

Longacre Julia

MEASURE: SJR 0026
EXHIBIT: R
Senate Finance and Revenue 76th Session
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SUBMITTED BY: Don McIntire

From: LRO
Sent: Monday, February 21, 2011 11:45 AM
To: Warner Paul D; Longacre Julia
Subject: FW: Testimony on SJR26
Attachments: SJR26 - Eric's Notes.pdf

For this afternoon's meeting. Mr. McIntire won't be able to make the meeting, and wants this testimony presented to the members.

Corinne Gavette
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-----Original Message-----

From: Don McIntire [<mailto:m5mc@comcast.net>]
Sent: Monday, February 21, 2011 11:15 AM
To: LRO
Subject: Testimony on SJR26

Members of the Revenue Committee,

Attached is the text of HJR26, together with my notes explaining how I think the measure is supposed to function.

At first glance, I think the proposal is somewhat better than the status quo (which is no spending limit and an unpredictable kicker). I think that SJR26 has some problems which, if rectified, could make it worth supporting.

The measure creates a soft spending limit that directs a portion of excess revenues into a Rainy Day Fund. This is an improvement over what we currently have but in the big picture, I would trade the entire Kicker for a hard spending limit (such as that proposed by Measure 48, 2006) and a Rainy Day Fund that "kicks" out tax refunds once it is filled.

Sincerely,

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Eric's notes on SJR 26 - The proposed spending limit-rainy-day-fund-kicker amendment

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Friday, February 10, 2011
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76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

Senate Joint Resolution 26

Sponsored by Senators MORSE, BURDICK, TELFER, HASS, THOMSEN, Representatives GELSER, READ; Senators NELSON, OLSEN, Representative OLSON

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.

Proposes revision of Oregon Constitution. Directs Legislative Assembly to leave amount unappropriated for biennium if Legislative Assembly determines that percentage increase in available General Fund revenues exceeds increase in rate of population and inflation. Sets amount left unappropriated at percentage difference between increase in revenues available for biennium and population and inflation growth, with three percent maximum. Requires deposit of unappropriated amount in Oregon Rainy Day Fund if General Fund revenues collected equal or exceed revenue estimate for biennium. Requires transfer of lesser of one percent of General Fund appropriations for biennium or ending balance to Oregon Rainy Day Fund.

Establishes Oregon Rainy Day Fund. Sets conditions for appropriation of moneys in fund. Transfers one-half of surplus personal income tax revenues to fund. Returns one-half of surplus personal income tax revenues to personal income taxpayers.

Establishes Oregon Universities Stability Fund. Sets conditions for appropriation of moneys in fund. Transfers surplus corporate income or excise tax revenue to fund.

Refers proposed revision to people for their approval or rejection at next primary election.

JOINT RESOLUTION: Be It Resolved by the Legislative Assembly of the State of Oregon, two-thirds of all the members of each house concurring:

PARAGRAPH 1. The Constitution of the State of Oregon is revised by creating new sections 14a, 15, 16 and 17 to be added to and made a part of Article IX, and by amending section 14, Article IX, such sections to read:

SECTION 15. [Soft Spending Limit]

(1) If required under subsection (2) of this section, in budgeting for a biennium that begins on July 1 of the year of a regular legislative session held in an odd-numbered year, the Legislative Assembly shall leave unappropriated an amount of General Fund revenues estimated to be available for the biennium. The Legislative Assembly shall use the estimate of General Fund revenues contained in the last quarterly economic and revenue forecast presented prior to the end of the regular legislative session held in an odd-numbered year. For purposes of this section, the quarterly economic and revenue forecast is the forecast made for purposes of subsection (5) of section 4, Article XV of this Constitution.

(2) (a) Subject to paragraph (b) of this subsection, if the Legislative Assembly determines that the growth index is greater than the population and inflation index, the amount to be left unappropriated under subsection (1) of this section will be a percentage of the General Fund revenues estimated to be available for the biennium that is equal to the growth index percentage minus the population and inflation index percentage.

(b) The amount to be left unappropriated under this section may not exceed three percent of the General Fund revenues estimated to be available for the biennium.

(3) As soon as practicable after the Legislative Assembly determines the ending balance of the General Fund for a biennium, if the amount of General Fund revenues collected during the biennium equals or exceeds the amount of the estimate used to determine the amount left unappropriated for that biennium under subsection (2) of this section, the amount that was left unappropriated under subsection (2) of this section shall be transferred to the Oregon Rainy Day Fund established by section 16 of this Article.

(4) As soon as possible after the ending balance for a biennium is determined, an amount equal to one percent of the amount of General Fund appropriations for that biennium shall be transferred to the Oregon Rainy Day Fund established by section 16 of this Article. If the ending balance does not equal or exceed one percent of the amount of General Fund appropriations, an amount equal to the ending balance shall be transferred to the Oregon Rainy Day Fund.

(5) As used in this section:

(a) "Ending balance" means the difference between the amount of General Fund revenues collected during a biennium and the amount of General Fund appropriations for the biennium.

