get the tax benefit, a fair balance of costs and benefits.
- Atkinson: Let me ask my second question, which is a little bit more direct. Would it be fair to assume under the -A8 even in a regulated market that a publicly managed company like this, let me say, publicly regulated company like this, could increase costs to lessen a tax liability? Do you have that ability to do that under the -A8? Meaning, again, taking me back to, you know, business. Sometimes we'll go out at the end of the year, some clients will go out and spend all kinds of money just to lower tax liability to get under different tax brackets. Do you have that ability under the -A8?
- Dahlgren: I am not aware of how that would be financially beneficial. There is no tax breaks. Basically, our tax rate is about 40%. Other times, we get to the increment, which means if you spend a dollar to get 40¢ in tax benefit...
- Atkinson: Actually one more ... I think you are making it harder than it is. Can, under a company that is publicly managed under the PUC, publicly regulated, can you drive up expenses to lower your tax liability under the -A8? Can you do that?

Bauer: Mr. Chair, Senator Atkinson, I'll take a stab at it and I think what Mr. Dahlgren was trying to point out is that if you aren't getting additional revenue for that expense, let me back up. Yes, you could just as anybody could try to find ways of driving up an expense to offset their taxes. I think what we're trying to say is, it doesn't make sense if your revenue is still at a certain level, which the PUC sets as your rate, to incur additional expenses as Mr. Dahlgren said, at a \$1 to get 40¢ off on your taxes. You've lost 60¢ in that process. So, while, yes, theoretically you could, it doesn't make good business sense to us.

Chair: Senator Walker, do you have a question?

Walker: Yes, Mr. Chair, thank you. I appreciate Senator Atkinson's question about a definition of fairness, because heretofore it has not been very fair, ladies and gentlemen. Do either of you know how much every single day the City of Portland and all the rate payers are paying out to Enron right now for taxes that Enron never paid? They collected, but they never paid.

Miller: Mr. Chair, Senator Walker, I don't have that figure.

Walker: Well, it's a significant sum of money. Mr. Meek can generally spout it off the top of his head, I always have to look it up, because generally it is rather stunning, but I think at the last hearing you folks testified that you didn't think that automatic adjustment clause was two-way, but I think we have testimony on the record from Mr. Johnson and his excellent skills at drafting have indicated that it's two way, so what is your objection?

Miller: Senator Metsger and Senator Walker, they actually changed the language to make sure it was two way, that was a change between the -7 and the -8. So, I believe it is two way now. I'm not sure it was in the -7.

Walker: OK. So, you don't object to that part, anymore.

Miller: No, we don't.

Walker: Well, that's good. We're making progress. I'm not quite sure we are every going to get there with you folks, though, because I think what is important to the rate payers and the public at large is that you are not allowed to collect taxes that you don't owe and that you don't pay, and think that is what we are trying to get to here, and I'm not sure your -9, well I am sure your -9 won't get us there, but thank you for your good effort.

Chair: Thank you Senator. Questions? Senator Starr.

Starr: Thank you. I might disagree with the Senator from Eugene. The question I have is, from my perspective, the issue is a real one that if you're paying taxes, and those taxes are included in the rates, and you don't pay what the

rates assume, you shouldn't collect that in the rates, and apparently, the –A8s do that, and your contention is that it is not a fair way to do it, and the –A9s apparently do it, as well, and your contention is that is a fair way to do it. I want you to explain to me the difference. I am looking at the rate geek to do that, because, you know, this is an issue that is, now some people in this room have dealt with this into the wee hours of the night, and I appreciate that, and some of us have not, but I want you to explain to me in real English for the legislative record that we are building on this issue, the difference in your opinion on why the –A8s are fair to utilities and why in my mind, again, there is a real problem here with taxes that if you charge them, you ought to pay them, and if the –A8s are not the fair way to do it, you have to convince this committee, and this legislature, why the –A9s are the answer.

Dahlgren: I'll certainly try. Thank you. I guess I'd hearken back to the presentation that Ms. Lesh, I believe gave last week, and went through a couple of examples of changes and revenues and or costs and how it affected taxes, and I guess from my point of view, the –A8s are not fair to utilities, but they're also not fair to customers in that there are circumstances where the impact goes the other way. The one example....

Starr: My understanding is in the –A8, they've adjusted the language in that bill so that if it goes the other way, it's in the utilities' favor. So, OK, that answers that question. Next question.

Dahlgren: Let me go over the example again where, for example, the economy recovers very well or there is a long-cold snap, revenues are up for the utilities a substantial amount, our power costs go up, but not as much as revenues go up, so we have an increase to net income as the result of that cold snap, so customers paid more, they had higher bills because of that. If you then look at higher net income, higher income taxes, under the –A8 amendment the automatic adjustment clause would capture those higher income taxes that are due, because of the high revenues, so customers would then end up paying twice. They would pay higher bills, and they end up having to pay the increased taxes, also. That is why the –A9 amendments take into account the higher revenues, the higher costs associated with that to see what the overall impact is, not just isolated on income tax.

Starr: Mr. Chair, so let me jump in here. So, then, under the –A9 amendments, the customers would not ultimately pay both higher rates, because of a cold winter, and then see higher rates again, because your tax bill was higher?

Dahlgren: That's right.

Chair: Further questions? Senator Deckert.

Deckert: Thank you Mr. Chair. If I could just follow up on the point. It sounds like to me, and I find myself in a similar place as Senator Starr, frankly, is that I've been looking for a rationale on this of why the basic principle is that if taxes are imbedded, then they ought to be paid, and I've been looking for rationale on that. Up until this point, I haven't heard it. I heard a little scintilla of a rationale right there with the symmetry argument, but what I also hear is the customer as a whole are willing to take that gamble, which then it is just a principle that you are willing to on the tough years live with maybe a slight increase, because if you look at history and you look at the way this is run that it's traditionally been on the other side. So, I guess I would just put the question back to you of customers as a whole, because the argument that you are making is that we want to protect the customers on these odd years, and I guess where I land is the customers as a whole seem to be saying, we are willing to take that gamble, we see the upside over here, and we are willing to loose on the downside. But I guess I give you one more opportunity to convince me both on the rationale side, because that was the first time I've heard at least some rationale of why they shouldn't be embedded in rates, and secondly what are the customers missing, what are they not seeing here that perhaps on this one, your perspective, because you are dealing with the PUC every day, maybe you are picking it up.

Dahlgren: Senator, I think that certainly the customer groups have their perspective and from mine, I do look at it from both sides, obviously, there is the customer impact and example I went through. There is a company impact if costs go the other way that there's a big run up in medical costs, we're having to pay additional benefit costs that aren't included in rates. To me, there is a fairness issue of, well, who should get the income tax effect of those higher costs that the utility incurred? I think that the entity that bore those costs should get the tax effect of those costs, and that's why under the -A9 amendments it aligns the costs and revenues and the income tax impact.

Deckert: I guess I just have a hard time. I know this is an endless debate, but I have a hard time pulling in other related costs, because I understand in the PUC case, you have to look at the whole realm of costs that the utility incurs, but to me, it's hard on the tax one, because I guess I see it as such a simple true set rate that really doesn't deviate much, and to pull in medical costs or other costs and try to embed those into it, I guess I struggle with how the rationality of that. I'm operating on lack of sleep, today, so maybe that's...

Miller: Mr. Chair, Senator, if I could just take one shot. I think our perspective on this is just the fact that what the taxes end up being actually are directly related to whatever those costs were, and so we just feel if you are going to look at taxes, you can't just separate them and say, OK, let's just take taxes alone, because those taxes are derived from whatever your costs and

revenues are. So, linking them makes sense, I think, and that is the fairness argument, because taxes are just a result of whatever your costs and revenues are. So, to say, let's treat taxes separately sort of ignores that connection, I guess.

Bauer: Mr. Chair, if I might add one more thing to Senator Deckert's question. In the rate proceeding where you established what the amount ought to be for taxes, it was after looking at your test case, which again assumed revenues and your costs, so, once you leave that rate proceeding, to the extent that taxes are changed, for Northwest Natural, because we don't have a holding company, it is because costs and other things have changed, and I guess that is what I have been trying to point out. It is not that—and I totally understand your concerns and frustrations about collecting money from Oregonians and then shipping it off somewhere else—Northwest Natural does not have a holding company. All I'm trying to say in this whole process is that as you've developed this, and even as the proponents talked about, they were trying to get a the dollars that are basically collected in Oregon and then maybe sent off somewhere else. So, that's why we're trying to point out, and I think that is why this issue has been going on for all session, and actually for a few years in terms of trying to find some way to find a balanced solution.

Chair: I am going to dismiss this panel for now.

Anderson: Can I ...

Chair: Senator Monnes Anderson.

Anderson: Yes. Hopefully, this can be answered simply. We have shareholders, and shareholders aren't considered part of other related costs or are they, and when we are in a recession, have our shareholders in PGE or Northwest Natural, well, of course, Enron, it's different, when the costs of utilities is high, does that mean more money for the shareholders? And, I guess I'm trying to see a correlation. You don't want shareholder costs to be in and yet you want the taxes to be considered part, I view it as operating costs, and I know they're not, but that's how I view it. Do you have a comment on trying to do shareholder—when you have a high price for the utility, I mean for energy, it costs a lot, that's great for the shareholder, correct?

Dahlgren: No.

Anderson: OK. That's what I want you to explain.

Dahlgren: I'll try and, you know, please follow up. In the rate-making process, basically what one does is add up what is determined to be a prudent level of expenses, whether they be power costs, medical costs, salaries, benefits, all that type of thing, look at all O&M costs, and then added to that is an element for recovery of debt and equity financing, equity is shareholders,

and that basically when you add all that up—I'll make it more complicated—but you divide by kilowatt hours and get a rate, and that's what is then charged going forward. Once rates are set and you go forward, you're just like any other business. The shareholder return is the last thing that falls out the bottom. You pay all your expenses, pay your interest and a return drops out the bottom, hopefully. The fact that power costs, for example, go up, there is no return element associated with that. Again, O&M costs are just covered dollar for dollar. So, the fact that costs go up, power costs go up, does not yield a higher return for shareholders, and, in fact, if you've set rates, and then they go up after you've set rates, it's eating into the return. So, my short answer was no.

Anderson: OK. Well, I just wanted to, I mean we're talking about other related costs, and I know there are costs that aren't a part of the rate making, I mean shareholder, you certainly aren't putting that in the cost of rates.

Dahlgren: There is a return to shareholders that is a component...

Anderson: In the rate setting.

Dahlgren: Yes.

Anderson: OK. Thank you.

Chair: Thank you very much. Ann Fisher and Jason Eisendorfer, please come forward. These two folks were also part of our email buddies the last couple of weeks, and we appreciate that. Jason, I think we'll defer to Ann to start, and I think what we will do here as we are wrapping up this, the comment on the -A8 and the -A9, as you've requested, I think we have had the utility perspective and then Jason, you, as well, so, welcome.

Fisher: Well, I've been watching you very carefully, and I haven't noticed any of your eyes glazed over. People ask me what I do, and as soon as I start rattling off that I do electricity, you see their eyes sort of drift to the back of their head, and so I appreciate all of your attention, and I know that this is very complicated and where a lot of energy wonks.

Chair: Please identify yourself for the record, by the way.

Fisher: Chairman Metsger, I am happy to do so. I am Ann Fisher and I represent Building Owners and Managers Association of Portland. On my way down here, I called back to the BOMA offices to find out what that meant in square footage, because I thought that might be better than just saying as I usually do, which is most of the large buildings, strip malls, industrial parks in the Portland Metropolitan area. Well, the number I got back was 7 billion square feet of commercial property, which is no small amount by any standards. We've been part of the email buddies. It was a good day for the pulp and paper industry this weekend, because I'm sure we used up

many reams of paper trying to find solutions to what is a very difficult problem, and the problem is, as you all know, that there is an ability in the way rates are handled that would allow rates to be collected, but not actually paid to any governmental unit. That means folks like my BOMA members get charged twice. They pay those extra rates, the higher rates in the electricity prices, then you all come back and say, wouldn't you like to pay a little more in taxes to cover some of the essential services that we have otherwise. So, it's a critical issue to everyone. What we looked at were ways to make sure that that wouldn't happen. Now the rate setting scenario is probably worth mentioning, at least briefly. What happens when the utility needs to set its rates? It goes in and then files a rate case, and as Gary Bauer represented, that you start off with a test year and you figure out costs and what needs to be done and what the services are going to look like, and the commission puts it all together, with the help of a lot of interveners, and, of course, the utilities, and figures out an appropriate rate of return that reflects sort of the risks to the shareholders for having this investment. It's a package deal, and it goes forward for some period of time. If the utility doesn't come back in, it means it's pretty much satisfied, and now it could be satisfied, because it has exactly matched its costs with the actual costs and the anticipated revenues out there, and everything looks exactly as we estimated or it might not come back, because it turns out that they were able to do a better purchase with power or get a better deal here, and there is a little extra money that comes in, and the utility is entitled to keep that. The utility doesn't come back in and say, well you know we're sort of over collecting here so the customer should get a rebate—doesn't happen. That means that as often as the costs change, the utilities can come back and ask for new rates, and provide the backup to get those. That brings me to where we are today. I looked at the -9s and I looked at the -8s, and I tried to put them together, and I did a cut and paste, and you didn't see the machinations that I did here, but occurred to me happens in the -9 is that the utilities want a second bite, because what they are asking you to do in the -9 is not just find fairness, they are asking you to give them a little extra, so if in all of the stuff that the commission put together to establish their rates in the first place, doesn't quite add up right, and that has as simultaneous with the fact that the taxes were collected but not paid for whatever reason, then to get the taxes back, the customers will also have to go through what amounts to a mini-rate case so that we can look at all those costs, again, and you know it becomes one of those overwhelming and unwieldy process. But, I took a look at what -9 does to see if we could improve -8. I came down here to support -8. We worked awfully hard to find the best possible compromise. Nobody came to fisty-cuffs, but you know, that was only because we were separated by space, not because we weren't at that point at times. And it looks like there are a couple of things that you find in -9 that could be maybe used to tweak -8. I like -8. I like it because it has Section 2, which goes through and talks about what I think you all believe.

You believe that the taxes should not be collected in rates and then not paid. It says that this isn't the way we want to run our state and have the utilities handle it. It attempts to find a solution and the solution is what we call an automatic adjustment clause. We have those for instance if a utility has extraordinary power cost it can go in and ask for an automatic adjustment clause outside of a rate case to say this cost was extraordinary, let's have some adjustment. It puts forth this automatic adjustment clause which will be based upon how much was paid in taxes and how much was collected and we'll figure out who's high and who's low and we'll take care of it going forward. There's a lot of issues about whether or not we should go forward or retroactively but we all agree that going forward is a positive thing and we should support it for that basis.

At the end of the day it's intended to keep things on an even keel so that whatever is collected and whatever is paid match up pretty clearly. It also has some additional language that has to do with automatic adjustment clauses and how taxes are treated which don't show up in the -9 amendments at all and I think those are the kind of amendments that are just really to keep things consistent more than anything else. So no matter what you do those should stay.

But this is how I would change the -8 amendments. I would add under section 3 a subsection 1C. Currently it requires that everyone files a tax report and the tax report will say how much they paid and how much they collected. The part that I would add is additional information which, and I don't have exact language here, but that the utilities' analysis of the reason that the amount paid versus the amount collected differ. The idea that is captured there is the one that Mr. Dahlgren raised. Sometimes there are things that go on, greater revenue due to things that could not have been reasonably anticipated that the commission might want to consider. But I would put it into what the commission considers so that the end of the day the commission can decide whether or not to have the automatic adjustment clause or to, as it says in, toward the end, whether to let it go or not, I'll say condition it. That gives, that puts the onus on the commission. The commission sets the rates in the first place, the commission takes a look at what happened, the commission makes the decision about what should happen going forward, the commission understands where the utilities are coming from and why they are what they are, and then they handle it. Takes you all out of it but makes it clear because of section 2 that the direction to the commission is that taxes should not be collected that aren't being paid.

So I'd support the -8, I'd add a little extra information for that commission to consider, and I think that you could all go forth and feel like you did something good today if you pass it.

Chair: Thank you Ms. Fisher, we'll definitely consider that as the bill moves forward. Jason?

Eisdorfer: Chairman Metsger, members of the committee, I'm Jason Eisdorfer, attorney with the Citizen's Utility Board. I will be very brief. I will be brief on the A8s. I think this is an important fix in the longstanding mismatch in utility regulation ratemaking. It does what we want to do. It ties taxes paid in rates with taxes paid to the taxing authority. It does have an off ramp if there are unintended consequences, but for the most part this bill does what we want it to do. So let me spend just a few minutes talking about the A9s and why we would oppose those. We think that the A9s, I'm seeing these now for an hour or so so I'm, it's not written as well as I would have liked so I think it's English, and so if I'm understanding this wrong I'll stand corrected. As I read them though, the A9s are a way to oppose the tax utility bill, the A8s, in a way that isn't too vigorous because the A8s really does get us closer to fairness and the A9s are simply a way to oppose that from the utility point of view.

There are two fundamental differences between taxes and all other costs. As I read A9, A9 is really a true-up of all costs within the utility system and the fairness argument I think we heard goes well if you're going to true-up taxes you'd have to true-up all other costs. And that's simply not true. And here are the two reasons taxes are different from all other costs. The first reason is that customers think and I think we hope that the legislature also thinks, that taxes are of special interest. The system that we had going right now is that under the guise of taxes justified by the taxing authority of this state, the utilities are collecting more from customers than they are actually paying to those taxing authorities. And in our mind, that is a different kind of cost than all other utility costs which brings me to the second big difference.

We pay utility shareholders a profit in rates. We cannot avoid that, it's hardwired into our rates, and we pay shareholders a profit so they will make good business decisions to invest in resources, to invest in utility infrastructure in an efficient manner, and to take some risk. We do not provide the shareholders a profit based on how creative the parent company's accountants, tax accountant's are, we don't pay the utility a profit based on where the holding company stores debt, which is a source of tens of millions of dollars of mismatch in what customers are charged versus what is actually paid. Literally it simply is where debt is stored, whether it's at the utility or at the holding company, and credit rating agencies look at the overall amount of the debt anyway, and simply where you store it creates a mismatch.

Ms. Davison said something that is absolutely true and let me reiterate this. One of the reasons that we pay a return, a profit to the utility shareholders is they take a risk. They take risks when they put up capital

to invest in resources. If in A9 as I read this, we are constantly trueing-up actual costs, utilities are not taking any risk. The only way to make A9s palatable is if you added a provision that tied the utility shareholder profit margin to treasury bills which is essentially a nonrisk margin. There is a word for a situation where the customer takes all the risk. It's called public power. Public power, the customer is assigned all the risk ultimately and there is no profit for the shareholder. Essentially what A9 as I read it is attempting to do is to shift all of the risk onto the customer and yet still provide a profit to the shareholder and that is simply unacceptable obviously. A9, it looks innocuous but what it will do is essentially throw out all the utility ratemaking regulation. So again, the Citizen's Utility Board supports A8, we think it's a long time coming, and we oppose the -9 amendments.

Chair: Questions for the committee?

Woman: Mr. Chair?

Chair: Senator Walker?

Walker: I would just make a comment that that was really a very good explanation, that latter point, so essentially the A9s would give the utilities their cake and they could eat it too, so thank you for that very clear explanation after an entire weekend of wondering where my head was going next. That was simple, direct, I appreciate it. And you have not commented on email all weekend.

Man: No. I had a vacation. [Inaudible.]

Walker: That doesn't count.

Chair: We would have like one, huh Senator Walker.

Walker: Yeah. It was my birthday on Sunday and I [inaudible] a computer.

Man: Happy birthday.

Chair: Other questions from the committee?

Woman: ...answered my question.

Chair: Senator Starr?

Starr: ...question for Ms. Fisher. You were here the other day when Ms. Lesh from PGE gave her explanation.

Fisher: I was not but I heard it.

Starr: Did you happen to, you heard her testimony?

Fisher: Yeah.

Starr: So you heard her explain kind of the various scenarios of how, in her estimation the taxpayer, or the customer is negatively impacted by the A8s.

Fisher: Well I think though, Chairman Metsger and Vice-Chair Starr and Senators, I think the real question that she was answering was focused on the prior that did not have the reciprocal nature in it and I can play out scenarios myself where you can say okay, you've adjusted the taxes, but the parent isn't putting anymore money in, and so to make up for this you wind up not collecting enough money which causes a decrease in service and these things fall down the line, you can do that. That's from an analysis from utility practices, that's possible. But I think that the group worked very hard to come up with a way to make sure that that particular event would not occur. So it does two things. It is reciprocal now, so that if, you know, the utilities can no longer complain as Pamela did, that they would undercollect and then be left holding the tax bag, so we've corrected that. Nor is it a scenario where it would be so automatic that the customers would see perhaps the same rates but what was really recovered that went to pay the cost was so much less that they saw a loss of reliability or have problems with the way they provided the services overall. So by giving this out clause, I think that's what Jason called it, the ability to say if there is a material adverse impact, and that's a commission decision on what that would be, with I'm sure all of us weighing in, it is intended to mitigate those kinds of scenarios that Pam was describing. Yes, they're conceivable but I think that the new -8A amendments correct them.

Chair: Any questions? Okay, thank you very much. We've heard today from the utilities and from those who pay that. Again, Mr. Meek, would you like to comment again?

Meek: Yes.

Chair: You haven't commented on the A9, so ...

Meek: [Inaudible.]

Chair: Yeah, so please do. I'm sorry. I would like you to do that. Then we'll go to [inaudible].

Meek: Thank you Mr. Chair, my name is Dan Meek, I'm a PGE ratepayer. The A9 is of course modeled in large degree on the A8, pardon me, on the A7. I think there is some confusion about what the A7 actually says and it feeds into the both what Mr. Dahlgren said about the cold snap and the

utility having higher net income, and everything that Pamela Lesh said at the hearing last week. On the A7 and the A9, the comparisons that are made are the estimated taxes in rates versus the actual taxes paid by the utility. Estimate versus actual paid. But the A8 is not that. The A8 removed from the calculation the estimate of taxes and the A8 simply compares the amount of taxes charged to ratepayers versus the amount of taxes paid by the utility. It's no longer comparing an estimate with an actual. It's comparing an actual with an actual. And that nullifies really what Pam Lesh had to say because we're no longer comparing the estimate with the actual. For example, also Mr. Dahlgren's cold snap example, under the cold snap example, the reason the utility has higher net income is because it has higher net sales of kilowatt hours. The way ratemaking works right now for PGE, you take \$92.6 million and you include in rates to pay for PGE's alleged state and local income taxes. In order to derive a kilowatt hour rate the 92.6 goes into the number of kilowatt hours and increases the charges on the bill per kilowatt hour by approximately 7%. So if you have a cold snap and you sell more kilowatt hours, in fact ratepayers have paid more in income taxes already, so you don't have to make the adjustment that Mr. Dahlgren just mentioned because you've already paid more in income taxes. On the other hand, if you have a warm snap, and less, fewer kilowatt hours are sold, then ratepayers have already paid less in income taxes. Because the comparison under -8 is what the ratepayers paid, not what was estimated in rates and what the ratepayers paid does depend upon the number of kilowatt hours sold during each period.

And regarding the -9s, there are some very interesting provisions on the -9s.

Chair: Do you want to share with us?

Meek: It would require more thought on my part.

Chair: Would it be fair to say you oppose the -A9s?

Meek: I would reserve judgment on that actually.

Chair: Thank you Mr. Meek. As I said, we've had an opportunity to hear from all of this, I do believe [inaudible], this is a huge issue and it is very clearly, I mean, both in business and in revenue we've heard this issue in various forms for four and one half months. If it was real easy I guess it would have been done a long time ago. But it is an important issue, I think people have a right to believe that if they are paying taxes, they're going to be collected by government. And to do anything different really is not fair, just and reasonable. I think the people have done a good job and I appreciate during the course of this discussion, both the PUC and the utilities in prior renditions, their discussion on this, and particularly those

who pay these bills, the last couple of weeks, trying to find a solution that actually works on this. I believe the A8 gets us there. I'm certainly not opposed to, as some people have mentioned, some technical work when we get into the house if you can even improve on a good product. But I believe that's where we are, I think it does serve the interest of citizens, I think it has a real opportunity in this first go around to cut the taxes. The people have been paying these for a long time and then hopefully over about a two year period there will be symmetry, and we won't have those discrepancies and people will know when they're paying those, that they will actually have them.

So the chair would prefer to entertain a motion to adopt the A8 amendment.

Anderson: Mr. Chair?

Chair: Senator Monnes Anderson?

Anderson: I move the –A8s to Senate Bill 408.

Chair: Senator Monnes Anderson just moved the –A8 amendment to Senate Bill 408. Further discussion on the A8 adoption? Senator Deckert?

Deckert: Mr. Chair, just one thought that I would like to at least put on the record is that I wasn't party to the A8, so I don't know if they are perfect, if they get everything that we want to do done in them, but I've been convinced since last, this whole debate over the last four months is that any action that we would take that would move the ball forward and actually create a better environment, and I have yet to hear really a cogent reason that you wouldn't move forward, I have just yet to hear it so the A8s to me are something that I haven't had the time to read through every comma and period, but to me it moves the discussion forward and so I would support the A8s as something that I think is an important issue for Oregonians and I think it's an important issue that we would move forward on today.

Chair: Thank you Senator, other discussion? Senator Atkinson?

Atkinson: All session I have been voting against things that we could have fixed to make them even technically accurate. Why wouldn't we want to make this technically accurate to save time, why wouldn't we do it right the first time?

Chair: Well Senator Atkinson, in fairness to your question, I don't think it's a question of being technically accurate, it's a question of people having different technical difference of opinions. But I think we've heard in testimony they believe this does accomplish the task, that there is not an inaccuracy there, other people would have different opinions about how

they might refine things different ways but that the testimony clearly tells us that this moves and does accomplish the task.

Atkinson: I respectfully disagree. That's alright.

Chair: I understand that, thank you Senator. Further discussion? Okay, please take roll on the -A8.

Clerk: Senator Atkinson?

Atkinson: No.

Clerk: Senator Deckert?

Deckert: Vote aye.

Clerk: Senator Monnes Anderson?

Anderson: Yes.

Clerk: Senator Starr?

Starr: No.

Clerk: Chair Metsger?

Chair: Aye. The -8A has been adopted. Senator Monnes Anderson?

Anderson: I move Senate Bill 408 as amended to the floor with a do pass recommendation.

Chair: Senator Monnes Anderson has moved Senate Bill 408 as amended by the -A8 to the floor with a do pass recommendation. Further discussion? Please call the roll.

Clerk: Senator Atkinson?

Atkinson: No.

Clerk: Senator Deckert?

Deckert: Aye.

Clerk: Senator Monnes Anderson?

Anderson: Aye.

Clerk: Senator Starr?

Starr: No.

Clerk: Chair Metsger?

Chair: Aye. Senate Bill 408 having received a constitutional majority declared passed and the chair will carry.

To the surprise of everyone, Senator Atkinson has declared notice of I think a minority report, so that is so noted for the record. Thank you Senator.

[End of Senate Bill 408 on May 31, 2005.]

SB 408-A8
(LC 819)
5/31/05 (DJ/ps)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 408**

1 In line 2 of the printed A-engrossed bill, after "utilities" insert "; creating
2 new provisions; amending ORS 757.210; and declaring an emergency".

3 Delete lines 4 through 23 and insert:

4 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and
5 made a part of ORS chapter 757.**

6 **"SECTION 2. The Legislative Assembly finds and declares that:**

7 **"(1) The alignment of taxes collected by public utilities from utility
8 customers with taxes actually paid to units of government by utilities,
9 or affiliated groups of corporations that include utilities, is of special
10 interest to this state.**

11 **"(2) Taxes are a unique utility cost because the actual tax liability
12 is affected by the operations or tax attributes of the parent company
13 or other affiliates of the utility.**

14 **"(3) The Public Utility Commission permits a utility to include costs
15 for taxes that assume the utility is not part of an affiliated group of
16 corporations for tax purposes.**

17 **"(4) The parent company of a utility may employ accounting
18 methods, debt, consolidated tax return rules and other techniques in
19 a way that results in a difference between the tax liability actually
20 paid to units of government by the public utility, or the affiliated
21 group of corporations of which the utility is a member, and the
22 amount of taxes collected, directly or indirectly, from customers.**

23 **"(5) Tax uncertainty in the ratemaking process may result in col-
24 lecting taxes from ratepayers that are not paid to units of government.**

1 “(6) Utility rates that include amounts for taxes should reflect the
2 taxes that are actually paid to units of government to be considered
3 fair, just and reasonable.

4 “SECTION 3. (1) Every public utility shall file a tax report with the
5 Public Utility Commission annually, on or before October 15 following
6 the year for which the report is being made. The tax report shall
7 contain the information required by the commission, including:

8 “(a) The amount of taxes that was paid by the utility in the three
9 preceding years, or that was paid by the affiliated group and that is
10 properly attributed to the regulated operations of the utility, deter-
11 mined without regard to the tax year for which the taxes were paid;
12 and

13 “(b) The amount of taxes authorized to be collected in rates for the
14 three preceding years.

15 “(2) The tax report shall be made publicly available at the time it
16 is filed.

17 “(3) The commission shall review the tax report and make the de-
18 terminations described in this section within 90 days following the fil-
19 ing of the report. If the commission determines that the amount of
20 taxes assumed in rates or otherwise assessed to ratepayers for any of
21 the three preceding years differed from the amount of taxes actually
22 paid to units of government by the public utility, or by the affiliated
23 group and properly attributed to the regulated operations of the util-
24 ity, the commission shall require the utility to implement an auto-
25 matic adjustment clause, as defined in ORS 757.210, within 30 days
26 following the date of the commission’s determinations under this sec-
27 tion. The automatic adjustment clause shall apply only prospectively,
28 and shall account for all taxes paid to units of government by the
29 utility, or by the affiliated group that are properly attributed to the
30 regulated operations of the utility, and all taxes that are charged to

1 ratepayers of the utility through rates, so that ratepayers are not
2 charged for more tax than:

3 “(a) The utility actually pays to units of government; or

4 “(b) In the case of an affiliated group, the affiliated group pays to
5 units of government that is properly attributed to the regulated oper-
6 ations of the utility.

7 “(4) The automatic adjustment clause described in subsection (3)
8 of this section may not be used to make adjustments to rates that are
9 properly attributable to any other affiliate of the utility or to the
10 parent of the utility.

11 “(5) Notwithstanding subsections (1) to (3) of this section, the
12 commission may authorize a public utility to include in rates deferred
13 taxes resulting from accelerated depreciation or other tax treatment
14 of utility investment. Deferred taxes that are subsequently paid by a
15 utility to a unit of government may not be charged to ratepayers.

16 “(6) If the commission determines that implementing an automatic
17 adjustment clause under subsection (3) of this section would have a
18 material adverse effect on customers of the public utility, the com-
19 mission may not require the utility to implement the clause.

20 “(7) The commission must conduct a hearing under ORS 757.210
21 prior to making a determination under subsection (6) of this section
22 that an automatic adjustment clause would have a material adverse
23 effect on customers of the public utility.

24 “(8) As used in this section and section 2 of this 2005 Act:

25 “(a) ‘Affiliated group’ means an affiliated group of corporations of
26 which the utility is a member, and that files a consolidated federal
27 income tax return.

28 “(b) ‘Public utility’ or ‘utility’ does not include a water utility.

29 “(c) ‘Tax’:

30 “(A) Means a federal, state or local tax or fee that is imposed on

1 or measured by income and that is paid to units of government.

2 “(B) Does not include any amount that is refunded by a unit of
3 government as a tax refund.

4 “(d) ‘Three preceding years’ means the three most recent consec-
5 utive fiscal years preceding the date the tax report is required to be
6 filed.

7 “SECTION 4. The tax report that, under section 3 of this 2005 Act,
8 is required to be filed on or before October 15, 2005, shall set forth the
9 information required to be reported under section 3 of this 2005 Act for
10 the three most recent consecutive fiscal years of the public utility that
11 concluded prior to the date of the filing of the tax report or January
12 15, 2006, whichever is earlier.

13 “SECTION 5. ORS 757.210 is amended to read:

14 “757.210. (1)(a) Whenever any public utility files with the Public Utility
15 Commission any rate or schedule of rates stating or establishing a new rate
16 or schedule of rates or increasing an existing rate or schedule of rates, the
17 commission may, either upon written complaint or upon the commission’s
18 own initiative, after reasonable notice, conduct a hearing to determine [*the*
19 *propriety and reasonableness of such rate or schedule*] **whether the rate or**
20 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
21 *a*] **the** hearing upon written complaint filed by the utility, its customer or
22 customers, or any other proper party within 60 days of the utility’s filing;
23 provided that no hearing need be held if the particular rate change is the
24 result of an automatic adjustment clause. At [*such*] **the** hearing the utility
25 shall bear the burden of showing that the rate or schedule of rates proposed
26 to be established or increased or changed is [*just and reasonable*] **fair, just**
27 **and reasonable.** The commission may not authorize a rate or schedule
28 of rates that is not fair, just and reasonable. [*The term*]

29 “(b) As used in this subsection, ‘automatic adjustment clause’ means
30 a provision of a rate schedule [*which*] that provides for rate increases or

1 decreases or both, without prior hearing, reflecting increases or decreases
2 or both in costs incurred, **taxes actually paid to units of government** or
3 revenues earned by a utility and *[which]* **that** is subject to review by the
4 commission at least once every two years.

5 “(2)(a) Subsection (1) of this section does not apply to rate changes under
6 an approved alternative form of regulation plan, including a resource rate
7 plan under ORS 757.212.

8 “(b) Any alternative form of regulation plan shall include provisions to
9 ensure that the plan operates in the interests of utility customers and the
10 public generally and results in rates that are just and reasonable and may
11 include provisions establishing a reasonable range for rate of return on in-
12 vestment. In approving a plan, the commission shall, at a minimum, consider
13 whether the plan:

14 “(A) Promotes increased efficiencies and cost control;

15 “(B) Is consistent with least-cost resources acquisition policies;

16 “(C) **Does not include the recovery of amounts collected as taxes**
17 **that are not actually paid to units of government by the public utility**
18 **or, if the utility is part of an affiliated group of corporations, by the**
19 **group and properly attributed to the regulated operations of the util-**
20 **ity;**

21 “[~~(C)~~] (D) Is consistent with maintenance of safe, adequate and reliable
22 service; and

23 “[~~(D)~~] (E) Is beneficial to utility customers generally, for example, by
24 minimizing utility rates.

25 “(c) As used in this subsection, ‘alternative form of regulation plan’
26 means a plan adopted by the commission upon petition by a public utility,
27 after notice and an opportunity for a hearing, that sets rates and revenues
28 and a method for changes in rates and revenues using alternatives to cost-
29 of-service rate regulation.

30 “(d) Prior to implementing a rate change under an alternative form of

1 regulation plan, the utility shall present a report that demonstrates the cal-
2 culation of any proposed rate change at a public meeting of the commission.

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

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

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

18 **“SECTION 6. This 2005 Act being necessary for the immediate**
19 **preservation of the public peace, health and safety, an emergency is**
20 **declared to exist, and this 2005 Act takes effect on its passage.”.**

21

SB 408-A9
(LC 819)
5/31/05 (DJ/ps)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 408**

1 In line 2 of the printed A-engrossed bill, after "utilities" insert "; and
2 declaring an emergency".

3 Delete lines 4 through 23 and insert:

4 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and
5 made a part of ORS chapter 757.**

6 **"SECTION 2. (1)(a) Subject to paragraph (b) of this subsection, if
7 the Public Utility Commission has previously authorized a public util-
8 ity to include in the rates of the utility or otherwise assess ratepayers
9 an estimate of federal, state or local taxes and the estimate differs
10 from the amount of taxes actually paid to units of government by the
11 utility, or by an affiliated group of corporations of which the utility
12 is a member, the commission shall adjust the rates of the utility to
13 recover, with interest determined at a rate that is equal to the au-
14 thorized rate of return on investment of the utility:**

15 **"(A) For the utility, any amount of tax actually paid to units of
16 government by the utility that is greater than the estimated amount
17 of taxes, the cost of which was previously authorized to be collected;
18 or**

19 **"(B) For customers, any amount included in estimated federal,
20 state or local taxes, the cost of which was previously authorized to be
21 collected by the utility, and that is not actually paid to units of gov-
22 ernment by the utility, or by an affiliated group of corporations that
23 includes the utility.**

24 **"(b) To the extent that any difference between the estimate of taxes**

1 included in the rates of the utility differs from the actual taxes paid
2 to units of government because of changes to either the revenues or
3 costs of the utility that relate to the provision of utility service, the
4 commission shall adjust the rates of the utility to recover, with in-
5 terest determined at a rate that is equal to the authorized rate of re-
6 turn on investment of the utility:

7 “(A) For the utility, any cost increases or revenue decreases that
8 affected the amount determined due under paragraph (a)(A) of this
9 subsection; or

10 “(B) For customers, any cost decreases or revenue increases that
11 affected the amount determined due under paragraph (a)(B) of this
12 subsection, in an amount that is no less than the amount that is
13 otherwise due under paragraph (a)(B) of this subsection.

14 “(2) The commission shall establish an automatic adjustment
15 clause, as defined in ORS 757.210, to achieve the adjustments described
16 in subsection (1) of this section.

17 “(3) The commission may authorize a public utility to include in a
18 rate or schedule of rates deferred income taxes that result from ac-
19 celerated depreciation or other tax treatment of utility investment in
20 capital assets or depreciable property. Accumulated deferred income
21 taxes shall be deducted from the rate base of the utility. Deferred in-
22 come taxes that are subsequently paid by a utility to units of govern-
23 ment may not be charged to customers.

24 “(4) As used in this section, ‘tax’ means a federal, state or local tax
25 or fee that is imposed on or measured by income and that is paid to
26 units of government.

27 **“SECTION 3. (1)** Notwithstanding any other provision of law, the
28 Public Utility Commission may require a public utility, or a parent
29 company or other affiliate of the utility, to provide those federal, state
30 and local tax returns to the commission that are necessary to enable

1 the commission to make the rate adjustments described in section 2
2 of this 2005 Act.

3 “(2) The commission may not use the tax information the commis-
4 sion has obtained under subsection (1) of this section for any purposes
5 other than those described in section 2 of this 2005 Act. An intervenor
6 in a commission proceeding to make rate adjustments under section
7 2 of this 2005 Act may, upon signing a protective order prepared by the
8 commission, examine the tax information described in subsection (1)
9 of this section only to verify the accuracy of rate adjustments made
10 by the commission. An intervenor may not make copies or otherwise
11 disclose any information described in this section to any other person.

12 “SECTION 4. This 2005 Act being necessary for the immediate
13 preservation of the public peace, health and safety, an emergency is
14 declared to exist, and this 2005 Act takes effect on its passage.”.

**SENATE CHAMBER
SENATE BILL 408**

June 8, 2005

- President: The clerk will read the Committee Report and the Minority Report on Senate Bill 408.
- Clerk: President Courtney, your Committee on Business and Economic Development team has referred 408A having had the same under consideration the [inaudible] Reports are back recommending do pass with amendments.
- President: I will now recognize Senator Vicki ... excuse me.
- Clerk: President Courtney, the Minority on your Committee on Business and Economic Development team has referred Senate Bill 408A having had the same under consideration [inaudible] Reports are back recommending do pass with different amendments.
- President: Thank you. My apologies to the reading clerk for moving too quickly. I will now recognize Senator Vicki Walker who will present the Committee Report. Senator Walker.
- Walker: Thank you Mr. President, I move that the Committee Report on Senate Bill 408 be adopted.
- President: Senator Vicki Walker has moved that the Committee Report on Senate Bill 408 be adopted. To your, please explain your Committee Report, Senator Walker.
- Walker: Mr. President, colleagues, Senate Bill 408 is a product of several months' work. It is the utility income tax true-up bill. It is intended to provide more balance between the amount of utility taxes included in rates and the amount of taxes paid to the federal, state and local taxing authorities by a utility's parent company. The bill makes legislative findings regarding public utility taxes and provides a mechanism to close an indefensible loophole in state law.
- President: Thank you, Senator Vicki Walker. I will now recognize Senator Jason Atkinson.
- Atkinson: Thank you, Mr. President. I move that the Minority Report be substituted for the Committee Report on Senate Bill 408.
- President: Senator Jason Atkinson has moved the Minority Report be substituted for the Committee Report on Senate Bill 408. To your motion please.

Atkinson: Thank you Mr. President. The Minority Report requires the PUC, the Public Utility Commission, to convene a work group and study and evaluate the appropriate methods to account for taxes collected from the public utility ratepayers to insure that the amounts collected from the ratepayers match the amounts in which the utility or the affiliated corporations properly attribute to the utility's regulated operations pay to the units of government. Mr. President, that sounds, that's a pretty big explanation, but let me put it to you - Am I having a visual aid?

Man: Wait, wait. No, no, no.

Atkinson: What is this?

Man: Excuse me.

Atkinson: Mr. President?

President: Excuse me. We'll take care of this momentarily and ask that it be removed please. Please continue Senator Atkinson, please.

Atkinson: Well, thank you Mr. President. I think what just happened is a perfect example of what we've got here. We've got nothing but a political bill. That's all this is. This is a political bill. This is a bill that didn't have the votes on the floor just a few weeks ago and now here it is in a new form after we've had a task force to run a political bill. Any of you that traveled around the state of Oregon last year will know that there was a radio ad that half this caucus, a little more than half of this body, used to support their campaigns saying we're going to go after an evil out-of-state corporation that is now bankrupt, and we're going to fix up this loophole, \$15 loophole. Well certainly there's no Oregonian in our state that believes that that should not occur, that we shouldn't true up, but we bring you this Minority Report today as a method of fairness. It's not a fairness for the corporations but it's actually for the ratepayers. If you look at the PUC's finding and the white paper where they have laid out all the options that we have, between the cobbled together version of the Majority Report, or this Minority Report, or some of the other options that have been discussed in the last five months, Mr. President, you will see that they have some significant considerations with regard to the amount of changing the taxes which could remain a, in adjudicated rate cases it could mean that the rates go up. So, 2 to 3% of rates go up with Portland General Electric could not be a consequence that the Majority Report wants to fill. Mr. President, we also look at some other parts in here. We look at the fact that natural gas rates could go up. We look at the fact that this could wind up, I think another speaker will talk about this fact, that this could be in litigation for years. Mr. President, I've got some talking points, but you know what, what I'd rather talk to you about is process, and it's not because I'm in love with workgroups. But it's because we have a very, on the floor today, a very

political bill where we've got a lot of people getting their names in the newspaper and a lot of editorial writers writing these real pretty editorials, and we're going to stop some evil out-of-state corporation that's no longer in business and we're going to go around and grandstand and run radio spots and campaign and all that. But you know what, Mr. President, ask yourself as a member of the Oregon Senate if every time we're going to have a rate case in the state of Oregon if we're going to have a rate case here in the Oregon Senate. Is that what you want to do? Do you want to have one here? Maybe we should have a Minority Report that just gets rid of the PUC! Maybe, if I could have got that to fit in this relating clause I probably would have because that's what this bill is trying to do. If it's political enough, let's make sure in that case, that we let the PUC do it. Or, maybe the State Senate can do it, or, some pollsters to do it. The fact of the matter is is that this is a regulated industry in which we regulate not only the rates that are paid, but we regulate the expenses, we regulate the growth, and we also regulate the taxes. Now, I believe that the PUC is a better body than a political body to make a tax change. I also believe that in the Committee I actually asked the question, "What happens if under this bill, could a company go ahead and jack up expenses to lower a tax liability, is that true or is it not true?" Well, of course it's true. And if it's true, not only for the evil company of Enron that everyone seems to be getting at, but if you read the *Wall Street Journal* today and you turn to the very back page, the editorial page, you'll look at somebody actually looking at Warren Buffett and saying Mr. Buffett are you playing games with the PUC and the Public Utility Commission in the attempt to buy out PacifiCorp? Look, Mr. President and members of the Senate, this is a very complicated issue. It's not just regulated by the Oregon Senate, it's regulated by the PUC, by FERC, by the SEC. It's the same speech I gave when we did the big political bill last month over PGE and who's going to own it. The fact of the matter is that we have a process in place. It's called the PUC. And I think the PUC should set rates, even if it's been political, if there's a tax loophole to tighten up. Absolutely, it should be done. That's the politics. But the reality is that I don't think you should do it for a quick hit in the newspaper and then jack up everyone's rates in the long term. So, Mr. President, I would urge a yes vote on the substitution and a yes vote here on the Minority Report.

President: Thank you Senator Atkinson and I want to apologize to you and the members of Senate for a visual aid being brought onto the floor without proper prior procedural approval. Recognize Senator Rick Metsger please.

Metsger: Thank you, Mr. President, and I apologize as well that we got a little ahead of ourselves, but ask that the visual could be shown, Mr. President, for my presentation.

President: You're now asking for?

Woman: Yes.

President: Senator Metsger has asked for unanimous consent from the body to allow a visual aid to be shown on the floor for purposes of his presentation. Senator Ted Ferrioli, for what purpose is your light on?

Ferrioli: Mr. President, because the visual aid was presented during the middle of a floor speech on another bill, I would object to the use of that aid on the floor.

Metsger: But that wasn't...

President: Then we do not have unanimous consent.

Ferrioli: Mr. President, that was a distraction to our speaker, and I...

President: Mr. Ferrioli, I'm going to rule that because we obviously do not have a unanimous consent, there's an objection filed, the visual aid will not be allowed to be used in your presentation, Senator Rick Metsger.

Metsger: Thank you, Mr. President.

President: Thank you.

Metsger: Well, ah...

President: Excuse me one second. Senator Ryan Deckert your light is on, is it for any point of personal privilege or is it simply waiting to speak. Alright, I didn't mean to interrupt Senator Rick Metsger, but lights are coming on at different times, I apologize to you, I'm just trying to procedurally make sure I don't make a mistake any more so than I usually do. Alright, now, we will now recognize Senator Rick Metsger please.

