



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD
PUBLIC AFFAIRS

Rely on us.

TO: Commissioners Brown, Cunningham, Cassidy, Ernst and Farmer
FROM: Jason Heuser
DATE: January 12, 2010
SUBJECT: 2010 Special Legislative Session Preview

Background:

The Oregon Legislature is scheduled to meet in special session beginning February 1st. Although the Legislature technically remains one of just three states with a biennial legislature, a supplemental “special session” has been convened in even numbered years since 2002, usually just for one month. This is in large part a response to the challenges of budgeting two years at a time utilizing a revenue system that is overly dependent on income taxes, which are more sensitive to changes in the economic health of the state and nation. Recent special sessions have almost exclusively focused on budget rebalancing, but now that special sessions are routine, consideration of non-budgetary policy legislation is more common. If the tax increases enacted in the 2009 Legislative Session are overturned in January via Ballot Measures 66 and 67, rebalancing the state budget will be a much more daunting challenge in February. Current estimates are that the Legislature will have to make budget cuts of up to \$750 million should those measures fail.

Issues of concern to EWEB:

Failure of Measures 66 and 67 would focus most of the Legislature’s attention on budget issues during the special session, leaving less time to deal with other non-budgetary policy issues. However, the Legislature likely will take up some issues of interest to EWEB during the special session. The following is a brief summary of the issues likely to be considered by lawmakers during the special session.

BETC Reforms

The Oregon Department of Energy (ODOE) offers tax credits to Oregon residents and businesses that invest in energy conservation and renewable energy projects. Under the Business Energy Tax Credit (BETC), businesses can collect tax credits for 35 percent of eligible conservation projects, and/or up to 50 percent of the cost of renewable energy projects. The tax credits have existed for some time but have become much more popular since the credits were enhanced in 2007 (eligible costs for renewable energy were raised to 50 percent). The current price tag to the state of Oregon, in foregone revenue, is \$243 million over the 2010-2012 biennium. This lost revenue opportunity has created criticism among the public, media and legislators. A recent series of articles in The Oregonian included allegations that ODOE staff misrepresented the impact of the BETC on state revenues. The news stories also highlighted concerns and criticism among the public and legislators

that the BETC was providing a subsidy to developments and projects that would have been completed, even if the tax credit had not been available, largely as a result of the new Renewable Portfolio Standards in Oregon and other Western states.

Because the BETC debate transcends state energy policy, touching on a larger debate about competing state spending priorities and budget-balancing, EWEB will need to tread carefully as we engage legislators on this issue. While pragmatic reforms to the BETC are being proposed for legislative enactment in the February Special Session, politically-charged outrage over BETC abuses has also produced more extreme reforms that may threaten the more successful features of the BETC that are worth retaining. EWEB will communicate to legislators how these beneficial features of the BETC benefit EWEB and its customers.

EWEB Supports:

- Preserving the pass-through option, especially for local governments, non-profits and other entities without a tax-liability to utilize the BETC directly. The BETC is an extremely effective tool public entities have to help finance improvements and renewable energy projects with minimal impact to customers.
- Preserving the current eligible costs threshold for energy efficiency (35 percent). This should not be lowered.

EWEB will Monitor (with Neutrality):

- Curbing multiple applications for projects in close proximity or otherwise interrelated, that logically would be one project.
- Curbing “automatic” cost overrun adjustment approvals.
- Changing the cost cap for a project from \$20 million to \$10 million.
- Altering the BETC rate for renewable projects over 10 megawatts from 50% down to 35%.
- Requiring the demonstration of specific delivered outcomes (energy output, jobs created, etc.).
- Providing a more conservative discount schedule for purchases of BETCs through the pass-through option.
- A cap on overall funds the state could expend on the BETC program.
- Commissioning an overall report on long term phasing out of the BETC for specific renewable types (big wind) because of maturation.
- Discussions of either converting the tax credit to an instant tax refund, or directly monetizing (grant) the BETC.

Renewable Energy Credit (REC) Eligibility

A bill is expected to be introduced that would allow pre-1995 biomass generated electricity to be eligible for RECs for purposes of compliance with the 2007 Renewable Portfolio Standard (RPS), which as enacted only allows eligibility for post-1995 facilities. Operators of these post-1995 facilities claim they are unfairly arbitrarily put at a competitive disadvantage. This bill is expected to be similar to HB 2940 from the 2009 Legislative Session, which was passed by the legislature but vetoed by Governor Kulongoski. EWEB monitored HB 2940 with a neutral position.

EWEB will monitor with a neutral position.