Metsger: Thank you, Mr. President, and that's actually a very good entrée into a very brief presentation I will make regarding the Minority Report, and we'll talk more about the Majority Report when it is appropriate. The motion on the floor is to substitute the Minority Report and colleagues, the reason this is an extremely bad idea, and what the visual shows is that every day in Oregon over \$500,000 is collected from taxpayers in this state, most of which does not go to benefit the state or the businesses or the individuals who pay that. Most of those monies go elsewhere, parts unknown. The Minority Report seeks to ask the Portland, I mean the Public Utility Commission to continue to study the evasion of the responsibilities of energy utilities to use the tax monies which the government allows them to collect from our pockets, for liabilities that for the most part do not exist. It asks the Public Utility Commission to study an issue that the legislature has already asked the Public Utility Commission to study, which they did, involving all of the stakeholders, and they issued that report in the spring of

this year to the legislature, to the Senate Revenue Committee. Colleagues, they did the study, they presented their report, they presented their findings and that was, in essence, the original substance of what was Senate Bill 171 of which then the utilities opposed and most of the people on this floor felt it was not a good piece of legislation. That *was* the report. That *was* the study. As the chairman of the Public Utility Commission told me yesterday when I talked about the Minority Report study it was very short. Well, we've been there, we've done that. Anything else and what they say in that report is, you know, we need legislative guidance. When we get to the Majority Report, you will see that will be the legislative guidance. But colleagues, it is unjustified to allow taxpayers in this state to pay hundreds of thousands of dollars every day with no accountability for the liabilities in which those taxes have been collected. It is time to solve this issue. It is time to put those dollars back in the pockets of the businesses and the customers that pay them, if in fact they are not the liabilities of those utilities. We have no choice. The lights are going to go off if you don't pay that bill. And the government allows the utilities to collect a liability and if that liability does not exist, that is not fair, it is not just, it is not reasonable, I urge a no vote on the Minority Report.

President: Thank you Senator Rick Metsger. We'll now recognize Senator Ryan Deckert.

Deckert: Thank you, Mr. President. Study this? Study this issue? Mr. President, we have been looking at this issue for three years now and the PUC looked at it for two years and they told us what we have had almost near unanimous opinion that in no shape or form should the taxes that we pay that are embedded in our rates actually not go either to the Oregon Treasury or into decreased rates. And I think that's the key question here is the reason that all of the consumer groups, whether it's the smallest consumers or the biggest companies in Oregon, support this is because they're willing to take that risk. They're willing to take the risk with this bill and say that Senate Bill 408, that on par we know there's downward pressure on rates if we get a more accurate depiction of the tax situation of our customers and whether that's Intel or that's Senator Bate's home, you don't live in PGE territory, yeah, Ryan Deckert's home. But Mr. President, to me this is a clear issue. And actually the one misnomer in this whole debate has been that somehow the utilities are at fault here. Because I don't blame the utilities, I don't blame the PUC, this is a question for the Oregon Legislature. It's a fundamental question because we write the tax laws. This is our first attempt to actually correct those tax laws. The PUC has no jurisdiction over the tax laws of Oregon, the utilities are simply doing what they ought to do which is comply to the tax laws that we write, this is our opportunity to actually fix a problem that everyone I've talked to has been unanimous on. We ought to fix it. Taxes that are paid should go to the rightful place – either the consumer's pocket or the Oregon Treasury. And so this is the one attempt, voting no on this to put it off for two more years, I think is a

deflection of the issue. This is the one bill that we've had before us that actually gets at the heart of the problem which is where we've all agreed we're going to do something, and so I commend the authors of this legislation and would strongly urge that this has been something that has received more diligence and investigation than just about any tax issue that I'm familiar with, Mr. President, thank you.

President: Thank you Senator Ryan Deckert. Recognize Senator Vicki Walker please.

Walker: Thank you, Mr. President, I just wanted to briefly respond to a couple of the carriers' comments that I believe are a different interpretation so I'll get to that in a moment and my colleagues have indicated that the PUC did develop a white paper, it's on their website. It had comments by several, six regulated utilities and four customer groups, and they made that white paper available to several Committees. So, Mr. President, this has been studied to death. What I would like to enlighten my colleagues about is the carrier of the bill said what happens if a company jacks up expenses and lowers the tax bill. Well, colleagues, the PUC looks at those issues in a rate case, and they review those expenses and they're not going to allow that, and there's also, well I'm not going to get to that in the Majority Report, but there is provision for the PUC to do that. Secondly, this bill does not affect taxes, colleagues, it only affects the way we collect those taxes. So, that's the argument there, and the PUC still has full ratemaking authority. This bill does not infringe on the PUC's ratemaking authority at all. So I would just like to make those comments for the record and say the rest of my comments later. Thank you.

President: Thank you Senator Vicki Walker. Is there further discussion on the Minority Report which is now before the body? Senator Jason Atkinson, you're closing on the Minority Report.

Atkinson: Thank you, Mr. President. You know, there's some good points that are made here. I will say that I hate task forces and study groups and work groups, but you know what, I even don't, I don't like cruddy politics either. And the fact of the matter is is that we can't get the true up, we can't get something fair past this building and headed over to the House. In the entire session I've been saying that I do not like to do things half. Where you do things a little bit political or you keep an issue alive and you move it over to the House and you make it easy for someone in the House to vote yes or vote no or whatever. I took an oath of office to the Senate and I don't believe that there is enough in the Majority Report that takes away alleviations of my concern that when you're tinkering with one element of something in a regulated rate case at the PUC, you're not in turn going to have unintended consequences of jacking up the rates. Now that's kinda complicated. That actually doesn't sell very well. That's not a very good little sound bite to get something in the newspaper, but the fact of the matter is is this is a very cumbersome, difficult issue. I want that loophole closed

up. I think, I think Senator, ah, the Senator from Sandy said it the best when he said, you know, ratepayers are paying things and they don't know where their taxes go. Oregonians are paying things to this Senate and we don't even know where the tax money is going. That's a brilliant point. Maybe we should make that comment apply to the rest of taxes that are paid in the state of Oregon. I would urge that the Minority Report be substituted for the Majority Report and that we actually try to take the politics out of this, and do get these taxes trued up, and also trued up with expenses. You can't have it both ways, and so what I would urge is that we can actually get an entire policy that fits not only the ratepayer but also our utility companies.

President: Thank you Senator Jason Atkinson.

Brown: Call it to the Senate, Mr. President.

President: Senator Kate Brown has demanded a call to the Senate, and she is joined by Senator Richard Devlin and Senator Avel Gordly. The doorkeepers will bar the doors, the Sergeant in Arms will attend, and the clerk will please call the roll.

Clerk: Atkinson.

Atkinson: Here.

Clerk: Bates.

Bates: Here.

Clerk: Beyer.

Beyer: Here.

Clerk: Brown.

Brown: Here.

Clerk: Burdick.

Burdick: Here.

Clerk: Carter.

Carter: Here.

Clerk: Deckert.

Deckert: [Inaudible.]

Clerk: Devlin.
Devlin: Here.
Clerk: Ferrioli.
Clerk: George.
George: Here.
Clerk: Gordly
Gordling: Here.
Clerk: Johnson
Johnson: Here.
Clerk: Kruse.
Kruse: Here.
Clerk: Metsger.
Metsger: Aye.
Clerk: Monnes-Anderson?
Anderson: Aye.
Clerk: Morrisette.
Morrisette: Aye.
Clerk: Morris.
Morris: Here.
Clerk: Nelson.
Nelson: Here.
Clerk: Prozanski.
Prozanski: [Inaudible.]
Clerk: Ringo.
Ringo: Here.

Clerk: Schrader.
Schrader: Here.
Clerk: Shields.
President: Everybody thinks...
Clerk: Shields.
Shields: Here.
Clerk: Starr, B.
Starr, B.: Here.
Clerk: Starr, C.
Starr, C.: Here.
Clerk: Verger.
Verger: Here.
Clerk: Walker.
Walker: Here.
Clerk: Westlund.
Westlund: Here.
Clerk: Whitsett.
Whitsett: Present.
Clerk: Winters.
Winters: Here.
Clerk: President Courtney.
Man: He is here.
President: Alright, all those subject to the call are now present. We are voting on the substitution of the Minority Report as presented by Senator Jason Atkinson, the substitution of the Committee Report for Senate Bill 408. All those in favor of substituting the Minority Report will vote aye as your names are called, all those opposed will vote no. The clerk will please call the roll.

Clerk: Walker?
Walker: No.
Clerk: Whitsett?
Whitsett: [Inaudible].
Clerk: Winters?
Winters: [Inaudible.]
Clerk: Atkinson?
Atkinson: Yes.
Clerk: Bates?
Bates: No.
Clerk: Beyer?
Beyer: Aye.
Clerk: Brown?
Brown: No.
Clerk: Burdick?
Burdick: No.
Clerk: Carter?
Carter: No.
Clerk: Deckert?
Deckert: No.
Clerk: Devlin?
Burdick: No.
Clerk: Ferrioli?
Ferrioli: Aye.
Clerk: George?

George: Aye.
Clerk: Gordly?
Gordly: No.
Clerk: Johnson?
Johnson: No.
Clerk: Kruse?
Kruse: Aye.
Clerk: Metsger?
Metsger: No.
Clerk: Monnes-Anderson?
Anderson: No.
Clerk: Morrisette?
Morrisette: No.
Clerk: Morris?
Morris: [Inaudible.]
Clerk: Nelson?
Nelson: Aye.
Clerk: Prozanski?
Prozanski: No.
Clerk: Ringo?
Ringo: No.
Clerk: Schrader?
Schrader: No.
Clerk: Shields?
Shields: No.

Clerk: Starr, B?

Starr, B.: [Inaudible.]

Clerk: Starr, C?

Starr, C. [Inaudible]

Clerk: Verger?

Verger: No.

Clerk: President?

President: No.

Clerk: Voting no: Bates, Brown, Burdick, Carter, Deckert, Devlin, Gordly, Johnson, Metsger, Monnes-Anderson, Morrisette, Prozanski, Ringo, Schrader, Shields, Verger, Walker, President Courtney, 12 aye votes?

Woman: [Inaudible.]

President: She voted yes.

Clerk: 13 aye votes.

President: The Minority Report has failed. In accordance with SR 8.602 the Senate will take action immediately on the third reading of Senate Bill 408 as amended by the Committee Report. The clerk will read the bill.

Clerk: Senate Bill 408 relating to rates of public utilities.

President: And now I'll recognize Senator Vicki Walker please.

Walker: Thank you Mr. President. I asked Legislative Counsel in May over a year ago to draft a bill to correct this problem. I got the bill back in November and introduced it this session and we've worked it for the last six months. For several years the large electricity and gas utilities regulated by the Oregon Public Utility Commission have been charging the Oregon ratepayers hundreds of millions of dollars for state income taxes and federal income taxes that have not in fact been paid to any government entity. Currently, the best available estimate of these charges to Oregon ratepayers is \$150 million per year. Know colleagues that I'm kind of putting income taxes in quotation marks because the utilities claim to be charging ratepayers for income taxes, but in fact the charges do not go to any government. In their rate case filings to the PUC, the utilities list all of their expected costs to be recovered in customers, from customers in the rates they charge. These include salaries, maintenance, office rents, and

estimated future state and federal income taxes. The estimates are not based on any review of the utilities' actual tax payments, instead the nominal income tax rate is merely applied to the utilities' estimated net income. For example, if the rates are designed to earn PGE \$200 million in net income per year, then the amount included in rates to pay PGE's federal income taxes is \$70 million because that is \$200 million times the nominal federal income tax rate of 35%. Does that sound complicated? It does. This bill often has been claimed to be too complicated to understand but I don't think it is. Because what the utilities actually pay in income taxes could not be more different from these estimates. Since being acquired by Enron in 1997, we know that PGE charged Oregon ratepayers over \$750 million for state and federal income taxes that in fact neither PGE nor Enron paid to either the state or federal government. We know that PacifiCorp charged Oregon ratepayers over \$88 million for state and federal income taxes in 2002, but they paid the state only \$10. That fact rather strongly implies that PacifiCorp has paid the government little or nothing in federal income taxes that year because state income taxes are based on federal taxable income. Just like you and I fill out your tax return at home. The regulated utilities do not disclose their federal and state income tax filings and their annual reports filed with federal agencies do not report the amounts they actually pay to governments for income taxes. So we can't provide complete documentation on the size of this loophole. But it's fair to say that Oregon ratepayers over the past eight years have certainly paid to these utilities over \$1 billion for federal income taxes and state income taxes that have not been paid to any government. How do utilities get away with this despite their very large net incomes? That's because most of these utilities are corporate conglomerates and do not even file their own tax returns. The returns are filed by their corporate parents, such as Enron, which deducts billions of dollars in alleged losses experienced by the corporate parents and affiliates through their subsidiaries in the Cayman Islands or equally attractive business locations. But even when the utilities are not consolidated, colleagues, they are not paying in income taxes anything close to what they are charging the ratepayers. PGE was not even consolidated with Enron during 2002 and for that year PGE reported \$66 million of net income and charged Oregon ratepayers \$93 million for its federal and state income taxes, but in reality PGE paid only the minimum \$10, far less than the \$1 million they collected. So the filing of consolidated corporate income tax returns is part of the problem but not the whole problem. The Oregon Department of Revenue reported to the Committees, the Revenue Committee, the Business Committee, that during the years 2000 to 2003, the six largest regulated energy utilities paid in the aggregate for all of them, between 1.5 and 5 million dollars per year in state income taxes. However, we know from PUC rate schedules that these utilities charged ratepayers about \$30 million for state income tax in each of those four years. So about 90 cents, colleagues, 90 cents of every taxpayer dollar paid for state income taxes is simply retained by the utility or its parent

corporation and not paid to the government. The utilities are using the mere existence of income taxes as a profit center, charging these unpaid income taxes to ratepayers has the effect of increasing utilities' rate of return on investment far beyond a reasonable level. This scam is also running on the local level as the utilities that operate in Multnomah County are charging ratepayers there well over \$2 million per year for the Multnomah County Business Income Tax, while not actually paying those amounts to Multnomah County. Senate Bill 408 will do away with this scam.

In 19 states that we know of, the public utility commissions have taken actions to stop utilities from charging ratepayers for income taxes the utilities actually do not pay. We have found numerous court decisions upholding these adjustments and no court decisions which have found such adjustments invalid. Senate Bill 408 was drafted by our very own Legislative Counsel Dexter Johnston who is sitting here with me today and he spent many late nights here at the Capitol as did I and Senator Metsger, working on this legislation. It has, the bills had input from the Attorney General's office, the PUC and several customer groups.

Senate Bill 408 requires each regulated utility, except the water utilities, to file an annual tax report with the PUC stating the amount of income taxes actually paid to government by the utility or by its consolidated group and properly attributed to the utility. If the Commission finds that the amount of income taxes actually paid is different than the amount of income taxes charged to ratepayers, then it shall create what's called an automatic adjustment clause in utility's rate structure so that charges to ratepayers for income taxes are no more or no less than the taxes actually paid to the government entities. Because most of these utilities are consolidated with their corporate parents for income tax purposes, it is important that the Commission not allocate to the utility, credit for income taxes paid to the government by the consolidated group, that is more than the amount of income tax payments properly attributed to the utility. Senate Bill 408 also does not change, does not change, how the PUC handles what is called deferred income taxes. These are income taxes to ratepayers that are not currently paid by the utility because for tax purposes the utility is allowed to take accelerated depreciation on assets. But these taxes are in fact later paid by the utility when the accelerated depreciation is reversed. During that time that the utility holds the deferred income taxes already paid by the ratepayers, that amount is deducted from the utility's rate base. When the utility actually pays those income taxes to government, ratepayers are not charged again. Section 3, sub 6 of the bill allows the Commission not to implement an income tax automatic adjustment clause for a utility only if it determines that it would cause a material adverse affect on customers of the public utility. The bill will not allow the PUC to rescind or not implement the automatic adjustment clause unless the PUC finds in an evidentiary and contested case hearing, that it would cause material adverse effect even considering the huge savings to ratepayers. Colleagues, then the material

adverse affect clause will be defined in a public hearing process so that everyone has input on what that actually means. Section 3, sub C, defines tax so that the utilities get credit only for the income taxes they actually pay to government and do not later get back in the form of refunds. In the late 1990s, Enron did pay some federal income taxes but later amended, filed amended returns and got refunds that brought their net amount down to zero. A mere temporary payment of income taxes to government does not justify permanently charging that amount to ratepayers. Section 5 of the bill applies these same principles to the utilities that file alternative forms of regulation plans. The remainder of the bill has technical provisions necessary to make other statutes consistent. It has an emergency clause so we can stop this scam immediately upon passage and signature by the governor, and the bill requires the PUC to establish the automatic adjustment clauses within 90 days of following the filings of the tax reports. Colleagues, I know it's been a long explanation, but I needed to put down some legislative history about this bill and how we got there. Utility rates should be based on the lawfully recognized costs of providing utility service to the customers. Income taxes are lawfully recognized costs only to the extent the claim amounts are actually paid to the appropriate government. We cannot allow the utilities to continue this scam. It's a legitimate scam right now, and we need to put a stop to it. And it's legitimate only because there's a loophole in the law, and colleagues, that's what we're here to do. We fix loopholes in the law. We fix problems. In just the past week, Senate Bill 408 has been endorsed by the *Oregonian*, the *Statesman Journal*, the *Albany Democrat Herald*, joining the earlier statement of outrage by the *Daily Astorian*. It is supported by all the major customer groups and business groups and I doubt, I seriously doubt if you have received one email, one phone call, or any letter from a ratepayer asking you to let this scam continue. Because colleagues, Senate Bill 408 will most likely reduce PGE customers' electricity bills by about 7% and other utilities by comparable or somewhat smaller percentages. The *Oregonian* editorial of June 2 said it best and I will close with that comment. "The time has come for Oregon legislators to close an indefensible loophole in the law saving ratepayers an estimated \$180 million annually and sending a long overdue message to the utilities, true up." This is your true-up bill, colleagues. This is a bill to take home and be proud of because you have saved business, end customers, residential customers alike a heck of a lot of money. Thank you.

President: Senator Vicki Walker, and now I recognize Senator Roger Beyer.

Beyer: Thank you Mr. President, to the bill.

President: To the bill.

Beyer: Thank you. Colleagues, no one supports utilities collecting taxes and then not paying them to government and we all want that to not happen. But I

don't think one, this bill is necessary and, two, it's a good or the best public policy to fix that. The reason I don't think it's necessary is if you look at current statute ORS 757.210, which states, and I'm not going to read the entire statute, but in part, the heading of the statute is hearing to establish new schedules alternative regulation plan. Under this statute whenever any public utility files with the PUC or any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the Commission may either upon written complaint or upon the Commission's own initiative after reasonable notice conduct a hearing to determine the propriety and reasonableness of such rate or schedule. The statute goes on to say that the Commission shall conduct a hearing upon a written complaint filed by the utility, its customer or customers or any other proper party within 60 days of the utility's filings and provide that no hearing need to be held in the particular rate change. And I'll skip a couple sentences and then it goes on. We have now amending the statute, it says that the term automatic adjustment clause, this is current law, means a provision of a rate schedule would provides for rate increases or decreases or both without prior hearing reflecting increases or decreases or both of costs incurred or revenues earned by a utility. Colleagues, the PUC already has the authority to do this. We don't need to put the term which is being added to this section "taxes actually paid to units of government". The PUC already has the authority if a customer or a group of customers files a complaint with the PUC, they have the authority today without changing the law to review. For that reason I question why do we need to change this? Because the authority is already there. In fact, we have a case in front of PUC right now, I understand, in dealing with this issue.

The second issue is whether or not this is the best public policy to keep utilities from collecting taxes that they're not paying. I don't believe it is. And there's a couple of reasons I don't believe it is. One is that first and foremost the utilities do not pay the taxes. You and I and the other consumers of the utilities are paying the taxes. These are passed through as costs. So, the only and the best and the fairest way to stop this practice is to quit authorizing these charges, i.e., quit taxing the utilities. This is just a tax on rate payers. It's a tax on you and I and all the other consumers and industries that use electricity and gas for these six regulated utilities. The solution here is not to true-up the taxes. The solution here is to not collect the taxes or not attempt to collect the taxes and allow the utilities to pass that cost on. That is the only fair solution. This is not a tax on utilities. This is a tax on us. So, we are allowing the Public Utility Commission to tax ourselves. There's no need for that. Eliminate the tax on utilities and they will not have the need to pass on that cost. That is the fair solution to this issue.

The other concern I have on this bill, the carrier spoke of it. It is section 3 sub 6. If the Commission determines that implementing an automatic

adjustment clause under subsection 3 of this section would have a material adverse effect on the customers of a public utility, the Commissioners may not require the utility to implement the clause. Well, colleagues, that only works one way. That means if the costs to the customers is going to increase because a utility actually paid more taxes then they were correcting the PUC and we don't know what material adverse effects on customers means. That's an undefined term. But, if the PUC determines that material adverse effect on customers would be too great, they may not require the utility to raise their rates. So, while the proponent's of the bill are saying this is an automatic adjustment clause either way, subsection 3, sub 6, is an out for the rate payers. But there's not an out for the utility. So, colleagues, I agree that we do not want the abuses of Enron in the past where they pay \$10 and collected \$180 million. That is completely inappropriate. We all agree to that. But, I don't agree that this bill is the best public policy to get us there. There are outs for the customers, not for the utilities, the PUC already has the authority to do this if they would exercise to do so without this bill, and it's clearly just a tax on us. Quit collecting the tax, quit allowing the utility to charge a tax in their rates, and the problem will be solved. I urge a no vote.

President: Thank you, Senator Roger Beyer and Senator Jeff Cruise, Senator [inaudible] for yielding her time to Senator Vickie Walker. I now recognize Senator Gary George, please.

George: Thank you, Mr. President. Concerned about a couple of comments that were made during the presentation. Would the carrier yield us some questions?

President: Would the carrier yield, please?

Walker: Yes.

President: The carrier will yield.

George: In the workgroup that developed the Majority Report, the question I had is was the PUC involved? Was the Department of Justice and were the regulated utilities involved?

Walker: Thank you, Mr. President, Senator. We had several hearings where the utilities had input on this bill. As you know, we had Senate Bill 171 and Senate Bill 408 trading back and forth. Often the utilities would not even come up to the dias and had to be called to the dias, but they had input there. During the work group we excluded the utilities from participating in writing the legislation because they had their opportunity at the public hearing to appear and you don't write good legislation with the foxes in the henhouse. We had input from the PUC and from the Attorney General.

George: A follow up question?

President: Will the carrier yield to another question?

Walker: I will.

President: The carrier will yield.

George: Had the PUC and the Justice Department requested the bill?

Walker: Mr. President and to the good Senator from Yamhill County, I believe, the answer is no, they did not request the bill. I drafted the bill, it was at my request, and the PUC came in with a white paper during a session indicating it had some concerns and that's why they drafted the white paper. But the bill was already drafted at my request.

George: And now that leads to the final question, Mr. Chairman, if she will yield.

President: Would the carrier yield to another question?

Walker: I will.

President: The carrier will yield.

George: Thank you. My understanding of the white paper that was presented by the PUC is that we'll be the only state that will be treating the utilities in this way relative to the tax, tax disclosure, tax regulation. That we would be the only state treating regulated utility taxes this way?

Walker: Mr. President, I need to consult with Legislative Counsel before I answer that question. Thank you, Mr. President, for that moment, and to the good Senator, there are 19 other states where public utility commissions have taken action to change the way rate payers are charged for income taxes. Whether those other 19 states have the same treatment that we do, I cannot answer that question, but I know they have some treatment method.

George: Thank you. To the bill. Mr. President, I'm very concerned about the fact that, you know, we're taking a major step here. We've, to a certain extent, accused the PUC of being inept and maybe perpetrating or allowing a scam to continue and I have never seen it that way. And, as a person who's paid those taxes to PGE that did not get paid, I still will say that we have regulators in place that I trust and I believe they are totally capable, particularly with the scrutiny that's gone on relative to the failure to pay those taxes, that they will make these adjustments. So, therefore, I am very much concerned about the idea that we will enter into that discussion and place ourselves in the position of telling them what to do, when in fact we have allowed them to make those decisions. So, with that, because of that, I personally believe that other states do not regulate in this way, that there is the authority within the PUC to regulate them properly, I'm going to urge a no vote on this.

President: Thank you, Senator Gary George. Recognize Senator Bruce Starr.

Starr: Thank you, Mr. President. To the bill.

President: To the bill, Senator.

Starr: Colleagues, I have very serious concerns about this piece of legislation. I think that the law of unintended consequences is in play here big time. I think there's very few of us who really understand the PUC rate making process. There are certain and specific things that this legislative body delegates to state agencies, and that's what the PUC does. They're the ones who set the rates. They're the ones that regulate the utilities. And I'm concerned that this bill, we as a legislature, step back into that role. If we want to be that rate making body, maybe we should take that authority back from the PUC. I think that that is a huge issue and I think that this is one that we really don't have all the facts. And I think it's an easy one to politicize and demagogue on. I'm also, it's very interesting to me that the payers of the taxes are willing to kind of role the dice here with those unintended consequences. And I think that that is one that's very interesting to me. These are the same folks for the most part that play a significant role as interveners in these rate cases and for them to come here to the legislature and ask for this in pretty much unanimity as all of the customers of the utilities, I find that to be greatly interesting. And I think that the issue that the senator from Molalla identified as the one way street as it relates to the truing-up is maybe the reason why the customers are all lined up behind this bill. As a senator that represents Washington county that has the largest customer, I think it's PGE's largest customer is in my district, and they happen to be one of the customers who's very supportive of this legislation. Kind of puts me in a bit of a predicament, quite honestly. And I think that as a legislator, even one who has some serious concerns about this bill and its unintended consequences and also the process by which we are here today, the senator from Yamhill County asked about the work group and asked about who was involved. Well, all we heard about in Committee was, you know, the email lines that were going on all weekend long behind the scenes and everybody, you know, emailing one another back and forth. And I think that was a process that could have been more open and more public and had more opportunity for the utilities to play a role in coming to a solution here. Colleagues, I think that I understand what's the process here. I understand that this bill's going to move to the house and I expect in the house side, if this bill is to move forward, that it's one that will be done in a way that has a more inclusive conversation and would include the utilities' playing a role in that conversation. Colleagues, I'm torn by this. I think the underlying policy everybody pretty much agrees upon. I think that the taxes that the utilities owe, they pay. There's no question that they pay the taxes that they owe. The question is on as it relates to the rate making process, you know, the ability to collect those in the rates, and that rate process is a snapshot, and obviously things change

and I think as you look at truing-up, you ought to look at the entire cost structure that goes into the utilities as they have to determine where they invest and when they invest and the kinds of things that they invest in. And then I think that issue of unintended consequences is at play here. If we pass this bill, do we lose an opportunity to have a utility to invest in our state, as opposed to another state where they're doing business. I think that that is a risk that we have on the table with the passage of this bill, and I'm concerned about that. So, colleagues, I just ask that we contemplate this carefully. I'd love to put the politics aside, the sound bite kinds of things that can be said about this bill, and I'd ask that we look at this in maybe a more concrete and comprehensive manner. Thank you, Mr. President.

President: Thank you, Senator Bruce Starr. I recognize Senator Ted Ferrioli, please.

Ferrioli: Thank you, Mr. President. Mr. President, I would request that the carrier yield to a question.

President: Will the carrier yield?

Walker: Yes, Mr. President.

President: The carrier will yield.

Ferrioli: Thank you, Mr. President. Mr. President, I thought I heard the carrier indicate that a yes vote would create a situation that would end up in a rate reduction. I would like to ask specifically if I vote yes on this bill, am I voting for a rate reduction?

Walker: Mr. President and the good senator from John Day, I would anticipate that that would be one of the results of this bill because we would see taxes actually paid to the government entity and rate payers will not be stiffed anymore for what's been happening to them for several years. So, I would think that the rates would be reduced in that respect. And I would also comment that it does not apply retroactively. We made it very clear that this bill does not go backwards, this bill only goes forward.

Ferrioli: Mr. President, another question please to the carrier?

President: Would the carrier respond to the question?

Walker: Yes, I will.

President: The carrier will.

Ferrioli: Mr. President, the good senator from Molalla testified that the Public Utility Commission already has the authority to make these specific rate adjustments. I'd like to ask the carrier if she agrees with that statement.

Walker: Mr. President and to the good senator from John Day, the Public Utility Commission has the ability to implement an automatic adjustment clause, but currently the statute is permissive. This bill will require the PUC to implement the automatic adjustment clause. That would be one of the differences and there is one more, if you'll hang on? And the other part to that, I'm so glad Legislative Counsel is here, is that for an automatic adjustment clause they have to have a hearing on the material adverse impact and that is a public hearing. The utilities, the customers, anyone who actually wants to talk and come to the public hearing, so that is how we protect both utility and the rate payer.

Ferrioli: Mr. President. To the bill.

President: To the bill, Senator.

Ferrioli: Mr. President. Like everybody else, I like to feel good about actions we take on the senate floor, and I've been told that this is a vote for a rate reduction. That's what I heard here. And I think the yes vote is very definitely being connected with that idea. It would be interesting to watch how this rolls out in the future, whether or not this vote does create some good feelings or actually causes a rate reduction. And I hope people will pay attention at the end of the day as this bill moves forward. I find it difficult to reconcile the idea that the Public Utility Commission, which already has this authority and has never used this authority will be motivated to use this authority if the bill passes. But, I did not hear an answer to the question that the authority already is vested. I heard this discussion about permissive versus mandatory. I would suggest that those of us that want to feel good about confirming the Public Utility Commission's authority to make rate adjustments would be very comfortable voting yes for this bill. I believe that it will be very interesting to watch the accountability process work if we vote yes for this bill and we don't see a rate reduction. Mr. President, I urge my colleagues to vote their conscience on this bill, but I heard the senator from Molalla loud and clear indicate that the Public Utility Commission already has the authority to make these kind of rate case adjustments and they can be petitioned by a member of the public, by the public utility that are regulated, I'm sorry, by the regulated utility, by anyone who wishes a rate case question, that can already be brought, that that authority is clear from the section that was read on the floor. Mr. President, feel good bill, great politics, have a good time with it. Thank you, Mr. President.

President: Thank you, Senator Ted Ferrioli. Recognize Senator Dave Nelson.

Nelson: Yes, thank you, Mr. President. The question to the carrier, please?

President: Will the carrier answer a question, please?

Walker: Yes, Mr. President.

President: The carrier will.

Nelson: Thank you. I appreciate all the hard work you've done. I've been reading some of the material in my file and the term has come up. It's called Internal Revenue Service Normalization Requirements. Could you discuss, was this issue raised in the Committee and what is the effect upon the bill?

Walker: Yes, Mr. President, I'm glad you asked me that, Senator. If the IRS has a different opinion of what we're doing here, then the PUC does not have to implement the automatic adjustment clause. That's what we've taken care of, that's what we've been talking about here, and so in lines 34 through 36 of the bill, we have the automatic adjustment clause provision, so if the IRS has a different opinion, we just don't change anything.

Nelson: Yeah. To the bill. Seems to me that there's an issue, at least the other side of this bill is saying, well, there is some problems, they don't agree with what our counsel has said. I think we're buying a lawsuit. Not only are we talking about some of the constitution issues as brought forth by other members here, we're also talking about components of the Internal Revenue Service which is very complex. You have a bill here that is going to forward the reporting and then potentially looking back. To me this is very complex and I would agree with the Senator from Hillsboro, who indicated this is far too complex for us to be making a yes vote on. I will be voting no on this bill. Thank you.

President: Thank you, Senator Dave Nelson. Further discussion? Recognize Senator Ginnie Burdick.

Burdick: Thank you, Mr. President. I wish to disclose a potential conflict of interest because the company I work for in my private life has PGE as a client.

President: Thank you. Your potential conflict of interest is noted for the record. Now recognize Senator Rick Metsger for the closing.

Metsger: Thank you, Mr. President, and thank you, colleagues, for the discussion today. As I close, and I know we'll probably be closing to lunch, so I'll try to address a few of the key points that have been brought up today, and we move forward on this piece of legislation. First of all, a couple of things to clarify. I think other than Senate Bill 622, of which I worked on with the good senator from Pendleton in the 1999 session, I have never participated in a bill that received more public hearings and testimony in this entire legislature. This went through two different Committees, almost a dozen public hearings and discussions between those over a four and a half month period, in which everyone, all stakeholders were involved. The fact of the matter is regarding the questions of the utilities, and I think the good Senator from Eugene pointed this out, in most cases, most Committees,

refused to sign up to even testify. They had to be pulled and dragged by the Chairman of Revenue or the Chairman of Business and Economic Development to comment on the piece of legislation. And the reason is very clear: they don't see any need to change. Now, they don't want to work on anything because they don't want the status quo to change, and that's what we're talking about.

A couple of issues were brought about other states, and I wanted to talk a little bit about that. There are other states that take into account the taxes. Connecticut, this is from the Public Utility Commission in their white paper and their investigation. The study that was done. Connecticut, Florida, Indiana, Pennsylvania, Tennessee, Virginia and West Virginia, report that they do consider the savings from the consolidated returns and recognize those for the rate making purposes. Additionally, the Pennsylvania PUC, consistent with the state supreme court decisions, applies this same actual taxes paid standard by including a utility's share of federal taxes benefits when they do set the rates. Now, in Oregon, why do we have a situation in Oregon that's a little more difficult? Well, one of the major reasons is we're an income tax state. That's why, and that's why these taxes are paid and for the most part not delivered to the units of government. In other states, for example, our neighbor Washington, because they don't have the same tax structure, they levy a gross receipts tax. And so those utilities, they can't escape that through the income tax manipulation of affiliated groups. And so those taxes are paid. But because Oregon is an income tax state, that's where the loophole comes in. That's where the loophole is contained in terms of paying taxes to some unit of a corporation and then not forwarded on to a unit of government and that's why we have a particular problem here in the state of Oregon. And it has been addressed in those other states such as Pennsylvania and West Virginia where this has also been an issue. Vermont has recently passed a piece of legislation that has yet to be implemented also dealing with this issue.

The good Senator from Molalla talked about, well, why don't we just relieve them from paying taxes, you know, and that's a good idea. The problem is we can only do that on the state level, and 70 to 80% of the dollars that are coming out of businesses and customers' pockets are federal taxes and we can't control that issue. But, certainly looking at a gross receipts tax instead of a state would be another possibility, and we did, in fact, look at that. But how do we solve the problem in the rate making process for all those federal taxes that don't exist. We talked about the PUC authority. The good Senator from Molalla also asked about the PUC authority on the automatic adjustment clause. And I think the Senator from Eugene covered that in the question, but let me make one thing clear: they can, they have permission to make adjustments of all types of rates. The problem is, that doesn't happen with taxes, and the reason is that also under the PUC regulation, the way taxes are set are what the utility quote pays, not pays to government, but they're looked as a standalone utility. And so

for many years, PGE says we paid \$80 million in taxes, and they did, but they paid it to themselves. They paid it to Houston, or they paid it to Glasgow, if you're in case to PacifiCorp. So, in the narrow-minded look in what the authority the PUC has, they say, yeah, did you PacifiCorp, did you PGE, pay tax, and they will say, yes, and so there's nothing to adjust. The problem is that they didn't pay the tax to government. This clarifies that it must be to units of government and that's why we need legislation.

Another question was asked, did the PUC ask for this bill? No, they didn't ask for the bill, what they asked for was legislative guidance, and that's what this bill is: the legislative guidance to make this situation change. Finally, I think it's really, really important when we talk about are there going to be reductions in rates. First of all, I'm going to go back to three words I talked about in the Minority Report. This is what this is really about: it's about fair, just and reasonable. And you'll see those three words throughout this bill. This isn't about cutting taxes. It isn't about paying the government, although either of those situations are likely to occur in different years. The question is, is it fair? Is it just and is it reasonable to all parties concerned? That's what this piece of legislation does. In all reality, in the first year that this goes into effect, there in all reality will likely be a big tax reduction for businesses and customers. Yes, because they're going to look at the last three years in setting an automatic adjustment for the very first year going forward, and if, in fact, the taxes that have been embedded in rates the last three years were not paid to units of government, and there's a good indication that the majority of those were not, in all likelihood most customers throughout this state of these utilities will see a reduction. But going forward, being fair, just and reasonable, they should align side by side. If you have liabilities, you will be allowed to collect those from your rate payers. You can invest in anything you want to do under your regulated activities as a utility. You can deduct those costs on your taxes, and when you get to that bottom line, just like any other business does, and you know what your tax liability is, then you'll be allowed to collect that liability from the rate payers through the PUC process. It's fair, it's just, it's reasonable. This is a good bill for Oregon's economy and at one point was, I want to mention as I close, people talk about politics, I think this is really interesting, political. This bill is supported by Associated Oregon Industries, the Oregon Restaurant Association, the Northwest Industrial Customers. It's supported by CUB. These, I guess, are political groups. They're the people that run this state. These are the people that run the economy of this state and what they're asking for is fairness. You know, charge me for a real cost, please, but don't charge me for something that does not exist. And if we're going to infuse the economy of Oregon, it's not going to come by sending hundreds of millions of dollars to other states or other countries. That money needs to be in the pockets of Oregonians. It needs to be in the pockets of businesses in this state. The liabilities should be paid. Those that are not liabilities should be staying in this state, fueling this economy and the

taxpayers and the rate payers of this state. I urge, and I vote, and Mr. President, I ask for a call of the Senate.

President: Senator Metsger requests a call of the Senate joined by Senator Kate Brown and Senator Vickie Walker. The doorkeepers will bar the doors, Sergeant of Arms will attend. The clerk will please call the roll.

Clerk: Atkinson?

Atkinson: [inaudible]

Clerk: Bates?

Bates: [inaudible]

Clerk: Beyer?

Beyer: [inaudible]

Clerk: Burdick?

Burdick: [inaudible]

Clerk: Carter?

Carter: [inaudible]

Clerk: Deckert?

Deckert: [inaudible]

Clerk: Devlin?

Devlin: [inaudible]

Clerk: Ferrioli?

Ferrioli: [inaudible]

Clerk: George?

George: [inaudible]

Clerk: Gordly?

Gordly: [inaudible]

Clerk: Johnson?

Johnson: [inaudible]
Clerk: Kruse?
Kruse: [inaudible]
Clerk: Metsger?
Metsger: [inaudible]
Clerk: Monnes-Anderson?
Clerk: Monnes-Anderson?
Anderson: [inaudible]
Clerk: Morrisette?
Morrisette? [inaudible]
Clerk: Morse?
Morse: [inaudible]
Clerk: Nelson?
Nelson: [inaudible]
Clerk: Prozanski?
Prozanski: [inaudible]
Clerk: Ringo?
Ringo: Here.
Clerk: Schrader?
Schrader? [inaudible]
Clerk: Schrader?
Schrader? [inaudible]
Clerk: Shields?
Shields: [inaudible]
Clerk: Shields?

Shields: [inaudible]

Clerk: Starr B?

Starr B.: [inaudible]

Clerk: Starr C?

Starr C.: [inaudible]

Clerk: Verger?

Verger: Here.

Clerk: Walker?

Walker: Here.

Clerk: Westlund?

Westlund: [inaudible]

Clerk: Whitsett?

Whitsett? Here.

Clerk: Winters?

Winters: [inaudible]

Clerk: President Courtney?

President: He's here. Laurie [inaudible] is here. Atkinson, is he here?

Woman: Yes.

President: All those under the call are now present. The question now arise, upon the third reading and final passage of Senate Bill 408A. Those who are voting that the bill should pass will answer aye when their name is called. Those opposed no. Clerk, please call the roll.

Clerk: Westlund?

Westlund: Aye.

Clerk: Whitsett?

Whitsett? Aye.

Clerk: Winters?
Winters: Aye.
Clerk: Atkinson?
Atkinson: [inaudible]
Clerk: Bates?
Bates: [inaudible]
Clerk: Beyer?
Beyer: [inaudible]
Clerk: Brown:
Brown: Aye.
Clerk: Burdick?
Burdick: [inaudible]
Clerk: Carter?
Clerk: Carter?
Carter: [inaudible]
Clerk: Deckert?
Deckert: [inaudible]
Clerk: Devlin?
Devlin: [inaudible]
Clerk: Ferrioli?
Ferrioli: [inaudible]
Clerk: George?
George: [inaudible]
Clerk: Gordly?
Gordly: [inaudible]

Clerk: Johnson?
Johnson: Aye.
Clerk: Kruse?
Kruse: [inaudible]
Clerk: Metsger?
Metsger: [inaudible]
Clerk: Monnes-Anderson?
Anderson: [inaudible]
Clerk: Morrisette?
Morrisette? [inaudible]
Clerk: Morse?
Morse: [inaudible]
Clerk: Nelson?
Nelson: [inaudible]
Clerk: Prozanski?
Prozanski: Aye.
Clerk: Ringo?
Ringo: [inaudible]
Clerk: Schrader?
Schrader? [inaudible]
Clerk: Schrader?
Schrader? [inaudible]
Clerk: Shields?
Shields: Aye.
Clerk: Shields?

Shields: Aye.

Clerk: Starr B?

Starr B.: [inaudible]

Clerk: Starr C?

Starr C.: [inaudible]

Clerk: Verger?

Verger: [inaudible]

Clerk: Walker?

Walker: Aye.

Clerk: President Courtney?

President: He's a yes.

Clerk: Voted no: Atkinson, Beyer, Kruse, Nelson, 26 aye votes.

President: Senate Bill 408A [inaudible] clear pass. The [inaudible] appointments requiring senate confirmation.

[End discussion of Senate Bill 408.]

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

June 30, 2005
3:45 P.M.

Hearing Room 357
Tapes 14 - 16
CORRECTED 09/14/05)

MEMBERS PRESENT: Rep. Rep. Wayne Krieger, Chair
Rep. Rep. Jeff Barker, Vice-Chair
Rep. Rep. Brian Boquist, Vice-Chair
Rep. Rep. Linda Flores
Rep. Rep. Greg Macpherson

GUEST MEMBER: Rep. Tom Butler
Rep. George Gilman

STAFF PRESENT: Janet Adkins, Committee Administrator
Patrick Brennan, Committee Administrator
Cletus Moore, Committee Administrator
Joe O'Leary, Counsel
Bill Taylor, Counsel
Sandy Thiele-Cirka, Committee Administrator
Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD: SB 591 - Reconsideration and Work Session
SB 1018A - Public Hearing
HJM 37 - Public Hearing and Work Session
SB 65A - Public Hearing and Work Session
SJR 34 - Public Hearing and Work Session
SB 408B - Public Hearing
SB 71A - Public Hearing

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.

TAPE/#	Speaker	Comments
TAPE 14, A		
003		Calls the meeting to order at 4:02 p.m. and opens a work session on SB 591 relating to pedestrians.
<u>SB 591 - RECONSIDERATION</u>		
008	Rep. Boquist	MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING the vote on SB 591.
		VOTE: 5-0-0
013	Chair Krieger	Hearing no objection, declares the motion CARRIED.
014	Rep. Boquist	MOTION: Moves to RECONSIDER the vote by which SB 591 was sent to the floor with a DO PASS recommendation.
		VOTE: 5-0-0
018	Chair Krieger	Hearing no objection, declares the motion CARRIED.
<u>SB 591 - WORK SESSION</u>		

- 018 Chair Krieger Opens a work session on SB 591.
- 019 Joe O'Leary Counsel. Explains -1 amendments to SB 591 (**EXHIBIT A**).
- 032 Sen. Rick Metsger Senate District 26. Testifies on the amendments which deal with the illegal transfer of property. Refers to letters from the Portland business community regarding the issue of panhandlers (**EXHIBITS B & C**).
- 053 Kevin Neely Department of Justice. Comments that the initial review of this amendment shows this is a defensible position dealing with conduct as opposed to speech.
- 067 Rep. Macpherson Describes an actual situation of receiving papers while double-parked on the street and asks if this would be a Class D traffic violation as proposed by the -1 amendment.
- 082 Sen. Metsger Responds it would be up to the discretion of law enforcement, but the main objective is to keep people from stopping in the middle of traffic and creating a hazard.
- 098 Neely Notes that the Attorney General has no position on the policy.
- 107 Sen. Floyd
Prozanski Senate District 4. Reviews the history of SB 591 and using the bill as a vehicle for the -1 amendment. Cites an issue with subsection 2 which could be challenged on a constitutional basis. Believes there is a fix under the disorderly conduct statute - ORS 166.025.
- 142 Sen. Bruce Starr Senate District 15. Agrees people panhandling at freeway entrances do create a hazard, but will leave a solution to the committee.
- 171 Sen. Prozanski Indicates they may have tried to move this amendment too quickly.
- 201 **Rep. Boquist** **MOTION: Moves SB 591 to the floor with a DO PASS recommendation.**
- VOTE: 5-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 211 **Chair Krieger** **The motion CARRIES.**
- REP. MACPHERSON will lead discussion on the floor.**
- 215 Chair Krieger Closes the work session on SB 591 and advises SB 208 will not be heard today.
- 224 Chair Krieger Opens a public hearing on SB 1018A.
- SB 1018A – PUBLIC HEARING**
- 225 Bill Taylor Counsel. Explains SB 1018A which changes qualifications and term of office for Poet Laureate of the State of Oregon.
- 232 Christine D'Arcy Executive Director, Oregon Arts Commission. Testifies in support of SB 1018A.
- 261 Chair Krieger Closes the public hearing on SB 1018A and opens a public hearing on HJM 37 which urges Congress to establish regulation of open ocean aquaculture.
- HJM 37 – PUBLIC HEARING**
- 285 Rep. Deborah
Boone House District 32. Testifies in support of HJM 37 which is based on a similar memorial from Alaska. Points out regulations needed in the open ocean.
- 310 Chair Krieger Closes the public hearing and opens a work session on HJM 37.

HJM 37 – WORK SESSION

314 Rep. Boquist

MOTION: Moves HJM 37 be sent to the floor with a BE ADOPTED recommendation.**VOTE: 5-0-0**

319 Chair Krieger

AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.

320 Chair Krieger

REP. BOONE will lead discussion on the floor.

Closes the work session on HJM 37 and opens a public hearing on SB 65A.

SB 65A – PUBLIC HEARING

329 John Minnis

Director, Department of Public Safety Standards & Training (DPSST). Explains SB 65A relating to certification of public safety officers.

345 Marilyn Lorange

DPSST. Submits written testimony and testifies in support of SB 65A (**EXHIBIT D**). Explains the proposed civil penalty.

373 Rep. Macpherson

Questions the definition of a “public safety agency” – if they are public agencies as opposed to regulated providers of private security.

383 Lorange

Responds that a civil penalty provision is already in place for private security program.

390 Rep. Macpherson

Clarifies that this legislation gives a parallel requirement to “publics” that already exists for “privates.”

396 Minnis

Cites an exception for emergency medical dispatch that would come under this certification.

399 Chair Krieger

Closes the public hearing and opens a work session on SB 65A.

SB 65A – WORK SESSION

400 Rep. Boquist

MOTION: Moves SB 65A to the floor with a DO PASS recommendation.**VOTE: 5-0-0**

410 Chair Krieger

AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.

413 Chair Krieger

REP. BARKER will lead discussion on the floor.

Closes the work session on SB 65A and opens a public hearing on SJR 34.

TAPE 15, A**SJR 34 – PUBLIC HEARING**

024 Sandy Thiele-Cirka

Committee Administrator. Explains SJR 34 expresses legislative support of plans to transfer into federal trust certain lands acquired by Burns Paiute Tribe.

030 Chair Krieger

Notes no one is there to testify on the bill; closes the public hearing and opens a work session on SJR 34.

SJR 34 – WORK SESSION

033 Rep. Boquist

MOTION: Moves SJR 34 be sent to the floor with a BE ADOPTED recommendation and be placed on the CONSENT CALENDAR.

VOTE: 5-0-0**AYE:** In a roll call vote, all members present vote Aye.**The motion CARRIES.**

045 Chair Krieger
 050 Chair Krieger Closes the work session on SJR 34.
 058 Chair Krieger Committee stands at ease; announces the committee will run until 5:30 p.m. and then carry over any bills not heard.
 091 Chair Krieger Opens a public hearing on SB 408B relating to rates of public utilities. Notes that the bill will not be moved today because amendments are coming; requests testimony from speakers be brief.

SB 408B – PUBLIC HEARING

103 Sen. Vicki Walker Senate District 7. Testifies in support of SB 408B. Says Oregon rate payers have been paying on taxes that the utilities have not paid to the state or federal government. Refers to -B13, -B15 and -B16 amendments (**EXHIBITS E – G**).
 132 Sen. Rick Metsger Senate District 26. Relates how -B16 amendments improve SB 408A.
 154 Rep. Tom Butler House District 60. Lists people who will be speaking on SB 408A.
 170 Jeff Bissonnette Citizens Utility Board of Oregon (CUB). Testifies in support of -B16 amendments. Stresses the importance of this measure to rate payers.
 192 Michael Early Executive Director, Industrial Customers of Northwest Utilities (ICNU). Discusses the issue of rate payers only being charged for taxes that are actually paid. Urges support of the -B13 amendments.
 261 Greg Miller Government Affairs Manager, Weyerhaeuser Company. Believes this is the right policy question for the legislature to answer. Urges support of the -B16 amendments.
 296 Rep. Butler Asks for the differences between the B13s, B15s and B16s to be listed and a copy returned to the committee for comparison. States the -B15s are from the Department of Justice.
 331 Rep. Boquist Inquires if Mr. Early is most interested in the -16 amendments.
 332 Early Responds affirmatively.
 334 Rep. Boquist Asks if the -B16 amendments still need work.
 336 Early Confirms some adjustments may need to be made, but could be included in the comparison paper.
 349 Mike McCallum President and CEO of the Oregon Restaurant Association. Testifies in support of SB 408B and the -B16 amendments. Lists other organizations also in support of the -B16 amendments.
 379 Julie Brandis Associated Oregon Industries. Testifies in support of SB 408A as well as the -B16 amendments.
 405 Ray Wilkeson Oregon Forest Industries Council. Testifies in support of SB 408A and the -B16 amendments.

TAPE 14, B

019 Pete Shepherd Deputy Attorney General, Department of Justice (DOJ). Submits written testimony and testifies in support of SB 408A (**EXHIBITS I & J**). Refers to amendments by sponsors: -B15 amendments are the DOJ

alternative; -B16 amendments are the ICNU amendments; and -B13 amendments are the utilities' proposal. Discusses constitutional limitations and defensibility of the options being considered.

- 082 Shepherd Discusses the policy choices by referring to **EXHIBIT J**. Poses three questions that need to be asked of each proponent. Offers DOJ assistance in further efforts.
- 116 Dan Meek Attorney, Utility Reform Project. Refers to income taxes paid by consumers, but not paid by the utility companies to the state or federal government; gives statistics (**EXHIBIT Q**).
- 155 Meek Gives his opinion on the proposed amendments to SB 408B; points out a number of loopholes. Notes the taxes being charged this year (which will never be paid) will be approximately \$150 million.
- 216 Rep. Butler Questions the ability of the Department of Justice to successfully defend any litigation that may arise from this legislation.
- 233 Shepherd Explains how the language in this legislation (and amendments) could be defended in court.
- 247 Paul Graham Department of Justice (DOJ). Describes the "off ramp" which would give the Commission authority over the automatic adjustment clause.
- 254 Rep. Butler Asks about the issue of symmetry in SB 408B.
- 261 Graham Replies that symmetrical automatic adjustment clauses have been put in the DOJ (B15s) and utility (B13s) version to remove the risk of a constitutional attack.
- 279 Rep. Butler Asks for clarification that the symmetry language is not contained in the -B16 amendments or the original bill from the Senate.
- 282 Graham Points out he has not seen the B16s, but confirms it is not in SB 408 from the Senate.
- 284 Shepherd Indicates how this issue of symmetry has been disputed by proponents.
- 293 Rep. Macpherson Wonders if there is any constitutional problem with saying a tax collected in rates should actually be paid to the state.
- 304 Shepherd Says he can't think of a constitutional limitation that would prevent Oregon from increasing taxes which would result in a reduction in money pocketed by the company.
- 343 Rep. Butler Discusses changing the structure of the tax to avoid this problem in the future. Questions the tax placed on insurance companies – exempt an excise tax and then charge them a policy premium tax.
- 372 Shepherd Isn't sure how insurance companies are taxed.
- 377 Meek Shares his proposal for state income taxes of utilities: abolish the state income tax on regulated energy utilities and replace it with a one percent gross receipts tax.

TAPE 15, B

- 030 Scott Bolton PacifiCorp. Testifies in support of the -B13 amendments to SB 408A.
- 037 Sarah Lien Attorney with Stoel Rives. States the -B13 amendments are the only amendments that are constitutionally solid and will not put customers at risk of large rate increases. Says the -B15 amendments are constitutionally solid, but create a risk of substantial rate increases.

- 091 Lien Describes numerous flaws found in the -B16 amendments.
Also feels that the -B16s discourage utilities from investing in clean and renewable power as well as their own infrastructure. Concludes that the -B16 amendments would change how rates are set.
- 144 Gary Bauer Northwest Natural Gas. No comments.
- 148 Chair Krieger Agrees this is a very difficult issue; applauds the work done to date.
- 155 Chair Krieger Closes the public hearing on SB 408B and opens a public hearing on SB 71A which authorizes issuance of lottery bonds for transportation projects.

SB 71A – PUBLIC HEARING

- 165 Bruce Warner Director, Oregon Department of Transportation (ODOT). Submits written testimony and testifies in support of SB71A (**EXHIBIT K**). Explains the purpose and history behind *ConnectOregon* and the opportunity this proposal provides to create jobs in the state.
- 203 Rep. Terry Beyer House District 12. Testifies in support of SB 71A. Comments that the distribution formula could be looked at.
- 226 Martin Callery Port of Coos Bay. Submits testimony and testifies in support of SB 71A (**EXHIBIT L**). Describes benefits of leverage in transportation investments.
- 293 Larry Phipps President, Portland Western Railroad and Oregon Shortline Association. Testifies in support of SB 71A. Discusses the leverage used from grants by the railroads in Oregon.
- 326 Roger Martin Union Pacific Railroad, Alaska Airlines and Oregon Transit Association. Testifies in support of SB 71A. Indicates the Union Pacific Railroad is interested in investing more of its money if Oregon is considering investing money in the state's rail lines.
- 348 Rep. Boquist Asks if proponents are comfortable with the language in the bill that says not more than 30 percent will go to a single congressional district.
- 356 Phipps Replies that he is comfortable with that language.
- 364 Chair Krieger Comments that the bill needs more work so it will not be moved today.
- 377 Jonathan Schlueter Executive Director, Westside Economic Alliance. Testifies in support of SB 71A.
- 406 Rep. Greg Smith House District 57. Testifies in support of SB 71A. Discusses how to best support intermodal activity in Oregon.

TAPE 16, A

- 026 Art Schlack Association of Oregon Counties. Testifies in support of SB 71A with a reservation regarding the regional distribution of funds. Recommends utilizing the ODOT regions rather than congressional districts or direct the Oregon Transportation Commission to allocate these funds on a regional equity basis throughout Oregon.
- 051 Pat Egan Port of Portland. Submits testimony and testifies in support of SB 71A (**EXHIBIT M**). Discusses how *ConnectOregon* will meet statewide needs.
- 084 Greg Miller Government Affairs Manager, Weyerhaeuser Company. Testifies in support of SB 71A. Discusses how vital the shortline railroads are in

- Oregon. Suggests one alternative: intermodal ramp in the central part of the Willamette Valley.
- 113 Rep. Macpherson Questions restrictions on allocating expenditures in certain areas when this proposal is to provide optimal transportation objectives in Oregon.
- 122 Egan Says the Transportation Commission looks at and selects projects on a competitive basis, but a regional distribution formula could be used.
- 144 Rep. Boquist Asks about the breakdown of using 40 percent for loans, 60 percent for grants from the net proceeds of the lottery bonds.
- 148 Miller Replies they have not taken a position on this arrangement.
- 154 Schlack Talks about the expense of transportation projects and the interest in sharing these resources throughout the state.
- 172 Egan Believes the legislature could direct the Transportation Commission to distribute the projects equitably.
- 184 Jessica Harris Associated General Contractors. Testifies in support of SB 71A. Notes AOI (Associated Oregon Industries) is also in support of SB 71A (**EXHIBIT N**).
- 203 Linc Cannon Oregon Forest Industries Council. Testifies in support of SB 71A.
- 214 Terry Witt Oregonians for Food & Shelter. Submits testimony and testifies in support of SB 71A (**EXHIBIT O**). Emphasizes the importance of the shortline railroads in Oregon.
- 232 Rep. George Gilmour House District 55. Asks about ODOT distributing funds by maintenance regions.
- 235 Harris Encourages regional allocation be as widespread as possible.
- 259 Witt Suggests that safety concerns should be taken into account when distributing funds.
- 270 Cannon Agrees regional distribution is important.
- 282 Sen. Bruce Starr Senate District 15. Discusses the issue of an equitable distribution of resources.
- 329 Sen. Starr Addresses the issue of loans vs. grants. Says they could have a one shot deal – give out the \$100 million at once – or create an ongoing source of revenues for these kinds of projects in Oregon.
- 371 Rep. Boquist Expresses concern with the loan portion and not having the time to extend an intermodal program.
- 389 Rep. Gilman Addresses the importance of ODOT regions being included in the legislation.
- 414 Rep. Boquist Notes three of the five congressional districts are in the Portland area.

The following prepared testimony is submitted for the record without public appearance.

- Fred Nussbaum Association of Oregon Rail and Transit Advocates (AORTA). Submits written testimony in support to SB 71A (**EXHIBIT P**).
- 421 Chair Krieger Closes the public hearing on SB 71A. Notes that the following bills are being carried over: SJR 10, SB 1032A, SB 572A and HB 2009.

DRAFTING REQUEST– WORK SESSION

- 432 Rep. Boquist **MOTION:** Moves the committee request permission from Speaker

Minnis to request a BILL DRAFT relating to veterans
and military personnel.

VOTE: 5-0-0

435 Chair Krieger
440 Chair Krieger

Hearing no objection, declares the motion CARRIED.
Adjourns the meeting at 6:17 p.m.

EXHIBIT SUMMARY

- A. SB 591, -1 amendments, staff, 1 p
- B. SB 591, written testimony of Patrick Donaldson, Sen. Metsger, 1 p
- C. SB 591, written testimony of Peggy Anderson, Sen. Metsger, 1 p
- D. SB 65, written testimony, Marilyn Lorange, 1 p
- E. SB 408, -B13 amendments, staff, 10 pp
- F. SB 408, -B15 amendments, staff, 10 pp
- G. SB 408, -B16 amendments, staff 8 pp
- H. SB 408, written testimony, Michael Early, 9 pp
- I. SB 408, written testimony, Pete Shepherd, 5 pp
- J. SB 408, DOJ alternative chart, Pete Shepherd, 2 pp
- K. SB 71, written testimony, Bruce Warner, 2 pp
- L. SB 71, written testimony, Martin Callery, 2 pp
- M. SB 71, written testimony, Pat Egan, 2 pp
- N. SB 71, written testimony of John Ledger, Jessica Harris, 1 p
- O. SB 71, written testimony, Terry Witt, 1 p
- P. SB 71, written testimony of Fred Nussbaum, staff, 1 p
- Q. SB 408, written testimony, Dan Meek, 2 pp

**HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE
SENATE BILL 408 PUBLIC HEARING**

June 30, 2005

Chair: Open a public hearing on Senate Bill 408. We have a lot of people have come some distance. Its complicated. We're going to try to get everyone to be very brief because we're not going to move the bill. Amendments aren't here yet and the Speaker's asked a certain group of people to get together to continue to work on this and she's actually going to be meeting with them. So we'll ask you to be brief if you can. Senator Walker and Senator Metsger will you come up please.

[pause]

Please proceed.

Walker: Thank you Mr. Chair, Vickie Walker, State Senator District 7. We're here on Senate Bill 408 today, which is a bill I had drafted over a year ago and when it came to the Senate after session started I asked Senator Metsger to join me on the bill and I believe recently Representative Butler has signed on as a chief sponsor. Mr. Chair, this bill is really important to Oregon ratepayers because there's been a scam going on. And of course the utilities won't call it a scam but ratepayers have been paying on taxes that the utilities have not been paying. You've seen it in the press, you've heard about it in the building and both Senator Metsger and I truly appreciate that Representative Butler has headed up a work group. We, just about an hour ago I got draft amendments to the -13. We now have the full amendments, there are also -15s and -16s, which we'll have Senator Metsger speak to, but Mr. Chair I've not have a chance to review but the first two pages of these. I can tell you the -13 is completely different than what we sent over here and we're very concerned about it because basically you've got a section in the bill that says notwithstanding whatever we did before nothing else is going to happen. So this basically just allows the utilities to continue doing what they're doing, in my opinion, but I've not completed reviewing the bill and I think there's a lot of work left to be done. It is a very controversial issue and it's not an easy one to understand as you have indicated. It took me a long time to get a handle on it myself and you can see my bill file is very large and this bill went back and forth from Senate Bill 171 to 408 and so generally on both bill files. So, Mr. Chair we would be happy to assist in further discussion about this bill and that's about all I want to say today because I know you're not going to even begin to move it.

Chair: Yeah.

Metsger: Thank you, Senator. Thank you Mr. Chair, members of the Committee, welcome back, and this is not panhandling at the moment so. I want to make sure we got a different bill so I know which one I've got in front of me. Rick Metsger, State Senator, District 26. Just briefly, as you go through the testimony on this, and I appreciate Representative Butler's hard work on this. In the Senate side in both the Business Committee in which I chair, and then also in the Revenue Committee we worked five months and you know dozens and dozens of meeting on it so it is a complicated issue – but it's an important one. I believe the –16s do an improvement on the original 408 and essentially what those do, just to kind of give you a snapshot, is that what it does is take the issues in which Representative Butler's work group that people agreed on, it was a better implementing language than what came over from 408 but it keeps the main substance of the bill. I will echo the comments of Senator Walker at least on the 13s, I don't believe they do that. Their bottom line question for I think the committee to answer and I think for the legislature is that when you talk about taxes for utilities and you look at what they adopt is that these are to be recovered liabilities of the utility. And if they don't pay that to a unit of government then it was not a liability and taxpayers should be allowed to have to pay for that which is not a real liability. And that would be I think the litmus test is that you look at what you may adopt is to make sure that you're not collecting from taxpayers for liabilities that at the end of the day don't exist. We believe they did that in 408, we think the –16s improves upon that. Thank you Mr. Chair.

Chair: Okay, committee members do you have any questions on the Senators? Thank you very much.

Metsger: Thank you very much.

Chair: Representative Butler, did you have a group here that will speak to us on the bill?

Butler: Thank you Mr. Chair, there was, there were two different groups that could, that probably should come forward. There would be folks from representing the users which would include someone from ICNU and the AOI the, let's see I think yes, Julie Brandis has signed up as well as let's see, Greg Miller is from the user's group and Jeff Bissonette from CUB and Michael Early from ICNU.

Chair: [Inaudible] consumer groups conference?

Butler: Yeah it's the consumer group.

Chair: Go ahead and have them come up, the ones he just named there please.

Man: I found a question [inaudible].

Butler: [Inaudible.]

Man: One of these is the DOJ [inaudible] pull out of the file. I didn't know which one of these was the DOJ one. [Inaudible.]

Chair: Okay.

Man: [Inaudible] speak to it. I'm just trying to figure out which is which here.

Bissonette: Mr. Chair, members of the committee, for the record my name is Jeff Bissonette representing the Citizens Utility Board of Oregon. We represent residential ratepayers of utilities – electricity, natural gas, and telecommunications. We are one of the groups that have been working on 408. We supported Senate Bill 408 as it came out of the Senate. We were part of the group that are offered the –16 amendments. We are generally in support of those. You will hear in a moment from Michael Early with the Industrial Customers who have just some sort of technical corrections to those amendments as they came out of LC, but they're very close and we think they're headed in the right direction. Both Senator Metsger and Senator Walker gave you testimony as to where this issue has come from. I can only echo those remarks. This is a very important issue to ratepayers. This is something that we hear a lot about from our members and something that we hope we can report back to our members at the end of the session that there's something that is good for consumers and that is workable that corrects the situation we have today. And with that opening comment we can get to some more detailed testimony from my fellow customer groups.

Early: Mr. Chairman, my name is Michael Early, I'm the new Executive Director of Industrial Customers of Northwest Utilities effective August of this year. That organization's membership includes a number of industries that are customers of industrial utilities in the state of Oregon who purchase large amounts of electricity and natural gas from those utilities at rates that are regulated by the Commission pursuant to the direction by the State Legislature. What we're trying to do in this bill is to catch up. As you know, the corporate structure of investor owned utilities has changed rather dramatically over the last 10 years. It's much more complex and much more controversial then when we used to have sort of homegrown utilities. And now many of our major utilities have parents who are far removed from Oregon and frankly from this legislature. And one of the consequences has been – a very public consequence of some of these acquisitions, particularly in the Enron/PGE situation has been a sustained situation where taxes have been collected from ratepayers, both residential customers and industrial customers, and no taxes have actually been received from those entities either in Salem or to other taxing authorities. Now that's the fundamental question we have before us and the fundamental policy question we are asking you to resolve. The Senate

Bill addressed that policy question. It basically said in the future, going forward, we're going to look at the amount of taxes that are actually collected from ratepayers and we're going to match that up to the amount of taxes that were collected from ratepayers, and going forward we're going to make sure that taxpayers don't – that ratepayers don't pay more than the taxes that are actually received here in Salem and in other taxing authorities. The Staff, the Senate Bill left a fair amount of the detail to be developed by the Commission in the meetings that were held under the auspices of Representative Butler. There was a request to provide more detail to that bill and we've worked to develop that and I want to thank the Commission staff, they've been very helpful to us in working in putting together language that we think accurately captures the intent of the bill. I won't belabor you today with the details of the bill because we're coming back and we'd be more than happy at that time to work through with you the details of the bill. But again, in concept it's relatively simple. We measure actual taxes collected, and then actual taxes paid, and attribute those actual taxes paid to those of the regulated operations and true them up. Just in summary, we support Version 13 of the bill. We think it changes the policy direction of the state to address this problem. We think it is within your authority to adopt and we strongly support in the context of the alternative which is before you which is Senate Bill 13, Version 13. which quite candidly doesn't change the current situation. And the question before you is is an alternative that addresses the problem or an alternative that if passed and if applied to a situation like the Enron/PGE situation that reoccurs in the future, would produce the same result that we saw in the past, that is ratepayers pay money in the expectation that it will be delivered in Salem and it's not. So, thank you very much.

Miller: For the record, Greg Miller, Government Affairs Manager for Weyerhaeuser Company. First I'd like the representatives both Representative Butler and Macpherson and Boquist for meeting with us some 13 maybe 15 hours and getting up at 6 o'clock in the morning and working through this. There's a lot of energy and a lot of time put into this effort. I absolutely think this is the right policy question for the Legislature to answer. You're going to have some amendments to decide on and while I haven't seen the final product, I have seen the our iteration of what I believe is the –16s, and I believe as a significant ratepayer in the state of Oregon, and I can't speak for all manufacturers, and I barely, I certainly don't want to speak for our entire forest sector, but energy is top of our list in terms of costs that we have to manage. And this issue would be very helpful for the legislature, it would be helpful for manufacturers for you to resolve this particular, unique issue. And we believe that the – 16s would, without fundamentally changing how PUC sets rates, would solve the problem of a regulated utility collecting taxes from ratepayers that are never paid to units of government in Oregon. And we think that's a pretty simply stated and know that it's complex to get to, we think that's the right question for you folks to address. In my opinion, as I've listened

to our workgroup and the product that has – and I haven't seen what I think has been referred to as the –13s from the utility folks, I don't believe that that would have any effect on this issue and to resolve that issue. In essence I believe if those amendments were adopted I think it would just basically enshrine the status quo. So we hope that you will help us get to an acceptable answer here and appreciate your time and I'll keep this brief.

Chair: Any Committee members have any questions or comments?
Representative Butler?

Butler: Thank you Mr. Chair. I just have a question for Mr. Early and it's probably too early to ask for this Mr. Early. I'd just, I'd like to have you, if you would please, line out the differences between the 13s, the 15s and the 16s, line them out side-by-side for me if you would please and return a copy of that to the Committee at your earliest convenience.

Early: Okay, I've not even seen the 15s, so I'm not.

Man: Are the 15s the Department of Justice?

Butler: They are the Department of Justice's recommendations as you'll recall, the Department of Justice was concerned and we'll hear testimony from them shortly, that the issues in the original bill, the underlying bill which is enshrined in B-16. The 16 amendment that you're talking about right now had a number of very difficult and including Constitutional issues, and some definitional issues which I don't see totally defined yet in the 13s. So we're back to the same place where we started before with issues number one that have constitutional concerns relative to both the *Duquesne* and the *Hope* cases as well as some concerns relative to you know the definitions and these kinds of things. So I'm wondering if you'll go back to our list, start with day one, when I gave you a whole list of the things that I was concerned about. What's the definition of taxes? Is it income taxes, is it franchise taxes, what is it? What's the definition of income? Is it net income, is it gross income? And if you'll line that out for us and get a copy of that back to the Committee Administrator for the Chair of the Committee I would appreciate it so that we'll be able to get an idea of your expertise as to how we're going to answer all of the questions that were left unanswered in the earlier iteration of this 408 at it came to the House.

Early: I'll be happy to do that, Representative Butler.

Butler: Thank you.

Chair: Representative Boquist?

Boquist: Thank you Mr. Chair. I have two questions Mr. Chair. First to make sure we confirm in the record because Mike, it's been a long day, because you were bouncing back and forth. Yours is the B-16, correct?

Early: Yes, I'm sorry, I misspoke.

Boquist: If I understand correctly, the B-16 still needs work too, is that not correct? I believe when CUB, I believe when he started out said that there needed to be some tweaking still done on the B-16.

Early: I saw a draft of the B-16 about one o'clock today and I went through it quickly and identified a couple areas and I can include those in the paper, in a separate paper.

Boquist: Thank you.

Chair: Anything further? Thank you gentlemen.

Man: I'd like to have Mike McCallum, Julie Brandis and Ray Wilkerson come up please.

McCallum: Good afternoon Mr. Chair and members of the committee. For the record my name's Mike McCallum and I'm the President and CEO of the Oregon Restaurant Association. We're here today in support of the B-16 amendments to Senate Bill 408. We think that this is a simple and fair answer to a real concern. Oregon's regulated utilities do allow for utilities to collect real taxes in their rates. Nothing in the bill will change that. But the utilities should not be able to make money on taxes if they ultimately don't pay those. And we think that's what's happening today. And we think that ultimately the B-16s in addition to the initial tenets of Senate Bill 408 will resolve that. I'll tell you that commercial class customers first really got actively engaged in utility issues about four years ago when we entered the whole deregulation fray. And commercial class customers are about 30% of the overall load. I'm joined in supporting the B-16s today by my friends at the Oregon Grocery Association, the National Federation of Independent Business, the Oregon Metals Industry Council, and the Oregon Lodging Association. I think you'll find that those groups will comprise almost all of the commercial class customers in the state of Oregon. Thank you for your support of the -16s to Senate Bill 408.

Brandis: Mr. Chair and members of the Committee, for your record I'm Julie Brandis with Associated Oregon Industries. AOI has been involved with this issue since the beginning of the session and our members have actually debated this issue at length through the AOI energy committee at least three times. And I think first and foremost our members would argue that they are very interested in resolving this issue and that being the collection of taxes in our rates that are not paid to a government entity. We did support the bill as it exited the Senate but we did so promising our

members, because we do have a diverse membership, that we would work to reach a consensus on this issue. And I think you've heard that we have spent a great deal of time trying to reach consensus and working at very early mornings and hours to do that. We however have, I think what our members, well our members would probably be most apt to support the – 16s because we feel other versions of this legislation for example the –13s would codify the problem into statute rather than resolving the problem. So those are our thoughts and we thank you for your time.

Wilkeson: Mr. Chairman, Ray Wilkeson of the Oregon Forest Industries Council. We represent almost all of Oregon's private forest land owners and almost all of Oregon's forest products manufacturers and Mr. Miller of Weyerhaeuser modestly said he couldn't speak for the entire industry, I'm fairly confident that I think I can and we strongly support the position taken by the Industrial Customers of Northwest Utilities on the –16 amendments to this bill. Aside from environmental regulations, are two things that are of most concern to people in the business that I represent are transportation issues and energy costs. Those are at the top of the list. And so anything that can moderate the cost of energy, particularly in an area like this where it appears on the surface at least to be an obvious injustice to have money collected from a ratepayer for a purpose that it is in fact not used for. So we would strongly support the –16 amendments to this bill and hope that it can be moved forward. Thank you.

Chair: Okay. Members do you have any questions? Seeing they don't have any questions they don't understand it.

Man: We can help with that Mr. Chair.

Chair: On this one it's going to take awhile. I've read some of it.

Man: But just for the record, Ray wasn't there at six o'clock in the morning in these meetings. He's a new face here.

Wilkerson: I am.

Man: I thank you very much.

Man: Could I have Pete Shepherd please? Paul Graham, and was is Meek? Mr. Meek? Dan Meek please. This is the –13, the 15? It's the 15 crowd.

Chair: Please continue.

Shepherd: Good afternoon Mr. Chair my name is Pete Shepherd, I'm the Deputy Attorney General. In addition to Mr. Meek, I'm joined this afternoon by Paul Graham to my right. Paul is the head of our Regulated and Utilities Business Section with the unfortunate acronym of RUBS and Mr. Graham has been serving in that capacity and thus is one of the principal council

for the public utility commission for many many years. And so we're here to, after a couple of brief comments, to answer any questions you might have and to offer our continuing assistance to the Committee as it works its way through to a solution on this really interesting and challenging issue. Let me first say that I'm going to do something a little different than the other witnesses. I'm going to refer to the amendments by their sponsors rather than by the numbers – it helps me keep track of who's who. But just by way of reminder, the B-15s are the amendments that the Department of Justice has offered and in the materials that you see—those are being handed out now—those are described as the Department of Justice alternative. [Exhibit] The B-16 amendments are the consumer or ICNU amendments, and those are referred to as the ICNU version in the written materials, and finally the B-13s are the utilities' proposal which in fact was the structure around which the working group that Representative Butler organized, organized it's work. Paul, I want to start with just two basic constitutional outside limitations on your discretion with the bottom line being that you have a lot of discretion to construct rate making methodologies within the applicable constitutional limitations. And that they're fairly easy to state and fairly complex to apply but the two constraints are basically these: First, rate setters must allow investors in a regulated utility to recover their prudent expenses and earn a fair return on their investment. This is, you'll hear people refer to this as the *Hope Test* and it's so named because of an opinion of the United States Supreme Court decided in 1944 and it goes by that name. So when you hear people refer to the *Hope Test*, what they're generically referring to is the principle that rate setters must allow investors in a regulated utility to recover their prudent expenses and earn a fair return on the investment. Second, the second constitutional limitation we think on your discretion is that we don't believe that the regulator may arbitrarily switch back and forth between different rate setting methodologies in a way that ultimately requires investors to bear all of the risk and give ratepayers none of the bargain—none of the benefits. Without safeguards in such a system, that system ultimately could lead to a *Hope* violation and this principle was announced we believe in a case called the *Duquesne* case, and that again is named after a United States Supreme Court opinion that goes by that name, this one a 1989 opinion. Within those very broad constraints on your discretion, you have complete authority to do, to adopt a whole very wide array of differing forms of rate setting methodology. I will tell you that if any of the four versions before you, including the printed bill that came over from the House were to become law, we would defend that statute. That is to say none of the four options that are before you fall within that real narrow class of statutes that the assembly has approved and the governor has caused to become law, where we look at them and say we can't make any argument to dry to defend that statute. Now of course that's a different thing than saying that we would prevail in the defense of that statute, and here our judgment is that because both the

utilities' version and the Department of Justice alternative contained very explicit protections to prevent a *Hope* violation, we're quite confident that we could successfully defend those against a facial constitutional attack—someone coming in and saying the Assembly has passed an unconstitutional statute in either of those versions. These proposals however array themselves across an array of litigation risk and we think that the ICNU proposal as it's before you today is improved over the House Bill. We would judge our prospects for defense of those successfully to be less than the prospects for successful defense of the other, but at some point it begins to be not very useful to decisionmakers for us to say one is 49% and one is 33% because it's really more misleading than informative. But in terms of an array of litigation risk that's our judgment, the Department of Justice proposal and the ICNU proposal—and the utilities' proposal—are more defensible than the other two.

Let me turn very briefly to the policy choices that are before the Committee because the Attorney General of course wears two hats, both a legal advisory hat and also a policy hat, and there are many points upon which a comparison between the various proposals might be made and I've tried to provide you with a chart that shows kind of in column form a point-by-point comparison of the proposals in the version at least that we had access to which was previous to the formal legislative council versions. I won't go over all that, it sounds as though we may have more opportunities to work on that. But let me just leave you with three questions that I think every proponent of any proposal policy option for you should be prepared to answer for you. The first is, "If the PGE/Enron situation were to recur in the future how would the outcome be different under your proposal." The second question it seems to me that we've tried to ask ourselves as we've looked at the policy options is, "Assuming that your proposal would change the status quo in some way, would those changes both protect investors against an unconstitutional taking, the *Hope* test, and secondly protect ratepayers against unreasonable rates?" And then finally the third question that we've of course, overlying all of these, is "Is your proposal constitutional?" But that's an assumed question. The third question that we'd suggest you ask of each of the proponents is "Is the system that you describe and advocate for clearly enough described in law that the agency charged with administering that scheme can understand it and apply it in an intelligible way?" So those are the three questions that we've tried to ask ourselves as we've worked through this. I'd simply leave you with two things. One, given the variety of options here you may have the perception that the working group that Representative Butler and members of your committee participated in didn't make much headway, but the fact is that under representatives tutelage we did in fact clarify all of the proposals that are before you and as a result of his work on the working group I think all the proposals you have are better than the ones than you had from the House. And second,

we would simply offer the Department of Justice assistance in any further efforts that you might want to undertake. And we stand open for questions.

Meek: Thank you Mr. Chairman, my name is Dan Meek, I'm an attorney representing the Utility Reform Project. I guess you could say I sort of kicked off this matter two and a half years ago when I filed a complaint at the Oregon Public Utility Commission against Portland General Electric asking the PUC to stop PGE from charging ratepayers \$93 million a year for federal and state income taxes that PGE was in fact not paying, and that Enron was in fact not paying. It turns out that these amounts have not paid since the time Enron acquired PGE in 1997 so the total amount at this point is over \$750 million in state and federal income taxes that PGE ratepayers have paid to the company and the company and Enron have never paid to either the state government or the federal government and never will. We've also since then learned that the other utilities are engaged in the same practice. PacifiCorp in 2002 charged Oregon ratepayers over \$88 million for state and federal income taxes but paid the state only \$10 in state income taxes. That strongly implies that PacifiCorp probably paid the federal government very little or nothing in that year because state income taxes for these corporations are of course based on the same amounts as their federal filing. So it's fair to say that over the last eight years we can document that the utilities, just the two largest energy utilities in Oregon have charged ratepayers over \$1 billion for state and federal income taxes that they have not paid and will never pay. The Oregon Department of Revenue reported during the Senate deliberations on this bill, that during the years 2000 through 2003, the six largest regulated energy utilities in Oregon paid in the aggregate only between \$1.5 million and \$5 million per year in state income taxes. That's all six of them put together. So it averages for all six of them put together about \$3 million a year in state income taxes during that four year period. During the same four year period we know that these utilities charged Oregon ratepayers nearly \$30 million in rates, a line item in the rate case – State Income Taxes – so they charged ratepayers \$30 million and they paid the state on average \$3 million so the real usings, even the existence of state income taxes as a profit center and they're using the existence of federal income taxes as an even larger profit center – about 85% of the problem here relates to federal income taxes and about 15% of the problem relates to state income taxes. I participated in the Senate working group and Senate Bill 408 was a compromise among various groups on the Senate side. I was specifically I think excluded from the working group on this side despite my requests to the committee administrator and to members of this committee I was not provided with any of the amendments until two hours ago. The B-13 amendments, by the way I saw the B-16 amendments when they were handed out here just a few minutes ago, that looks essentially the same as Senate Bill 408 although the deadlines are extended – that is it gives the PUC more time to

implement the automatic adjustment clause that I think should be implemented immediately. So I don't think this additional time is necessary. But generally the B-16 amendments don't look too bad. I would have to read them and examine them some more to come up with a definite conclusion. The B-13 amendments however would be entirely counterproductive – it would be worse than doing nothing. If you start at the back of it, Section 6 bans the PUC from using its existing authority to stop this practice. My contention has been that the PUC has the existing authority not to allow utilities to charge ratepayers for taxes they don't pay. In fact that kind of existing Public Utility Commission authority has been used by PUCs in 19 other states to make this kind of an adjustment. And by the way when the PUCs have made these adjustments in other states, or when other state legislators have adopted such requirements to limit the utilities to charging ratepayers only for the income taxes they actually pay, those adjustments have never been invalidated by the courts – not one single case. And it's been, as you would imagine, there are hundreds of millions of dollars involved in these cases. They are litigated to the hilt. And none of these adjustments have ever been overturned by the courts. What Section 6 and the B-13 amendments would do essentially is ban the PUC either from using this bill or using its existing authority to correct this problem until the year 2009 at the earliest. So that's certainly, as one of the earlier witnesses said, that's certainly simply sets the existing practice in cement. There are other, if you go backwards here, there are other loopholes that subsume the entire bill. Section 5C is a loophole that subsumes the entire bill. It allows the PUC to do nothing about this if it doesn't feel like doing anything about it. Basically restates the kinds of standards that the PUC already uses and make no mistake the PUC does not want to correct this problem. The PUC has had authority to correct this problem and affirmatively refuses to do so. In fact the PUC refused even to consider this issue until I obtained an order from Marion County Circuit Court in 2004 ordering the PUC to consider this issue. So to the extent any of these bills allows the PUC to exercise discretion in implementing the automatic adjustment clause, I think we can expect the PUC not to implement the automatic adjustment clause. What Section 5C of the –13 amendments does is it simply allows the PUC not to implement an automatic adjustment clause if it doesn't feel like it. On the previous page there's another complete loophole, and there is about five others that would essentially render the bill entirely meaningless, allow the PUC to continue its current practices. So at this point I would say the –16 amendments look pretty good. I would like to have some time to examine them more carefully, but certainly the –13 amendments are affirmatively counterproductive and my glance, and looking through the –15 amendments which are apparently those that are supported by the Department of Justice are, appear to be pretty much the same as the –13 amendments. They would be affirmatively counterproductive, would lock the PUCs existing practice into statute, would not even allow the PUC to

correct this situation, even if it wanted to, until the year 2009. Oh, and the amount that is being charged in rates this year is in the rates of just the three largest energy utilities for federal and state income taxes that are in fact not being paid and will never be paid is approximately \$150 million. For PGE for example that increases PGE's authorized rate of return on equity from 10.5% to 19.5% - it essentially doubles the utility's authorized profit.

Chair: Representative Butler.

Butler: Thank you Mr. Chair. I'd like first to ask how Mr. Meeks got a copy of all the amendments an hour before I did. I don't think anybody's trying to isolate you from what's going on here at this particular point. I would ask Deputy Attorney General, Pete Shepherd to reiterate that this concern that I'm hearing relative to the *Hope*, the concern of successfully defending this series of amendments. We've had some growing testimony on the -- 16s which are in effect the user group, ICNU's user group, and you're telling us that that's going to be more difficult to defend as is the Senate Bill 408 as it came to us. Can you just reiterate what the concerns are, relative to *Hope* and *Duquesne*.

Shepherd: Mr. Chair, Representative Butler, let me just say briefly and then I'll let Mr. Graham address the question because he actually helped draft the language that's embedded now in the utilities' version and in the DOJ version. But the gist of it is that since the Constitution sets a constitutional standard below which rates cannot fall, that the addition of explicit language as has been added to the two version that I referred to as being more defensible, helps us, gives us confidence that if someone were to challenge these statutes on their face we could site to those provisions and say, "No, that challenge is not sustainable because the statutes on their face permit and indeed require compliance with the constitutional amendment." Mr. Graham, do you want to address what we call the "off ramp" in the...

Graham: We called it an off ramp because if some bill passes that requires the Commission to lower rates based on tax benefits from nonutility enterprises, then the Commission would be able to pull the plug on the automatic adjustment clause and say it prefer to implement the clause than to violate the *Hope* test. So, the Commission would have discretion to say we're not going to implement the clause in a given case.

Butler: Follow up.

Chair: Butler.

Butler: Thank you Mr. Chair. While we have Paul Graham at the microphone -- Paul, can you talk to us about the issue of symmetry. This is another

problem that we've found in the 408 and I'm seeing as I'm presently working my way through the -16.

Graham: Yes, Mr. Shepherd earlier told you that the *Duquesne* case which follows the *Hope* case and reaffirms the *Hope* case, contains some language that warned regulators, not a warning that would apply to states that, legislators that make laws to regulators as well, not to come up with an approach that would switch back and forth between methods and so that utilities would be in a head's I win, tails you lose situation. In other words the utilities would never be able to win and the customers would always win. So, one of the things that we cautioned was that even though the language from the *Duquesne* case is dicta, that is it wasn't absolutely necessary to the decision, it is nevertheless Supreme Court dicta and we ignore that at our peril, and so we thought the prudent approach was to put symmetrical automatic adjustment clauses within the statute so that we would completely remove the risk of a facial constitutional attack on the measure. And as Mr. Shepherd pointed out the symmetry language is in the DOJ version and it's also in the utility version.

Butler: But just to clarify Mr. Chair. The symmetry is not found in the B-18, or B16s and the symmetry is not found in the 408 as it came over from the Senate?

Graham: I haven't seen the 16s but I'll take your word for it. It is not found in SB 408 that came over from the Senate.

Butler: Thank you very much.

Man: Mr. Chair, Representative Butler, if I can add just a bit to that just so folks are fully informed. The advocates of the 16s, I guess, that have already testified. That is actually a disputed issue, there is some contention I think Mr. Early would tell you that his version does provide some measure of symmetry so I wouldn't want to leave the impression with that, with the impression that that was a agreed upon by everybody. That is how we read them now.

Butler: Thank you very much, I appreciate it.

Chair: Representative Macpherson?

Macpherson: Yeah, thank you Mr. Chair. To direct this question, this question I think is to Mr. Shepherd. What we seem to have here is an amount of savings through consolidation of returns that the utilities are pocketing now and that the customers would rather pocket by getting a reduction in their rates. To the extent that the taxes are actually paid, of course that becomes moot. Is there anything, any constitutional problem with in fact imposing a tax that has the taxes that were collected in rates actually paid to the state.

Shepherd: Mr. Chair, Representative Macpherson, I cannot – I've thought about that question some and indeed in the working group we revisited a concept that had been started in the Senate and considered in the Senate and then ultimately and apparently not approved—well certainly not approved by the Senate in Senate Bill 171B. And Mike, to answer your question straightforwardly, no, I can't think of a constitutional limitation that would prevent the assembly in the appropriate manner and with the appropriate number of votes, and I think probably a tax increase would require a heightened majority, but presuming all those procedural conditions were met, I can't think of a substantive constitutional limitation that would prevent the State of Oregon from increasing taxes in a way that compensates for their reduction, the savings as you describe it, that the utility pockets and that don't reach the government. Obviously we'd want to look at the details of any such proposal, but in the abstract I can't think of a constitutional limitation that would do that. And indeed there's some appeal to the idea of looking at this as a tax problem inasmuch as nobody disputes that Enron and PGE were acting lawfully in filing a consolidated return. There was nothing unlawful about what was done there. It's the intersection of that choice that was made in the tax world with the ratemaking world that gives us the problem. And so one could say that if you were starting out with an absolutely clean white board this afternoon, that the right way to tackle this would be to look at it as a tax problem and to try and write a tax law solution to that problem. Of course at this point in the session, we at the Department of Justice are trying to deal as you are with the cards that you've been dealt and so that's why we've cast our proposal in terms of the die that was cast in the Senate.

Macpherson: Thank you, Mr. Chair.

Chair: Representative Butler.

Butler: Thank you, Mr. Chair, and that's, the response of Deputy Shepherd has kind of created a new idea, or not a new idea but a regeneration of a thought which actually was some information that I read from the Senate file on what Mr. Meek had presented that the tax should have been in the vicinity of about \$27.5 to \$30 million, and that the gross amount was something in the vicinity of, I don't remember the dollar amount, but if you took the gross amount of the actual rates that were charged in the state of Oregon and took approximately 1% of that, that you could come up with a franchise. Now, a franchise tax of 1% and that would be a change of the taxing in regard to electrical or energy generating companies. I'm just wondering, Pete, I'm going to ask a question and I think you might be able to help me here. Don't we do that in the case of insurance companies? We don't charge them the corporate excise tax but we allow them to be exempted from the corporate excise tax for an insurance company base industry and then we actually charge them a policy premium tax which comes back in in lieu of that taxing?

Shepherd: Mr. Chair, Representative Butler, I'm in deep enough water when I venture into utility law and I'm going to beg off on a tax question because I honestly don't know the answer your question.

Man: Mr. Chair, may I also respond to that question?

Chair: [Inaudible.]

Man: My primary proposal for dealing with the state income taxes of the utilities on the Senate workgroup was to abolish the state income tax on regulated energy utilities and to replace it with a 1% gross receipt tax. That would raise about \$30 million in state revenue but it would be paid by the utilities and not simply retained by utility shareholders. As a secondary proposal, I suggested simply abolishing the state income tax on regulated energy utilities that would then save rate payers approximately \$30 million a year because the PUC would no longer have a handle against the existence of a state income tax to impose that cost on rate payers. At the same time, the state would be essentially revenue neutral because, although it would lose on average \$3 million a year in state income taxes from these utilities, the energy cost deduction on all business tax returns in Oregon would be reduced and it would recoup probably about half the loss that way and it would recruit the rest of the loss by the fact that the state itself pays these utilities for electricity and gas so their rates would go down by about 7%. So, abolishing the state income tax on these utilities would be in my calculations essential revenue neutral but would save the rate payers \$30 million a year.

Man: And Mr. Chair, I wanted to properly ascribe and attribute that thought to the underlying documents from the Senate file to Mr. Meek because it was his testimony as one of the four alternatives that he has presented to the Senate that gave rise to that idea and today isn't the day, but it says, Deputy Shepard says we're basically dealing with the cards we have been dealt with.

Chair: Okay, thank you very much, gentlemen. We're obviously not going to get to everything today. I want to finish up 408 and then we're going to drop down to Senate Bill 71. I'd like to have Scott Bolton, Sarah Lien and Gary Bauer please. Representative Butler. I'm glad we've asked for a short condensed testimony. I can imagine what it would be like if we hadn't.

Man: I'll give you my testimony later, Mr. Chair.

Chair: Okay, thank you. Why don't you start with who wants to.

Bolton: [inaudible] name is Scott Bolton. I'm here today representing PacifiCorp in support of the -13 amendments to Senate Bill 408. With me this afternoon are Sarah Adams Lien, a regulatory lawyer from the Stoel Rives

law firm and Gary Bauer with Northwest Natural Gas. We were part of the discussion group chaired by Representative Butler and we're here to speak on behalf of all of Oregon's electric and gas utilities. In the interest of time, I'll turn this over to Sarah so we can just get into it, but Gary and I will be available to answer business questions as they come up.

Chair: Okay. Thank you.

Lien: Chair Krieger, Representatives, I'm Sarah Adams Lien. I'm a lawyer at the firm Stoel Rives and I just, for the sake of time, I'm going to condense some of the points that I had made and some of you know I can talk at great length about this bill, but I won't do so right now. Representative Butler's amendments which are before you today are the -13 amendments are the amendments before you that are both constitutionally solid, in that they will not result in years of litigation potentially involving the state, the Public Utility Commission, customers and the utilities. So, they are both constitutionally solid and they don't put customers at risk of large rate increases. They also don't discourage important investment in charitable contributions that are important to the state of Oregon. The -15 amendments, the DOJ amendments before you, are also constitutionally solid, but you heard the DOJ say earlier, that is the constitution under the *Duquesne Light* case, there's grave constitutional concern under that case if a mechanism is put in place that switches back and forth in such a way that it takes burdens but not benefits from investors. So, or I should say that the opposite, takes the benefits from investors, but doesn't pass those burdens on. And so what you've got before you are three versions. You've got the -15s which are the DOJ's. You've got the -13s which are Representative Butler's and you've got the -16s which are CUB and ICNU's. The -15s and the -13s are both constitutionally solid in that they apply the approach to taxes in a consistent manner. But unfortunately the DOJ's amendments, the -15, do something else. They create a risk of a great or serious substantial rate increases and as you've heard the customers who have come up and talked to you today already, there's definitely something that they do not want. They do that by dismantling a kind of bedrock consumer protection principle that is in rate making in Oregon, as well as most other states and the Federal Energy Regulatory Commission. And I can describe that principle for you in a moment, but instead I'm just going to continue on and if you'd like me to describe it afterwards, then I'll do that.

The -16 amendments, the CUB and ICNU amendments that are before you are flawed in numerous ways. Not only are they constitutionally suspect in that they flip-flop between their methodologies and when I say that, what I mean is they look at the consolidated tax payment of an affiliated group of corporations only when that payment is lower than what the properly attributed tax payment that would be properly attributed to the regulated operations of the utility would be. When it's lower, they

look at that tax payment and they use that as their marker for rates. When it's higher, when affiliates are actually making money, which is probably the case most of the time when our economy is doing well because that's the way to get investors and run a business, they don't want to look at that tax payment because of course they don't want to attribute to rate payers taxes that have something to do with nonregulated businesses operations. So, in that case, they go back to the standalone principle, this bedrock principle of rate making and look only at the properly attributed operations of the utility. So, that kind of flip-flop is exactly the constitutional symmetry issue that Paul Graham and Pete Shepard were just discussing.

But, they do something else. Not only are they constitutionally suspect, they would take away the incentive for the affiliates and parent companies that are related to utilities to make charitable contributions and they would also take away or undermine the incentive of utilities and their affiliates to invest in renewable and clean power, which if you consider the impact of taking away that incentive from the very companies that provide power, it is something that the state of Oregon should tread very carefully before deciding to make that kind of policy move.

Significantly, the -16 amendments would also discourage one more thing, and that is they would discourage the utilities from investing in their own infrastructure. You would do this by passing through to rate payers the tax effects of this thing that's called disallowed expenses. Currently, because under current law, the tax expense is based only on the regulated operations of the utility, if an expense is disallowed, meaning that the Public Utility Commission says to the utility that's before it, you shouldn't have incurred that expense for whatever reason, we're not going to allow you to go to rate payers and recoup that expense, the tax effect of that expense is also not in rates. So, what you would see is if a utility makes a major investment in a plant, perhaps millions and millions of dollars, and for some reason down the line that plant is never able to go into operation, perhaps it was poorly sited or something has come up that stops that plant from going into operation, the costs of that are never allowed to be recovered in rates. And so under a method that looks only at regulated operations of a utility, the method that's in place in the -13 amendments, Representative Butler's amendments that are before you, the tax effect related to that investment and risk that investors bore is also kept by the investors. So, the loss that came about as a result of them taking the risk to build that plant but then it not happening, the expenses bore by the investors because it's never put into rates and the tax effect that is born by investors, but under the -16 amendments, the tax effect would be passed on to rate payers. So, rate payers would see a decrease. Investors wouldn't get that benefit. Even though the rate payers didn't pay any of the price, any of the cost, of creating that plant. So, that's just one example of the kind of disincentive that would spin out of the -16 amendments.

So, the final thing I'd like to add is that we've heard from a couple people, primarily what comes to mind is Greg Miller from Weyerhaeuser, that the -16 amendments would not fundamentally change how rates are set. This is just simply not true. A bedrock principle of rate making is passing on to rate payers only those costs that are associated with the regulated operations of the utility. So, if the utility does something that doesn't actually go into providing service or if the utility has an affiliate that does something completely unrelated like making chairs or making donuts, none of the costs associated with those things are allowed to be included in rates. This bedrock principle is sometimes called ring fencing or applying a standalone methodology. And it's been credited as a consumer protection principle. It protects rate payers in the long run when you're not taking a short sited approach to things. It protects rate payers from having to bear the costs of things that the PUC has no control over and things that don't do anything to supplement or increase the service to rate payers. So, what you get is, under these bedrock rate making principles, you get a viewpoint of rates that is—it's like a vessel. Everything in rates has to be related to providing a regulated service. If it's not related, it doesn't make its way into rates. That bedrock principle, which is a consumer protection principle, is completely undermined by the -16 amendments. So...

Chair: Sarah?

Lien: Hm, mmm?

Chair: We're going to have to summarize. I'm going to give you one minute.

Sarah: Well, I actually am ready to wrap up. I'm sorry. I told you I could talk for too long. So, Representative Boquist, or Chair, I'm sorry, Chair Krieger. Actually, I could just wrap up with that and open to questions.

Chair: Gary Bauer.

Bauer: Mr. Chair, pass for now. I again could talk for quite awhile.

Chair: You have had the best presentation today. The one I listened to the most. This is a very difficult issue and the workgroup, you know, I really have to applaud them for the work they've already done. It's not done yet. There are going to be some people contact to me with the Speaker. We're going to have a bill, but we want to just bill. It's a very difficult issue to deal with, so, Committee members, do you have anything further for these people? I think probably the questions we need to get to are going to be the next time we have the next public hearing. Okay, thank you very much.

Bauer: Thank you.

Lien: Thank you.

Chair: And we'll close public hearing on Senate Bill 408.

SB 408-B13
(LC 819)
6/30/05 (DJ/ps)

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 2. (1) The Legislative Assembly finds and declares that:**

6 **"(a) The alignment of taxes collected by public utilities from utility**
7 **customers with taxes actually paid to units of government by utilities,**
8 **or affiliated groups, is of special interest to this state.**

9 **"(b) Taxes are a unique utility cost because the actual tax liability**
10 **is affected by the operations or tax attributes of the parent company**
11 **or other affiliates of the utility.**

12 **"(c) The Public Utility Commission permits a utility to include an**
13 **expense for taxes in rates that assume the utility is not part of an**
14 **affiliated group of corporations for tax purposes.**

15 **"(d) The parent company of a utility may employ accounting**
16 **methods, debt, consolidated tax return rules and other techniques in**
17 **a way that results in a difference between the tax liability actually**
18 **paid to units of government by the utility, or the affiliated group of**
19 **which the utility is a member, and the amount of taxes collected, di-**
20 **rectly or indirectly, from customers.**

21 **"(e) Tax uncertainty in the ratemaking process may result in col-**
22 **lecting taxes from ratepayers that are not paid to units of government.**

23 **"(f) Utility rates that include amounts for taxes should, over time,**
24 **reflect the taxes that are paid to be considered fair, just and reason-**

1 able.

2 “(g) The level of tax expense in utility rates involves complicated
3 questions of state and federal tax law and accounting and ratemaking
4 principles. Approaches to ratemaking that do not base the tax expense
5 that is included in rates on the regulated operations of the utility
6 would raise economic, public policy and constitutional concerns.

7 “(h) Because of the economic, public policy and constitutional con-
8 cerns that would arise using alternative approaches to determining the
9 cost of taxes in rates, section 3 of this 2005 Act and ORS 757.210 seek
10 to more closely align the tax expense in rates with the tax obligations
11 of the utility that are attributable to the utility’s regulated operations.

12 “(i) Information about the past and future tax expenses of a busi-
13 ness has commercial value. Disclosure of the past and future tax ex-
14 penses of a business could give other businesses an advantage over the
15 business to which the information pertains and over other businesses
16 that do not know the information.

17 “(2) The Legislative Assembly makes the findings and declarations
18 described in this section as part of the context in which section 3 of
19 this 2005 Act and ORS 757.210 are to be interpreted and applied. Noth-
20 ing in this section creates any claim for relief.

21 “(3) The definitions in section 3 of this 2005 Act apply to this sec-
22 tion.

23 “SECTION 3. (1) On or before the 15th day of the 11th month after
24 the end of each fiscal year of a utility or of an affiliated group to
25 which a utility belongs, each public utility shall obtain and provide to
26 the Public Utility Commission any information the commission re-
27 quires to determine the amount of tax for the fiscal year preceding the
28 fiscal year in which the information is provided that:

29 “(a) The utility actually paid to units of government and that is
30 properly attributed to the regulated operations of the utility; or

1 “(b) In the case of an affiliated group, the affiliated group paid to
2 units of government and that is properly attributed to the regulated
3 operations of the utility.

4 “(2) On or before the 15th day of the 11th month after the end of
5 each fiscal year of a utility or of an affiliated group to which a utility
6 belongs, each public utility shall file a tax report with the commission.
7 The tax report shall contain the information required by the commis-
8 sion for the fiscal year preceding the fiscal year in which the infor-
9 mation is provided, including:

10 “(a) The amount of taxes that was paid by the utility or affiliated
11 group that is properly attributed to the regulated operations of the
12 utility in Oregon in the three preceding years, determined without
13 regard to the tax year for which the taxes were paid and, for a multi-
14 state utility, calculated using the utility’s jurisdictional cost-based al-
15 location methodology;

16 “(b) The amount of taxes authorized to be collected in Oregon rates
17 for the three preceding years; and

18 “(c) Any other information relevant to the level of projected tax
19 expense for the following fiscal year.

20 “(3) The commission may require or allow the information required
21 to be reported under subsections (1) and (2) of this section to be re-
22 ported in a single filing with the commission.

23 “(4) The commission shall review the tax report and any other in-
24 formation that it has obtained and make the determinations described
25 in this section within 90 days following the filing of the report or
26 within a further period of time that the commission may by rule es-
27 tablish for making determinations under this section. The commission
28 shall require the public utility to establish an automatic adjustment
29 clause, as defined in ORS 757.210, within 30 days following the date of
30 the commission’s determinations under this section, or by a later date

1 that the commission may by rule prescribe for establishing an auto-
2 matic adjustment clause, if the commission determines:

3 “(a) That the amount of taxes assumed in rates or otherwise as-
4 sessed to ratepayers for any of the three preceding years differed by
5 10 percent or more from the amount of taxes actually paid to units
6 of government by the utility or affiliated group and properly attributed
7 to the regulated operations of the utility; and

8 “(b) No other factors exist that materially impact the level of tax
9 expense in the following fiscal year.

10 “(5) The automatic adjustment clause shall apply only prospectively
11 to reset the tax expense in rates so that rates reflect the amount that:

12 “(a) The utility will actually pay to units of government that is
13 properly attributed to the regulated operations of the utility; or

14 “(b) In the case of an affiliated group, the affiliated group will pay
15 to units of government that is properly attributed to the regulated
16 operations of the utility.

17 “(6) The automatic adjustment clause may not be used to make
18 adjustments to rates that are properly attributed to any other affiliate
19 of the utility or to the parent of the utility.

20 “(7) Notwithstanding subsections (1) to (6) of this section or ORS
21 757.210, the commission shall authorize a public utility to include in
22 rates:

23 “(a) Deferred taxes resulting from accelerated depreciation or other
24 tax treatment of utility investment; and

25 “(b) Tax requirements and benefits that are required to be included
26 in order to ensure compliance with the normalization requirements
27 of federal tax law.

28 “(8) The commission may not require the establishment or contin-
29 uation of an automatic adjustment clause if the automatic adjustment
30 clause would cause the taxpayer to:

1 “(a) Lose the right to claim accelerated depreciation with respect
2 to its capital assets or depreciable property on the tax returns of the
3 taxpayer;

4 “(b) Incur a reduction in other tax benefits because implementation
5 of the clause would result in the taxpayer’s not using a normalization
6 method of accounting under federal tax law; or

7 “(c) Otherwise violate a requirement of federal tax law.

8 “(9) The commission may discontinue or choose not to implement
9 an automatic adjustment clause under this section if the commission
10 determines that continuation or implementation of the automatic ad-
11 justment clause would have a material adverse effect on customers of
12 the public utility, on renewable energy companies or on the general
13 public.

14 “(10) The commission shall conduct a hearing under ORS 757.210
15 prior to making a determination under subsection (8) or (9) of this
16 section.

17 “(11) The commission may not use the tax information obtained by
18 the commission under this section for any purpose other than those
19 described in subsections (1) to (10) of this section. An intervenor in a
20 commission proceeding to review the tax report or make rate adjust-
21 ments described in this section may, at the commission’s discretion
22 and upon signing a protective order prepared by the commission, ex-
23 amine, obtain or use the tax information according to the terms of the
24 protective order.

25 “(12) As used in this section:

26 “(a) ‘Affiliated group’ means an affiliated group of corporations of
27 which the utility is a member and that files a consolidated federal in-
28 come tax return.

29 “(b) ‘Properly attributed’ means the attribution of tax liabilities or
30 tax benefits to the entity or activity whose business or economic ac-

1 tivities created the items of income, expenses, losses, deductions or
2 credits that gave rise to the tax liabilities or tax benefits.

3 “(c) ‘Public utility’ or ‘utility’ means:

4 “(A) A regulated investor-owned utility that provided electric or
5 natural gas service to an average of 50,000 or more customers in
6 Oregon in 2003; or

7 “(B) A successor in interest to an entity described in subparagraph
8 (A) of this paragraph that continues to be a regulated investor-owned
9 utility.

10 “(d) ‘Regulated operations of the utility’:

11 “(A) Means utility activities that give rise to expenses or revenues
12 that are included in utility rates;

13 “(B) Do not include economic activities that are unrelated to utility
14 activities;

15 “(C) Do not include expenses that are disallowed by the commission
16 for ratemaking purposes; and

17 “(D) Do not include expenses for charitable contributions or ex-
18 penses for which tax credits may be claimed, unless those expenses
19 are included in rates.

20 “(e) ‘Tax’:

21 “(A) Means a federal, state or local tax that is imposed on or
22 measured by income and that is paid to a unit of government.

23 “(B) Does not include any amount that is refunded by a unit of
24 government as a tax refund.

25 “(C) Does not include a franchise fee or privilege tax.

26 “(D) Does not include a local business license fee measured by in-
27 come.

28 “(f) ‘Three preceding years’ means the three most recent consec-
29 utive fiscal years preceding the date the tax report described in section
30 3 of this 2005 Act is required to be filed.

1 **“SECTION 4.** The tax report and other information that, under
2 section 3 of this 2005 Act, is required to be filed on or before the 15th
3 day of the 11th month after the end of the fiscal year that ends in 2005
4 of a utility or of an affiliated group to which the utility belongs, shall
5 set forth the information required to be reported under section 3 of
6 this 2005 Act for the three most recent consecutive fiscal years of the
7 public utility or of the affiliated group to which the utility belongs
8 that concluded prior to the date of the filing of the tax report.

9 **“SECTION 5.** ORS 757.210 is amended to read:

10 **“757.210. (1)(a)** Whenever any public utility files with the Public Utility
11 Commission any rate or schedule of rates stating or establishing a new rate
12 or schedule of rates or increasing an existing rate or schedule of rates, the
13 commission may, either upon written complaint or upon the commission’s
14 own initiative, after reasonable notice, conduct a hearing to determine [*the*
15 *propriety and reasonableness of such rate or schedule*] **whether the rate or**
16 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
17 *a*] **the hearing** upon written complaint filed by the utility, its customer or
18 customers, or any other proper party within 60 days of the utility’s filing;
19 provided that no hearing need be held if the particular rate change is the
20 result of an automatic adjustment clause. At [*such*] **the hearing** the utility
21 shall bear the burden of showing that the rate or schedule of rates proposed
22 to be established or increased or changed is [*just and reasonable*] **fair, just**
23 **and reasonable. The commission may not authorize a rate or schedule**
24 **of rates that is not fair, just and reasonable.** [*The term*]

25 **“(b)** As used in this subsection, ‘automatic adjustment clause’ means
26 a provision of a rate schedule [*which*] **that:**

27 **“(A)** Provides for rate increases or decreases or both, without prior
28 hearing, reflecting increases or decreases or both in costs incurred, **includ-**
29 **ing adjustments made pursuant to section 3 of this 2005 Act, or reve-**
30 **nues earned by a utility; and** [*which*]

1 “(B) Is subject to review by the commission at least once every two years.

2 “(c) Prior to establishing an automatic adjustment clause under
3 section 3 of this 2005 Act, the commission shall review the expected
4 earnings of the utility for the period affected by the proposed adjust-
5 ment.

6 “(d) Notwithstanding any other provision of law, the commission
7 may not establish an automatic adjustment clause under section 3 of
8 this 2005 Act if the commission determines that the use of an auto-
9 matic adjustment clause would result in rates that would fail:

10 “(A) To balance the interests of utility investors and utility con-
11 sumers;

12 “(B) To be fair, just and reasonable rates;

13 “(C) To provide adequate revenue both for operating expenses of the
14 utility and for capital costs of the utility;

15 “(D) To provide a return to utility equity holders that is
16 commensurate with the return on investment in other enterprises
17 having corresponding risks; and

18 “(E) To ensure confidence in the financial integrity of the utility,
19 allowing the utility to maintain the credit of the utility and to attract
20 capital.

21 “(2)(a) Subsection (1) of this section does not apply to rate changes under
22 an approved alternative form of regulation plan, including a resource rate
23 plan under ORS 757.212.

24 “(b) Any alternative form of regulation plan shall include provisions to
25 ensure that the plan operates in the interests of utility customers and the
26 public generally and results in rates that are just and reasonable and may
27 include provisions establishing a reasonable range for rate of return on in-
28 vestment. In approving a plan, the commission shall, at a minimum, consider
29 whether the plan:

30 “(A) Promotes increased efficiencies and cost control;

1 “(B) Is consistent with least-cost resources acquisition policies;

2 “(C) Yields rates that are consistent with the rates that would be
3 obtained following application of section 3 of this 2005 Act and this
4 section;

5 “[(C)] (D) Is consistent with maintenance of safe, adequate and reliable
6 service; and

7 “[(D)] (E) Is beneficial to utility customers generally, for example, by
8 minimizing utility rates.

9 “(c) As used in this subsection, ‘alternative form of regulation plan’
10 means a plan adopted by the commission upon petition by a public utility,
11 after notice and an opportunity for a hearing, that sets rates and revenues
12 and a method for changes in rates and revenues using alternatives to cost-
13 of-service rate regulation.

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

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

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

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

1 record made at the hearing.

2 **"SECTION 6. (1) Notwithstanding section 3 of this 2005 Act or ORS**
3 **757.210, an automatic adjustment clause that otherwise may be re-**
4 **quired under section 3 of this 2005 Act may not be applied as a result**
5 **of a tax report or other information submitted in 2005, 2006 or 2007.**
6 **An automatic adjustment clause under section 3 of this 2005 Act may**
7 **be required under a determination made by the Public Utility Com-**
8 **mission that is based on a tax report or other information that is**
9 **submitted in 2008 or subsequent years.**

10 **"(2) On or before April 1, 2006, and on or before April 1, 2007, the**
11 **commission shall submit a detailed report to the Governor, the Presi-**
12 **dent of the Senate and the Speaker of the House of Representatives.**
13 **The commission shall conduct a public hearing on the draft report**
14 **before submitting it. The report shall include, but is not limited to:**

15 **"(a) A description of the operation of section 3 of this 2005 Act and**
16 **ORS 757.210 to date;**

17 **"(b) The extent to which section 3 of this 2005 Act and ORS 757.210**
18 **would have resulted in rate adjustments based on the reports and**
19 **other information due from utilities in 2005, 2006 and 2007;**

20 **"(c) Data about the cost of implementing section 3 of this 2005 Act**
21 **and the amendments to 757.210 by section 5 of this 2005 Act; and**

22 **"(d) Recommendations for legislative action, if any, to modify sec-**
23 **tion 2 or 3 of this 2005 Act or ORS 757.210.**

24 **"(3) The definitions in section 3 of this 2005 Act and ORS 757.210**
25 **apply to this section.**

26 **"SECTION 7. This 2005 Act being necessary for the immediate**
27 **preservation of the public peace, health and safety, an emergency is**
28 **declared to exist, and this 2005 Act takes effect on its passage."**

29

SB 408-B15
(LC 819)
6/30/05 (DJ/ps)

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 1a to 3a of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 1a. As used in sections 1a to 3a of this 2005 Act:**

6 **"(1) 'Affiliated group' means an affiliated group of corporations of**
7 **which a utility is a member and that files a consolidated federal in-**
8 **come tax return.**

9 **"(2) 'Properly attributed' means the attribution of tax liabilities or**
10 **tax benefits to the entity or activity whose business or economic ac-**
11 **tivities created the items of income, expenses, losses, deductions or**
12 **credits upon which the tax liabilities or tax benefits are based.**

13 **"(3) 'Public utility' or 'utility' means:**

14 **"(a) A regulated investor-owned utility that provided electric or**
15 **natural gas service to an average of 50,000 or more customers in**
16 **Oregon in 2003; or**

17 **"(b) A successor in interest to an entity described in paragraph (a)**
18 **of this subsection that continues to be a regulated investor-owned**
19 **utility.**

20 **"(4) 'Regulated operations of the utility':**

21 **"(a) Means utility activities that give rise to expenses or revenues**
22 **that are included in utility rates;**

23 **"(b) Do not include economic activities that are unrelated to utility**
24 **activities; and**

1 “(c) Do not include expenses that are disallowed by the Public
2 Utility Commission for ratemaking purposes.

3 “(5) ‘Tax’:

4 “(a) Means a federal, state or local tax that is imposed on or
5 measured by income and that is paid to a unit of government.

6 “(b) Does not include any amount that is refunded by a unit of
7 government as a tax refund.

8 “(c) Does not include a franchise fee or privilege tax.

9 “(d) Does not include a local business license fee measured by in-
10 come.

11 “(6) ‘Unit of government’ means the United States, the State of
12 Oregon or a political subdivision of the State of Oregon.

13 “SECTION 2. (1) The Legislative Assembly finds and declares that:

14 “(a) The alignment of costs for taxes collected by public utilities
15 from utility customers with taxes actually received by units of gov-
16 ernment from utilities, or from affiliated groups, is of special interest
17 to this state.

18 “(b) Taxes are a unique utility cost because the actual taxes re-
19 ceived by units of government are affected by the operations or tax
20 attributes of the parent company or other affiliates of the utility.

21 “(c) The Public Utility Commission permits a utility to include an
22 expense for taxes in rates that assume the utility is not part of an
23 affiliated group for tax purposes.

24 “(d) The parent company of a utility may employ accounting
25 methods, debt, consolidated tax return rules and other techniques in
26 a way that results in a difference between the taxes actually received
27 by units of government from the utility, or from the affiliated group
28 of which the utility is a member, and the amount of costs for taxes
29 collected, directly or indirectly, as part of rates paid by customers.

30 “(e) Tax uncertainty in the ratemaking process may result in col-

1 lecting taxes from ratepayers that are not received by units of gov-
2 ernment.

3 “(f) Utility rates that include amounts for taxes should, over time,
4 reflect the taxes that are actually received by units of government to
5 be considered fair, just and reasonable.

6 “(g) The level of tax expense in utility rates involves complicated
7 questions of state and federal tax law and accounting and ratemaking
8 principles. The legal and economic consequences of changing the ex-
9 isting system are difficult to predict and if predicted incorrectly may
10 have significant unintended legal or economic consequences.

11 “(h) Because of economic, public policy and legal concerns that
12 would arise using alternative approaches to determining the cost of
13 taxes in rates, sections 3 and 3a of this 2005 Act and ORS 757.210 seek
14 to more closely align the tax expense in rates with the tax obligations
15 of the utility that are attributable to the utility’s regulated operations.

16 “(i) Information about the past and future tax expenses of a busi-
17 ness has commercial value. Disclosure of the past and future tax ex-
18 penses of a business could give other businesses an advantage over the
19 business to which the information pertains and over other businesses
20 that do not know the information.

21 “(2) The Legislative Assembly makes the findings and declarations
22 described in this section as part of the context in which sections 3 and
23 3a of this 2005 Act and ORS 757.210 are to be interpreted and applied.
24 Nothing in this section creates any claim for relief.

25 “SECTION 3. (1) On or before October 15 of each year, or on or
26 before a later date that the Public Utility Commission may allow, ev-
27 ery public utility shall obtain and provide to the commission any in-
28 formation the commission requires to determine the amount of tax for
29 the fiscal year preceding the fiscal year in which the information is
30 provided that units of government received:

1 matic adjustment clause if the commission determines that the
2 amount of taxes under subsection (2)(a) of this section differed by 10
3 percent or more from the amount of costs for taxes under subsection
4 (2)(b) of this section.

5 “(5) The automatic adjustment clause shall apply for a three-year
6 period following establishment of the clause, to:

7 “(a) Recoup for ratepayers the amount of costs for taxes paid in
8 rates by ratepayers but never received by units of government; or

9 “(b) Reimburse utility investors for the amount of taxes received
10 by units of government but not collected in rates from ratepayers.

11 “SECTION 3a. (1) The automatic adjustment clause described in
12 section 3 of this 2005 Act may not be used to make adjustments to
13 rates that are properly attributed to any other affiliate of the public
14 utility or to the parent of the utility.

15 “(2) Notwithstanding section 3 of this 2005 Act or ORS 757.210, the
16 commission shall authorize a public utility to include in rates:

17 “(a) Deferred taxes resulting from accelerated depreciation or other
18 tax treatment of utility investment; and

19 “(b) Tax requirements and benefits that are required to be included
20 in order to ensure compliance with the normalization requirements
21 of federal tax law.

22 “(3) The commission may not require the establishment or contin-
23 uation of an automatic adjustment clause under section 3 of this 2005
24 Act if the automatic adjustment clause would cause the taxpayer to:

25 “(a) Lose the right to claim accelerated depreciation with respect
26 to its capital assets or depreciable property on the tax returns of the
27 taxpayer;

28 “(b) Incur a reduction in other tax benefits because implementation
29 of the clause would result in the taxpayer's not using a normalization
30 method of accounting under federal tax law; or

1 “(c) Otherwise violate a requirement of a normalization method of
2 accounting or another requirement of federal tax law.

3 “(4)(a) The commission may discontinue or choose not to imple-
4 ment an automatic adjustment clause under this section if the com-
5 mission determines that continuation or implementation of the
6 automatic adjustment clause would have a material adverse effect on
7 customers of the public utility or on renewable energy companies.

8 “(b) The commission shall conduct a hearing under ORS 757.210
9 prior to making a determination under this subsection.

10 “(5) Prior to establishing an automatic adjustment clause under
11 section 3 of this 2005 Act, the commission shall review the results of
12 operations of the public utility to determine whether the effect of the
13 automatic adjustment clause is large enough to merit, in the sole
14 discretion of the commission, the initiation of a new general
15 ratemaking proceeding.

16 “(6)(a) The commission may not use the tax information obtained
17 by the commission under section 3 of this 2005 Act for any purpose
18 other than those described in section 3 of this 2005 Act. Except as
19 provided in this subsection, the tax report and information submitted
20 to the commission under section 3 of this 2005 Act are confidential.

21 “(b) An intervenor in a commission proceeding to review the tax
22 report or make rate adjustments described in section 3 of this 2005 Act
23 may, at the commission’s discretion and upon signing a protective
24 order prepared by the commission, obtain or use the information, in-
25 cluding the tax report, according to the terms of the protective order.

26 “(c) The commission or any intervenor may disclose the amount
27 by which the amount of taxes that units of government received from
28 the public utility or from the affiliated group of which the utility is a
29 member, differs from the amount of costs for taxes collected, directly
30 or indirectly, as part of rates paid by customers, including whether the

1 difference is positive or negative.

2 **"SECTION 4.** The tax report and other information that, under
3 section 3 of this 2005 Act, is required to be filed on or before October
4 15, 2005, or another date determined by the Public Utility Commission,
5 shall set forth the information required to be reported under section
6 3 of this 2005 Act for the most recent fiscal year of the public utility
7 that concluded prior to the date of the filing of the tax report.

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

9 **"757.210. (1)(a)** Whenever any public utility files with the Public Utility
10 Commission any rate or schedule of rates stating or establishing a new rate
11 or schedule of rates or increasing an existing rate or schedule of rates, the
12 commission may, either upon written complaint or upon the commission's
13 own initiative, after reasonable notice, conduct a hearing to determine [*the*
14 *propriety and reasonableness of such rate or schedule*] **whether the rate or**
15 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
16 *a*] the hearing upon written complaint filed by the utility, its customer or
17 customers, or any other proper party within 60 days of the utility's filing;
18 provided that no hearing need be held if the particular rate change is the
19 result of an automatic adjustment clause. At [*such*] the hearing the utility
20 shall bear the burden of showing that the rate or schedule of rates proposed
21 to be established or increased or changed is [*just and reasonable*] **fair, just**
22 **and reasonable.** The commission may not authorize a rate or schedule
23 of rates that is not fair, just and reasonable. [*The term*]

24 **"(b)** As used in this subsection, 'automatic adjustment clause' means
25 a provision of a rate schedule [*which*] that:

26 **"(A)** Provides for rate increases or decreases or both, without prior
27 hearing, reflecting increases or decreases or both in costs incurred, includ-
28 ing adjustments made pursuant to section 3 of this 2005 Act, taxes
29 actually paid to units of government or revenues earned by a utility; and
30 [*which*]

1 “(B) Is subject to review by the commission at least once every two years.

2 “(c) Notwithstanding any other provision of law, the commission
3 may not establish an automatic adjustment clause under section 3 of
4 this 2005 Act if the commission determines that the use of an auto-
5 matic adjustment clause would result in rates that would fail:

6 “(A) To balance the interests of utility investors and utility con-
7 sumers;

8 “(B) To be fair, just and reasonable rates;

9 “(C) To provide adequate revenue both for operating expenses of the
10 utility and for capital costs of the utility;

11 “(D) To provide a return to utility equity holders that is
12 commensurate with the return on investment in other enterprises
13 having corresponding risks; and

14 “(E) To ensure confidence in the financial integrity of the utility,
15 allowing the utility to maintain the credit of the utility and to attract
16 capital.

17 “(2)(a) Subsection (1) of this section does not apply to rate changes under
18 an approved alternative form of regulation plan, including a resource rate
19 plan under ORS 757.212.

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

26 “(A) Promotes increased efficiencies and cost control;

27 “(B) Is consistent with least-cost resources acquisition policies;

28 “(C) Yields rates that are consistent with the rates that would be
29 obtained following application of sections 3 and 3a of this 2005 Act;

30 “[(C)] (D) Is consistent with maintenance of safe, adequate and reliable

1 service; and

2 “[(D)] (E) Is beneficial to utility customers generally, for example, by
3 minimizing utility rates.

4 “(c) As used in this subsection, ‘alternative form of regulation plan’
5 means a plan adopted by the commission upon petition by a public utility,
6 after notice and an opportunity for a hearing, that sets rates and revenues
7 and a method for changes in rates and revenues using alternatives to cost-
8 of-service rate regulation.

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

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

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

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

27 **“SECTION 6. (1) Notwithstanding sections 3 and 3a of this 2005 Act**
28 **or ORS 757.210, an automatic adjustment clause that may be otherwise**
29 **required under section 3 of this 2005 Act may not be applied as a result**
30 **of a tax report or other information submitted in October 2005, 2006**

1 or 2007. An automatic adjustment clause under section 3 of this 2005
2 Act may be required under a determination made by the Public Utility
3 Commission that is based on a tax report or other information that is
4 submitted in October 2008 or subsequent years.

5 “(2) On or before April 1, 2006, and on or before April 1, 2007, the
6 commission shall submit a detailed report to the Governor, the Presi-
7 dent of the Senate and the Speaker of the House of Representatives.
8 The commission shall conduct a public hearing on the draft report
9 before submitting it. The report shall include, but is not limited to:

10 “(a) A description of the operation of sections 3 and 3a of this 2005
11 Act and ORS 757.210 to date;

12 “(b) The extent to which sections 3 and 3a of this 2005 Act and ORS
13 757.210 would have resulted in rate adjustments based on the reports
14 and other information due from utilities in October 2005, 2006 and 2007;

15 “(c) Data about the cost of implementing sections 3 and 3a of this
16 2005 Act and the amendments to 757.210 by section 5 of this 2005 Act;
17 and

18 “(d) Recommendations for legislative action, if any, to modify
19 sections 1a to 3a of this 2005 Act or ORS 757.210.

20 “(3) For purposes of this section, a tax report or other tax infor-
21 mation that is reported to the commission prior to October of a year
22 shall be considered to be submitted in October of the year in which the
23 tax report or other information is required to be filed.

24 “(4) The definitions in section 1a of this 2005 Act and ORS 757.210
25 apply to this section.

26 “SECTION 7. This 2005 Act being necessary for the immediate
27 preservation of the public peace, health and safety, an emergency is
28 declared to exist, and this 2005 Act takes effect on its passage.”.

SB 408-B16
(LC 819)
6/30/05 (DJ/ps)

MEASURE: SB 408
EXHIBIT: 6
H. COMM. ON STATE & FED. AFFAIRS
DATE: 6-30-05 PAGES: 8
SUBMITTED BY: Staff

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 2. (1) The Legislative Assembly finds and declares that:**

6 **"(a) The alignment of taxes collected by public utilities from utility**
7 **customers with taxes paid to units of government by utilities, or af-**
8 **filiated groups that include utilities, is of special interest to this state.**

9 **"(b) Taxes are a unique utility cost because the tax liability is af-**
10 **fectured by the operations or tax attributes of the parent company or**
11 **other affiliates of the utility.**

12 **"(c) The Public Utility Commission permits a utility to include costs**
13 **for taxes that assume the utility is not part of an affiliated group of**
14 **corporations for tax purposes.**

15 **"(d) The parent company of a utility may employ accounting**
16 **methods, debt, consolidated tax return rules and other techniques in**
17 **a way that results in a difference between the tax liability paid to units**
18 **of government by the utility, or the affiliated group of corporations**
19 **of which the utility is a member, and the amount of taxes collected,**
20 **directly or indirectly, from customers.**

21 **"(e) Tax uncertainty in the ratemaking process may result in col-**
22 **lecting taxes from ratepayers that are not paid to units of government.**

23 **"(f) Utility rates that include amounts for taxes should reflect the**
24 **taxes that are paid to units of government to be considered fair, just**

1 and reasonable.

2 “(2) The definitions in section 3 of this 2005 Act apply to this sec-
3 tion.

4 **SECTION 3.** (1) Every public utility shall file a tax report with the
5 Public Utility Commission annually, on or before October 15 following
6 the year for which the report is being made. The tax report shall
7 contain the information required by the commission, including:

8 “(a) The amount of taxes that was paid by the utility in the three
9 preceding years, or that was paid by the affiliated group and that is
10 properly attributed to the regulated operations of the utility, deter-
11 mined without regard to the tax year for which the taxes were paid;
12 and

13 “(b) The amount of taxes authorized to be collected in rates for the
14 three preceding years.

15 “(2) Every public utility shall be required to obtain and provide to
16 the commission any other information that the commission requires
17 to review the tax report and to implement and administer this section
18 and ORS 757.210.

19 “(3) The information described in subsection (1) of this section and
20 included in the tax report shall be made publicly available at the time
21 the tax report is filed.

22 “(4) The commission shall review the tax report and any other in-
23 formation the commission has obtained and make the determinations
24 described in this section within 90 days following the filing of the re-
25 port, or within a further period of time that the commission may by
26 rule establish for making determinations under this section that does
27 not exceed 180 days following the filing of the report. If the commis-
28 sion determines that the amount of taxes assumed in rates or other-
29 wise collected from ratepayers for any of the three preceding years
30 differed from the amount of taxes paid to units of government by the

1 public utility, or by the affiliated group and properly attributed to the
2 regulated operations of the utility, the commission shall require the
3 utility to establish an automatic adjustment clause, as defined in ORS
4 757.210, within 30 days following the date of the commission's deter-
5 minations under this section, or by a later date that the commission
6 may by rule prescribe for establishing an automatic adjustment clause
7 that does not exceed 60 days following the date of the commission's
8 determinations under this section.

9 “(5) If an adjustment to rates is made under an automatic adjust-
10 ment clause established under this section, the automatic adjustment
11 clause shall remain in effect for each successive year after an adjust-
12 ment is made and until an order terminating the automatic adjust-
13 ment clause is made under subsection (9) of this section.

14 “(6) The automatic adjustment clause shall account for all taxes
15 paid to units of government by the public utility that are properly at-
16 tributed to the regulated operations of the utility, or by the affiliated
17 group that are properly attributed to the regulated operations of the
18 utility, and all taxes that are authorized to be collected through rates,
19 so that ratepayers are not charged for more tax than:

20 “(a) The utility pays to units of government and that is properly
21 attributed to the regulated operations of the utility; or

22 “(b) In the case of an affiliated group, the affiliated group pays to
23 units of government and that is properly attributed to the regulated
24 operations of the utility.

25 “(7) An automatic adjustment clause established under this section
26 may not be used to make adjustments to rates that are properly at-
27 tributed to any unregulated affiliate of the public utility or to the
28 parent of the utility.

29 “(8) Notwithstanding subsections (1) to (7) of this section, the
30 commission may authorize a public utility to include in rates:

1 “(a) Deferred taxes resulting from accelerated depreciation or other
2 tax treatment of utility investment; and

3 “(b) Tax requirements and benefits that are required to be included
4 in order to ensure compliance with the normalization requirements
5 of federal tax law.

6 “(9) If the commission determines that establishing an automatic
7 adjustment clause under this section would have a material adverse
8 effect on customers of the public utility, the commission shall issue
9 an order terminating the automatic adjustment clause. The order shall
10 set forth the reasons for the commission’s determination under this
11 subsection.

12 “(10) The commission shall conduct a hearing under ORS 757.210
13 prior to making a determination under subsection (9) of this section
14 that an automatic adjustment clause would have a material adverse
15 effect on customers of the public utility.

16 “(11) The commission may not use the tax information obtained by
17 the commission under this section for any purpose other than those
18 described in subsections (1) to (10) of this section. An intervenor in a
19 commission proceeding to review the tax report or make rate adjust-
20 ments described in this section may, upon signing a protective order
21 prepared by the commission, obtain or use the information obtained
22 by the commission that is not otherwise required to be made publicly
23 available under this section, according to the terms of the protective
24 order.

25 “(12) For purposes of this section, taxes paid that are properly at-
26 tributed to the regulated operations of the public utility may not ex-
27 ceed the lesser of:

28 “(a) That portion of the total taxes paid that is incurred as a result
29 of income generated by the regulated operations of the utility; or

30 “(b) The total amount of taxes received by units of government

1 from the utility or from the affiliated group, whichever applies.

2 “(13) As used in this section:

3 “(a) ‘Affiliated group’ means an affiliated group of corporations of
4 which the public utility is a member and that files a consolidated
5 federal income tax return.

6 “(b) ‘Public utility’ or ‘utility’ does not include a water utility.

7 “(c) ‘Regulated operations of the utility’ means those activities of
8 a public utility that are subject to rate regulation by the commission.

9 “(d) ‘Tax’:

10 “(A) Means a federal, state or local tax or fee that is imposed on
11 or measured by income and that is paid to units of government.

12 “(B) Does not include any amount that is refunded by a unit of
13 government as a tax refund.

14 “(C) Does not include franchise fees or privilege taxes.

15 “(e) ‘Taxes authorized to be collected in rates’ means the product
16 determined by multiplying the following three values:

17 “(A) The revenues the utility collects from ratepayers in Oregon;

18 “(B) The ratio of the net revenues from regulated operations of the
19 utility to gross revenues from regulated operations of the utility; and

20 “(C) The effective tax rate used by the commission in establishing
21 rates.

22 “(f) ‘Taxes paid’ means amounts received by units of government
23 from the utility or from the affiliated group of which the utility is a
24 member, whichever is applicable, adjusted as follows:

25 “(A) Increased by the amount of tax savings realized as a result of
26 charitable contribution deductions allowed because of charitable con-
27 tributions made by the utility;

28 “(B) Increased by the amount of tax savings realized as a result of
29 tax credits associated with investment by the utility in the regulated
30 operations of the utility, if the tax credits have not been taken into

1 account by the commission in the utility's last general ratemaking
2 proceeding; and

3 "(C) Adjusted by deferred taxes related to the regulated operations
4 of the utility.

5 "(g) 'Three preceding years' means the three most recent consec-
6 utive fiscal years preceding the date the tax report is required to be
7 filed.

8 "SECTION 4. (1) The tax report that, under section 3 of this 2005
9 Act, is required to be filed on or before October 15, 2005, shall set forth
10 the information required to be reported under section 3 of this 2005
11 Act for the three most recent consecutive fiscal years of the public
12 utility that concluded prior to the date of the filing of the tax report.

13 "(2) If an automatic adjustment clause is established under section
14 3 of this 2005 Act, notwithstanding any other provision of section 3 of
15 this 2005 Act, the automatic adjustment clause shall apply only to
16 taxes paid to units of government and collected from ratepayers on
17 or after January 1, 2006.

18 "SECTION 5. ORS 757.210 is amended to read:

19 "757.210. (1)(a) Whenever any public utility files with the Public Utility
20 Commission any rate or schedule of rates stating or establishing a new rate
21 or schedule of rates or increasing an existing rate or schedule of rates, the
22 commission may, either upon written complaint or upon the commission's
23 own initiative, after reasonable notice, conduct a hearing to determine [*the*
24 *propriety and reasonableness of such rate or schedule*] whether the rate or
25 schedule is fair, just and reasonable. The commission shall conduct [*such*
26 *a*] the hearing upon written complaint filed by the utility, its customer or
27 customers, or any other proper party within 60 days of the utility's filing;
28 provided that no hearing need be held if the particular rate change is the
29 result of an automatic adjustment clause. At [*such*] the hearing the utility
30 shall bear the burden of showing that the rate or schedule of rates proposed

1 to be established or increased or changed is *[just and reasonable. The term]*
2 **fair, just and reasonable. The commission may not authorize a rate**
3 **or schedule of rates that is not fair, just and reasonable.**

4 “(b) As used in this subsection, ‘automatic adjustment clause’ means
5 a provision of a rate schedule *[which]* **that** provides for rate increases or
6 decreases or both, without prior hearing, reflecting increases or decreases
7 or both in costs incurred, **taxes paid to units of government** or revenues
8 earned by a utility and *[which]* **that** is subject to review by the commission
9 at least once every two years.

10 “(2)(a) Subsection (1) of this section does not apply to rate changes under
11 an approved alternative form of regulation plan, including a resource rate
12 plan under ORS 757.212.

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

19 “(A) Promotes increased efficiencies and cost control;

20 “(B) Is consistent with least-cost resources acquisition policies;

21 “(C) Yields rates that are consistent with those that would be ob-
22 tained following application of section 3 of this 2005 Act;

23 “[~~(C)~~] (D) Is consistent with maintenance of safe, adequate and reliable
24 service; and

25 “[~~(D)~~] (E) Is beneficial to utility customers generally, for example, by
26 minimizing utility rates.

27 “(c) As used in this subsection, ‘alternative form of regulation plan’
28 means a plan adopted by the commission upon petition by a public utility,
29 after notice and an opportunity for a hearing, that sets rates and revenues
30 and a method for changes in rates and revenues using alternatives to cost-

1 of-service rate regulation.

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

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

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

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

20 “**SECTION 6.** This 2005 Act being necessary for the immediate
21 preservation of the public peace, health and safety, an emergency is
22 declared to exist, and this 2005 Act takes effect on its passage.”.

23

House Committee On State and Federal Affairs

Testimony of Michael Early

on behalf of

Industrial Customers of Northwest Utilities

June 30, 2005

I am Michael Early, the new Executive Director of Industrial Customers of Northwest Utilities (ICNU), effective August 1, 2005. ICNU's membership includes industries that purchase services from investor-owned utilities at rates that are established by the Oregon Public Utility Commission pursuant to the statutory directives of the Oregon legislature.

As everyone knows, the corporate structure of Oregon utilities has become more complex and controversial in recent years. Both PGE and PacifiCorp have corporate parents far removed from Oregon. One very public consequence in the case of Enron and PGE is that revenues have been collected from Oregon rate payers to pay estimated income taxes of the utility and, then, no income tax payments were received in Salem or elsewhere because the parent chose to file on a consolidated tax basis. This imposed a unnecessary financial burden on Oregon residents and businesses, both as Oregon rate payers and as Oregon taxpayers.

The Senate in SB-408 provided direction to the Commission to address this problem. The Commission can and has used automatic adjustment clauses to track and adjust certain utility costs because these

costs are uncertain during the period in which the rates will be in effect. The effect of the automatic adjustment clause is that rate payers ultimately pay the utility for the actual cost it incurs, whether that cost is lower or greater than the estimate initially included in rates. The Senate directed the Commission to apply the same approach to taxes: the taxes collected from rate payers, based on an estimate included in establishing rates, would be compared after the fact to the taxes paid that were attributed to the regulated operations of the utility, and an adjustment would be made to rates to assure that rate payers did not pay more to the utility than was paid to governmental taxing authorities.

The version of SB 408 passed in the Senate left much of the implementation of this approach to the expertise of the Commission. During discussions with the utilities, Commission staff, the Attorney General's office and CUB, at the request of Representative Butler, a request was made, for more detail regarding key terms such as "taxes collected from rate payers" and "taxes paid and attributed to regulated utility operations" would be determined. The Commission staff has been very helpful in developing definitions for these terms. These clarifying amendments respond to this request. The amendments do not, however, change the basic result of the Senate bill, which is to prevent a recurrence of one effect of the Enron/PGE situation. In the future, taxes collected from Oregon rate payers would be reduced if little or no taxes attributed to the regulated operation of the utility were paid to governmental taxing authorities by the utility or its parent. In this respect, our amendments fundamentally differ from the utilities' amendments. Their bill asks the legislature to endorse and enshrine for the future the Enron/PGE result with regard to taxes and would preclude

the Commission, if an Enron/PGE type situation should occur in the future, from providing any relief to rate payers for amounts collected to pay taxes which are, in fact, not paid to any governmental taxing authority.

Attached are two examples showing the status quo (and the utilities' proposed amendments) and our amendments.

In summary, our amendments are within the legislature's authority to adopt and we believe they are the right policy choice. SB 408 seeks to ensure that the residential, commercial and industrial customers of Oregon's regulated utilities are only charged for taxes that are actually paid.

Examples

The utility is authorized to recover in rates from ratepayers the costs of taxes attributed to regulated utility operations and paid to governmental units. The problem arises when the amount of revenues collected from ratepayers for this purpose is less than the taxes actually paid to governmental units and, thus, ratepayer monies are diverted to other purposes.

Example 1 - Status Quo (dollars in millions)				
Year	1	2	3	4
Parent	N/A	\$500	(\$50)	\$450
Taxes Collected in Rates	\$100	\$100	\$100	\$100
Taxes Paid to Governmental Units	\$100	\$600	\$50	\$550
Taxes Paid to Governmental Units and Attributed to Regulated Operations of the Utility	\$100	\$100	\$50	\$100
Adjustment to Rates	\$0	\$0	\$0	\$0
Impact on Investors	Neutral	Neutral	Advantaged	Neutral

Year One

1. The utility has no parent or affiliates.
2. The utility engages only in regulated utility operations.
3. The tax amount to be recovered in rates is (roughly):

$$[(\text{loads} * \text{power rates}) - \text{costs}] * \text{imputed tax rate}.$$
4. Assumes authorized taxes are collected in rates, i.e., loads are as forecasted.
5. Since the utility has no parent or affiliate and the utility engages only in regulated utility businesses, all taxes are attributed to regulated utility operations.
6. All taxes collected are paid.
7. No adjustment to rates is currently provided for.
8. Investors are Neutral, i.e., the monies collected from ratepayers to pay taxes are, in fact, paid to governmental units.

Year Two

1. Utility is acquired by parent. Parent does not engage in regulated utility operations. Utility operations are unchanged.
2. Parent is profitable and incurs a tax liability, if it chooses to file separately, of \$500 million.
3. Parent chooses to file on a consolidated basis; there is a single taxpayer and the total taxes paid to governmental units are \$600 million.
4. Of that \$600 million, \$100 million is attributed to regulated utility operations.
5. No adjustment to rates.
6. Investors are still Neutral.

Year Three

1. Unregulated business of the parent becomes unprofitable. If parent chooses to file individually, it would recognize a tax loss of \$50 million.
2. Utility operations and revenues are unaffected by the parent's bad year; utility still collects \$100 million in rates for taxes.
3. Parent chooses to file on a consolidated basis, and total taxes paid to governmental units are \$50 million.
4. Because the total taxes paid to governmental units by taxpayer is \$50 million; no more that this amount can be taxes paid to governmental units that is attributed to the regulated utility operations. In this case, \$50 million is the tax paid to governmental units attributed to regulated utility operations.
5. No rate adjustment.
6. Investors are Advantaged, i.e., half of the revenue collected from ratepayers to pay taxes is not actually paid to governmental taxing units.

Year Four

1. Parent recovers and becomes profitable again.
2. Parent continues to file on a consolidated basis; total taxes paid are \$550 million and the portion of this amount attributed to regulated utility operations is \$100 million.
3. No rate adjustment and investors are again Neutral.

Summary

1. Ratepayers paid \$400 million.
2. Taxes paid to governmental units attributed to regulated operations of the utility were \$350 million.
3. Ratepayers paid \$50 million in excess of actual taxes paid to governmental units for activities attributed to the regulated utility.

Rates, including an automatic adjustment clause, should be established to recover from ratepayers only the actual amounts of taxes paid to governmental units and attributed to the utility's regulated operations.

Example 2 – SB 408 ICNU Amendments (dollars in millions)					
1	Year	1	2	3	4
2	Parent	N/A	\$500	\$(50)	\$450
3	Taxes Collected in Rates	\$100	\$100	\$100	\$100
4	Taxes Paid to Governmental Units	\$100	\$600	\$50	\$550
5	Taxes Paid to Governmental Units and Attributed to Regulated Operations of the Utility	\$100	\$100	\$50	\$100
6	Adjustment to Rates	\$0	\$0	\$(50)	\$0
7	Impact on Investors	Neutral	Neutral	Neutral	Neutral

The rate adjustment (Line 6) is line 2 – line 5, i.e., taxes collected in utility rates less that portion of taxes paid to governmental units attributed to regulated utility operations.

Year 1 – No adjustment

Year 2 – No adjustment

Year 3 – \$50 million credit (recognizing that due to regulatory lag, the credit may not be received in Year 3, but will be treated as received in Year 3, i.e. the credit does not reduce “actual taxes paid” if recovered in a period later than the period giving rise to the credit.)

Year 4 – No adjustment (\$50 million credit in Year 3 does not affect taxes collected in Year 4 unless the Commission modifies base rates.)

Summary

1. Ratepayers paid \$350 million (\$400 million collected and \$50 million credit).
2. The same amount, \$350 million, was actually paid to governmental taxing units for activities attributed to regulated utility operations.
3. Investors are Neutral across all years; revenues collected from ratepayers for taxes on regulated operations matched actual tax amounts paid to governmental units and attributed to regulated utility operations.

Bill Summary

Section 3(1) requires each utility to file a tax report using three years of historical information (initially years 2002-2004) that discloses (1) taxes collected from rate payers and (2) taxes paid to governmental taxing authorities which are attributed to regulated operations of the utility.

Section 3(2) requires the utility to obtain from its affiliates tax information requested by the Commission to implement this Act.

Section 3(3) requires the Commission to disclose publicly two numbers for each of the three years covered by the report: The taxes collected and the taxes paid and attributed to regulated operations. Section 3(12) allows intervenors to receive and use copies of all tax information obtained by the Commission, subject to a reasonable protective order.

Section 3(4) requires the Commission to review the tax report and to establish an automatic adjustment clause if the two numbers differ for any of the three years in this report. Once authorized, the automatic adjustment clause is reauthorized for each successive year after an adjustment is made.

Section 3(5) provides that, while the initial tax report deals with years 2002-04, the tax adjustment clause adjusts rates annually only for the years beginning January 1, 2006. There is no attempt to recoup differences for years before 2006.

Section 3(6) provides the Commission with direction on what the automatic adjustment clause should do: adjust rates so that rate payers are not charged more for taxes than the amount that is paid by the utility (if the utility is the taxpayer), or paid by the filing member of the affiliated group (if the utility

is a member of an affiliated group that files on a consolidated tax basis), to governmental taxing authorities and attributed to the regulated operations of the utility.

Section 3(11) defines certain terms used in Sections 3(1)-3(6): “Tax” is defined as a tax on income that is paid to a governmental taxing authority, but excludes franchise fees and privilege taxes.

“Taxes authorized to be collected in rates” is defined as actual utility revenues collected in Oregon for the year, times the ratio of net revenues to total revenues used by the Commission in setting rate, times the effective tax rate used by the Commission in setting rates.

“Taxes paid” means the amount paid to governmental taxing authorities, whether the taxpayer is the utility or the filing member of the affiliated group. There are three adjustments to “taxes paid” that allow the utility to retain the tax benefit of deductions for charitable contributions, the credits for certain utility investments, and for deferred taxes related to accelerated depreciation allowed by the IRS. Specifically for purposes of the automatic adjustment clause, “taxes paid” is increased above the actual amount paid to governmental units to reflect the additional taxes that would have been paid (1) if charitable donations by the utility had not been made and (2) if tax credits for utility investments, made after rates were set, had not been made, and (3) “taxes paid” is adjusted by deferred tax amounts related to regulated utility operations. We understand from OPUC staff that this last adjustment is necessary, and consistent with Section 3(8), to allow the utility to obtain the benefits of accelerated depreciation.

“Taxes paid” is not the amount that is compared to taxes collected in the automatic adjustment clause; rather the amount compared is that portion of “taxes paid” that is “properly attributed to the regulated operations of the utility.” This is defined and determined by applying a fraction (not greater than one) to “taxes paid”, based on the amount of taxes paid that is attributed to revenues collected for services provided in Oregon (and activities that were intended to provide such services) from the regulated operations of the utility.

The increase in “taxes paid” for charitable deductions and tax credits and the adjustment for deferred taxes flows through from “taxes paid” to “attributed to regulated operations of the utility.” Thus, in implementation of automatic adjustment clause, the increases in “taxes paid attributed to regulated operations of the utility” allows taxes collected from rate payers for this increased amount to be retained by the utility.

Sections 3(7)-(10) provide safeguards against potential unintended results.

In summary, the adjustment clause adjusts rates so that taxes collected equals taxes paid and attributed to regulated operations of the utility, whatever the utility’s corporate structure. Thus, if “taxes paid” are a loss and consequently the taxes paid and “attributed to regulated operations” is also zero, then the rate payers receive a credit for prior payments to the utility of estimated taxes which were never incurred.

TESTIMONY OF DEPUTY ATTORNEY GENERAL PETE SHEPHERD
SB 408B

The Assembly's law-making powers have no limits except those imposed by the state constitution, the federal constitution, or federal law. Therefore, our primary responsibility is to flag for you constitutional limitations that might impinge on the options you are considering. Secondly, our office is required by law to help agencies conform their conduct to law. To fulfill the second responsibility, it has been our pleasure to have worked under Rep. Butler's courteous and firm leadership to clarify the language of the proposals that you will consider today. Finally, the Attorney General has statutory authority – independent of the Attorney General's role as the lawyer for state agencies including the Public Utility Commission (PUC) – to recommend improvements in laws intended to protect consumers. To fulfill this responsibility, we have prepared¹ a set of amendments that represent the Attorney General's recommended policy option.

I.

Basic Constitutional Principles

Two decisions from the United States Supreme Court set out the basic constitutional principles applicable to the ratemaking process. The cases are *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).

Under these opinions the Assembly, and regulators to whom the Assembly delegates its rate-making legislative authority, must allow a regulated industry to charge enough for its product that it has a reasonable opportunity recover its prudent expenses and to earn a fair return on investment that serves customers. The Constitution requires only that the total rate allowed is sufficient. The Constitution does not require that any individual component of the ratemaking process -- including any individual component of the "expense" portion of the rate calculation -- meet any sufficiency test. As the United States Supreme Court put it in *Duquesne*, "The Constitution protects the utility from the net effect of the rate order on its property." In short, the Constitution does not require that subsidiary components of a state's ratemaking methodology be examined piecemeal; nor does it forbid a methodology that takes expenses into account piecemeal provided that the total rate allowed is reasonable.

The cases establish a second important principle. Regulators may not "arbitrarily switch back and forth between" ratemaking methodologies in ways

¹ We gratefully acknowledge the assistance of Legislative Counsel Dexter Johnson.

that require investors to bear all the risk of bad investments yet deny them the benefit of good investments. In short, whatever ratemaking methodology the Assembly chooses to adopt must be applied consistently – even if that methodology could result in *increased* rates as well as reduced rates. In the absence of safeguards, a ratemaking methodology that can only create downward adjustments in rates could lead to confiscatory rates that would violate the first principle.

Within these limits, the Assembly has latitude to create many different rate making methodologies.

II.

Evaluation Of The Four Alternatives

We have examined the four alternatives² before you today. They align along a range of litigation risk. We would attempt to defend all four choices. The probability of success in that defense varies amongst the proposals.

In our opinion, we have a very high probability of successfully defending the “Utilities’ version” and the “DOJ Alternative” against facial constitutional challenge. Both of these measures contain explicit provisions that protect investors against the application of a rate adjustment that unconstitutionally deprives them of the value of their investment. If all else failed, these so-called “off-ramps” would allow the PUC to avoid an unconstitutionally low rate.

ICNU’s version does not contain the same provision as the Utilities’ Version” and the DOJ Alternative. ICNU’s version does prohibit the establishment of a rate that is “not fair, just and reasonable.” If the Assembly adopted ICNU’s version and a facial challenge to its constitutionality were to arise, we would assert that this provision has the same legal effect as the more explicit provisions in the “Utilities version” and in the “DOJ Alternative.”

SB 408A contains the same limitation as the ICNU version. Nevertheless, the multiple ambiguities in SB 408A makes us less optimistic about making a successful defense of the bill.

² Except for SB 408B, final LC drafts of the variants were not available at the time this testimony was prepared.

III.

DOJ's Alternative Policy Option

We believe that the fundamental policy issue presented by the Enron/PGE situation is one of tax policy. No one disputes that Enron/PGE acted lawfully in filing consolidated tax returns. The intersection of that choice with the existing ratemaking proceedings created a unique problem.

If we were writing an answer to this problem on a clean slate, we might well recommend that you attack it as a problem of tax law, rather than one of regulated utility law. In fact, one option for doing just that was evaluated but not adopted in the Senate.³ We raised this approach in the working group; it was not met with enthusiasm.

At this point in the session, we are not writing on a clean slate. Like the other versions before you today, our recommended policy option starts with the proposition that we should try to address the problem in the context of regulated utility law.

We believe that our recommended approach would forestall a repetition of the Enron/PGE situation and would protect customers and investors alike. We have separately submitted to the committee a chart showing a feature-by-feature comparison of the competing alternatives.

In the attached examples, we show how the DOJ Alternative would work. RedCo illustrates the rate reductions that would take place over time in response to repetition of the Enron/PGE situation. BlackCo illustrates the rate increases that could take place if units of government consistently received more in taxes than had been estimated in rates. In either example, the protections in our alternative against unreasonably high rates or unconstitutionally low rates could be triggered; whether they would be triggered cannot be anticipated in a hypothetical because it depends on the details of the particular rate and particular utility.

Attachments:

Similarities/Dissimilarities Chart
RedCo Example
BlackCo Example

³ SB 174B.

MAJOR SIMILARITIES AND DISSIMILARITIES BETWEEN VARIANTS

Feature/Characteristic	Utilities' Version	DOJ's Alternative	ICNU Version	SB 408B
Would reduce rates if another Enron/PGE situation were to develop involving a utility regulated by the Oregon PUC.		●	●	?
Taxes "paid" when money moved from subsidiary to parent, whether or not any of the funds ever are received by units of government.	●			?
Taxes "paid" when "received by" or "paid to" units of government.		●	●	●
Sensitive business data protected during adjustment proceedings under the "other statutory confidentiality mandate" exemption to the Public Records law; exemption is not subject to balancing test.		●	?	
Sensitive business data protected during adjustment proceedings under the "trade secrets" exemption to the Public Records law; Protected information subject to disclosure if public interest in disclosure outweighs interest in confidentiality	●	●	?	
Intervenors in adjustment proceedings may obtain and use confidential data subject to commission protective order	●	●	●	
PUC general ratemaking proceedings remain undisturbed: adjustments added to or subtracted from the rates established in the customary manner	●	●		?
Delayed application of calculated adjusted rates until 2008; period status reports to the Assembly, Governor between now and 2008.	●	●		
Prospective (i.e., no refunds, retroactive credits, or "balancing" accounts needed)	●	●	●	?
Symmetrical (i.e., adjustments are even-handed – up as well as down)	●	●	?	?
Explicit "Off-ramp" protects investors against confiscatory rate resulting from the automatic adjustment (The <i>Hope</i> standard)	●	●		
Presumptive deadlines for action by PUC at various procedural points; PUC granted authority to depart from presumptive deadlines	●	●		
Explicit nullification of potential causes of action based on the findings in and of themselves	●	●		
Automatic adjustment triggered when taxes "paid" and taxes collected in rates differ by ± 10 percent or more	●	●		
Automatic adjustment triggered when taxes "paid" and taxes collected in rates differ by as little as \$1			●	●

Feature/Characteristic	Utilities' Version	DOJ's Alternative	ICNU Version	SB 408B
Focus on largest utilities; exclude water utilities and electric utilities serving an average of 50,000 Oregonians or less	●	●		
Explicit limit protects ratepayers against unfair rates resulting from the automatic adjustment.	●	●	●	●
Public disclosure of difference between taxes "paid" and taxes collected in rates allowed.	●	●	●	●
DOJ would defend against a facial constitutional attack	●	●	●	?
Protection of Accelerated Depreciation	●	●		
Emergency clause	●	●	●	●

Sources: At the time we prepared this chart, DOJ did not have access to the Legislative Counsel drafts of any of the three variants to SB 408B. In the case of the "utilities" version", we based this chart on the version distributed at the working group meeting June 27, modified with what we understood to be the changes agreed upon at that meeting. For the "ICNU version" we examined undated "proposed amendments to B-Eng. SB 408" received from ICNU on June 29, 2005. We based the conclusions indicated in the column headed "DOJ's Alternative" on the document DOJ circulated to the workgroup on June 29, 2005.

214

MEASURE: SB 408
EXHIBIT: J
H. COMM ON STATE & FED. AFFAIRS
DATE: 4-30-05 PAGES: 2
SUBMITTED BY: Pete Shepherd

RedCo Utility

Year in which "tax report" is submitted (contents relate to the prior fiscal year)

**TL: Amount allowed
in rate as estimated
tax**

TR: Amount received by government from the Oregon regulated activities of the utility or the affiliated group

TR-TL

Percent difference

RA: Rate Increase to be distributed over three years

RA: Rate Decrease to be distributed over three years

Prospective Rate

Adjustments

(added to or sub-

tracted from the

rate calculated in the usual manner)

**Increase or
(Decrease) in rates
applied in stated
year**

2004	2005	2006	2007	2008	2009	2010	2011	2012
92	92	92	92	92	92	92	92	92
87	112	81	75	0	25	50	100	150
(5.00)	20.00	(11.00)	(17.00)	(92.00)	(67.00)	(42.00)	8.00	58.00
-5%	22%	-12%	-18%	-100%	-73%	-46%	9%	63%
0.00	20.00	0.00	0.00	0.00	0.00	0.00	0.00	58.00
0.00	0.00	(11.00)	(17.00)	(92.00)	(67.00)	(42.00)	0.00	0.00
0.00	0.00	0.00						
6.67	6.67	6.67	6.67					
	(3.67)	(3.67)	(3.67)	(3.67)	(5.67)			
			(5.67)	(5.67)	(30.67)	(30.67)		
				(30.67)	(30.67)	(22.33)	(22.33)	
					(22.33)	(22.33)	(14.00)	(14.00)
						(14.00)	0.00	0.00
							0.00	19.33
2004	2005	2006	2007	2008	2009	2010	2011	2012
0.0	6.7	3.0	(2.7)	(40.0)	(58.7)	(67.0)	(36.3)	5.3

6/28/05

Page 1 of 1

**BlackCo
Utility**

Year in which "tax
report" is submitted
(contents relate to the
prior fiscal year)

TL: Amount allowed
in rate as estimated
tax

TR: Amount received
by government from the
Oregon regulated
activities of the utility or
the affiliated group

TR - TL

Percent difference

RA: Rate *Increase* to
be distributed over three
years

RA: Rate *Decrease* to
be distributed over three
years

Prospective Rate
Adjustments
(added to or sub-
tracted from the
rate calculated in the
usual manner)

Increase or
(Decrease) in rates
applied in stated
year

2004	2005	2006	2007	2008	2009	2010	2011	2012
92	92	92	92	92	92	92	92	92
87	97	95	120	75	85	95	105	115
(5.00)	5.00	3.00	28.00	(17.00)	(7.00)	3.00	13.00	23.00
-5%	5%	3%	30%	-18%	-8%	3%	14%	25%
0.00	0.00	0.00	28.00	0.00	0.00	0.00	13.00	23.00
0.00	0.00	0.00	0.00	(17.00)	0.00	0.00	0.00	0.00
0.00	0.00	0.00						
	0.00	0.00	0.00					
		0.00	0.00	0.00				
			9.33	9.33	9.33			
				(5.67)	(5.67)	(5.67)		
					0.00	0.00	0.00	
						0.00	0.00	0.00
							4.33	4.33
								7.67
2004	2005	2006	2007	2008	2009	2010	2011	2012
0.0	0.0	0.0	9.3	3.7	3.7	(5.7)	4.3	12.0

TESTIMONY ON SB 408

before the
House Committee on State and Federal Affairs

Daniel Meek
June 30, 2005

The electricity and gas utilities regulated by the Oregon Public Utility Commission (PUC) have for years been charging to Oregon ratepayers hundreds of millions of dollars for "state income taxes" and "federal income taxes" that in fact have not been paid to any government. Currently, the best estimate of these charges for phony taxes is \$150 million per year.

The PUC simply allows the utilities to charge ratepayers wildly inflated "estimates" of state and federal income taxes. These estimates are not based on any review of the utility's actual tax payments or past tax returns. Instead, the PUC simply applies the statutory income tax rate to the utility's estimated net income. For example, if the rates are designed to earn PGE \$200 million in net income per year, then the amount included in rates to pay PGE's federal income taxes is \$70 million, because that is \$200 million times the nominal federal income tax rate of 35%.

But these estimates are very wrong. We know that PGE has charged Oregon ratepayers, since being acquired by Enron in 1997, over \$750 million for "state and federal income taxes" that in fact neither PGE nor Enron has paid or ever will pay to any government. PacifiCorp charged Oregon ratepayers over \$88 million for "state and federal income taxes" in 2002 but paid the state only ten dollars in state income taxes, which strongly implies that PacifiCorp also paid little or nothing in federal income taxes that year. The utilities' tax returns are "confidential," but it is fair to say that Oregon ratepayers over the past 8 years have almost certainly paid these utilities over \$1 billion for "federal income taxes" and "state income taxes" not paid to any government.

Most of the reason for this is that the utilities are now parts of corporate conglomerates, such as Enron, which deduct billions of dollars in alleged losses experienced by the corporate parents and its other subsidiaries. But it happens even when there is no corporate consolidation. PGE was not consolidated with Enron during 2002, reported \$66 million of net income, charged Oregon ratepayers \$93 million for its "federal and state income taxes," but paid only ten dollars in state income tax and less than \$1 million in federal income taxes.

The Oregon Department of Revenue reported that, during the years 2000-03, the six largest regulated energy utilities paid in the aggregate only \$1.5 to \$5 million per year in state income taxes. But these utilities charged Oregon ratepayers nearly \$30 million for "state income taxes" in each of those 4 years. So about 90 percent of this \$30 million per year is charged to ratepayers but never actually paid to government. The same is likely true for their federal income taxes charged to ratepayers.

Charging these phony income taxes to ratepayers is a "profit center" for the utilities and has the effect of increasing their financial returns on investment to absurd levels. The "income taxes" retained by PGE and Enron added about 9 percentage points to PGE's authorized return on equity, nearly doubling it from 10.5% to 19.5%.

SB 408 will end this scam in Oregon, unless this committee inserts loopholes into the bill passed by the Senate. It requires each regulated utility (except water utilities) to file an annual tax report with the PUC, stating the amount of income taxes actually paid to government by the utility or by its consolidated group and properly attributed to the utility. It requires the PUC to create automatic adjustment clauses in the utilities' rates, so that the charges to ratepayers for income taxes are no more and no less than the income taxes actually paid to governments.

In 19 states that we know of, the legislature or PUC has taken actions to stop utilities from charging ratepayers for income taxes that the utilities actually do not pay, and all of their actions have been upheld against challenges in court. Oregon needs to do the same, now.

The Oregon Senate passed SB 408 by a 26-4 vote. It has been endorsed by the Oregonian, the Statesman-Journal, the Albany Democrat-Herald, and the Daily Astorian.

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 15, 2005
1:00 P.M.

Hearing Room 357
Tapes 34 - 36

MEMBERS PRESENT: Rep. Rep. Wayne Krieger, Chair
Rep. Rep. Jeff Barker, Vice-Chair
Rep. Brian Boquist, Vice-Chair
Rep. Linda Flores
Rep. Greg Macpherson

GUEST MEMBERS: Rep. Bill Garrard
Rep. George Gilman
Rep. Greg Smith

STAFF PRESENT: Janet Adkins, Committee Administrator
Patrick Brennan, Committee Administrator
Cletus Moore, Committee Administrator
Joe O'Leary, Counsel
Bill Taylor, Counsel
Sandy Thiele-Cirka, Committee Administrator
Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:
HB 2101 – Work Session
SB 408B – Work Session
SB 1076A – Reconsideration and Work Session
SB 1037B – Public Hearing
SB 71A – Work Session

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.

TAPE/#	Speaker	Comments
TAPE 34, A		
003	Chair Krieger	Calls the meeting to order at 1:15 p.m. Announces that SB 818B will be carried over as not all the amendments are available. Opens a work session on HB 2101.
<u>HB 2101 – WORK SESSION</u>		
012	Bill Taylor	Counsel. Explains HB 2101 which creates the Office of Homeland Security. Refers to the -11 amendments (EXHIBIT A).
017	Rep. Boquist	Reviews the -11 amendments which create an Office of Homeland Security. Points out that a plan for the consolidation of communications facilities is needed by 2013. Discusses the State Interoperability Executive Council and the Oregon Homeland Security Council. Describes the overall organization of the new department.

- 084 Craig Campbell Governor's Senior Policy Advisor and State Homeland Security Advisor. Advises that HB 2101 places in statute the organization created by Executive Order.
- 093 Rep. Boquist **MOTION: Moves to ADOPT HB 2101-11 amendments dated 7/15/05.**
- VOTE: 5-0-0**
- 095 Chair Krieger **Hearing no objection, declares the motion CARRIED.**
- 097 Rep. Boquist **MOTION: Moves HB 2101 to the floor with a DO PASS AS AMENDED recommendation.**
- VOTE: 5-0-0**
- 104 Chair Krieger **AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**
- REP. BOQUIST will lead discussion on the floor.**
- 106 Chair Krieger Closes the work session on HB 2101 and opens a work session on SB 408B.

SB 408B – WORK SESSION

- 114 Cletus Moore Committee Administrator. Describes SB 408B which establishes legislative findings regarding public electric utility taxes; requires public utilities to file an annual tax report and to review the balance between what the utility has paid in taxes and what the consumer has paid. Refers to the -20 amendments (**EXHIBIT B**). *Note: Staff distributed copies of the -17 amendments (EXHIBIT C).*
- 125 Rep. Tom Butler House District 60. Refers to the -13, -15 and -16 amendments previously discussed. Offers that the -20 amendments are constitutional and follow a consolidated approach. Indicates that the -21 amendments (**EXHIBIT D**) ordered by Sen. Metsger lack symmetry. Recommends adoption of the -20 amendments. Advises that the Speaker has requested a letter removing the subsequent referral.
- 177 Pete Shepherd Deputy Attorney General. Explains the three differences between the -15 amendments and the -20 amendments.
- 239 Shepherd Refers to the examples contained in *DOJ Alternative (EXHIBIT E)*. Details how rates would be calculated.
- 280 Shepherd Continues explanation of the examples in **EXHIBIT E**. Points out that rates can go up or down.
- 316 Rep. Macpherson Asks about features in addition to charitable contributions that are not recovered in rates that would be taken into account in adjustment.
- 326 Paul Graham Department of Justice. Responds that it could be any investment that is not prudent or an investment that does not come "on line."
- 339 Rep. Macpherson Seeks clarification on effects on tax analysis.
- 349 Graham Responds with an example.
- 380 Rep. Macpherson Asks if in the analysis comparing the taxes collected in rates to what was actually paid, the deduction is allowed in the analysis.
- 393 Graham Replies, yes. Provides an example.

TAPE 35, A

024	Rep. Macpherson	Inquires if the utility is getting the benefit of the charitable contribution or an investment that did not come "on line."
027	Graham	Answers correct.
029	Rep. Macpherson	Asks about the full reach of the kinds of items not included in rates but would be part of the tax analysis.
030	Graham	Replies charitable deductions, dry hole investments, or investments that came on line, parts of which were not prudent.
042	Rep. Macpherson	Indicates that the greatest potential for sensitivity would be those circumstances in which the adjustment would increase rates. Inquires what circumstances would cause an increase in rates.
049	Shepherd	Refers to the BlackCo Utility illustration in EXHIBIT E . States he can describe how SB 408 would operate but cannot provide an economic impact. Adds that the bill allows rates to go up as well as down.
070	Rep. Butler	Discusses tax credits available to an affiliate.
094	Rep. Macpherson	Wants to understand the mechanics of the boundaries, the percentage adjustment, and the limits it could go either way.
101	Graham	Answers that regulators can use any method they want to set rates but they must provide reasonable opportunity to recoup expenses and a fair return on investments. Adds that test involves judgment.
134	Rep. Macpherson	Comments there is now a rate proceeding based on an application by the utility that is considered by the PUC based on the fair rate of return analysis. Asks if the amendments create a two-bite process – the first one being the initial proceeding on rates, and then after tax adjustment either the utility or the customer can argue about whether there is a fair return.
145	Graham	Responds that could happen. Continues that since there is an upper band and a lower band there is a possibility the commission could require a full look at rates to be sure the utility is not over-earning or earning so little there is a problem with confiscatory rates.
163	Rep. Butler	Addresses where the -20 amendments exempt small utility companies from the process.
179	Shepherd	Points to language that prohibits the commission from using the automatic adjustment clause to make adjustments to rates that are properly attributed to any other affiliate of the public utility or the parent of the utility.
212	Chair Krieger	Comments on the amount of time spent in work groups and public hearings trying to find a position of right and justice. Believes that no matter what is done, it will probably end up in litigation.
232	Rep. Butler	Refers to an Attorney General letter on the constitutional issues that states the positions are defensible. Believes there are problems with the -21 amendments. Requests adoption of the -20 amendments which are a product of the compromise work group.
315	Chair Krieger	Comments there will likely be a conference committee on SB 408.

- 320 Rep. Boquist **MOTION: Moves to ADOPT SB 408B-20 amendments dated 7/11/05.**
- 325 Rep. Macpherson Offers he will support the -20 amendments and moving the bill. Expresses appreciation for the amount of work on the bill. Comments on taxes being collected from rate payers that are not being delivered to the taxing authority. Believes this solution is fraught with all kinds of problems and is concerned rate setting is becoming a two-step process. Concludes that SB 408 is a work in progress.
- 361 Chair Krieger Agrees.
- 363 Chair Krieger **VOTE: 5-0-0**
- 366 Rep. Boquist **Hearing no objection, declares the motion CARRIED.**
MOTION: Moves SB 408B to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the House Committee on Budget BE RESCINDED.
- 370 Rep. Macpherson Inquires if the -17 amendments are included in the -20 amendments.
- 374 Chair Krieger Responds yes.
- 375 **VOTE: 5-0-0**
- 386 Chair Krieger **AYE: In a roll call vote, all members present vote Aye.**
The motion CARRIES.
REP. BUTLER will lead discussion on the floor.
- 395 Chair Krieger Closes the work session on SB 408B and opens a public hearing on SB 1076A.

SB 1076A – PUBLIC HEARING

- 401 Sandy Thiele-Cirka Committee Administrator. Explains that SB 1076A modifies the terms of office for members of the Oregon Health Policy Commission (OHPC) and removes the OHPC representatives from the Oregon Health Advisory Board; and directs the OHPC to study childhood obesity in Oregon and develop a comprehensive strategy to address the problem. Advises SB 1076A has a subsequent referral to the budget committee. Refers to the -A2 amendments (**EXHIBIT F**).

TAPE 34, B

- 002 Sen. Richard Devlin Senate District 19. Testifies in support of SB 1076A which is a housekeeping bill. Cites statistics of obese children in Oregon. Reads a prepared statement. Comments on the -A2 amendments which remove the portion of SB 1076A dealing with childhood obesity. Discusses research of other states.
- 066 Rep. Billy Dalto House District 21. Testifies in support of SB 1076A. Believes there are some constitutional problems with the bill. Indicates the study could be done without legislative mandate. Urges the committee to move SB 1076A with the -A2 amendments to the floor.
- 090 Rep. Flores Asks Sen. Devlin if his fact gathering was done as a member of the Oregon Health Policy Commission or by his staff.
- 095 Sen. Devlin Answers both. Discusses the childhood obesity issue. Explains how the Commission works.
- 135 Rep. Flores Inquires if the work done during the last interim was by an official work group, an interim committee or individually.

- 139 Sen. Devlin Responds all. Continues that work has begun and will continue.
- 143 Chair Krieger Asks if a directive is needed. Believes a letter is just as effective.
- 154 Rep. Dalto Replies that the OHPC is comprised of an excellent group of people. Doesn't think they need a special charge and doesn't think legislation is needed. Asserts that the obesity problem is paramount and discussions have begun.
- 168 Rep. Garrard Advises that he served on the Commission and supports Rep. Dalto's comments.
- 182 Gretchen Morley Director, OHPC. Testifies and submits written testimony in support of SB 1076A (**EXHIBIT G**).
- 191 Katy King Intergovernmental Relations Liaison for Health Services, Department of Human Services. Testifies in support of SB 1076A.
- 195 Chair Krieger Closes the public hearing and opens a work session on SB 1076A.

SB 1076A – WORK SESSION

- 197 Rep. Boquist **MOTION: Moves to ADOPT SB 1076A-2 amendments dated 7/15/05.**
- VOTE: 5-0-0**
- 202 Chair Krieger **Hearing no objection, declares the motion CARRIED.**
- 203 Rep. Boquist **MOTION: Moves SB 1076A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- 211 Chair Krieger **The motion CARRIES.**
- REP. DALTO will lead discussion on the floor.**
- 217 Chair Krieger Closes the work session on SB 1076A and opens a public hearing on SB 1037B. Asks that the testimony be limited as not all the amendments are ready.

SB 1037B – PUBLIC HEARING

- 224 Patrick Brennan Committee Administrator. Explains SB 1037B formalizes the process for Ballot Measure 37 (BM 37) claims and the judicial review process for those claims; specifies that the new claims process and judicial review process apply only to claims filed on or after the effective date of the measure; and authorizes Tract of Record dwellings under certain circumstances. Advises there is no revenue impact, but there is a fiscal impact. Refers to written testimony from the League of Women Voters (**EXHIBIT H**). Distributes the -B19 amendments (**EXHIBIT I**).
- 241 Lane Shetterly Director, Department of Land Conservation and Development. Comments on his involvement with BM 37 and a work group on SB 1037. Highlights critical issues. Discusses the authority to waive state statute. Cites statistics on claims filed to date. Comments on the need to clarify the roles of state and local governments in waiving their respective regulations and the need to clarify the claims process.
- 352 Shetterly Concludes that transferability is another key issue.
- 399 Kay Guess Resident, Portland, Oregon. Testifies and submits written testimony on SB 1037B (**EXHIBIT J**). Reads from written testimony urging transferability.

TAPE 35, B

- 050 Dave Hunnicutt Oregonians in Action. Testifies in opposition of SB 1037B. States it is not a consensus bill and contains a number of problems. Continues that under BM 37 a property owner is not now required to process claims with local government. Cites the costs in various cities and counties to process claims. States that people of modest means are unable to afford the process.
- 120 Hunnicutt Comments on the removal of claims along the Oregon coast. States the problems with the September 2006 deadline for filing all retroactive claims. Reiterates that transferability is important and vital to SB 1037B. Informs that amendments in Legislative Counsel to address these issues should be ready soon.
- 164 Rep. Macpherson Asks about the term "ripeness" used in Mr. Hunnicutt's testimony.
- 167 Hunnicutt Responds that it is used in the takings context in Article I, Section 18 of the 5th Amendment to the Constitution. Defines how a claim is "ripened." Continues that SB 1037B requires use of the local government's claims process before filing with circuit court.
- 205 Rep. Macpherson Clarifies that the "ripeness" issue is the right to proceed directly to circuit court without going through an administrative proceeding with the local government.
- 203 Hunnicutt Answers exactly.
- 206 Chair Krieger Closes the public hearing on SB 1037B and opens a work session on SB 71A which authorizes the use of lottery bonds for transportation projects. *Note: The -All amendments were distributed by staff (EXHIBIT K).*

SB 71A – WORK SESSION

- 225 Rep. Greg Smith House District 57. Reads the language in the -A12 amendments (EXHIBIT L) into the record.
- 251 Rep. McPherson Comments that the language seems rather specific for an amendment to a bill that is statewide to fund a wide range of transportation projects. Asks for the rationale.
- 257 Rep. Smith Responds that the amendments are being introduced as a tool to encourage further discussion among four local government entities and the Port of Portland on how best to utilize the Reynolds Aluminum property.
- 264 Rep. Macpherson Refers to prior testimony on a contract for purchase by the Port of Portland for that property, so acquisition is under way. Comments that this appears to prevent that from proceeding.
- 277 Rep. Smith Replies that four jurisdictions have opposed that action and want to continue working with the landowner to see if there is a better use for the property than is being proposed.
- 284 Rep. Macpherson Asks how this relates to the broader need to relieve congestion of rail in Portland.
- 291 Rep. Smith Answers that the focus is to encourage communication between local governments and the landowner.

311 Rep. George Gilman House District 55. Testifies that the -A11 amendments merely take the Rail Advisory Committee out of SB 71A.

338 Rep. Macpherson Seeks clarification about the Rail Advisory Committee.

347 Janet Adkins Committee Administrator. Points to the language in the A-engrossed bill which would be deleted with the -A11 amendments.

376 Rep. Macpherson Asks Rep. Gilman if he intends to also delete the "public transit" language.

379 Rep. Gilman Answers that the -A7 amendments already removed the transit language.

383 Rep. Macpherson Requests background on the rail advisory committees.

401 Kelly Taylor Rail Division Administrator, Oregon Department of Transportation. Explains that a rail advisory committee that encompasses both passenger and freight rail issues can be established administratively so it doesn't need to be in statute.

TAPE 36, A

004 Chair Krieger Asks if both the -A7 amendments and -A11 amendments are needed.

009 Adkins Understands that the -A11 amendments also remove transit projects from the program.

015 Rep. Gilman Agrees then that the -A7 amendments are not needed.

017 Chair Krieger Advises that more work will be done in Budget.

019 Rep. Macpherson Asks if the -A7 amendments have been included in the bill. Appears that the -A11 amendments remove transit and rail advisory and address the Troutdale project.

027 Adkins States that the -A11 amendments have all the provisions in the -A7 amendments. Explains the other amendments that were discussed but not adopted. Continues that the -A11 and -A12 amendments are not compatible.

037 Rep. Boquist Asks if the -A11 amendments should be moved into the bill, and then the -A12 amendments.

043 Adkins Answers that both have language about the Port of Portland but a decision is needed on which Section 7 is wanted.

049 Rep. Macpherson Agrees. Thinks that statute should remain broad. Urges a conceptual amendment to the -A11 amendments to remove Section 7 and leave the -A12 amendments alone.

064 Rep. Boquist Explains why he doesn't agree.

073 Rep. Macpherson Agrees that the -A11 and -A12 amendments amend the bill twice.

079 Chair Krieger Asks if the -A7 amendments are needed.

080 Rep. Gilman Answers yes.

084 Rep. Boquist Disagrees.

086 Adkins Reiterates that the -A11 amendments contain all the provisions in the -A7 amendments.

091 Rep. Boquist **MOTION: Moves to ADOPT SB 71A-11 amendments dated 7/11/05.**

- 094 Rep. Barker Doesn't support.
- 095 Rep. Macpherson Doesn't support.
- 096 Chair Krieger Notes the objections.
- VOTE: 3-2-0**
AYE: 3 - Boquist, Flores, Krieger
NAY: 2 - Barker, Macpherson
Declares the motion CARRIED.
- 097 Chair Krieger
- 098 Rep. Boquist **MOTION: Moves to ADOPT SB 71A-12 amendments dated 7/15/05.**
- 100 Rep. Macpherson Doesn't support.
- 101 Rep. Barker Doesn't support.
- 102 Chair Krieger Notes the objections.
- VOTE: 3-2-0**
AYE: 3 - Boquist, Flores, Krieger
NAY: 2 - Barker, Macpherson
Declares the motion CARRIED.
- 103 Chair Krieger
- 104 Rep. Boquist **MOTION: Moves SB 71A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.**
- 107 Rep. Macpherson Opposes the motion. Explains that a good bill is being made worse by the various amendments. States that the allocation formula does not give the Transportation Commission sufficient flexibility to be sure the money is targeted for the benefit for all Oregonians.
- 119 Adkins Seeks clarification that the committee wants the Section 7 in the -A12 amendments and not the Section 7 in the -A11 amendments.
- 124 Rep. Boquist Clarifies that the -A11 amendments were adopted first which become part of the original bill, and then the -A12 amendments which replace the Section 7 in the previous amendment.
- 135 **VOTE: 3-2-0**
AYE: 3 - Boquist, Flores, Krieger
NAY: 2 - Barker, Macpherson
The motion CARRIES.
- 141 Chair Krieger **The following written material is submitted for the record without public testimony:**
Bruce Agnew Policy Director, Cascadia Center at Discovery Institute. Submits written testimony in support of SB 71A (EXHIBIT M).
- 143 Chair Krieger Closes the work session on SB 71A and opens a work session on HB 2101.
- HB 2101 - WORK SESSION**
- 148 Rep. Boquist **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on HB 2101.**
- VOTE: 5-0-0**
AYE: All members present vote Aye.
The motion CARRIES.
- 152 Chair Krieger
- 154 Rep. Boquist **MOTION: Moves to RECONSIDER the vote by which HB 2101 was moved to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 5-0-0

AYE: All members present vote Aye.

162 Chair Krieger

The motion CARRIES.

164 Rep. Boquist

MOTION: Moves HB 2101 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.

VOTE: 5-0-0

AYE: All members present vote Aye.

169 Chair Krieger

The motion CARRIES.

170 Chair Krieger

Closes the work session on HB 2101 and opens a work session on SB 1076A.

SB 1076A – RECONSIDERATION AND WORK SESSION

179 Rep. Boquist

MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 1076A.

VOTE: 5-0-0

AYE: All members present vote Aye.

181 Chair Krieger

The motion CARRIES.

189 Rep. Boquist

MOTION: Moves to RECONSIDER the vote by which SB 1076A was moved to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the House Committee on Budget.

VOTE: 5-0-0

AYE: All members present vote Aye.

194 Chair Krieger

The motion CARRIES.

197 Rep. Boquist

MOTION: Moves SB 1076A to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the House Committee on Budget BE RESCINDED.

VOTE: 5-0-0

AYE: All members present vote Aye.

200 Chair Krieger

The motion CARRIES.

REP. DALTO will lead discussion on the floor.

202 Chair Krieger

Closes the work session on SB 1076A.

209 Chair Krieger

Announces that SB 591 will be carried over until July 18.

213 Chair Krieger

Adjourns the meeting at 3:20 p.m.

EXHIBIT SUMMARY

- A. HB 2101, -11 amendments, staff, 46 pp
- B. SB 408, -B20 amendments, staff, 11 pp
- C. SB 408, -B17 amendments, staff, 1 p
- D. SB 408, -B21 amendments, staff, 9 pp
- E. SB 408, DOJ alternative, Pete Shepherd, 2 pp
- F. SB 1076, -A2 amendments, staff, 1 p
- G. SB 1076, written testimony, Gretchen Morley, 2 pp
- H. SB 1037, written testimony by Margaret Noel, staff, 1 p

- I. SB 1037, -B19 amendments, staff, 1 p
- J. SB 1037, written testimony, Kay Guess, 1 p
- K. SB 71, -A11 amendments, staff, 3 pp
- L. SB 71, -A12 amendments, Rep. Greg Smith, 1 p
- M. SB 71, written testimony, Bruce Agnew, 1 p

274

**HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE
SENATE BILL 408 WORK SESSION**

July 15, 2005

Chair: Open the work session on Senate Bill 408B.

Clerk: SB408 establishing legislative findings regarding public utility taxes. It requires a public utility to file an annual tax report to the PUC and it also takes and reviews the difference between what the utility has paid in terms of taxes and what the consumer has paid on their bill in terms of—towards those taxes. It authorizes the PUC to authorize the public utility to include a deferred tax resulting from accelerated depreciation of other tax treatments. We have with this bill several amendments. The primary one with Representative Butler here today to address is SB 408B-20 and he has some other invited testimony to address the bill.

Chair: Okay. Representative Butler, please.

Butler: Thank you, Mr. Chair, members of the committee. Tom Butler from House District 60. I'd like to invite Deputy Attorney General Pete Shepard and Assistant Attorney General Paul Graham who does the PUC specialty work if they would please come forward. They, in a meeting with Dexter Johnson and these two counselors, Mr. Chair, please recall from our last meeting, we have a set of -13 amendments which have come out of the work group, a -15 amendment which the attorney general, deputy attorney general had indicated that was consolidated and then a -16 which came from the Hickman group and then we, of course, laid that out side by side with 408. At the request of the Chair, we went forward and tried to get a little closer amongst the groups. One thing we learned on our last hearing on Senate Bill 408 and before your committee, Mr. Chair, was that nobody liked the -15 amendments which were drafted in large part by deputy general here to my right hand side, Peter Shepard, and so when we got back together I felt like that was probably an excellent place to start because nobody really liked them, but they met all the constitutional requirements relative to both symmetry and confiscatory rates. So, with that, Mr. Chair, at your request and at the request of other folks we drafted out a set of amendments which are before you today as the -B20 amendment, dated 7/11. These amendments basically follow the -15. They are both constitutional and they follow a consolidated approach. The difficulty with the consolidated approach and I visited with some of our house leadership earlier today, is that you understand that rates can go up as easily as they can go down. In good times when the folks are paying income taxes on a consolidated basis, they will be paying income taxes on the consolidated group and those rates will be considered those taxes paid to the governmental entities will be considered in that process. The other concern that we had was that I received this morning a

copy of the -B21s from, which were ordered by Senator Metsger, I understand, from Mark Nelson, who represented ICNU, and CUB. Those amendments continue to lack symmetry in that over on page 5, they call for, and this was the same case in their -16 model that they used the lesser of the tax calculated under the stand alone or the lesser of the consolidated taxes, that lacks symmetry, therefore violates according to my understanding the basic tenants of the *Duquesne* case and I'll let the attorneys speak to that. Mr. Chair, my recommendation to you today is that we, that the committee consider amending Senate Bill 408B with the B20 amendments and my request is that after you have done so, that you pass this bill to the House of Representatives for and request of the speaker's office, I've gone to the speaker and the chair of the budget, and they're request is that you prepare a letter requesting that the subsequent referral be removed and that this bill move to the floor of the House of Representatives.

Chair: Okay. Gentlemen.

Shepherd: Mr. Chair, members of the Committee. Pete Shepherd, I'm the Deputy Attorney General, and I thought perhaps what I could do is tell you the three differences between the B20 amendments and the B15 amendments so that you'll know how those are distinct and then just illustrate how both of those sets of amendments work with two examples that, I think, illustrate the principles that Representative Butler has described. The three distinctions between the B20 and the B15 amendments are first changes in the timing of the submission of reports and the action by the Public Utility Commission and these changes occur on several pages of the drafts. The first one is on page 3, starting at lines 25, the second on page 4 at line 7, and the third on page 7 at lines 4 to 15. But the principle of all of those timing changes is to substitute flexible or floating dates for fixed calendar dates that were in the B15 amendments. The second difference is that in the B20 amendments on page 5, lines 17 to 22, we've tried to take into account the reality of rate calculation that currently exist and to make sure it's preserved under the B20 amendments in which it's my understanding that when rates are calculated for utilities the effect of charitable contributions that the utility makes that those costs of the utility are not recouped in the rate. That's considered to be a contribution by the entity to the good of the public and so that's not a cost that the Public Utility Commission permits the utility to recover. And, likewise, there are certain other costs that may be disallowed in the rate making process that the utility incurs but are not allowed to be imbedded in the rate. Those kinds of actions or economic decisions have tax consequences and the intention of the B20 amendments on page 5 in the cited lines is to eliminate the tax consequences of those kinds of choices from the adjustments that are required in the rates so as to preserve the status quo with respect to those kinds of activities and then the third area of distinction between the B20s and the B15s is that in the earlier version we

30

had contemplated that although most of the submissions to the Public Utility Commission would be exempt from public disclosure although available to all of the parties to the proceeding, there was an exception to that exemption from public disclosure and that was for the difference between the amount of tax that the entity that was actually received by governmental entities from the taxpayer and the amount that was allowed in rate. We referred to it in the working group as the delta between those two figures and in the earlier version that was to be disclosed. In the work that we've done since our last meeting, it was pointed out, I think forcefully, that if you know one of the numbers in that calculation, you can obviously derive the second one, and so really the disclosure of that had the effect of disclosing some of the confidential business data that otherwise was sought to be protected by the confidentiality. So, that exception for the disclosure for the delta has been eliminated from the amendments that you have before you.

Let me just illustrate the basic principles then, using the two examples which are before you today and you also received these in the public testimony that I provided to the Committee when we earlier testified and these are no different now under the B20s, then they were under the previous version. [Exhibit.] First, Redco Utility. First of all, recognize that under the B20s the effect of, the actual effect of, the proposal doesn't begin to actually have an effect on rates until the year 2008. Between now and then, the machinery will turn, but it won't have an effect on rates. So, in the chart that you have, the yellow shaded portion is where the rates are actually being adjusted up or down. So, in the year 2008, in the Redco example, Redco is permitted in terms of its rate to recover 92 units in its rate, representing the estimated tax. However, whether it files as a standalone or as part of a consolidated return as part of an affiliated group, under either scenario, our hypothetical has them actually, governments actually receiving no money in terms of the tax. So, the delta or the difference there is 92 units.

Man: [Inaudible and whispered] come up first and then...

Shepherd: The B20s provide that if the difference or the delta is less than 10% then no adjustment is required. This is obviously more than 10%, it's 100% in this case, and so the adjustment then, under the bill, would be 92 units and then under the bill, that adjustment would be distributed over the next three years. So, it would be smoothed out, the variance from year to year would be smoothed out by taking it forward over the next three years. So, in this instance, 30 units would be applied to reduced rates in 2008, likewise in 2009, likewise in 2010 and then together with the other rates, the other adjustments for prior years, it would result in a net adjustment. This is, on the lower end then, this illustrates one of the limitations on the adjustments under the constitution and under the *Hope* test, the *Hope* case that we talked about last time we were here. Rates cannot be reduced to a

level that would be confiscatory and so even if in this example, the reduction were to need to account under the bill for 40 units of tax that wasn't received by governments, if that resulted in a total rate that was less than a constitutionally permissible minimum, then the Public Utility Commission could not impose or permit the total reduction and so that would operate as a limitation on the reduction in rate in each of the given years.

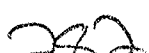
Turning to Blackco Utility. Let's take the example of the year 2011. In the year 2011, Blackco Utility, again, like Redco was allowed in its rate an estimated recovery of 92 units for estimated tax, but in this instance Blackco was in the black and actually governments received from Blackco, whether filing alone or filing consolidated returns part of an affiliated group, 105 units of tax, so the delta here is 13, 14%, so the adjustment would kick in under the bill. Again, that would be distributed forward. This time as an increase in the rate allowed. That would be distributed forward for the next three years, so in each of the next three years it would be four and a third units of an upward adjustment. And this illustrates the upward limitation in the bill because under the bill, rates cannot go up. PUC cannot allow the adjustment if it would result in a rate which is not fair, just and reasonable, as the terms of the total rate. So, that there would be an upward limitation, as well as a downward limitation. It is absolutely correct, as Representative Butler suggested, that rates could go up, as well as down, under this proposal because, as you remember from our earlier testimony, when the Public Utility Commission sets a rate, it's not the only reasonable rate. That, in fact, the Public Utility Commission could as reasonably set a rate that might be a little higher or it might be a little lower. So, that tells us that there's a range of rates that exist and then the effect of the -20 amendments is that within that range, rates may move up and down as adjustments are made. I think with that, Mr. Graham and I would stand by for questions, unless Mr. Graham had anything you wanted to add to that explanation.

Chair: Committee members. Representative Macpherson.

Macpherson: Yeah, thank you, Mr. Chair. First, a question Mr. Shepherd, on the items, you mentioned charitable contributions, but I think that you mentioned that it wasn't just charitable contributions that would be items that were not recovered in rates that would be then taken into account in this adjustment and I wondered if you could just elaborate on what those features are besides charitable contributions?

Shepherd: Mr. Chair, Representative Macpherson, I defer to Mr. Graham who's familiar with that current practice.

Macpherson: That would be great.



Graham: It could be any investment that is not prudent, could be an investment that doesn't come on line, let's say, for example, utility invests \$300 million in a plant and is unable to complete the plant, so the plant does not produce electricity. In that case, that \$300 million investment would not be reflected in rates nor would any of the costs associated with the investment be reflected in rates.

Chair: Could you state your name, please, for the record?

Graham: Paul Graham, excuse me, at the Department of Justice.

Chair: Okay, thank you.

Macpherson: Okay, if you could follow-up, Mr. Chair. I just want to make sure I understand the mechanics of that. So, an item that was not allowed to be recovered in rates, say a new plant is undertaken by the utility and they're not allowed, it never came online, say it turned out to be a bad project for whatever reason...

Graham: Like whoops.

Macpherson: So, it didn't come online, and so those costs wouldn't have been recovered in the rates and then how does that effect then the tax analysis?

Graham: Let's use the example I was giving you before. Let's assume that we had a \$300 million plant that didn't get built and so the utility has to write it off and let's say that gives the utility \$100 million, a third of that amount as a tax write off, which we've been calling it tax benefit in our discussions, the PUC's position has been we don't put the \$300 million in rates and so because we haven't put the \$300 million investment in rates, we won't put the tax benefit that it created in rates, either. So, immediately what you would have is a disconnect between the taxes that are assumed in rates and what's actually paid. Let's assume that the PUC estimated \$100 million in taxes for the utility, that's federal, state and local. And let's assume, then, that the utility had this \$100 million tax write off, and again, the benefit we would say does not go into rates, and so in that particular case the utility would pay zero, but under the stand alone approach, you would say that everything was appropriate because the utility collected \$100 million in rates, it had \$100 million tax write off, but the \$100 million tax write off wasn't related to the provision of utility service, it was related to an investment that never came online, and because the investment never came online and was not included in rates, then the tax write off associated with that dry hole investment doesn't go into rates, either. Is that clear?

[laughter]

Macpherson: I'm getting there, if I could, and so just to recite what I think I'm hearing, is that when this analysis is done comparing the taxes that have been collected in rates with what was actually paid that that deduction is, is it being allowed in the analysis?

Graham: Yeah, you would include that in the analysis. In other words, under this language what you would say is \$100 million got collected in rates, there was \$100 million tax deduction which was unrelated to rates because of this dry hole investment, and that has to be taken into account by the commission, and so the commission would say there's no adjustment in that case. A super example might be the one I used in the working group, in a little water company—I know water companies aren't in the bill—but you have a little water company, and let's say it does nothing but provide water. And it makes a \$5,000 donation to the local high school and let's say that \$5,000 donation results in a \$2,000 tax write off. What the PUC would do, would be to say rate payers are not going to pay for the \$5,000 charitable deduction to the local high school. So that comes out of rates. It's not a utility expense, customers don't have to bear it, but because that \$5,000 charitable deduction resulted in a \$2,000 tax write off, that doesn't get reflected in rates, either. So, if the PUC estimated, say, \$5,000 in taxes for this utility and it actually only paid \$3,000, but the \$2,000 delta related to this charitable deduction, then there would be no adjustment under this bill.

Macpherson: Right, so in effect, what's happening then is, for purposes of this alternative analysis, the utility is getting the benefit of those, in that case, charitable contribution in the other example, an investment that didn't eventually come online?

Graham: That's correct.

Macpherson: And if I can follow up, Mr. Chair? And then how broad is that? What does the full reach of the kinds of items that are not included in rates, but would be part of a tax analysis?

Graham: It could be, first of all, charitable deductions are common. All utilities make them. That's something you deal with all the time. On occasion we will get a dry hole investment, such as the one I mentioned. And you could have a situation where a utility has made an investment that did come online, but we decided part of the investment was not prudent. Let's say it made a \$300 million investment and it did come online, but we decided only \$20 million of that investment was not prudent, so we put only \$280 million of the investment in rates. There's another situation you could have where we disallow part of the investment and then we would also take out the tax consequences that were associated with the disallowance.

211

Macpherson: Okay.

Graham: In other words, it's a consistency approach. Basically, you're saying if you don't take the expense and the expense generates a tax write off, then you don't get the tax write off either.

Macpherson: Okay. Further question if I could, Mr. Chair? Then, I guess, the thing about the proposed -20 amendments that would be of maybe greatest potential sensitivity would be those circumstances in which the adjustment could be an increase in rates, since as you pointed out in your presentation, it's now symmetrical. It could go either way. So, I wonder if any of the three of you could describe the circumstances in which we might see an increase in rates because I suspect that if that were to happen, there would be some unhappy folks out there who might be inclined to contact their lawmakers. Mr. Shepherd, maybe you could respond?

Shepherd: Mr. Chair, Representative Macpherson, I think the Blackco utility hypothetical that you have is an illustration, intended to be an illustration, of that very effect and, of course, one can insert any different numbers and generate different things for the hypothetical. What I can do is describe how the bill would operate. What I can't do for you, is give you an assessment of the economic impact or the consequence of that. That would be for others to do, I think. But clearly the bill does permit rates to go up, as well as down, and even though they're bounded on the upward and downward arena, the sort of scenario in which rates could rise the greatest amount, if that's part of the question, is if it happens to be, let's assume that the rate that the Public Utility Commission allows in the first line of the Blackco hypothetical, the 92 rate, let's assume that's very close to the lowest rate that's constitutionally permissible. So, it's very close to wherever that would become a confiscatory rate, then events occur, either because the utility as a stand alone as remarkably profitable in a given year, and so pays more, or files as a consolidated company that includes very profitable affiliates. Then the bill would kick in to provide for adjustments and there might be more on the upside in that hypothetical for a change in rate, then there is on the downside because you start out so close to the confiscatory rate.

Graham: Mr. Chair, let me just, early on, very early on in the work group, I used an example of tax credits that were available, not to the rate regulated utility necessarily, but perhaps one of its affiliates, and those credits were used to totally wipe out the tax of the affiliate, as well as a portion of the tax of the rate regulated utility. Under that circumstance, under the automatic adjustment clause, the three-year smoothing, there would actually be a reduction of the rates. However, the commencement of the reduction of the rates, then in immediate subsequent year, if they disposed of that activity which generated the credit and thus they weren't eligible for the credit and had to recapture it, the recapture then is recaptured in the total

and assuming that those are the only two activities in the two years, what happens is, in the second year, you'd have the total tax that was originally due by the rate regulated utility, plus the recapture and it's proportionate share of the recapture. And thus you would have the effect in those two years, assuming that all numbers were the same, the smoothing of the lesser tax the first year and the greater tax paid the second year, and the netting of that over the next three years would be an evening of that tax credit. So, it attempts to work on the consolidated basis so that you've got a symmetrical approach, that if the consolidated activities cause the tax to go down, the rates can come down. If the consolidated activities then cause the rates to go up, the tax to go back up, the amount of net taxes that are paid, then the rates can reflect that same amount, whether or not it was created by the rate regulated utility.

Macpherson: Further, if I could, Mr. Chair. And I appreciate that, Representative, that's helpful because it can illustrate how it can go either way, but what I'm hearing is that there are boundaries on how much it can swing and I want to understand the mechanics of those boundaries better. That is, what, it's driven by the principle that there has to be a fair and reasonable return to the utility, but what is, what percentage adjustment, or what is the limits that it can go either way?

Graham: Well, unfortunately, there's not a mechanical test. Let me focus on the *Hope* test first. That's the case that prohibits contriscatory rates and what the *Hope* case says is that a regulator can use any method it wants to set rates, but at the end of the day, the bottom line, has to be that the rates allow the utility to do two things. One is a reasonable opportunity to recover prudent expenses that it incurred in serving the rate payers and two, it allows the utility a reasonable opportunity to earn a fair return on the investment it's made to serve rate payers. That's not a mechanical test. That's a test that involves judgment and regulators typically hear testimony in cases as to what this constitutional floor is. They know what other regulators around the country are doing and, you know, right now if you were to ask me what is a fair rate, I would say it's one that would allow the utility to recover it's estimated future prudent expenses and it's one that would probably give the utility today about a ten and a half percent return on equity, maybe 10, maybe 11, people could argue about what the reasonable range is. That's what it is today. Of course, as capital markets change, the 10 or 11 percent return might not be adequate and in other situations, it may be more than adequate. As to the top end, it's another judgment call that the PUC staff has to make and it advises the commission if the utility is doing what we call over-earning. Let's say it has a ten and a half percent return on equity and we look as see over the last two or three years that it's been earning consistently 13, 14%, then we might say this utility is over-earning and the commission might then use its authority to have a rate case and have the utility come on in and show what its rates really should be to get them down to a more reasonable

246

level. It's a situation that's likely to occur on the telecommunications side, much more than on the energy side, because in a telecommunication side you have a declining cost industry. It's not a situation where you run in to too much on the energy side because there's not a great deal of technical progress and it's not a declining cost industry. So, usually there's, utilities feel the need to come in after a year or two and ask for another rate increase. So, we don't run into many over-earning problems with respect to energy utilities.

Macpherson: I think it's one more question, Mr. Chair, if you'll indulge me?

Chair: I start charging...

Macpherson: The question is this to all the panel generally, we have now a process where there's a rate proceeding based on an application made by the utility that is measured then by the PUC, or determined based on a fair rate of return analysis. Are we, through this set of amendments to the bill if this were then actioned to law, then creating sort of a two bites process. That is, you have your first bite when you go in for your initial proceeding on rates, and then after the tax adjustment is done, then either side, either the utility or the customers, or both, can then sort of come in again with their arguments, is this a fair return? Is that what we're creating with this process?

Graham: That could happen, yes. Typically what we do with an automatic adjustment clause, is we're selecting one item in rates and we are adjusting it on a going forward basis, use the natural gas company's gas cost is a big item for them, and we had what we call a purchase gas adjustment for them where we'll adjust the rates going forward based on increases or decreases in the gas that they're purchasing and we have sharing mechanisms in them and they're very fancy and probably bore you if I explained them in detail. But that's typically what we're doing with an automatic adjustment clause. We're looking at one item in rates and we're adjusting it going forward to reflect the latest information. These measures would create this type of automatic adjustment clause for taxes, but you're right, Representative Macpherson, because we do have the upper band and the lower band here, there's a possibility that the commission would be required to say we need to take a full look at rates to make sure that the utility is not over-earning or not earning so little that we have a problem under the *Hope* case with confiscatory rates.

Macpherson: Okay. Mr. Chair, thank you for your indulgence in my questions.

Chair: Are you satisfied?

Macpherson: I am for now. Let's see what anybody else has to ask.

Chair: Committee members?

Butler: Mr. Chair. A couple of items. I'll ask Pete to address one of them. And going through, we need just a little additional explanation. Let me just share with you that on the face of the B20 amendment, page 1 on lines 14 through 16. Under section 1A, you'll see that small utility companies, natural gas and energy companies in the state of Oregon are exempted, there's an opt out for small utility companies. It's conceivable that these automatic adjustment and trailing these automatic adjustments could cost hundreds of thousands of dollars. If you're serving 50,000 customers or less in the state of Oregon and there's one and possibly two of these smaller companies, these would not, these could be exempted from this process because of both in-house and the work that's done within the commission itself. The second I'll ask, it's under section 3A, I think, and I'll ask deputy attorney general Pete Shepherd to address that quickly.

Shepherd: Mr. Chair, members of the committee, the language to which Representative Butler refers, appears on lines 15 and 16 on page 5, and the observation arises from some feedback I think that Representative Butler received from the staff of the Public Utility Commission in reviewing the -20 amendments. The question that arises here is that under lines 15 to 16, the Commission is not allowed to use the automatic adjustment clause described in section 3 of the act, to make adjustments to rates that are properly attributed to any other affiliate of the public utility or to the parent of the utility. Now, I recognize that section 3 of the act does permit adjustments to be made based upon a consolidated return which necessarily implies that in the making of that adjustment on the consolidated return that we are taking into account the tax effects of other entities that are within the affiliated family. And so the question comes up, logically, well, how do you square the language in lines 15 to 16 with the fact that section 3 appears to and does permit it and indeed require the adjustment in an affiliated situation. And I think the best way to reconcile, the very best way would be to clean up the language to make it clearer on its face, but if we were confronted with construing this language, I think the construction we would place on it is that the limitation in lines 15 to 16 means that when a company files as a stand alone utility, then it is not permitted to take into account any other affiliates or the tax consequences on a calculation of the activities of any of its other affiliates or of its parent. But when it files as part of a consolidated, and when a consolidated return is filed, then of course, one has to take into account those effects. Otherwise, the Blackco and Redco utility examples don't operate in the way that we've described them.

Chair: Representative Butler, if I'm not mistaken, you had about 13 hours of a work group subsequent to that. We've had about another 10 or 12 hours of kind of other work groups meeting with the speaker. You've met with both sides. We had a public hearing process last week of another hour, hour and 15 minutes, and oh 45 minutes today. And what I've been

looking for, as I've learned what this bill does, is trying to find a position of right and justice and you and I talked about that.

Butler: Mr. Chair.

Chair: Let me go on a minute. And whether that right of justice or point of right is for the rate payer and utilities, it's my opinion that we could have another 10 and you could talk for another six weeks and you're not going to get everybody together where they like it. I think that's why leadership has said, hey, we need to move a bill. And then I just want you to make a brief comment to the fact that no matter what we do, it's probably going to end up in the courtroom.

Butler: Thank you, Mr. Chair. My hope is and I do have letter from deputy attorney Peter Shepherd relative to the constitutional issues and this was dated following our last meeting with your committee and I'd asked for that. I did not ask for renewal of that letter and I shall do that relative to the current -21 amendments that we have. Mr. Chair, this is truly a smithed-out compromise now. I believe we took something that we knew was absolutely legal, that the deputy attorney general has to us in a letter that says that we believe that these are positions that are defensible and that we could more easily defend this particular position. We've also attempted to do that, looking to that which is fair, just and reasonable, and you'll find that language sprinkled throughout this process because you cannot, there's not a smithed-out formula, as the assistant attorney general has indicated, there's not a smithed-out formula that tells you exactly how you do this. This is done by the staff and the regulatory process and using their current regulations as promulgated. This attempts to make it both symmetrical, as well as nonconfiscatory and in that regard completely constitutional, and it also addresses the issues of attempting to say that if we ever did have another Enron, and I doubt that we'll have one identical to the Enron case because those folks were lying on everything except their tax returns. I'm assuming they didn't lie on those, however, they are in prison, so we'll know where to catch them if we need to do that. But that's a particular circumstance and in an Enron situation with the tax amounts in hand, we can go ahead and anticipate rate adjustments downwards, but then if they are profitable, then those rates could potentially, and they don't have to be, recognize please, that just because the total tax that's included within rates is 100x and they begin to pay 110x, does not mean that the rates go up. It still comes back to the PUC for the automatic adjustment clause to determine whether or not that 110x is directly related or can be associated with the rate setting process with the rate regulated company, and so folks say that, well, rates are going to go back up, they're paying more, they may be disappointed. The folks that say rates are going to come down because they paid less in this particular period than they paid last period that are in the rates, they may be disappointed when the rates don't go down. So, it's a combination of a

compromise and not necessarily that the parties have come together and said, gee, we think this is an excellent compromise. Mr. Chair, it's the best that I've been able to come up with and I do want to express my thanks and appreciation to deputy attorney general Pete Shepherd, as well as assistant attorney general Paul Graham, and to counsel of our own legislature, counsel Dexter Johnson, for coming together and helping. Plus the members of the work group, Mark Nelson and Mike Early, as well as, Shawn Miller and Sarah Adams Lien. And you're right, you want to drill on it for another four or five weeks, you could do that and probably nobody would be happier than what they are today, Mr. Chair.

Chair: Have we cut the baby in half as best we could?

Butler: I think so, Mr. Chair, at this particular point. Mr. Chair, this is going to go back over, assuming that you request the cancellation of the subsequent referral, this would go to the house floor. I anticipate that it would pass there. It'll go back over to the senate. I do know that Senator Metsger had ordered the -21s. If he wants to go ahead and smith those out again over on the senate side, I'm sure that's a possibility. My concern is, and I've pointed out to the committee, that there are some problems with those amendments, that on their face they violate the *Duquesne* case. Or they could, they could, now the PUC could go ahead and use their vast experience and authority to say wait a minute, we believe that this is in violation, but if it violates Oregon statute as promulgated, then I'm not sure where they go. So, rather than have the statute have language in it which violates *Ducane*, I would prefer that we take a look now at amending this bill and my request is that you adopt the -20s from this work group that we've had as a compromise work group, Mr. Chair.

Chair: Okay, committee members, we've had some discussion earlier today with leadership and they do want us to move a bill, realizing what Representative has said, that obviously there's going to be a conference committee and another 20 hours possibly of trying to find a point of right. And I don't know that we can do any more than what we've done, to tell you the truth, I really don't. Representative Boquist.

Boquist: Mr. Chair, I move the B20 amendment into Senate Bill 408.

Chair: Representative Boquist has moved the B20 amendments into Senate Bill 408. Any objections?

Man: A point of discussion, Mr. Chair, if I could?

Chair: Yep.

Macpherson: And it's a way of explanation of my, I will support the B20s and moving the bill with them in, but I just wanted to comment generally. First of all, to appreciate the tremendous amount of work that Representative Butler,

in particular, and the good folks from the Department of Justice and a lot of other players have put in on this issue. It's been a lot of really hard work and I tell you more intellectual energy than you can imagine has been expended over this piece of legislation. I think that was made necessary because, or occurred because, a fundamental mistake was made about the way to solve this problem early on, on the other side of the building. The fundamental problem is taxes that are being collected from rate payers that are not, in fact, being delivered to the taxing authorities. And Representative Barker and I introduced a bill a couple weeks ago. It had to be a separate bill because it had originated on the house side to say that the Oregon corporate tax, that is on income generated from rate payers in Oregon, as a minimum ought to be collected as the minimum tax and, obviously, we have the opportunity to take up that as a separate piece of legislation, but I think that is a much simpler and I think more elegant solution to the problem than this. And I think the thing we demonstrated is that this solution is fraught with all kinds of problems. You have asymmetry in some situations which could be constitutionally flawed. If you would make it symmetrical, you have the risk that it could cause rates to go up in certain circumstances. I'd say my overriding concern is that we're really turning the rate making process into a two-step process. One step to set the rates prospectively and then another to do a retrospective adjustment based on what actually happened, which I suspect is going to complicate the rate making process quite a bit. So, I regard this piece of legislation as a work in progress. I will support it, but I think there are grave concerns about it.

Chair: Well, I think your words of work in progress and not a finished product is probably going to be something we're all going to realize. I think we realize it now. Anything further? -20s are in.

Boquist: Mr. Chair, I'd like to move SB 408 as amended to the floor with a request to the Speaker to rescind the referral to Budget.

Chair: Okay, Representative Boquist has moved Senate Bill 408 as amended to the floor with a request to rescind the subsequent referral to Budget. The due pass. Any further discussion?

Man: Mr. Chair? We have a B17s that are here in the packet that were for the smaller utilities. They were carved out in some earlier versions.

Chair: Yes.

Man: And I think I understand they're not...

Chair: They are in the B20s.

Man: They are in the B20s? I beg your pardon.

Chair: Okay. Anything further? Can you call the roll, please?

Woman: Representative Barker?

Barker: Aye.

Woman: Representative Boquist?

Boquist: Aye.

Woman: Representative Flores?

Florez: Aye.

Woman: Representative Macpherson?

Crisen: Aye.

Woman: Chair Krieger?

Chair: Aye. Senate Bill 408 as amended moves to the floor and with the request for the rescinding of the referral which we'll do with a letter. The Speaker knows it's coming. She's approved it, I understand. And Representative Butler, this is your baby to carry on the floor. Thanks.

[End of Senate Bill 408 on this transcription file.]

SB 408-B20
(LC 819)
7/11/05 (DJ/ps)

MEASURE: SB 408
EXHIBIT: B
H. COMM ON STATE & FED. AFFAIRS
DATE: 7/15/05 PAGES: 11
SUBMITTED BY: STAFF

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 1a to 3a of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 1a. As used in sections 1a to 3a of this 2005 Act:**

6 **"(1) 'Affiliated group' means an affiliated group of corporations of**
7 **which a utility is a member and that files a consolidated federal in-**
8 **come tax return.**

9 **"(2) 'Properly attributed' means the attribution of tax liabilities or**
10 **tax benefits to the entity or activity whose business or economic ac-**
11 **tivities created the items of income, expenses, losses, deductions or**
12 **credits upon which the tax liabilities or tax benefits are based.**

13 **"(3) 'Public utility' or 'utility' means:**

14 **"(a) A regulated investor-owned utility that provided electric or**
15 **natural gas service to an average of 50,000 or more customers in**
16 **Oregon in 2003; or**

17 **"(b) A successor in interest to an entity described in paragraph (a)**
18 **of this subsection that continues to be a regulated investor-owned**
19 **utility.**

20 **"(4) 'Regulated operations of the utility':**

21 **"(a) Means utility activities that give rise to expenses or revenues**
22 **that are included in utility rates;**

23 **"(b) Do not include economic activities that are unrelated to utility**
24 **activities; and**

1 “(c) Do not include expenses that are disallowed by the Public
2 Utility Commission for ratemaking purposes.

3 “(5) ‘Tax’:

4 “(a) Means a federal, state or local tax that is imposed on or
5 measured by income and that is paid to a unit of government.

6 “(b) Does not include any amount that is refunded by a unit of
7 government as a tax refund.

8 “(c) Does not include a franchise fee or privilege tax.

9 “(d) Does not include a local business license fee measured by in-
10 come.

11 “(6) ‘Unit of government’ means the United States, the State of
12 Oregon or a political subdivision of the State of Oregon.

13 “SECTION 2. (1) The Legislative Assembly finds and declares that:

14 “(a) The alignment of costs for taxes collected by public utilities
15 from utility customers with taxes actually received by units of gov-
16 ernment from utilities, or from affiliated groups, is of special interest
17 to this state.

18 “(b) Taxes are a unique utility cost because the actual taxes re-
19 ceived by units of government are affected by the operations or tax
20 attributes of the parent company or other affiliates of the utility.

21 “(c) The Public Utility Commission permits a utility to include an
22 expense for taxes in rates that assume the utility is not part of an
23 affiliated group for tax purposes.

24 “(d) The parent company of a utility may employ accounting
25 methods, debt, consolidated tax return rules and other techniques in
26 a way that results in a difference between the taxes actually received
27 by units of government from the utility, or from the affiliated group
28 of which the utility is a member, and the amount of costs for taxes
29 collected, directly or indirectly, as part of rates paid by customers.

30 “(e) Tax uncertainty in the ratemaking process may result in col-

1 lecting taxes from ratepayers that are not received by units of gov-
2 ernment.

3 “(f) Utility rates that include amounts for taxes should, over time,
4 reflect the taxes that are actually received by units of government to
5 be considered fair, just and reasonable.

6 “(g) The level of tax expense in utility rates involves complicated
7 questions of state and federal tax law and accounting and ratemaking
8 principles. The legal and economic consequences of changing the ex-
9 isting system are difficult to predict and if predicted incorrectly may
10 have significant unintended legal or economic consequences.

11 “(h) Because of economic, public policy and legal concerns that
12 would arise using alternative approaches to determining the cost of
13 taxes in rates, sections 3 and 3a of this 2005 Act and ORS 757.210 seek
14 to more closely align the tax expense in rates with the tax obligations
15 of the utility that are attributable to the utility’s regulated operations.

16 “(i) Information about the past and future tax expenses of a busi-
17 ness has commercial value. Disclosure of the past and future tax ex-
18 penses of a business could give other businesses an advantage over the
19 business to which the information pertains and over other businesses
20 that do not know the information.

21 “(2) The Legislative Assembly makes the findings and declarations
22 described in this section as part of the context in which sections 3 and
23 3a of this 2005 Act and ORS 757.210 are to be interpreted and applied.
24 Nothing in this section creates any claim for relief.

25 “SECTION 3. (1) On or before the 15th day of the seventh month
26 following the close of the fiscal year of a public utility, or on or before
27 a later date that the Public Utility Commission may allow, every
28 public utility shall obtain and provide to the commission any infor-
29 mation the commission requires to determine the amount of tax for
30 the fiscal year preceding the fiscal year in which the information is

1 provided that units of government received:

2 “(a) In the case of a utility that is not a part of an affiliated group
3 for tax purposes, from the utility and that is properly attributed to the
4 regulated operations of the utility; or

5 “(b) In the case of a utility that is part of an affiliated group, from
6 the affiliated group.

7 “(2) On or before the 15th day of the seventh month following the
8 close of the fiscal year of the utility, or on or before a later date that
9 the commission may allow, every public utility shall file a tax report
10 with the commission. The tax report shall contain the information
11 required by the commission for the fiscal year preceding the fiscal year
12 in which the information is provided, including:

13 “(a) The amount of taxes that was received by units of government
14 from the utility and properly attributed to the regulated operations
15 of the utility or from the affiliated group in the previous fiscal year,
16 determined without regard to the tax year for which the taxes were
17 paid and, for a multistate utility, calculated using the utility’s juris-
18 dictional cost-based allocation methodology; and

19 “(b) The amount of costs for taxes authorized to be collected in
20 Oregon rates.

21 “(3) The commission may require or allow the information required
22 to be reported under subsections (1) and (2) of this section to be re-
23 ported in a single filing with the commission.

24 “(4) The commission shall review the tax report and any other in-
25 formation that it has obtained and make the determinations described
26 in this section within 90 days following the filing of the report or
27 within a further period of time that the commission may by rule es-
28 tablish for making determinations under this section. The commission
29 shall require the public utility to establish an automatic adjustment
30 clause, as defined in ORS 757.210, within 30 days following the date of

1 the commission's determinations under this section, or by a later date
2 that the commission may by rule prescribe for establishing an auto-
3 matic adjustment clause if the commission determines that the
4 amount of taxes under subsection (2)(a) of this section differed by 10
5 percent or more from the amount of costs for taxes under subsection
6 (2)(b) of this section.

7 “(5) The automatic adjustment clause shall apply for a three-year
8 period following establishment of the clause, to:

9 “(a) Recoup for ratepayers the amount of costs for taxes paid in
10 rates by ratepayers but never received by units of government; or

11 “(b) Reimburse utility investors for the amount of taxes received
12 by units of government but not collected in rates from ratepayers.

13 “SECTION 3a. (1) The automatic adjustment clause described in
14 section 3 of this 2005 Act may not be used to:

15 “(a) Make adjustments to rates that are properly attributed to any
16 other affiliate of the public utility or to the parent of the utility;

17 “(b) Allocate to ratepayers the tax benefits of charitable contribu-
18 tions, investments in renewable energy or other deductions, credits
19 or benefits unless the costs associated with those benefits are included
20 in rates; or

21 “(c) Allocate to ratepayers disallowed costs, if the costs were not
22 included in rates.

23 “(2) Notwithstanding section 3 of this 2005 Act or ORS 757.210, the
24 commission shall authorize a public utility to include in rates:

25 “(a) Deferred taxes resulting from accelerated depreciation or other
26 tax treatment of utility investment; and

27 “(b) Tax requirements and benefits that are required to be included
28 in order to ensure compliance with the normalization requirements
29 of federal tax law.

30 “(3) The commission may not require the establishment or contin-

1 uation of an automatic adjustment clause under section 3 of this 2005
2 Act if the automatic adjustment clause would cause the taxpayer to:

3 “(a) Lose the right to claim accelerated depreciation with respect
4 to its capital assets or depreciable property on the tax returns of the
5 taxpayer;

6 “(b) Incur a reduction in other tax benefits because implementation
7 of the clause would result in the taxpayer’s not using a normalization
8 method of accounting under federal tax law; or

9 “(c) Otherwise violate a requirement of a normalization method of
10 accounting or another requirement of federal tax law.

11 “(4)(a) The commission may discontinue or choose not to imple-
12 ment an automatic adjustment clause under this section if the com-
13 mission determines that continuation or implementation of the
14 automatic adjustment clause would have a material adverse effect on
15 customers of the public utility or on renewable energy companies.

16 “(b) The commission shall conduct a hearing under ORS 757.210
17 prior to making a determination under this subsection.

18 “(5) Prior to establishing an automatic adjustment clause under
19 section 3 of this 2005 Act, the commission shall review the results of
20 operations of the public utility to determine whether the effect of the
21 automatic adjustment clause is large enough to merit, in the sole
22 discretion of the commission, the initiation of a new general
23 ratemaking proceeding.

24 “(6)(a) The commission may not use the tax information obtained
25 by the commission under section 3 of this 2005 Act for any purpose
26 other than those described in section 3 of this 2005 Act. Except as
27 provided in this subsection, the tax report and information submitted
28 to the commission under section 3 of this 2005 Act are confidential.

29 “(b) An intervenor in a commission proceeding to review the tax
30 report or make rate adjustments described in section 3 of this 2005 Act

1 may, at the commission's discretion and upon signing a protective
2 order prepared by the commission, obtain or use the information, in-
3 cluding the tax report, according to the terms of the protective order.

4 **"SECTION 4. (1) The first fiscal year for which a tax report and**
5 **other tax information of a public utility must be reported to the Public**
6 **Utility Commission under section 3 of this 2005 Act shall be the fiscal**
7 **year that ends during the 2005 calendar year.**

8 **"(2) Notwithstanding section 3 of this 2005 Act, the tax report and**
9 **other information shall be required to be reported to the commission**
10 **on the later of:**

11 **"(a) The 15th day of the seventh month following the conclusion**
12 **of the fiscal year described in subsection (1) of this section;**

13 **"(b) The 15th day of the first month that begins on or after 120 days**
14 **after the effective date of this 2005 Act; or**

15 **"(c) A later date that the commission may allow.**

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

17 **"757.210. (1)(a) Whenever any public utility files with the Public Utility**
18 **Commission any rate or schedule of rates stating or establishing a new rate**
19 **or schedule of rates or increasing an existing rate or schedule of rates, the**
20 **commission may, either upon written complaint or upon the commission's**
21 **own initiative, after reasonable notice, conduct a hearing to determine [the**
22 **propriety and reasonableness of such rate or schedule] whether the rate or**
23 **schedule is fair, just and reasonable. The commission shall conduct [such**
24 **a] the hearing upon written complaint filed by the utility, its customer or**
25 **customers, or any other proper party within 60 days of the utility's filing;**
26 **provided that no hearing need be held if the particular rate change is the**
27 **result of an automatic adjustment clause. At [such] the hearing the utility**
28 **shall bear the burden of showing that the rate or schedule of rates proposed**
29 **to be established or increased or changed is [just and reasonable] fair, just**
30 **and reasonable. The commission may not authorize a rate or schedule**

1 of rates that is not fair, just and reasonable. *[The term]*

2 “(b) As used in this subsection, ‘automatic adjustment clause’ means
3 a provision of a rate schedule *[which]* that:

4 “(A) Provides for rate increases or decreases or both, without prior
5 hearing, reflecting increases or decreases or both in costs incurred, includ-
6 ing adjustments made pursuant to section 3 of this 2005 Act, taxes
7 received by units of government from a utility (either directly or
8 through a consolidated return) or revenues earned by a utility; and
9 *[which]*

10 “(B) Is subject to review by the commission at least once every two years.

11 “(c) Notwithstanding any other provision of law, the commission
12 may not establish an automatic adjustment clause under section 3 of
13 this 2005 Act if the commission determines that the use of an auto-
14 matic adjustment clause would result in rates that would fail:

15 “(A) To balance the interests of utility investors and utility con-
16 sumers;

17 “(B) To be fair, just and reasonable rates;

18 “(C) To provide adequate revenue both for operating expenses of the
19 utility and for capital costs of the utility;

20 “(D) To provide a return to utility equity holders that is
21 commensurate with the return on investment in other enterprises
22 having corresponding risks; and

23 “(E) To ensure confidence in the financial integrity of the utility,
24 allowing the utility to maintain the credit of the utility and to attract
25 capital.

26 “(2)(a) Subsection (1) of this section does not apply to rate changes under
27 an approved alternative form of regulation plan, including a resource rate
28 plan under ORS 757.212.

29 “(b) Any alternative form of regulation plan shall include provisions to
30 ensure that the plan operates in the interests of utility customers and the

1 public generally and results in rates that are just and reasonable and may
2 include provisions establishing a reasonable range for rate of return on in-
3 vestment. In approving a plan, the commission shall, at a minimum, consider
4 whether the plan:

5 “(A) Promotes increased efficiencies and cost control;

6 “(B) Is consistent with least-cost resources acquisition policies;

7 “(C) Yields rates that are consistent with the rates that would be
8 obtained following application of sections 3 and 3a of this 2005 Act;

9 “[C)] (D) Is consistent with maintenance of safe, adequate and reliable
10 service; and

11 “[D)] (E) Is beneficial to utility customers generally, for example, by
12 minimizing utility rates.

13 “(c) As used in this subsection, ‘alternative form of regulation plan’
14 means a plan adopted by the commission upon petition by a public utility,
15 after notice and an opportunity for a hearing, that sets rates and revenues
16 and a method for changes in rates and revenues using alternatives to cost-
17 of-service rate regulation.

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

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

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

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

6 **“SECTION 6. (1) Notwithstanding sections 3 and 3a of this 2005 Act**
7 **or ORS 757.210, an automatic adjustment clause that may be otherwise**
8 **required under section 3 of this 2005 Act may not be applied as a result**
9 **of a tax report or other information submitted for a fiscal year of a**
10 **public utility that ends in 2005, 2006 or 2007. An automatic adjustment**
11 **clause under section 3 of this 2005 Act may be required under a de-**
12 **termination made by the Public Utility Commission that is based on**
13 **a tax report or other information that is submitted for a fiscal year**
14 **of a utility that ends in 2008 or subsequent years.**

15 **“(2) On or before April 1, 2006, and on or before April 1, 2007, the**
16 **commission shall submit a detailed report to the Governor, the Presi-**
17 **dent of the Senate and the Speaker of the House of Representatives.**
18 **The commission shall conduct a public hearing on the draft report**
19 **before submitting it. The report shall include, but is not limited to:**

20 **“(a) A description of the operation of sections 3 and 3a of this 2005**
21 **Act and ORS 757.210 to date;**

22 **“(b) The extent to which sections 3 and 3a of this 2005 Act and ORS**
23 **757.210 would have resulted in rate adjustments based on the reports**
24 **and other information due from utilities for fiscal years ending in 2005**
25 **and 2006;**

26 **“(c) Data about the cost of implementing sections 3 and 3a of this**
27 **2005 Act and the amendments to 757.210 by section 5 of this 2005 Act;**
28 **and**

29 **“(d) Recommendations for legislative action, if any, to modify**
30 **sections 1a to 3a of this 2005 Act or ORS 757.210.**

1 “(3) The definitions in section 1a of this 2005 Act and ORS 757.210
2 apply to this section.

3 “SECTION 7. This 2005 Act being necessary for the immediate
4 preservation of the public peace, health and safety, an emergency is
5 declared to exist, and this 2005 Act takes effect on its passage.”.

6

SB 408-B17
(LC 819)
7/5/05 (DJ/ps)

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

MEASURE: SB 408
EXHIBIT: C
H. COMM ON STATE & FED. AFFAIRS
DATE: 7/5/05 PAGES: 1

- 1 On page 2 of the printed B-engrossed bill, delete line 43 and insert:
2 “(b) ‘Public utility’ or ‘utility’ means:
3 “(A) A regulated investor-owned utility that provided electric or natural
4 gas service to an average of 50,000 or more customers in Oregon in 2003; or
5 “(B) A successor in interest to an entity described in subparagraph (A)
6 of this paragraph that continues to be a regulated investor-owned utility.”.
-

7

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 2. (1) The Legislative Assembly finds and declares that:**

6 **"(a) The alignment of taxes collected by public utilities from utility**
7 **customers with taxes paid to units of government by utilities, or af-**
8 **filiated groups that include utilities, is of special interest to this state.**

9 **"(b) Taxes are a unique utility cost because the tax liability is af-**
10 **fectured by the operations or tax attributes of the parent company or**
11 **other affiliates of the utility.**

12 **"(c) The Public Utility Commission permits a utility to include costs**
13 **for taxes that assume the utility is not part of an affiliated group of**
14 **corporations for tax purposes.**

15 **"(d) The parent company of a utility may employ accounting**
16 **methods, debt, consolidated tax return rules and other techniques in**
17 **a way that results in a difference between the tax liability paid to units**
18 **of government by the utility, or the affiliated group of corporations**
19 **of which the utility is a member, and the amount of taxes collected,**
20 **directly or indirectly, from customers.**

21 **"(e) Tax uncertainty in the ratemaking process may result in col-**
22 **lecting taxes from ratepayers that are not paid to units of government.**

23 **"(f) Utility rates that include amounts for taxes should reflect the**
24 **taxes that are paid to units of government to be considered fair, just**

1 and reasonable.

2 “(g) Tax information of a business is commercially sensitive. Public
3 disclosure of tax information could provide a commercial advantage
4 to other businesses.

5 “(2) The definitions in section 3 of this 2005 Act apply to this sec-
6 tion.

7 **“SECTION 3. (1) Every public utility shall file a tax report with the**
8 **Public Utility Commission annually, on or before October 15 following**
9 **the year for which the report is being made. The tax report shall**
10 **contain the information required by the commission, including:**

11 “(a) The amount of taxes that was paid by the utility in the three
12 preceding years, or that was paid by the affiliated group and that is
13 properly attributed to the regulated operations of the utility, deter-
14 mined without regard to the tax year for which the taxes were paid;
15 and

16 “(b) The amount of taxes authorized to be collected in rates for the
17 three preceding years.

18 “(2) Every public utility shall be required to obtain and provide to
19 the commission any other information that the commission requires
20 to review the tax report and to implement and administer this section
21 and ORS 757.210.

22 “(3) The commission may disclose, or any intervenor may obtain
23 and disclose, the amount by which the amount of taxes that units of
24 government received from the public utility or from the affiliated
25 group differs from the amount of costs for taxes collected, directly or
26 indirectly, as part of rates paid by customers, including whether the
27 difference is positive or negative.

28 “(4) The commission shall review the tax report and any other in-
29 formation the commission has obtained and make the determinations
30 described in this section within 90 days following the filing of the re-

1 port, or within a further period of time that the commission may by
2 rule establish for making determinations under this section that does
3 not exceed 180 days following the filing of the report. If the commis-
4 sion determines that the amount of taxes assumed in rates or other-
5 wise collected from ratepayers for any of the three preceding years
6 differed by \$100,000 or more from the amount of taxes paid to units of
7 government by the public utility, or by the affiliated group and prop-
8 erly attributed to the regulated operations of the utility, the commis-
9 sion shall require the utility to establish an automatic adjustment
10 clause, as defined in ORS 757.210, within 30 days following the date of
11 the commission's determinations under this section, or by a later date
12 that the commission may by rule prescribe for establishing an auto-
13 matic adjustment clause that does not exceed 60 days following the
14 date of the commission's determinations under this section.

15 “(5) If an adjustment to rates is made under an automatic adjust-
16 ment clause established under this section, the automatic adjustment
17 clause shall remain in effect for each successive year after an adjust-
18 ment is made and until an order terminating the automatic adjust-
19 ment clause is made under subsection (9) of this section.

20 “(6) The automatic adjustment clause shall account for all taxes
21 paid to units of government by the public utility that are properly at-
22 tributed to the regulated operations of the utility, or by the affiliated
23 group that are properly attributed to the regulated operations of the
24 utility, and all taxes that are authorized to be collected through rates,
25 so that ratepayers are not charged for more tax than:

26 “(a) The utility pays to units of government and that is properly
27 attributed to the regulated operations of the utility; or

28 “(b) In the case of an affiliated group, the affiliated group pays to
29 units of government and that is properly attributed to the regulated
30 operations of the utility.

1 “(7) An automatic adjustment clause established under this section
2 may not be used to make adjustments to rates for taxes paid that are
3 properly attributed to any unregulated affiliate of the public utility or
4 to the parent of the utility.

5 “(8) Notwithstanding subsections (1) to (7) of this section, the
6 commission may authorize a public utility to include in rates:

7 “(a) Deferred taxes resulting from accelerated depreciation or other
8 tax treatment of utility investment; and

9 “(b) Tax requirements and benefits that are required to be included
10 in order to ensure compliance with the normalization requirements
11 of federal tax law.

12 “(9) If the commission determines that establishing an automatic
13 adjustment clause under this section would have a material adverse
14 effect on customers of the public utility, the commission shall issue
15 an order terminating the automatic adjustment clause. The order shall
16 set forth the reasons for the commission’s determination under this
17 subsection.

18 “(10) The commission shall conduct a hearing under ORS 757.210
19 prior to making a determination under subsection (9) of this section
20 that an automatic adjustment clause would have a material adverse
21 effect on customers of the public utility.

22 “(11) The commission may not use the tax information obtained by
23 the commission under this section for any purpose other than those
24 described in subsections (1) to (10) of this section. An intervenor in a
25 commission proceeding to review the tax report or make rate adjust-
26 ments described in this section may, upon signing a protective order
27 prepared by the commission, obtain and use the information obtained
28 by the commission that is not otherwise required to be made publicly
29 available under this section, according to the terms of the protective
30 order.

1 “(12) For purposes of this section, taxes paid that are properly at-
2 tributed to the regulated operations of the public utility may not ex-
3 ceed the lesser of:

4 “(a) That portion of the total taxes paid that is incurred as a result
5 of income generated by the regulated operations of the utility; or

6 “(b) The total amount of taxes paid to units of government by the
7 utility or by the affiliated group, whichever applies.

8 “(13) As used in this section:

9 “(a) ‘Affiliated group’ means an affiliated group of corporations of
10 which the public utility is a member and that files a consolidated
11 federal income tax return.

12 “(b) ‘Public utility’ or ‘utility’ does not include a water utility.

13 “(c) ‘Regulated operations of the utility’ means those activities of
14 a public utility that are subject to rate regulation by the commission.

15 “(d) ‘Tax’:

16 “(A) Means a federal, state or local tax or fee that is imposed on
17 or measured by income and that is paid to units of government.

18 “(B) Does not include any amount that is refunded by a unit of
19 government as a tax refund.

20 “(C) Does not include franchise fees or privilege taxes.

21 “(e) ‘Taxes authorized to be collected in rates’ means the product
22 determined by multiplying the following three values:

23 “(A) The revenues the utility collects from ratepayers in Oregon,
24 adjusted for any rate adjustment imposed under this section;

25 “(B) The ratio of the net revenues from regulated operations of the
26 utility to gross revenues from regulated operations of the utility, as
27 determined by the commission in establishing rates; and

28 “(C) The effective tax rate used by the commission in establishing
29 rates.

30 “(f) ‘Taxes paid’ means amounts received by units of government

1 from the utility or from the affiliated group of which the utility is a
2 member, whichever is applicable, adjusted as follows:

3 “(A) Increased by the amount of tax savings realized as a result of
4 charitable contribution deductions allowed because of charitable con-
5 tributions made by the utility;

6 “(B) Increased by the amount of tax savings realized as a result of
7 tax credits associated with investment by the utility in the regulated
8 operations of the utility, to the extent the expenditures giving rise to
9 the tax credits and tax savings resulting from the tax credits have not
10 been taken into account by the commission in the utility’s last general
11 ratemaking proceeding; and

12 “(C) Adjusted by deferred taxes related to the regulated operations
13 of the utility.

14 “(g) ‘Three preceding years’ means the three most recent consec-
15 utive fiscal years preceding the date the tax report is required to be
16 filed.

17 **“SECTION 4. (1) The tax report that, under section 3 of this 2005**
18 **Act, is required to be filed on or before October 15, 2005, shall set forth**
19 **the information required to be reported under section 3 of this 2005**
20 **Act for the three most recent consecutive fiscal years of the public**
21 **utility that concluded prior to the date of the filing of the tax report.**

22 **“(2) If an automatic adjustment clause is established under section**
23 **3 of this 2005 Act, notwithstanding any other provision of section 3 of**
24 **this 2005 Act, the automatic adjustment clause shall apply only to**
25 **taxes paid to units of government and collected from ratepayers on**
26 **or after January 1, 2006.**

27 **“SECTION 5. ORS 757.210 is amended to read:**

28 **“757.210. (1)(a) Whenever any public utility files with the Public Utility**
29 **Commission any rate or schedule of rates stating or establishing a new rate**
30 **or schedule of rates or increasing an existing rate or schedule of rates, the**

1 commission may, either upon written complaint or upon the commission's
2 own initiative, after reasonable notice, conduct a hearing to determine [*the*
3 *propriety and reasonableness of such rate or schedule*] **whether the rate or**
4 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
5 *a*] **the hearing** upon written complaint filed by the utility, its customer or
6 customers, or any other proper party within 60 days of the utility's filing;
7 provided that no hearing need be held if the particular rate change is the
8 result of an automatic adjustment clause. At [*such*] **the hearing** the utility
9 shall bear the burden of showing that the rate or schedule of rates proposed
10 to be established or increased or changed is [*just and reasonable. The term*]
11 **fair, just and reasonable. The commission may not authorize a rate**
12 **or schedule of rates that is not fair, just and reasonable.**

13 “(b) As used in this subsection, ‘automatic adjustment clause’ means
14 a provision of a rate schedule [*which*] **that** provides for rate increases or
15 decreases or both, without prior hearing, reflecting increases or decreases
16 or both in costs incurred, **taxes paid to units of government** or revenues
17 earned by a utility and [*which*] **that** is subject to review by the commission
18 at least once every two years.

19 “(2)(a) Subsection (1) of this section does not apply to rate changes under
20 an approved alternative form of regulation plan, including a resource rate
21 plan under ORS 757.212.

22 “(b) Any alternative form of regulation plan shall include provisions to
23 ensure that the plan operates in the interests of utility customers and the
24 public generally and results in rates that are just and reasonable and may
25 include provisions establishing a reasonable range for rate of return on in-
26 vestment. In approving a plan, the commission shall, at a minimum, consider
27 whether the plan:

28 “(A) Promotes increased efficiencies and cost control;

29 “(B) Is consistent with least-cost resources acquisition policies;

30 “(C) Yields rates that are consistent with those that would be ob-

1 **tained following application of section 3 of this 2005 Act;**

2 **"[(C)] (D) Is consistent with maintenance of safe, adequate and reliable**
3 **service; and**

4 **"[(D)] (E) Is beneficial to utility customers generally, for example, by**
5 **minimizing utility rates.**

6 **"(c) As used in this subsection, 'alternative form of regulation plan'**
7 **means a plan adopted by the commission upon petition by a public utility,**
8 **after notice and an opportunity for a hearing, that sets rates and revenues**
9 **and a method for changes in rates and revenues using alternatives to cost-**
10 **of-service rate regulation.**

11 **"(d) Prior to implementing a rate change under an alternative form of**
12 **regulation plan, the utility shall present a report that demonstrates the cal-**
13 **culatation of any proposed rate change at a public meeting of the commission.**

14 **"(3) Except as provided in ORS 757.212, the commission, at any time, may**
15 **order a utility to appear and establish that any, or all, of its rates in a plan**
16 **authorized under subsection (2) of this section are in conformity with the**
17 **plan and are just and reasonable. Except as provided in ORS 757.212, such**
18 **rates, and the alternative form of regulation plan under which the rates are**
19 **set, also shall be subject to complaint under ORS 756.500.**

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

24 **"(5) The commission and staff may consult at any time with, and provide**
25 **technical assistance to, utilities, their customers, and other interested parties**
26 **on matters relevant to utility rates and charges. If a hearing is held with**
27 **respect to a rate change, the commission's decisions shall be based on the**
28 **record made at the hearing.**

29 **"SECTION 6. This 2005 Act being necessary for the immediate**
30 **preservation of the public peace, health and safety, an emergency is**

1 declared to exist, and this 2005 Act takes effect on its passage.”.

2

RedCo Utility

Year in which "tax report" is submitted (contents relate to the prior fiscal year)

TL: Amount allowed in rate as estimated tax

TR: Amount received by government from the Oregon regulated activities of the utility or the affiliated group

TR - TL

Percent difference

RA: Rate Increase to be distributed over three years

RA: Rate Decrease to be distributed over three years

Prospective Rate Adjustments (added to or subtracted from the rate calculated in the usual manner)

Increase or (Decrease) in rates applied in stated year

2004	2005	2006	2007	2008	2009	2010	2011	2012
92	92	92	92	92	92	92	92	92
87	112	81	75	0	25	50	100	150
(5.00)	20.00	(11.00)	(17.00)	(92.00)	(67.00)	(42.00)	8.00	58.00
-5%	22%	-12%	-18%	-100%	-73%	-46%	9%	63%
0.00	20.00	0.00	0.00	0.00	0.00	0.00	0.00	58.00
0.00	0.00	(11.00)	(17.00)	(92.00)	(67.00)	(42.00)	0.00	0.00
0.00	0.00	0.00						
	6.67	6.67	6.67					
		(3.67)	(3.67)	(3.67)				
			(5.67)	(5.67)	(5.67)			
				(30.67)	(30.67)	(30.67)		
					(22.33)	(22.33)	(22.33)	
						(14.00)	(14.00)	(14.00)
							0.00	0.00
								19.33
2004	2005	2006	2007	2008	2009	2010	2011	2012
0.0	6.7	3.0	(2.7)	(40.0)	(58.7)	(67.0)	(36.3)	5.3

MEASURE: SB408
EXHIBIT: E
H. COMM. ON STATE & FED. AFFAIRS
DATE: 7/15/05 PAGES: 2
SUBMITTED BY: PETE SHEPHERD

17.2

**BlackCo
Utility**

Year in which "tax
report" is submitted
(contents relate to the
prior fiscal year)

TL: Amount allowed
in rate as estimated
tax

TR: Amount received
by government from the
Oregon regulated
activities of the utility or
the affiliated group

TR - TL

Percent difference

RA: Rate *Increase* to
be distributed over three
years

RA: Rate *Decrease* to
be distributed over three
years

Prospective Rate
Adjustments
(added to or sub-
tracted from the
rate calculated in the
usual manner)

Increase or
(Decrease) in rates
applied in stated
year

2004	2005	2006	2007	2008	2009	2010	2011	2012
92	92	92	92	92	92	92	92	92
87	97	95	120	75	85	95	105	115
(5.00)	5.00	3.00	28.00	(17.00)	(7.00)	3.00	13.00	23.00
-5%	5%	3%	30%	-18%	-8%	3%	14%	25%
0.00	0.00	0.00	28.00	0.00	0.00	0.00	13.00	23.00
0.00	0.00	0.00	0.00	(17.00)	0.00	0.00	0.00	0.00
0.00	0.00	0.00						
	0.00	0.00	0.00					
		0.00	0.00	0.00				
			9.33	9.33	9.33			
				(5.67)	(5.67)	(5.67)		
					0.00	0.00	0.00	
						0.00	0.00	0.00
							4.33	4.33
								7.67
2004	2005	2006	2007	2008	2009	2010	2011	2012
0.0	0.0	0.0	9.3	3.7	3.7	(5.7)	4.3	12.0

215

HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 26, 2005
11:00 A.M.

Hearing Room 357
Tapes 47 – 48
(Corrected 7-28-05)

MEMBERS PRESENT: Rep. Rep. Wayne Krieger, Chair
Rep. Rep. Jeff Barker, Vice-Chair
Rep. Brian Boquist, Vice-Chair
Rep. Linda Flores
Rep. Greg Macpherson

STAFF PRESENT: Heidi Moawad, Counsel
Cletus Moore, Committee Administrator
Joe O'Leary, Counsel
Bill Taylor, Counsel
Sandy Thiele-Cirka, Committee Administrator
Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

SB 548A – Work Session
SB 660A – Work Session
SB 1068A – Work Session
SB 1067 – Work Session
HB 3505 – Work Session
SB 1083A – Work Session
SB 899A – Work Session
SB 408B – Reconsideration and Work Session
SB 303 – Work Session
HB 3507 – Work Session
SB 907B – Work Session

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.

TAPE/#	Speaker	Comments
TAPE 47, A		
004	Chair Krieger	Calls the meeting to order at 1:19 p.m. and opens a work session on SB 548A.
<u>SB 548A – WORK SESSION</u>		
008	Heidi Moawad	Counsel. Describes SB 548A which modifies the crime of interfering with a peace officer and is in response to an Oregon Supreme Court and Court of Appeals decision in 2004 that struck down portions of the existing peace officer statute. Refers to the -A6 amendments (EXHIBIT A) which resolve conflicts with HB 3379 that amended the "interfering with a peace officer" statute to include probation, parole and post-prison supervision officers. Details the -5 amendments (EXHIBIT B) which add portions of HB 2020, HB 2828A, HB 2974A

- and HB 3469A.
- 044 Moawad Explains a new provision in SB 548A which creates a requirement for certain findings before the petitioner can subpoena the victim in cases of post-conviction relief.
- 058 Sen. Floyd
Prozanski Senate District 4. Provides an overview of SB 548A. Comments on work as a police commissioner. Cites the intent of SB 548A. Offers that SB 548A is a necessary and reasonable tool.
- 093 Sen. Prozanski Indicates that the -A5 amendments may cause SB 548A to be referred to the budget committee.
- 100 Rep. Boquist **MOTION: Moves to ADOPT SB 548A-6 amendments dated 7/26/05.**
- VOTE: 5-0-0**
- 105 Chair Krieger **Hearing no objection, declares the motion CARRIED.**
- 106 Rep. Boquist **MOTION: Moves to ADOPT SB 548A-5 amendments dated 7/19/05.**
- 109 Rep. Macpherson Explains his reasons for objecting to the -A5 amendments.
- 126 Chair Krieger Notes the objection.
- 127 Chair Krieger **The motion CARRIES.**
- 128 Rep. Boquist **MOTION: Moves SB 548A to the floor with a DO PASS AS AMENDED recommendation.**
- 132 Rep. Barker Explains his reason for objection.
- 133 Chair Krieger Notes objection.
- VOTE: 3-2-0**
- AYE: 3 - Boquist, Flores, Krieger**
- NAY: 2 - Barker, Macpherson**
- 137 Chair Krieger **The motion CARRIES.**
- REP. FLORES & REP. BOQUIST will lead discussion on the floor.**
- 139 Rep. Macpherson Serves notice of a possible minority report.
- 140 Chair Krieger Closes the work session on SB 548A. Announces that SB 572A will be carried over.
- 143 Chair Krieger Opens a work session on SB 660A.
- SB 660A – WORK SESSION**
- 147 Cletus Moore Committee Administrator. Explains SB 660A which requires a county board or local boundary commission to approve a petition for formation of a special district and clarifies the rules.
- 151 Rep. Boquist **MOTION: Moves SB 660A to the floor with a DO PASS recommendation and be placed on the CONSENT CALENDAR.**
- VOTE: 5-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 155 Chair Krieger **The motion CARRIES.**
- 157 Chair Krieger Closes the work session on SB 660A and opens a work session on SB 1068A.

SB 1068A – WORK SESSION

- 166 Joe O'Leary Counsel. Describes SB 1068A which requires a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has been charged with an offense, is presently on pre-trial release pursuant to a release agreement, and the person has failed to comply with a "no contact" order pursuant to that agreement. Explains current law.
- 186 Rep. Boquist **MOTION: Moves SB 1068A to the floor with a DO PASS recommendation.**
- VOTE: 5-0-0**
- 193 Chair Krieger **AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**
- 196 Chair Krieger **REP. MACPHERSON will lead discussion on the floor.**
Closes the work session on SB 1068A and opens a work session on SB 1067.

SB 1067 – WORK SESSION

- 198 Joe O'Leary Counsel. Explains SB 1067 which expands the crime of telephonic harassment to include sending or leaving text messages, voice mails or any other messages knowing that the caller has been forbidden from doing so by a person exercising lawful authority over the receiving telephone. Details the -1 amendments (**EXHIBIT C**), the -2 amendments (**EXHIBIT D**) and the -3 amendments (**EXHIBIT E**).
- 249 Rep. Macpherson Asks if there are other restrictions or penalty structures on debt collection activities.
- 255 O'Leary Answers yes, both state and federal. Refers to ORS 646.642 for civil penalties, monetary compensation, attorney fees and punitive damages.
- 272 Rep. Boquist **MOTION: Moves to ADOPT SB 1067-2 amendments dated 7/25/05.**
- VOTE: 5-0-0**
- 275 Chair Krieger **Hearing no objection, declares the motion CARRIED.**
- 276 Rep. Boquist **MOTION: Moves SB 1067 to the floor with a DO PASS AS AMENDED recommendation.**
- VOTE: 5-0-0**
- 280 Chair Krieger **AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**
- 295 Chair Krieger **REP. BARKER will lead discussion on the floor.**
Closes the work session on SB 1067 and opens a work session on HB 3505.

HB 3505 – WORK SESSION

- 297 Cletus Moore Committee Administrator. Explains HB 3505 which provides that a public body may condemn property only if the primary purpose for taking the property is to allow the property to be owned, maintained, occupied and used by the public for public purposes. Distributes the -3, -4, -5, -6, -7, -8, -9, -10 and -12 amendments (**EXHIBIT F THROUGH EXHIBIT N**).
- 319 Dave Heynderickx Acting Legislative Counsel. Describes the amendments in detail. Informs that the: -3 amendments (**EXHIBIT F**) add to the types of

21A

things that are incidental to condemnation without prohibition on taking for private use; -4 amendments (**EXHIBIT G**) change the operative provisions of the bill to "owned and used;" -5 amendments (**EXHIBIT H**) address concerns relating to conveyance of the property.

TAPE 48, A

- 010 Heynderickx Continues explanation of the: -6 amendments (**EXHIBIT I**) respond to concerns whether "blighted" or "slum" areas were broad enough; -7 amendments (**EXHIBIT J**) pick up a concept to indicate that a court would not defer to the public body determination on whether or not a particular case complies with requirements of the operative provisions; -8 amendments (**EXHIBIT K**) relate to applicability; -9 amendments (**EXHIBIT L**) are a substitute for current language on urban renewal provisions and provide public notice requirements.
- 080 Heynderickx Concludes with the: -10 amendments (**EXHIBIT M**) apply to unimproved land zoned for industrial use on the effective date of the act; and -12 amendments (**EXHIBIT N**) exempt property condemned by the courts.
- 093 Rep. Macpherson Comments on the good work to identify the problem areas. Asks about "friendly condemnation" under federal income tax law. Comments there may be no fix for that.
- 103 Heynderickx Advises that he has not had anyone come forward with a solution to that problem. Continues that a waiver of some sort might be possible.
- 115 Rep. Boquist Requests the rationale for the -10 and -12 amendments.
- 119 Heynderickx Indicates that he was not part of the discussion.
- 125 Dave Hunnicutt Oregonians in Action. States that the -10 amendments resolve the issue of condemnation of undeveloped industrial lands for the primary purpose of something other than the operation of a small business or a residential area. Advises that the -12 amendments address issues relating to condemnations by ports and port districts. Has no objection to the amendments.
- 142 Sen. Bruce Starr Senate District 15. Comments on the -10 and -12 amendments. States that he doesn't believe the -12 amendments are necessary but doesn't oppose them. Encourages adoption of these amendments and moving HB 3505.
- 163 Rep. Macpherson Comments that HB 3505 is getting better but is on the wrong course. States that the real issue is the taking of residential property from longtime residents. Continues that there is still no mechanism to deal with friendly condemnations. Believes they are reacting to a case across the country and no one has brought forward a case with similar concerns in Oregon. Has trouble with the bill.
- 186 Rep. Boquist **MOTION: Moves to ADOPT HB 3505-3 amendments dated 7/20/05.**
- 190 Chair Krieger **VOTE: 5-0-0**
Hearing no objection, declares the motion CARRIED.

191 Rep. Boquist MOTION: Moves to ADOPT HB 3505-4 amendments dated 7/25/05.
VOTE: 5-0-0

193 Chair Krieger Hearing no objection, declares the motion CARRIED.
194 Rep. Boquist MOTION: Moves to ADOPT HB 3505-5 amendments dated 7/25/05.
VOTE: 5-0-0

196 Chair Krieger Hearing no objection, declares the motion CARRIED.
197 Rep. Boquist MOTION: Moves to ADOPT HB 3505-6 amendments dated 7/25/05.
VOTE: 5-0-0

198 Chair Krieger Hearing no objection, declares the motion CARRIED.
199 Rep. Boquist MOTION: Moves to ADOPT HB 3505-7 amendments dated 7/25/05.
VOTE: 5-0-0

201 Chair Krieger Hearing no objection, declares the motion CARRIED.
202 Rep. Boquist MOTION: Moves to ADOPT HB 3505-8 amendments dated 7/25/05.
VOTE: 5-0-0

203 Chair Krieger Hearing no objection, declares the motion CARRIED.
204 Rep. Boquist MOTION: Moves to ADOPT HB 3505-9 amendments dated 7/26/05.
VOTE: 5-0-0

205 Chair Krieger Hearing no objection, declares the motion CARRIED.
207 Rep. Boquist MOTION: Moves to ADOPT HB 3505-10 amendments dated 7/26/05.
VOTE: 5-0-0

208 Chair Krieger Hearing no objection, declares the motion CARRIED.
210 Rep. Boquist MOTION: Moves to ADOPT HB 3505-12 amendments dated 7/26/05.
VOTE: 5-0-0

211 Chair Krieger Hearing no objection, declares the motion CARRIED.
213 Rep. Boquist MOTION: Moves HB 3505 to the floor with a DO PASS AS AMENDED recommendation.

215 Rep. Barker Refers to the Supreme Court decision and advises that he will be a "soft" no and urges further corrections.

221 Chair Krieger Notes objection.
VOTE: 3-2-0
AYE: 3 - Boquist, Flores, Krieger
NAY: 2 - Barker, Macpherson

230 Chair Krieger The motion CARRIES.
REP. GARRARD & REP. BOQUIST will lead discussion on the floor.

232 Chair Krieger Closes the work session on HB 3505 and opens a work session on SB 1083A.

SB 1083A – WORK SESSION

- 238 Bill Taylor Counsel. Explains SB 1083A which creates credit against personal and corporate income tax liability for increased labor costs associated with annual inflation based on increases in Oregon's minimum wage. *Note: the -A7, -A8, -A10 and -A11 amendments were previously distributed by staff (EXHIBIT O THROUGH EXHIBIT R).*
- 243 Rep. Boquist **MOTION: Moves SB 1083A to the floor with a DO PASS recommendation.**
- 247 Rep. Macpherson Requests an update on the cost of the bill. Refers to the revenue analysis that showed an impact and to testimony describing an interpretation that would increase that impact.
- 259 Taylor Indicates that Paul Warner can address those questions.
- 268 Paul Warner Legislative Revenue Office. Discusses the interpretations on who is eligible for the credit. Distributes and describes policy options (EXHIBIT S).
- 308 Rep. Macpherson Responds that there is quite a spread depending on the interpretation of eligibility. Asks how confident he is that the Senate interpretation will prevail.
- 324 Warner Answers, not confident at all. Comments that Legislative Counsel needs to determine how the language is to be interpreted. Indicates that initially the interpretation was narrower. Continues that the number of eligible workers must be known to make estimates. Concludes that there are two issues: (1) minimum wage only, the minimum plus 50 cents, or all agricultural workers; or (2) incremental changes brought about by the indexing or starting from the \$6.90 base and adding to that. Believes the narrower interpretation will be challenged.
- 350 Rep. Macpherson Comments that this is a serious issue. Requests Legislative Counsel assistance.
- 357 Dexter Johnson Legislative Counsel. Offers assistance.
- 363 Rep. Macpherson Asks about the interpretation that would be applied to this language.
- 370 Johnson Responds that there is some legal risk that the larger revenue impact would be ultimately what the court would conclude the credit called for. Continues that the primary standard for judicial interpretation of statute is the words used and not the legislative record. States that the words talk about increases but do not mention annual increases so the court could construe that to mean all increases from a specific period.
- 396 Rep. Macpherson Inquires if they could amend the bill to clearly reflect a specific interpretation.
- 402 Johnson Answers they could.
- 405 Rep. Boquist Confirms the interpretation by the revenue committee.
- 411 Warner Responds that the numbers are what were in the revenue impact from the Senate.
- 418 Rep. Boquist Asks if the Department of Revenue (DOR) testified before that committee.
- 421 Warner Replies that the DOR had a similar interpretation.

TAPE 47, B

- 004 Rep. Macpherson Asserts that he can't vote for a bill that is subject to a \$114 million "swing" next biennium.
- 019 Chair Krieger Closes the work session on SB 1083A and opens a work session on SB 899A which abolishes the Multnomah County Tax Supervising and Conservation Commission (TSCC); and allows any county with a population of 500,000 or more to establish a TSCC if the county obtains approval of the county governing body and taxing districts within the county.

SB 899A – WORK SESSION

- 026 Cletus Moore Committee Administrator. Refers to the -A12 amendments (**EXHIBIT T**) which are a result of a work group addressing issues related to Washington County.
- 037 Rep. Macpherson Asks if the -A12 amendments exempt counties under 500,000 population but retain the commission for Multnomah County.
- 043 Moore Answers correct and allows a second option for how they can report.
- 046 Rep. Macpherson Clarifies that Multnomah County continues to have their commission and the other counties can opt in.
- 049 Moore Comments that there are no objections from Multnomah County to having a TSCC.
- 052 Rep. Macpherson Responds that Multnomah County which is paying for the commission objects.
- 057 Rep. Boquist **MOTION: Moves to ADOPT SB 899A-12 amendments dated 7/20/05.**
- 059 Rep. Macpherson Objects as there should be one policy for all counties.
- 063 Rep. Boquist **MOTION: Moves SB 899A to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the Revenue Committee BE RESCINDED.**
- VOTE: 4-1-0**
AYE: 4 - Barker, Boquist, Flores, Krieger
NAY: 1 - Macpherson
The motion CARRIES.
- 072 Chair Krieger **REP. FLORES will lead discussion on the floor.**
- 084 Chair Krieger Closes the work session on SB 899A and opens a work session on SB 408B which establishes legislative findings regarding public electric utility taxes; and requires public utilities to file an annual tax report to the Public Utility Commission and outlines the required report information.

SB 408B – WORK SESSION

- 091 Rep. Boquist **MOTION: Moves to SUSPEND the rules for the purpose of reconsidering the vote on SB 408B.**
- 094 Chair Krieger Explains that he asked SB 408B be returned to the committee to consider the -B22 amendments (**EXHIBIT U**).

096 Chair Krieger
098 Rep. Boquist

VOTE: 5-0-0
Hearing no objection, declares the motion CARRIED.
MOTION: Moves to RECONSIDER the vote by which SB 408B was passed to the floor with a DO PASS recommendation.

101 Chair Krieger
103 Rep. Boquist

VOTE: 5-0-0
Hearing no objection, declares the motion CARRIED.
MOTION: Moves to ADOPT SB 408B-22 amendments dated 7/25/05.

104 Rep. Macpherson
113 Mark Nelson

Requests an explanation of the amendments.
Industrial Customers of Northwest Utilities (ICNU). Testifies in support of the -B22 amendments.

117 Rep. Macpherson
131 Mike Early

Comments on the work that resulted in the version that was previously reported out of this committee which attempted to deal with constitutional issues where there was asymmetry.
Executive Director, ICNU. Advises that the -B22 amendments provide for adjustments to the rates either up or down. Explains the differences between the -B20 and -B22 amendments.

171 Rep. Macpherson
179 Early

Asks about the effect of consolidation that causes income generated out of the regulated operations to be subject to a higher rate because it is combined with a larger base of income.
Responds that is up to the commission's judgment. Elaborates on circumstances.

194 Rep. Macpherson
199 Chair Krieger

Comments on the input from the Department of Justice on the prior version of the bill.
Doesn't think there ever will be agreement. Continues that there is no position of right so it will end up in court, and those attorneys will make the determinations beyond what we can make.

209 Rep. Macpherson
221 Chair Krieger
223 Rep. Boquist

Offers that there is another solution to the problem.
VOTE: 5-0-0
Hearing no objection, declares the motion CARRIED.
MOTION: Moves SB 408B to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the Budget Committee BE RESCINDED.

231 Rep. Macpherson
237 Chair Krieger

Explains the reason for his no vote.
Notes the objection.

240 Chair Krieger
242 Chair Krieger
274 Chair Krieger

VOTE: 4-1-0
AYE: 4 - Barker, Boquist, Flores, Krieger
NAY: 1 - Macpherson
The motion CARRIES.
REP. BOQUIST will lead discussion on the floor.
Closes the work session on SB 408B.
Opens a work session on SB 303.

SB 303 – WORK SESSION

- 276 Sandy Thiele-Cirka Committee Administrator. Explains SB 303 which abolishes the Insurance Pool Governing Board (IPGB) and creates the Office of Private Health Partnerships. Reminds the committee that the -1 amendments were previously adopted. Refers to the -2 amendments (EXHIBIT V) which resolve conflicts with other bills that refer to the IPGB. Points out the subsequent referral to Ways and Means that can be rescinded.
- 292 Rep. Boquist **MOTION: Moves to ADOPT SB 303-2 amendments dated 7/25/05.**
- 297 Chair Krieger **VOTE: 5-0-0**
- 298 Rep. Boquist **Hearing no objection, declares the motion CARRIED.**
MOTION: Moves SB 303 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.
- 316 Chair Krieger **VOTE: 4-0-1**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 1 – Flores
The motion CARRIES.
- 319 Chair Krieger **REP. MACPHERSON will lead discussion on the floor.**
Closes the work session on SB 303 and opens a work session on HB 3507.

HB 3507 – WORK SESSION

- 321 Heidi Moawad Counsel. Explains that HB 3507 increases mandatory minimum sentences and extends periods of post-prison supervision for persons convicted of rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree. Refers to the -1 amendments (EXHIBIT W) that increase mandatory minimum sentences from 100 months to 300 months when the victim is under 12 years of age; excludes from the mandatory minimum sentences the increase if committed by a defendant less than 18 years of age; and establishes authority for lifetime post-prison supervision.
- 342 Rep. Kevin Cameron House District 19. Is available to answer questions.
- 349 Rep. Boquist Confirms the -1 amendments.
- 351 Chair Krieger Answers yes.
- 353 Rep. Macpherson Asks if the major increase in mandatory minimums for certain offenses will cause a fiscal impact.
- 360 Moawad Informs that a fiscal impact will occur in the Department of Corrections (DOC) eight plus years from now.
- 377 Rep. Macpherson Inquires if the indeterminate impact is because it is too far in the future or if it is uncertain.
- 380 Moawad Responds both. Explains the DOC impact and the possibility of additional trials.
- 389 Chair Krieger Advises of a work group to take a comprehensive look at all the statutes like was done with methamphetamine.

TAPE 48, B

010 Rep. Macpherson Believes that is a good idea. Wonders if a bill should be passed on a single issue before undertaking that effort.

018 Chair Krieger Indicates the sentiment is to do something now realizing that it will be revisited.

021 Rep. Macpherson Registers concern and plans to oppose the bill.

024 Rep. Boquist **MOTION: Moves to ADOPT HB 3507-1 amendments dated 7/20/05.**

026 Rep. Macpherson Objects.

027 Chair Krieger Notes objection.

VOTE: 4-1-0
AYE: 4 - Barker, Boquist, Flores, Krieger
NAY: 1 - Macpherson
The motion CARRIES.

028 Chair Krieger **MOTION: Moves HB 3507 to the floor with a DO PASS AS**

029 Rep. Boquist **AMENDED recommendation.**

033 Rep. Barker Discusses the victimization of children under the age of 12.

041 Rep. Macpherson Responds that they need to look at DOC facilities as an expensive resource and need to see where the beds are going to come from. Reiterates the need for a comprehensive review.

VOTE: 4-1-0
AYE: 4 - Barker, Boquist, Flores, Krieger
NAY: 1 - Macpherson
The motion CARRIES.

051 Chair Krieger **REP. PATTI SMITH will lead discussion on the floor.**

054 Chair Krieger Closes the work session on HB 3507 and opens a work session on SB 907B.

SB 907B – WORK SESSION

056 Heidi Moawad Counsel. Makes a presentation to Chair Krieger from the Judiciary Committee staff.

064 Moawad Explains that SB 907B is the Senate half of the methamphetamine package which modifies crimes of criminal mistreatment in the first degree and child neglect in the first degree to include leaving in an individual in a place where methamphetamine is manufactured; modifies the definition of abuse to include exposure to controlled substances; clarifies the court's ability to suspend child visitation if the parent's controlled substance abuse is not in the best interests of the child. Explains the need to rescind the referral to budget.

088 Chair Krieger Acknowledges the work done by Rep. Macpherson and Counsel Moawad. Stresses that in addition to enhancing penalties they recognize that part of the incentive is to get people into recovery programs.

105 Rep. Macpherson Comments that this legislation is a highlight of the session due to bipartisan participation to solve a problem.

109 Chair Krieger Shares comments from both parties.

- 116 Rep. Boquist MOTION: Moves SB 907B to the floor with a DO PASS recommendation and the SUBSEQUENT REFERRAL to the committee on budget BE RESCINDED.
- VOTE: 5-0-0
- 119 Chair Krieger AYE: In a roll call vote, all members present vote Aye. The motion CARRIES. REP. KRIEGER & REP. MACPHERSON will lead discussion on the floor.
- 121 Chair Krieger Announces the possible reconsideration of SB 548A.
- 131 Chair Krieger Adjourns the meeting at 2:50 p.m.

EXHIBIT SUMMARY

- A. SB 548, -A6 amendments, staff, 2 pp
- B. SB 548, -A5 amendments, staff, 16 pp
- C. SB 1067, -1 amendments, staff, 1 p
- D. SB 1067, -2 amendments, staff, 1 p
- E. SB 1067, -3 amendments, staff, 1 p
- F. HB 3505, -3 amendments, staff, 1 p
- G. HB 3505, -4 amendments, staff, 1 p
- H. HB 3505, -5 amendments, staff, 1 p
- I. HB 3505, -6 amendments, staff, 1 p
- J. HB 3505, -7 amendments, staff, 1 p
- K. HB 3505, -8 amendments, staff, 1 p
- L. HB 3505, -9 amendments, staff, 1 p
- M. HB 3505, -10 amendments, staff, 1 p
- N. HB 3505, -12 amendments, staff, 1 p
- O. SB 1083, -A7 amendments, staff, 1 p
- P. SB 1083, -A8 amendments, staff, 1 p
- Q. SB 1083, -A10 amendments, staff, 1 p
- R. SB 1083, -A11 amendments, staff, 1 p
- S. SB 1083, policy options, Paul Warner, 2 pp
- T. SB 899, -A12 amendments, staff, 2 pp
- U. SB 408, -B22 amendments, staff, 9 pp
- V. SB 303, -2 amendments, staff, 18 pp
- W. HB 3507, -1 amendments, staff, 5 pp

**HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE
SENATE BILL 408 WORK SESSION**

July 26, 2005

- Chair: Open a work session on Senate Bill 408.
- Boquist: Mr. Chair, I move the rules be suspended for the purpose of reconsidering the vote on Senate Bill 408.
- Chair: Representative Boquist moves this vote be suspended for the purpose of reconsidering the vote on Senate Bill 408. We passed Senate Bill 408 to the floor last week. I ask that it be brought back to the Committee before the floor debate to consider amending the bill with a -22 amendments. Are there any objections to Representative Boquist's motion to suspend the rules?
- Boquist: Mr. Chair, I move we reconsider the vote for which we passed Senate Bill 408.
- Chair: Representative Boquist moves that we reconsider the vote by which we passed Senate Bill 408. Any objections? So ordered. Senate Bill 408 is back before the Committee.
- Boquist: Mr. Chair, I move the B22 amendments to Senate Bill 408.
- Chair: Representative Boquist has moved the B22 amendments into Senate Bill 408. Any objections?
- Macpherson: Mr. Chair, I need to understand the B22s more fully before I would be able to vote effectively on this. I need an explanation of them and how they tie in with the constitutional issues that we were wrestling with before.
- Chair: Have Mr. Nelson come up. Quickly, please.
- Nelson: Mr. Chair, members of the Committee, my name is Mark Nelson, representing Industrial Customers of Northwest Utilities and a coalition of business associations in support of the -22 amendments. Michael Early is the executive director of ICNU and he'd be happy to answer any questions.
- Macpherson: Okay, thank you, Mr. Chair. Gentlemen, the work that had resulted in the version of the bill that was reported out of this Committee before was attempting to deal with what I understood to be constitutional issues about a situation in which there was asymmetry, that is, or that, maybe to use more a slang characterization, sort of a heads I win, tails you lose,

proposition in the way that the bill had come over from the senate. That is, an adjustment to rates that could only go one direction and is that still a problem or an issue or is that a characterization that is, one would then put on the B22s, that is, that the adjustment is made is only one that favors rate payers and, rather than the utility if the comparison were to go the other direction?

Early:

The B22 amendments provide for adjustments to the rate either up or down, so it is symmetrical in terms of adjusting increasing rates or decreasing rates. The fundamental difference between the B20 and the B22 is what the target of the automatic adjustment clause is. And specifically in the context of a utility that is owned by a parent and the parent files on a consolidated tax basis, what B20 said was that the adjustment would attempt to true-up the taxes collected from Oregon rate payers with the total consolidated tax bill of the utility. So, for example, if one of our utilities was owned by an out-of-state entity that was engaged in very profitable unregulated businesses, the Commission, the Oregon Public Utilities Commission, could include in rates, say \$50 million recovered from Oregon citizens, but the parent chooses to file under a consolidated basis, it's very profitable. Let's say it's income tax liability is \$500 million, it's ten times the amount that is recovered from utility customers and rates. What B20 says in that case, is that the rates would be adjusted through this automatic adjustment clause so that rate payers were responsible for that difference between the \$500 million and the \$50 million, or an additional \$450 million. Now, that doesn't happen automatically. There are provisions that allow the Commission to step in and apply the same standards they apply today in terms of just and reasonable. What's different about our bill, is our bill gets to the heart of the question. In that same fact situation, what we're trueing-up is, we're saying is we want to match the dollars collected from rate payers with the tax dollars by the utility and attributable to regulated operations. So, the Commission looks at the \$500 million and asks itself what portion of that \$500 million was attributable to regulated operations in Oregon and that answer's going to be, it's going to be \$50 million. So, then it says, well, it did collect and did pay to taxing authorities the amount of taxes collected. So, in that case, the adjustment is, there would be no adjustment, because in fact what was expected to happen, did happen. It collected \$50 million and it paid \$50 million.

Macpherson: Mr. Chair? What about the scenario in which there's a graduated tax effect and the effect of consolidation causes that income that was generated out of the regulated operations to then be subject to a higher rate because it's combined in with a larger base of income, so that in effect the consolidation causes the income that was generated out of regulated operations to be taxed at a higher rate than it would have been if it were just a standalone investor owned utility?

Early: Well, again, that's a judgment for the Commission to make under our bill. The starting point in our bill is it looks at, for the parent, it says how much tax did the parent pay and you look at the check. And then the Commission asks itself how much of that tax is attributable to a regulated operations of the utility and that's the job of the Commission. That's the sort of decisions it makes and, as you point out, it's fact specific and not something that can be dealt with legislatively in any detail. So, that is a decision for the Commission to make and after it makes that decision, then it compares that number, you know, the amount of that \$500 million attributable to the utility with the amount of tax that was collected in the same year through rates. And then it makes the adjustment up or down to the rates depending on whether it under-collected or over-collected.

Macpherson: Mr. Chair, recall we had input from DOJ from Pete Shepherd on the prior version of the bill that we moved out of Committee and I'm wondering is there anyone here from, we have somebody from DOJ, I wonder if we could hear from DOJ about...

Chair: Representative Macpherson, there's been 13 hours of your workgroup, about six hours in here and we could talk on this bill for another year, and I'm not certain that we would get the two sides together or we would get opinions of the attorneys together. And I don't think that I can go there.

Macpherson: Okay, okay. Thank you.

Chair: I think we've gotten to the point where I think I made a statement that there was no position of right on this bill that I could define down to where I was comfortable and I think everybody understands it's going to end up in court.

Macpherson: Yeah.

Chair: And the further attorneys will make determinations far beyond what we can.

Macpherson: Okay. Well, and I appreciate that.

Chair: And I understand your position.

Macpherson: And I don't want impede the process. I was trying to understand what the -22 amendments do. I would say there is another solution to the problem. I know I keep going back there. Representative Barker and I have advanced that hasn't got any traction, but it would be a good simple solution to this problem and it wouldn't be, you know, a drag through all this complexity. But, I will...

Chair: I wouldn't be surprised that when the time is right, we'll receive traction.

Macpherson: Okay. I appreciate your indulgence, Mr. Chair.

Chair: Thank you.

Man: We're on the B22.

Chair: Yeah, we're on the B22s, like there's a motion to put them into the bill?

Boquist: Already made it.

Chair: You did?

Boquist: That's what we're discussing.

Chair: I thought we discussed before [inaudible].

Boquist: No, I made the motion and then [inaudible].

Chair: Okay, we had discussion on the motion to have the amendments in. We heard the objection. They are in.

Boquist: Mr. Chair, I move Senate Bill 408 as amended to the floor with a due pass and the subsequent referral to budget be rescinded.

Chair: Representative Boquist has moved Senate Bill 408 as amended with a due pass recommendation and a subsequent referral to budget be rescinded. Any discussion?

Macpherson: Just to note, Mr. Chair, I was a supporter of the bill as it came out of the Committee before. I'll be a no vote today because it's veered off so that it's not a middle ground, given that I think it's the wrong way to solve the problem. It's also not in the middle ground of the solution, so I think that we should not, cannot support the version of the bill we're moving today.

Chair: Okay [inaudible]. Call the roll, please.

Woman: Representative Barker

Barker: Aye.

Woman: Representative Boquist?

Boquist? Aye.

Woman: Representative Flores?

Florez: Aye.

Woman: Representative Macpherson?

Crisen: No.

Woman: Chair Krieger?

Krieger: Aye. Senate Bill 408 as amended moves to the floor with a due pass. Representative Boquist will be the carrier. I hope you have help on the floor.

Boquist: Hopefully, the good representative across from me will send the questions in advance.

Man: I think arrangements are being made from another individual to do the same.

Man: And I commit to you I will do that.

Boquist: I don't mind a friendly ambush, okay?

[Senate Bill 408 Work Session completed.]

SB 408-B22
(LC 819)
7/25/05 (DJ/ps)

MEASURE: SB 408
EXHIBIT: 1
H. COMM ON STATE & FED. AFFAIRS
DATE: 7/26/05 PAGES: 9
SUBMITTED BY: S T A E E

**PROPOSED AMENDMENTS TO
B-ENGROSSED SENATE BILL 408**

1 On page 1 of the printed B-engrossed bill, delete lines 5 through 20 and
2 delete pages 2 through 4 and insert:

3 **"SECTION 1. Sections 2 and 3 of this 2005 Act are added to and**
4 **made a part of ORS chapter 757.**

5 **"SECTION 2. (1) The Legislative Assembly finds and declares that:**

6 **"(a) The alignment of taxes collected by public utilities from utility**
7 **customers with taxes paid to units of government by utilities, or af-**
8 **iliated groups that include utilities, is of special interest to this state.**

9 **"(b) Taxes are a unique utility cost because the tax liability is af-**
10 **fected by the operations or tax attributes of the parent company or**
11 **other affiliates of the utility.**

12 **"(c) The Public Utility Commission permits a utility to include costs**
13 **for taxes that assume the utility is not part of an affiliated group of**
14 **corporations for tax purposes.**

15 **"(d) The parent company of a utility may employ accounting**
16 **methods, debt, consolidated tax return rules and other techniques in**
17 **a way that results in a difference between the tax liability paid to units**
18 **of government by the utility, or the affiliated group of corporations**
19 **of which the utility is a member, and the amount of taxes collected,**
20 **directly or indirectly, from customers.**

21 **"(e) Tax uncertainty in the ratemaking process may result in col-**
22 **lecting taxes from ratepayers that are not paid to units of government.**

23 **"(f) Utility rates that include amounts for taxes should reflect the**
24 **taxes that are paid to units of government to be considered fair, just**

1 and reasonable.

2 “(g) Tax information of a business is commercially sensitive. Public
3 disclosure of tax information could provide a commercial advantage
4 to other businesses.

5 “(2) The definitions in section 3 of this 2005 Act apply to this sec-
6 tion.

7 “SECTION 3. (1) Every public utility shall file a tax report with the
8 Public Utility Commission annually, on or before October 15 following
9 the year for which the report is being made. The tax report shall
10 contain the information required by the commission, including:

11 “(a) The amount of taxes that was paid by the utility in the three
12 preceding years, or that was paid by the affiliated group and that is
13 properly attributed to the regulated operations of the utility, deter-
14 mined without regard to the tax year for which the taxes were paid;
15 and

16 “(b) The amount of taxes authorized to be collected in rates for the
17 three preceding years.

18 “(2) Every public utility shall be required to obtain and provide to
19 the commission any other information that the commission requires
20 to review the tax report and to implement and administer this section
21 and ORS 757.210.

22 “(3) The commission may disclose, or any intervenor may obtain
23 and disclose, the amount by which the amount of taxes that units of
24 government received from the public utility or from the affiliated
25 group differs from the amount of costs for taxes collected, directly or
26 indirectly, as part of rates paid by customers, including whether the
27 difference is positive or negative.

28 “(4) The commission shall review the tax report and any other in-
29 formation the commission has obtained and make the determinations
30 described in this section within 90 days following the filing of the re-

1 port, or within a further period of time that the commission may by
2 rule establish for making determinations under this section that does
3 not exceed 180 days following the filing of the report. If the commis-
4 sion determines that the amount of taxes assumed in rates or other-
5 wise collected from ratepayers for any of the three preceding years
6 differed by \$100,000 or more from the amount of taxes paid to units of
7 government by the public utility, or by the affiliated group and prop-
8 erly attributed to the regulated operations of the utility, the commis-
9 sion shall require the utility to establish an automatic adjustment
10 clause, as defined in ORS 757.210, within 30 days following the date of
11 the commission's determinations under this section, or by a later date
12 that the commission may by rule prescribe for establishing an auto-
13 matic adjustment clause that does not exceed 60 days following the
14 date of the commission's determinations under this section.

15 “(5) If an adjustment to rates is made under an automatic adjust-
16 ment clause established under this section, the automatic adjustment
17 clause shall remain in effect for each successive year after an adjust-
18 ment is made and until an order terminating the automatic adjust-
19 ment clause is made under subsection (9) of this section.

20 “(6) The automatic adjustment clause shall account for all taxes
21 paid to units of government by the public utility that are properly at-
22 tributed to the regulated operations of the utility, or by the affiliated
23 group that are properly attributed to the regulated operations of the
24 utility, and all taxes that are authorized to be collected through rates,
25 so that ratepayers are not charged for more tax than:

26 “(a) The utility pays to units of government and that is properly
27 attributed to the regulated operations of the utility; or

28 “(b) In the case of an affiliated group, the affiliated group pays to
29 units of government and that is properly attributed to the regulated
30 operations of the utility.

1 “(7) An automatic adjustment clause established under this section
2 may not be used to make adjustments to rates for taxes paid that are
3 properly attributed to any unregulated affiliate of the public utility or
4 to the parent of the utility.

5 “(8) Notwithstanding subsections (1) to (7) of this section, the
6 commission may authorize a public utility to include in rates:

7 “(a) Deferred taxes resulting from accelerated depreciation or other
8 tax treatment of utility investment; and

9 “(b) Tax requirements and benefits that are required to be included
10 in order to ensure compliance with the normalization requirements
11 of federal tax law.

12 “(9) If the commission determines that establishing an automatic
13 adjustment clause under this section would have a material adverse
14 effect on customers of the public utility, the commission shall issue
15 an order terminating the automatic adjustment clause. The order shall
16 set forth the reasons for the commission’s determination under this
17 subsection.

18 “(10) The commission shall conduct a hearing under ORS 757.210
19 prior to making a determination under subsection (9) of this section
20 that an automatic adjustment clause would have a material adverse
21 effect on customers of the public utility.

22 “(11) The commission may not use the tax information obtained by
23 the commission under this section for any purpose other than those
24 described in subsections (1) to (10) of this section. An intervenor in a
25 commission proceeding to review the tax report or make rate adjust-
26 ments described in this section may, upon signing a protective order
27 prepared by the commission, obtain and use the information obtained
28 by the commission that is not otherwise required to be made publicly
29 available under this section, according to the terms of the protective
30 order.

1 “(12) For purposes of this section, taxes paid that are properly at-
2 tributed to the regulated operations of the public utility may not ex-
3 ceed the lesser of:

4 “(a) That portion of the total taxes paid that is incurred as a result
5 of income generated by the regulated operations of the utility; or

6 “(b) The total amount of taxes paid to units of government by the
7 utility or by the affiliated group, whichever applies.

8 “(13) As used in this section:

9 “(a) ‘Affiliated group’ means an affiliated group of corporations of
10 which the public utility is a member and that files a consolidated
11 federal income tax return.

12 “(b) ‘Public utility’ or ‘utility’ means:

13 “(A) A regulated investor-owned utility that provided electric or
14 natural gas service to an average of 50,000 or more customers in
15 Oregon in 2003; or

16 “(B) A successor in interest to an entity described in subparagraph
17 (A) of this paragraph that continues to be a regulated investor-owned
18 utility.

19 “(c) ‘Regulated operations of the utility’ means those activities of
20 a public utility that are subject to rate regulation by the commission.

21 “(d) ‘Tax’:

22 “(A) Means a federal, state or local tax or fee that is imposed on
23 or measured by income and that is paid to units of government.

24 “(B) Does not include any amount that is refunded by a unit of
25 government as a tax refund.

26 “(C) Does not include franchise fees or privilege taxes.

27 “(e) ‘Taxes authorized to be collected in rates’ means the product
28 determined by multiplying the following three values:

29 “(A) The revenues the utility collects from ratepayers in Oregon,
30 adjusted for any rate adjustment imposed under this section;

1 “(B) The ratio of the net revenues from regulated operations of the
2 utility to gross revenues from regulated operations of the utility, as
3 determined by the commission in establishing rates; and

4 “(C) The effective tax rate used by the commission in establishing
5 rates.

6 “(f) ‘Taxes paid’ means amounts received by units of government
7 from the utility or from the affiliated group of which the utility is a
8 member, whichever is applicable, adjusted as follows:

9 “(A) Increased by the amount of tax savings realized as a result of
10 charitable contribution deductions allowed because of charitable con-
11 tributions made by the utility;

12 “(B) Increased by the amount of tax savings realized as a result of
13 tax credits associated with investment by the utility in the regulated
14 operations of the utility, to the extent the expenditures giving rise to
15 the tax credits and tax savings resulting from the tax credits have not
16 been taken into account by the commission in the utility’s last general
17 ratemaking proceeding; and

18 “(C) Adjusted by deferred taxes related to the regulated operations
19 of the utility.

20 “(g) ‘Three preceding years’ means the three most recent consec-
21 utive fiscal years preceding the date the tax report is required to be
22 filed.

23 “SECTION 4. (1) The tax report that, under section 3 of this 2005
24 Act, is required to be filed on or before October 15, 2005, shall set forth
25 the information required to be reported under section 3 of this 2005
26 Act for the three most recent consecutive fiscal years of the public
27 utility that concluded prior to the date of the filing of the tax report.

28 “(2) If an automatic adjustment clause is established under section
29 3 of this 2005 Act, notwithstanding any other provision of section 3 of
30 this 2005 Act, the automatic adjustment clause shall apply only to

1 taxes paid to units of government and collected from ratepayers on
2 or after January 1, 2006.

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

4 "757.210. (1)(a) Whenever any public utility files with the Public Utility
5 Commission any rate or schedule of rates stating or establishing a new rate
6 or schedule of rates or increasing an existing rate or schedule of rates, the
7 commission may, either upon written complaint or upon the commission's
8 own initiative, after reasonable notice, conduct a hearing to determine [*the*
9 *propriety and reasonableness of such rate or schedule*] **whether the rate or**
10 **schedule is fair, just and reasonable.** The commission shall conduct [*such*
11 *a*] **the** hearing upon written complaint filed by the utility, its customer or
12 customers, or any other proper party within 60 days of the utility's filing;
13 provided that no hearing need be held if the particular rate change is the
14 result of an automatic adjustment clause. At [*such*] **the** hearing the utility
15 shall bear the burden of showing that the rate or schedule of rates proposed
16 to be established or increased or changed is [*just and reasonable. The term*]
17 **fair, just and reasonable.** The commission may not authorize a rate
18 or schedule of rates that is not fair, just and reasonable.

19 **"(b)** As used in this subsection, 'automatic adjustment clause' means
20 a provision of a rate schedule [*which*] **that** provides for rate increases or
21 decreases or both, without prior hearing, reflecting increases or decreases
22 or both in costs incurred, **taxes paid to units of government** or revenues
23 earned by a utility and [*which*] **that** is subject to review by the commission
24 at least once every two years.

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

28 **"(b)** Any alternative form of regulation plan shall include provisions to
29 ensure that the plan operates in the interests of utility customers and the
30 public generally and results in rates that are just and reasonable and may

1 include provisions establishing a reasonable range for rate of return on in-
2 vestment. In approving a plan, the commission shall, at a minimum, consider
3 whether the plan:

4 “(A) Promotes increased efficiencies and cost control;

5 “(B) Is consistent with least-cost resources acquisition policies;

6 “(C) Yields rates that are consistent with those that would be ob-
7 tained following application of section 3 of this 2005 Act;

8 “[C)] (D) Is consistent with maintenance of safe, adequate and reliable
9 service; and

10 “[D)] (E) Is beneficial to utility customers generally, for example, by
11 minimizing utility rates.

12 “(c) As used in this subsection, ‘alternative form of regulation plan’
13 means a plan adopted by the commission upon petition by a public utility,
14 after notice and an opportunity for a hearing, that sets rates and revenues
15 and a method for changes in rates and revenues using alternatives to cost-
16 of-service rate regulation.

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

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

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

30 “(5) The commission and staff may consult at any time with, and provide

1 technical assistance to, utilities, their customers, and other interested parties
2 on matters relevant to utility rates and charges. If a hearing is held with
3 respect to a rate change, the commission's decisions shall be based on the
4 record made at the hearing.

5 **"SECTION 6. This 2005 Act being necessary for the immediate**
6 **preservation of the public peace, health and safety, an emergency is**
7 **declared to exist, and this 2005 Act takes effect on its passage."**

8

**HOUSE CHAMBER
SENATE BILL 408**

July 30, 2005

Speaker: Thank you.

Man: Clerk, read the next bill.

Clerk: Senate Bill 408 relating to rates and public utilities.

Chair: Question now rises upon third reading and final passage of Senate Bill 408.
Representative Boquist.

Boquist: Thank you, Madam Speaker. This is going to be another long one. Senate Bill 408C came across from the Senate to the House 26 to 4 and finally stopped in the Committee on State and Federal Affairs. Prior to actually going to the first public hearing and work session there, under the good leadership of Representative Butler, with the participation of Representative Macpherson, I think I calculated right. We spent about 15 ½ hours in workgroups. There is about another 60 hours of support time put into this and between the two sides, four to five hours of hearings. I recall, before I explain the bill, at one point there were twelve lawyers in the room. They were divided into three distinct groups. You are going to hear from all three distinct groups today. Even between those groups, I think one alone, I have four to five legal opinions sitting in my packet here on the desk. The more that you talk about this issue, the more complex it gets. I know many of you, I don't think there is anybody on the floor here, that is not familiar with this bill. Some people call it the "Enron Bill", but the fact is what happened at Enron is criminal and we are not really going to fix that. What we are attempting to do in this bill is address the taxation issue to regulated utilities. I think if you are looking for a short description, the best description I ever had that is short and to the point is actually the summary that is on the Senate Bill 408. If you are looking for more in depth description, the second one I propose you can skim through in the next ten, fifteen, twenty, thirty, forty, fifty minutes is the measure description of the revenue impact statement written by Legislative Revenue Office. It pretty well outlines exactly what the bill does. What is at issue in this bill, no matter which legal opinion you took. What is at issue here is a utility and there's only four that are impacted in this state. A public ... a investor owned utility, when their rates are set, when the rates are set by the Public Utility Commission, taxes are calculated into the allowable rates. The profit margin is calculated in. It is all set in its regulated industry. The issue this bill addresses, if taxes are calculated into the rate, then taxes ought to be paid to what many of us now refer to the unit of government. It took me four hours to figure out what a unit of government meant. That means they

actually paid the taxes and the check was written to the city, county, or state. That is a unit of government. What is at issue here is relatively simple, yet extremely complex. ~~The issue we are addressing in this bill, is as if the Public Utility Commission says that the rate payer, that is you, has to put enough rate into your utility bill to pay for a hypothetically \$100 million in taxes. That \$100 million in taxes ought to go to the government itself to spend on programs. That is the issue. It is an issue of fairness. It is an issue of balance and an issue of symmetry.~~ You are going to hear a lot of questions about those issues. What is balance? What is symmetry? And, all this all boils down to what is Constitutional and what is unconstitutional and what is fair and reasonable. ~~The key issue here, the key issue that we have in this bill and what this bill does. It simply says the utility must do a report, if the report says that they did not actually physically deliver that tax money to a unit of government that the rate will be adjusted.~~ If you look at the bill and you look at the twelve lawyers and the five or six legal opinions, then everything starts getting a little blurry of how each step goes into place and what is each scenario that plays out. Though I spent fifteen and a half hours in the workgroups, I am by no means the best expert on the floor. In a few minutes, I will shut up and sit down and will rely on Dexter Johnson over here to bail me out of the legal counsel side and you are going to hear from the head of the workgroup, the good representative who did a tremendous amount of work, Representative Butler. He is going to come at this from the accountant side. He is going to get me lost, but I respect his opinion. Then we are probably going to hear from the good representative Macpherson, who spent there at least nine of those thirteen or fifteen and half hours. He is going to come at it from the legal side. I am not a legal or an accountant. I am trying to give it to you very basic and very simple. I think everybody in here has heard this. We could beat the drum roll. This is Enron and everything else, but it really boils down to this simple issue of how and does this bill address a utility who collects taxes from the rate payer. ~~That is you and does that money actually go to the government coffers? And, not to some other entity. That is the issue that we have.~~ Rather than go on. I think and already know and appreciate the courtesy again from the two representatives and other representatives. I know the questions and answers that come up are going to fairly well summarize the points between all the various different groups. Then when I close, after I've again relied upon Dexter to bail me out four or five times, I think it will become very clear to you and your choice will become very clear. Thank you.

Speaker: For the discussion, Representative Macpherson.

Macpherson: Madam Speaker, I would like to declare a potential conflict.

Speaker: State your conflict.

Macpherson: I am a partner in a law firm that represents several regulated utilities that would be adversely affected by Senate Bill 408. These utilities include Northwest Natural, Portland General Electric and PacifiCorp. My law firm also represents over a third of the member of the Industrial Customers of Northwest Utilities, known as ICNU, which would be benefited by Senate Bill 408. These ICNU members, who are clients of my firm, include Blue Heron Paper, Boise Cascade, Georgia Pacific, Hewlett-Packard, Intel, Norpac Foods, Oregon Steel Mills and Weyerhaeuser. In other words, Madam Speaker, I have potential conflicts running both directions on this bill.

Speaker: I am not even going to begin to touch that one.

Macpherson: [Inaudible] the bill.

Speaker: So noted and to the bill.

Macpherson: Senate Bill 408 attempts to solve a simple problem. ~~Utilities in Oregon are collecting taxes in their rates based on a projection of the taxes they will owe on the income of their regulated utility operations. But they are not actually paying those taxes. This is happening because income tax law allows them to consolidate their utility operations with non-utility operations. Senate Bill 408C, which is what you have before you today, presents a very complicated solution to that simple problem. It provides for an after the fact adjustment of the rates when the taxes actually paid are less than the amount previously collected in rates.~~ The Public Utility Commission would be required to perform a complex tax analysis each year. That analysis would not recognize the charitable contributions made by the utility, nor its investment in renewable energy sources, like wind power. There has been some misinformation on this point. The reason for that...the dichotomy I just described is that in the rate making process. Those items, that is charitable contribution and investment in renewable energy are not allowed to be reflected in rates and yet they are taken on the tax return. There is a disconnect. When we reply the results of the tax return, we get a lower result. That is what would be then part of the adjustment downward affecting the utilities. As a result, Senate Bill 408C creates a disincentive to make charitable contributions, which our Oregon utilities have a long tradition of doing. It also creates a disincentive to invest in renewable energy which our utilities are becoming leaders in. Senate Bill 408C also may be unconstitutional. That is not just my opinion. It is the view of the Oregon Department of Justice. That is because the automatic adjustment can run only one way. If consolidating utility operations with non-utility operations produces a tax reduction, rates are cut. But, if the consolidation produces and increase in tax, there is no increase in rates. In other words, this bill says to the utilities, heads they win, tails you lose. That may strike you as a good feature of the bill. But, the courts are likely to think otherwise. In a 1989 case called *Duquesne*

Light the U.S. Supreme Court held that in utility rate making arbitrary inconsistencies raised serious constitutional issues. Senate Bill 408B, the version of the bill first passed out of the State and Federal Affairs Committee avoided this constitutional problem. It was developed by the workgroup that was headed by the representative of southeast Oregon with the help of the Department of Justice to reach a result that balanced the interests of the utilities and their customers. I voted for Senate Bill 408B. But all that good work was tossed out when the bill was brought back by the Committee to get gut and stuffed with the version proposed by the Industrial Customers. What we have here is a complicated solution to a simple problem. Remember that the problem is that amounts collected from Oregonians to pay taxes are not actually being paid. The simple solution to this simple problem is to require that the taxes be paid. When the difficulties with Senate Bill 408 became apparent. I joined with the representative from Beaverton-Aloha to introduce House Bill 3503 to do just that. It would provide that a regulated utility would be required to pay in Oregon corporate tax, no less than the amount it had collected from Oregonians on account of that tax. This solution had to be placed in a separate bill originating in the House because legislative counsel decided it was a bill to raise revenue. Not surprisingly this simple solution is not favored by either the utilities or the industrial customers. Because, it takes the Oregon tax they are squabbling over in Senate Bill 408 and provides it instead to support the needs of all Oregonians. Needs like: smaller class sizes, home assistance for seniors and state troopers. Some people criticize that solution because it doesn't deal with federal income taxes. To that criticism I say, we are the Oregon legislature. Let us deal with Oregon tax policy and let Congress deal with federal tax policy. All you have before you today to vote on is Senate Bill 408C. It is complicated. It stifles positive incentives. It may be unconstitutional. It will most certainly spawn years of lawsuits. I started out by declaring a potential conflict of interest. I explained that my law firm represents companies who line up on both sides of this bill. The real beneficiaries of this bill are likely to be the lawyers in my firm and others who will wrangle over what it means for years to come. Contrary to my economic interest, I am going to vote no on 408C.

Speaker: Represent...thank you. Further discussion. Representative Ackerman.

Ackerman. Thank you, Madam Speaker. To the bill.

Speaker: To the bill.

Ackerman: Thank you. Colleagues, in about 1984, 1985 the people in the state of Oregon through the initiative process did something rather remarkable in the world of public utilities. They passed a bill which established the citizens utility board, which acts as a watchdog group of the public utilities in the state of Oregon. I have the honor of being the first permanent chair

of the Citizens Utility Board and served on that board for a period of 4 years. However, I don't represent corporate utilities. I was proud to represent the rate payers of the state of Oregon. It is in that vein that I am speaking in favor of the bill this afternoon. Although, I don't profess to be an expert on public utility law, I was there on certain appeals to the . . . within the court system on issues that are very similar to those which are before us this afternoon. I think I would like to start by taking a quick trip to the regulatory world to the Supreme Court of the United States and back to our legislative council. What is occurring here is really a very simple issue and I think a very forthright legal and workable solution. Our problem starts with the fact that our investor owned utilities are granted monopoly status by . . . for several reasons, like having an essential service. They provide a essential service. They have a guaranteed market, geographically set. And, they are of course a monopoly. As such, they are therefore regulated by the Public Utility Commission. What is extremely important in this is to understand the function of the Commission because this is where the remedy is for the abuse that we will reveal later this afternoon. The Public Utility Commission has to balance the interest of rate payers and investors in order to make sure that the investor utilities get a commensurate rate of return on their investments and that they have a rate structure that is sufficient to insure confidence in their financial integrity and also to provide rates which are fair and reasonable to the rate payers. That is their statutory duty under chapter ORS 746. Those are the standards, which it must meet anytime a constitutional challenge is made to the rate setting process. The problem here is very, very simple. In a rate proceeding the utilities will present their case to the PUC to set rates. Of course it must therefore explain to the PUC with documentation and with evidence and with financial credibility what those expenses are. ~~What they do is impute with this laundry list of expenses their cost for state and federal income taxes.~~ The Commission upon approving that enters a rate order which says yes you can collect that \$100 million dollars from rate payers because that is your anticipated tax liability and we as rate payers pay that \$100 million. Then, the fun begins because these utilities are owned by other parent companies they can file a consolidated tax return and take the losses of the parent against their gains so there is no state tax liability or no federal tax liability. That is all well and good but, where is the \$100 million, folks, that was supposed to go to pay these taxes? It is still in the coffers of the public utility. That is the inherent fairness. This money was collected under a court, under a rate order. It was not spent in accordance with its terms. Senate Bill 408 has a real simple process by which information is sent to the Commission on an annual basis. The Commission can then make a determination as to how much was assessed to rate payers for taxes and how much were actually paid in taxes. What really happens here is when you have this situation whether it is \$100 million tax liability, money for that was collected and not spent for taxes. Then the rate payers are due a refund of \$100 million. That goes into a process call and

automatic rate adjustment, where that \$100 million will be taken out of the rates so that this will be trued up so that we will have total consistency between the amount of the utilities would recover and how much they would have to pay. Are there safeguards? Yes, there are many safeguards in this process. The statute I read you earlier guarantees that the utilities must have a fair return on their capital to insure investor confidence.

Speaker: Representative Patty Smith yields.

Ackerman: Thank you. And certainly if the payback to consumers was such that the financial integrity of the utility was impaired, the utility can go back and seek a termination of that automatic rate process. Also the bill does provide that if there is an adverse effect on rate payers, such as the utilities credit being impaired and they could not furnish services, the automatic adjustment clause which I have referred to can be cancelled, modified, or terminated. So this is a deliberate and very, very balanced process. I want to discuss a couple of legal issues with you, or a couple of legal cases because I think it gives greater credibility to my argument that documents some of my, some of my points this afternoon. Let me read to you a letter dated July 30, that is today, 2005 from Legislative Council from Dexter Johnson, Deputy of Legislative Council to Senator Metsger. In the review of Senate Bill 408, he concludes by saying the amendment requires the Public Utility Commission to establish rates that are fair and reasonable and permits the use of an automatic adjustment clause to adjust rates to account for taxes that were attributable to a regulated operation of the utility and were actually paid to a governmental unit. I conclude that the "fair, just and reasonable" standard and the limited use of the automatic adjustment clause satisfies constitutional requirements. Now that is from our Legislative Council. I have in my research, read commentaries that have informed me that there are approximately nineteen cases throughout the United States that challenged a process such as we are looking at here in this Senate bill. In all 19 cases, this process was upheld. I have cases in the United States Supreme Court, the state courts, which I won't read to you know because it is late in the day, all of which affirm the processes which are similar to Senate Bill 408. Let me answer a couple of contentions by my legal and legislative colleague from Lake Oswego. The argument apparently is made that since there is a characterization about the bill that says that the automatic adjustment clause here only allows for a consistent downward ramping of rates. Section 3 doesn't say that. Section 3 of the act only says that we will make this adjustment if these two factors are out of adjustment by more than \$100,000 that is what is paid actually in taxes and what was collected for taxes. It doesn't say that, which would be greater, the taxes assessed or the taxes paid. It is just a threshold requirement for the triggering of the automatic adjustment clause. What is not mentioned in any of the arguments that I heard yet this afternoon is what the automatic adjustment clause says. If you read that clause and that is basically ... get my notes together ... ORS 757.210. It says in that process that the Public

Utility Commission can make an upward or a down ward adjustment in rates in order to accommodate the cost or revenue matters, which they are considering. This is not a situation where there is a one-sided affect or heads I win, tells you lose affect. This is a deliberate process with the hearings through the Public Utility Commission and there is total symmetry because the Commission does have the authority to raise or lower rates depending upon the evidence, which is before it. I conclude that we have many, many things in common here this afternoon. We are all rate payers, and I think, more importantly, we are all taxpayers. I think also we all expect accountability in collection of taxes not paid. I think that the practice which is being employed now, which allows utilities to collect for taxes they don't pay is a breach of the rate order, a breach of the public trust and allows utilities to retain ill-gotten funds and allows utilities to unjustly enrich themselves by the expense of rate payers and taxpayers of Oregon. For these reasons, colleagues, this is a good bill. I urge an affirmative vote.

Speaker: Thank you, Representative. Further discussion. Representative Dingfelder.

Dingfelder: Thank you, Madam Speaker. To the bill.

Speaker: To the bill.

Dingfelder: Colleagues, I rise today in support of Senate Bill 408C and you will hear the non-attorney version of why I think you should support this bill. However, I did serve on the Portland Utility Review Board for several years and that board is responsible for overseeing the ratemaking process for the city of Portland. We hear a lot about complex bills addressing very complex problems. I am not going to stand here and say utility regulation isn't complex, but this bill I believe addresses a basic problem that most Oregonians and I would say most of our constituents believes needs to end. Today, it is legal for utilities to collect taxes in our rates and if they are part of a larger corporate structure that has little, if any, tax liability, the utility's corporate parent does not have to pay those collected taxes to the government entity for which they are collected. The utilities have been doing nothing wrong, however, it does not make sense to the customers, to our constituents who pay these taxes as part of their electric bills that a utility or their corporate parent can simply keep that money. Colleagues this is a practice that is unfair and I believe that we can end it here today by voting aye on this bill. The Public Utility Commission held a process earlier this year to examine this issue. You probably have this information in your files and at the end of that process, the Public Utility Commission asked the legislature for policy guidance. This bill, Senate Bill 408C, gives the PUC the guidance they are seeking with a clear policy direction. Madam Speaker, this issue has received a great deal of attention throughout this entire session. We can act today and be responsive to rate payers throughout the state and I urge an aye vote. Thank you.

Speaker: Thank you. Further discussion. Representative Butler.

Butler: Question the carrier.

Speaker: Question the carrier. Does he yield?

Boquist: Do I get to think about that? Yes. Delighted.

Butler: Representative, I am looking in the bill right now on, over on page 3, section 3, subsection 12, parts a and b. That is lines 24-29, which provides for the utility rate adjustments using the automatic adjustment clause. Is there any scenario under which the amounts of the consolidated liability would cause utility rates to go up under this section.

Boquist: Madam Speaker, Good Representative, as you well know, this is a complex issue so there are two legal opinions. One legal opinion says no that under the legislation, the consolidated tax liability is only used to set the tax expense and rates when doing so would cause the tax rates to go down. However, another legal opinion including the one sitting with me says yes, although only in the cases where the standalone tax liability would also cause rates to go up. If you are confused, so am I.

Butler: Further question, to the carrier.

Boquist: Yes.

Man: Carrier yields. Your question.

Butler: We've heard from our colleagues in North Eugene that it is legal to use the automatic adjustment clause on a limited basis. So, if a consolidated group's tax liability is more than the tax liability of the utility on a standalone basis, would not the base rates increase?

Boquist: Speaker, Colleague, give me one second to review my notes to make sure their isn't any divergent legal opinion here. Both legal opinions are fairly similar. The first one is no under this legislation. In some cases when a consolidated group's tax liability is higher than the utility's, the standalone the method would be used. However, another interpretation to the same clause is that rates would not increase between—because—rates would not increase because rates are only expected to cover taxes attributed to regulated utility operations only.

Butler: Okay, so what would happen if the consolidated group's tax ...

Man: Further question?

Butler: Yes, follow-up. Follow up questions.

Man: Does the carrier yield?

Boquist: Yes.

Butler: What would happen if the consolidated group's tax liability is lower than the utility standalone liability?

Boquist: Madam Speaker, Distinguished Colleague, who is much more learned than I, again there are divergent legal opinions. One is that in this instance, the consolidated method would be used, however, legal counsel and my interpretation with selected members of the Department of Justice has said that in the instance you cited, the amount collected from rate payers for taxes is greater than the amount paid to the units of government, that the rates would be correspondently reduced.

Butler: Okay. Thank you. An additional question, then?

Boquist: Additional question? Delighted. Your question, please.

Butler: During our workgroup, the Department of Justice was there and they talked about this methodology of switching back and forth. They warned it could be problematic. Do you recall? Do you recall why that was that switching back and forth could be problematic and what their response was?

Boquist: Speaker and Good Representative, I'm sure that is a complex way of answering, asking that question. The issue that came back with switching back and forth is sym... was whether it was symmetrical or asymmetrical. If it is symmetrical, the theory is that it is therefore constitutional. If it is asymmetrical, it is potentially open to challenge. The Department of Justice at that time stated that out of the various amendments that we had that talked about this issue, yes, defensively—the version of 408 we have now is less defensible. However, they further pointed out and legal counsel here agrees that the bill has a single method of computing the taxes collected from rater payers to the taxes paid for the units of government and properly attributed them only to the regulated utility operations. Once again, Madam Speaker and Good Representatives, there's a divergence of legal opinions as we heard the two dueling lawyers say earlier.

Butler: Another question. About the dueling lawyers, if I may, Madam Speaker.

Man: Additional question about dueling lawyers. Do you yield?

Boquist: As long as it is within the three we know about.

Man: Good question.

Butler: The good lawyer from North Eugene says that this is perfectly legal, if the automatic adjustment clause is used on a limited basis. How often do you

anticipate under the terms of this bill that the Department would be examining the potential of a automatic adjustment clause?

Boquist: Madam Speaker, Good Representative, the Department I'm assured you're actually referring to is the Public Utility Commission, and under the bill presently there would be an annual review. The report of course comes in annually, they review it, and then if there is \$100,000 or more difference at that point then the automatic adjustment clause would kick in and the process at which your question leads to would be, would happen.

Man: To the bill.

Man: To the bill.

Man: Thank you very much. Madam Speaker, colleagues, I first want to acknowledge the opportunity which I've had and express gratitude to Senators Metsger and Walker who are here on the floor with us today for the opportunity to work on this bill as I saw it come over from the Senate side. I think that there were some issues and with the bill and we've done some pretty good work in the process. I am disappointed that the bill has been re-revised recently. Today I want to talk about three periods of twenty. I want to talk about a period of 20 years, I want to talk about a period of 20 weeks, and I want to talk about a period of 20 days. The ancient history over the 20 years, this is back in the 1980s, the mid-80s, there were some high rolling Texas crooks that saw some investor owned, rate regulated utility companies, energy companies, as sleeping giants. Among those were a company of Oregon's largest utility company, PGE. The state and local regulators were largely asleep at their collective switches as the thieves crept in at night, stole our energy independence. Nothing in this bill punishes those Texas cat burglars, nothing in this bill protects Oregon from high rolling crooks who will come to Oregon and steel other utility companies such as our water, our telecommunications utility companies in the state of Oregon. Nothing in this bill changes Oregon PUC Commission and I want to just bring to your attention that the Commission and their staff where there was some comment and concern by some of the bill's proponents. But there's no change there. No one disputes that what those Texas crooks did was a crime. As I said, this bill attempts to react to a problem that was already punished. Hundreds of criminals and those business professionals who were complicit in that Texas hijack, and the exploitation of a healthy, vibrant Oregon utility company. Everything in this bill is about a knee jerk reaction. Oregon stands alone in the nation taking this level of reaction to the terrible Texans.

I'd next like to talk about the last 20 weeks. When this bill came to our attention, to provide for a rate adjustment, a utility rate adjustment using the automatic adjustment clause, which would be used on a limited basis, and I'm not sure that the use has defined limited basis as in every utility, every

rate regulated energy utility on an annual basis is a limited basis or not as contrasted from a general rate case hearing to adjust the income taxes actually paid units of government. In other words, I am not opposed to the concept of: if you collect it you ought to pay it. As a matter of fact, I find great solace in the bill that has been presented by our colleagues in ~~house~~ bill 3503. I think it's probably a better solution than what we are doing today, but it also, because it requires a tax which is already imposed and is already part of the law to be paid unfortunately it becomes a tax raising bill. And I'm very concerned about that conclusion. Now this bill came to the house from the senate as being broached, and it was flawed there. On its face it had two serious questionable relations of constitutionality relating to, number one, symmetry in the application of rate charges and rate changes and, number two, excessive taking of property of the private company and the mandated, if the mandated rate setting process eventually took large chunks of the ability of the company to do business away from the company.

This bill is, I support it, I might just add parenthetically by the same community of interests, substantial to the same community of interests that brought Oregon senate bill 1149 which included electricity deregulation restructuring and the energy crisis. The shortages back from, generated starting out of the 1999 session. While its Senate proponents acknowledge that their hand picked amendments which have now been placed back into the C version of 408, they continue to refuse to recognize this bill was symmetrically flawed then as it has become again today and remains so now. While this bill is supposed to be a utility rate true-up it has become a utility rate screw-up. One very serious error by the proponents was to bring only one side to the table and craft their version of the bill to punish the utilities and the out of town investors of those northwest companies. Those attempts while they bring a sit up and take notice headline and attract glitzy media attention, kept the PUC, the AG and other important players key to Oregon's utility rate reform away from the important negotiations.

Kropf: Representative Kropf yields.

Man: Thank you Representative Kropf. In the House, many hours of workgroup time, as has been expressed by a good colleague and carrier of the bill, and efforts were expended to bring both sides, utility users and utility providers to the table. I want you to know that almost everybody immediately lawyered up. As indicated by our good colleague. And at the very first meeting even, or at the very next meeting after we began, even Representative Boquist brought along Representative MacPherson. So everybody lawyered up. Now these two fine representatives became the key players in very important productive discussions and they also respected members of the House State and Federal Affairs Committee. I noted this morning that my first oral presentations of Representative Krieger's House Committee on State and Federal Affairs was dated June

29, over a month ago today. That House Committee considered the amendments provided: number one from a workgroup, they were too cold; from ICNU, they were too hot; and, from the input of the PUC, their accounts on the excellent suggestions of the Deputy Attorney General may appear to be just right and were unanimously adopted by the Committee. Those were the -20 amendments referred to in a letter by the Deputy Attorney General, which is on your desk today. [Exhibit]

Now the third period I'd like to talk the last 20 days. The -20 amendments were stripped out of the B version. The ICNU amendments, -B22 have been replaced in the bill, which they came out of the Committee with one nay vote. Unfortunately this new revised C in both versions restores that one fatal flaw that has been mentioned and noted here today in both versions. That is specifically with regard to section 3, subsection 12, it is a violation of the legal tenants of a *Duquesne Light Company* case, decided in the U.S. Supreme Court in 1989, which says arbitrarily switching back and forth between methodologies in a way in which requires investors to bear the risk of bad investments at the same time while denying them the benefits of good investments and others would raise serious questions of constitutionality. Now, if you'll just read that section you'll see that you always must use the lesser of one, the consolidated, or two, the standalone. And that raises serious constitutional questions as it's been mentioned here. So if enacted, the result of 480C could include an unconstitutional downward spiral of mandatory reductions in rates which could ultimately threaten the investor owned utilities in the northwest, and particularly here in Oregon.

I've asked the folks what do they want, do they want healthy, well-balanced utility companies or would they jeopardize their independence of our utility companies in the northwest? That's a problem. The bill's current proponents contend that the trigger to stop the downward spiral was that the rates must be fair, just and equitable—fair, just and reasonable. However, no testimony was presented in either the House or the Senate that I am aware of that indicated Oregon's investor owned utility regulated rates as administered by the PUC and Oregon to date were anything less today than fair, just and reasonable already. So when we seek for fair, just and reasonable, and that remains undefined incidentally in this legislation, this would leave Oregon ratemakers in about the same position tomorrow with this constitutionally questionable bill as they're in with it today without the bill being passed. Colleagues, in summary I just want to say this. By allowing Portland General Electric to be taken over by the Enron, probably was the mother of all utility mistakes in the state of Oregon, that's soon to be resolved by the referees in bankruptcy when new PGE stock will be issued to the creditors. But that's behind us, we have a whole new PUC Commission staff, one that I am personally have a great deal of confidence in. The question we should be asking ourselves today is so what are we trying to fix, what is the beef? And again, I could express a greater support

for a different kind of a fix, one which would require us to come back and examine how we get utility companies to actually pay a franchise fee in lieu of the less definable income tax. So if the CEO and CFO of a Texas utility company lied in their tax filings, which eventually bankrupted the parent company, why is Oregon unique in the United States attempting to impose new sanctions on a subsidiary or Oregon based company? Perhaps we're looking for a way to visit the sins of the fathers, that is the parent corporation, upon the children, a subsidiary corporation. I'm going to vote no after probably 75 hours of work on this bill, colleagues, and I would encourage you to do the same.

Speaker: Other discussion, Representative Nolan?

Nolan: Thanks Madam Speaker. Okay colleagues, so we'll stipulate that it's complicated. We've heard discussion about consolidated or deconsolidated or carried forward or constitutional or this or standard or that standard, legal this, legal that. Any eye in the chamber that's not closed is glazed over at this point. I'm going to talk about fairness, because I think that's what this bill is about, and that's why I'm supporting this bill. Is it fair that ratepayers, Oregon citizens and Oregon businesses, are paying taxes that never get to a government? I don't think so. Would it be fair for us today to be changing the rules retroactively? And asking the utilities to pay back taxes that they've already treated according to the law as it used to be? I don't think so. But colleagues, is it fair for us today and going forward to require the PUC to ensure that taxes that are collected by utilities from the pockets of Oregon citizens and the coffers of Oregon businesses actually get paid as taxes. I think so and that's what this bill is about. Senate bill 408 is fair to Oregon citizens, Oregon businesses, and its fair to Oregon investor owned utilities. Nowhere in this bill does it change how a utility or its parent company calculates or pays its taxes. Nowhere does it change underlying state tax law or policy. Nowhere does it prevent a utility from making a fair profit by delivering safe and reliable service to Oregon customers. Senate bill 408 is fair and it's a moderate solution to a problem that I would be willing to bet you've heard from many of your constituents about. Please join me on behalf of Oregon ratepayers and Oregon businesses in voting yes.

Speaker: Further discussion, Representative Buckley?

Buckley: Thank you Madam Speaker. To the bill?

Man: The bill.

Buckley: Colleagues, like my colleague from Lake Oswego, I wish there was a simple solution to this problem. Unfortunately the proposal to try to simplify would only address 15% of the problem, would not address the 85% of the federal taxes that are involved here as well. And I think just to

reframe this just a little bit, just to kind of get the numbers out and emphasize them one more time, for several years the large electricity and gas utilities regulated by the Oregon PUC had been charging to Oregon ratepayers hundreds of millions of dollars for state income taxes and federal income taxes that have not been paid to any government. Currently the best available estimate of these charges to Oregon ratepayers is \$150 million per year, \$150 million per year. I would like to also mention that the problem is not just the ownership of utilities by parent corporations: PG&E was not consolidated with Enron during 2002, when PG&E reported \$66 million of net income, charged Oregon ratepayers an additional \$93 million for its federal and state income taxes and paid only \$10 to the state and less than \$800,000 to the IRS. Consolidated corporate income tax returns are part of the problem, but they are not all of it. I would like to just mention three aspects of the bill that changed since the Senate version to make sure that these are on the record. Senate bill 408 requires the PUC to establish automatic adjustment clauses so utilities cannot charge ratepayers more income taxes than they actually pay the governments.

First point I'd like to make, the PUC cannot terminate the automatic adjustment clause unless there is a material adverse net effect on ratepayers. Section 3.9 allows the Commission to terminate an income tax automatic adjustment clause for a utility only to determine so that it would cause a material adverse effect on customers of a public utility. It would be very difficult for the PUC to make such a finding because implementing the automatic adjustment clause will itself save the ratepayers of just the three largest energy utilities over \$150 million per year. Senate Bill 408 does not allow the PUC to rescind an income tax automatic adjustment clause unless it would cause material adverse effect even considering that huge benefit to ratepayers not just an adverse effect that is smaller than this benefit.

Point number two. Senate Bill 408 does not change how the PUC treats what is called deferred income taxes. These are income taxes charged to ratepayers that are not currently paid by the utility because for tax purposes the utility is allowed to take accelerated—I can't even get this word out—depreciation on the assets. But deferred taxes are in fact later paid by the utility when the accelerated depreciation is reversed. During the time the utility holds deferred income tax is already paid by the ratepayers, that amount is deducted from utilities rate base. When the utility actually pays those income taxes to government, ratepayers are not charged again. SB 408 does not change this, and we expect the exact same treatment for deferred income taxes to continue.

And last point, number three. The PUC cannot speculate on a normalization requirement of federal tax law. This is for Representative Boquist to study here. Section 3(8)(b) allows the PUC to allow utilities to continue to include in rates income taxes that are not actually paid to government if they are required to be included in rates, and I quote, "in

order to ensure compliance with the normalization requirements of federal tax law." In the extended debate on this bill in Committees, is the PUC has offered unsupportable theories about the normalization requirements. This provision in Senate Bill 408 means that the unpaid income taxes can be charged to ratepayers only if those taxes are actually required to be included in the rates that federal normalization requirements. The PUC must base this decision on IRS rulings and nothing else. Colleagues, utility rates should be based on the lawfully recognized costs providing utility service to the customers. Income taxes are lawfully recognized costs only to the extent that claimed amounts are actually paid the appropriate governments. We cannot allow the utilities to continue this scam. Senate Bill 408 has been endorsed by the Oregonian, the Statesmen's Journal, the Albany Democrat Herald, and the Daily Astorian. It's been opposed by no editorials, it's supported by all the major customer and business groups. SB 408 will reduce electricity bills for customers and I urge your support.

Speaker: Further discussion? Seeing none..., Representative Boquist, do you wish to close?

Boquist: Yes I do. Colleagues, if you didn't notice that pause, we just saved you some more agony here, so I think this is an issue that everybody studied well. I want to comment very briefly on the various speakers. You heard that that there is a divergent opinion of whether this meets the supreme constitutionality question. Even the Department of Justice doesn't come out and say it's unconstitutional. They say it's defensible. In fact, we get the same thing from legal counsel. We've heard that you don't need a simple solution for a simple problem, and we've been at this almost an hour, and we've just cut off about another 15 minutes, so there's nothing simple about this. To my good chairman, I would agree with him on the Texas crooks, if we were in Texas in the old days we would have taken them out to the highest tree and hung them, and maybe if we did that we wouldn't be here today. Couple of points in the bill that I think are key and they go right to the issue of whether it's symmetrical or asymmetrical and I call your attention to the bill for those who haven't fallen asleep, page 2, lines 37 to 41, it talks about the taxes paid to units of governments by public utilities are those properly attributed to the regulated operation of utility. Regulated operation of utility. And those taxes that come from the unregulated are not to be used. It also is an exit strategy not for the Department, but for the Commission, as I said on page 3, lines 10 through 13, if the Commission determines that establishing an automatic adjustment clause under this section would have a material adverse effect on customers of the public utility, the Commission shall issue an order of terminated clause basically gives the PUC the authority to look out for the customers, and that's what we want the PUC doing. Page 4, lines 9 through 18, talk about preserving the ability of regulated utilities to address charitable-contribution and tax credits and the good representative from Beaverton Aloha out there didn't raise that question but was going to. As to the issue of being fair and just

and reasonable, that symmetrical thing, if you look on page 4 down around lines 41 and 42, you will see the Commission may not authorize a rate or schedule of rates that is not fair, just or reasonable. That language is repeated three times throughout the bill. You probably see no less than six or eight lobbyists and no less than six or eight floor letters [Exhibits], so I'm going to close with one quick paragraph here which is probably the laymen's version of what we're talking about here. Power is a rate regulated monopoly in Oregon. During the ratemaking process utilities detail their cost to the Public Utility Commission. One of these items is taxes paid. SB 408C does not change the original ratemaking process. SB 408C does not change the way utilities file taxes. This bill does not alter any tax credits or charitable contributions. What SB 408 does is to outline the process for rate adjustments to be made to balance the amount of taxes collected out of your pocket and the amount actually paid to government, I guess that's us. This includes both rate reductions for all of over-collection of taxes and rate increases for under-collection of taxes. All consumer agreements agree that if utilities collect taxes that are not paid, the money should be returned to the ratepayers. The bottom concept here is if no taxes are paid, then the money should remain with Oregonians and that's what SB 408 does, and Madam Speaker, I would call the House.

Speaker: Representative Boquist requests a call of the House, he is joined by Representative Kitts, Riley, Merkley, Hansen and Ackerman. Door keepers are part of the [inaudible]. The Sergeant at Arms will attend, the clerk will call the roll.

Clerk: [Roll called.] Speaker Minnis? Not answering. Nelson? [Inaudible/pause, followed by introduction of new bill.]

Speaker: Senate Bill 408C having received a constitutional majority is declared passed.

SENATE CHAMBER
SENATE BILL 408

|August 1, 2005, 1 p.m. |

President: I'm sorry, didn't mean to rush. Okay, now I recognize under [inaudible], I recognize Senator Rick Metsger please.

Metsger: Thank you Mr. President, I move that the Senate concur in the House amendments and repass Senate Bill 408.

President: Senator Metsger, Metsger moves the Senate to repass Senate Bill 408C. To your motion please?

Metsger: Thank you Mr. President. Colleagues, this is the bill that will stop the practice of private utilities charging taxpayers for taxes that they don't actually owe and true up those tax collections to those liabilities they actually incur. The House actually improved upon the bill that we passed out of here a few weeks ago. Specific House amendments, number one, is that they made specificity that the difference between taxes that were allowed in rates and those that were actually paid to units of government, that the automatic adjustment clause to align those taxes would trigger at \$100,000 or more, and the language is whether it differs by \$100,000 or more, so they would either go up or they would go down, based on a difference of at least \$100,000 and they could go either way. The other major change that they made in the House, and I do want to compliment Representative Butler, Representative Macpherson, and particularly Majority Leader Scott for their leadership on this issue. There was two questions that, even in our discussion, were of issue, that they clarified in the House and did an excellent job. Number one, it says in section 3 that it makes it very clear that taxes can be included in rates to account for charitable contributions by the utility, so make sure that there's no question that this would not in any way inhibit charitable contribution by the utility. The second was the question of the actual investments by the utility and not wanting to deter investments, and so in sub(b) of that section, the House added the language that the taxes may be increased by the amount of tax savings realized over tax credits associated with investments by the utility. So if they receive credits for an investment, this does not in any way detract from their ability to do that and actually be reimbursed so that they can get the benefit of the credit. Colleagues, Oregon will be joining 19 other states who have taken action to make sure that taxes equal in rates those that are actually collected, and I urge an aye vote.

President: Thank you Senator Rick Metsger. For further discussion on the bill on the floor. Recognize Senator Vicki Walker please.

Walker: Thank you Mr. President. Colleagues, I just wanted to thank all the folks who worked on this. Over a year ago, over a year ago I asked Legislative Counsel to draft the bill that's before you. It has been, to quote the Beatles, a long and winding road to get where we are today, but I really appreciate the work of our colleagues in the House, all the interested parties, and yes colleagues, even the lawyers, and I want to thank Senator Metsger for his leadership and the hard work that he's put into this bill and joining me on this legislation this session. Finally colleagues, with your support today, we can stop the collection of taxes from rate payers who are individuals and businesses, we can stop that collection of taxes that the utilities do not pay. Currently that's about \$150 million a year. We're going to return that to the pockets of Oregonians for investment purposes and building our economy and meeting their daily needs instead of putting that money into the pockets of bureaucrats and investors. Colleagues, this is a great bill and it is really a bipartisan effort and I appreciate your aye vote today. Thank you.

President: Thank you Senator Walker. Is there further discussion. Senator Metsger, you wish to close?

Those who are of the opinion that the Senate should concur in the House amendments and repass Senate Bill 408C will answer aye [inaudible] call, those opposed no, the clerk will please call the roll.

Clerk: Atkinson. Atkinson Bates.

Atkinson: Yeah.

Clerk: Beyer.

Brown.

Brown: [Inaudible].

Clerk: Burdick.

Burdick: Aye.

Clerk: Carter. Carter.

Carter: Aye.

Clerk: Deckert. Deckert. Devlin.

Devlin?: Aye.

Clerk: Ferrioli.

Ferrioli: [Inaudible].

Clerk: George.

George: Aye.
Clerk: Gordly.
Gordly: [Inaudible].
Clerk: Johnson.
Johnson: Aye.
Clerk: Kruse. Metsger.
Metsger: Aye.
Clerk: Monnes-Anderson.
M-Anderson: [Inaudible].
Clerk: Morrisette.
Morrisette: Aye.
Clerk: Morse.
Morse: Aye.
Clerk: Nelson.
Nelson: Aye.
Clerk: Prozanski.
Prozanski: Aye.
Clerk: Ringo.
Ringo: Aye.
Clerk: Schrader.
Schrader: [Inaudible].
Clerk: Shields.
Shields: Aye.
Clerk: Starr B.
Starr B.: Aye.

Clerk: Starr C.

Starr C.: [Inaudible].

Clerk: Verger.

Verger: Aye.

Clerk: Walker.

Walker: Aye.

Clerk: Westlund.

Westlund: [Inaudible].

Clerk: Whitsett.

Whitsett: No.

Clerk: Winters. Winters.

Winters: aye.

Clerk: President Courtney. The Senate Bill, yes. Not answering: Deckert.

Deckert?: [Inaudible].

Clerk: Thirty aye votes. The Senate Bill 408C, having a received the constitutional majority is declared repassed.

[End of discussion on 408C]