(b) "General Fund appropriations" means the amount of moneys appropriated from the General Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any General Fund appropriation balances for that biennium that revert to the General Fund as provided by law.

(c) "General Fund revenues estimated to be available for the biennium" means:

(A) The amount of revenues contained in the General Fund at the beginning of the biennium; and

(B) The amount of General Fund revenues estimated to be collected during the biennium.

(d) "Growth index" means the percentage difference between the General Fund revenues estimated to be available for the biennium and the General Fund revenues appropriated for the preceding biennium.

(e) "Legislatively adopted budget" means the budget enacted by the Legislative Assembly during an odd-numbered year.

(f) "Legislatively approved budget" means the legislatively adopted budget as modified by the joint committee referred to in section 3, Article III of this Constitution, or by the Legislative Assembly meeting in special session.

(g) "Population and inflation index" means the sum of:

(A) The ratio of the cost of living for the previous calendar year to the cost of living for two years prior to the previous calendar year, based on changes in the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor or other consumer price index designated by law; and

(B) The ratio of the estimated population of this state for the previous calendar year to the estimated population of this state for two years prior to the previous calendar year, as determined in the manner provided by law.

SECTION 16. [Rainy Day Fund]

(1) The Oregon Rainy Day Fund is established as an account in the General Fund.

I term this a Soft Spending Limit. There is no actual hard limit but an requirement to "leave unappropriated" 3% of estimated available funds when making appropriations.

At the end of a biennium those unappropriated amounts go to fill a Rainy Day Fund (RDF). Once the RDF is full, all unappropriated funds in a biennium become available revenue for the next biennium. The spending limit does little to restrain spending once the RDF is full.

The difference between population limit and estimated revenues may not be "unappropriated"

However, the "unappropriated" amount is limited to 3% of GF revenue estimate - therefore if revenues are projected to exceed that 3% amount, they may be appropriated (above the soft spending limit). If those estimated revenues don't come in then the unappropriated 3% shrinks accordingly when the ending balance is calculated, reducing transfers to the RDF.

If it turns out the revenue estimates were exactly accurate or too high then all the unappropriated revenues go to the RDF

When revenue estimates turn out low, then 1% (or less) of the total GF appropriations must go to the Rainy Day Fund depending on the ending balance. It appears that gap amounts (up to 2% of GF) would move forward as available revenue for the next biennium rather than go to the RDF.

Definition of GF appropriations does not include categories of unspent appropriations that return to the GF as a matter of law (not sure what is or isn't included here).

National CPI with legislative discretion to choose alternate measure...

Why not census estimates? I suppose OK if they stick with one index and adjust it when census numbers are final.

I think distorts the operation of the spending limit. Sec. 15(5) (c) counts "any revenues contained in the GF at the beginning of the biennium" as if they are available in the next biennium. If the RDF is part of the GF wouldn't it be treated as available revenue even when really it isn't?

(2) The Legislative Assembly may appropriate moneys from the Oregon Rainy Day Fund only if the appropriation is approved by three-fifths of the members serving in each house of the Legislative Assembly and the Legislative Assembly finds one of the following:

- (a) That the last quarterly economic and revenue forecast for a biennium indicates that moneys available to the General Fund for the next biennium will be at least three percent less than appropriations from the General Fund for the current biennium;
- (b) That there has been a decline for two or more consecutive quarters in the last 12 months in seasonally adjusted nonfarm payroll employment; or
- (c) That a quarterly economic and revenue forecast projects that revenues in the General Fund in the current biennium will be at least two percent below what the revenues were projected to be in the revenue forecast on which the legislatively adopted budget for the current biennium was based.

Three-fifths of both houses is solid, but the other triggers make little sense to me.

This is too tough. If population growth was 10%, it would ban a RDF transfer in a situation where the estimated revenues were 12.99% less than spending limit.

This one is too weak. A slight employment decline over two quarters could happen while revenue is increasing.

This makes a little sense, but there needs to be a provision that limits using the RDF in an amount that exceeds the population limit.

(3) Once each month, in the manner provided by law, a state agency designated by law shall calculate the amount of General Fund interest that is attributable to moneys in the Oregon Rainy Day Fund. Except as provided in subsection (5) of this section, the amount calculated under this subsection shall be transferred to the Oregon Rainy Day Fund.

(4) The Legislative Assembly may not appropriate for any one biennium more than two-thirds of the amount that is in the Oregon Rainy Day Fund at the beginning of that biennium. If the appropriation is for a biennium that has not yet begun, the Legislative Assembly may use as the base the most recent estimate of the amount that will be in the Oregon Rainy Day Fund at the beginning of the biennium for which the appropriation is made.

Rather see this as 50% rather than 2/3's.

(5) If the moneys in the Oregon Rainy Day Fund just prior to the time of a transfer scheduled under subsection (3) of this section or section 14 or 15 of this Article equal at least 12 percent of the amount of General Fund revenues collected during the prior biennium, moneys that would otherwise be transferred to the Oregon Rainy Day Fund shall be deposited in the General Fund or returned to personal income taxpayers as provided in section 14 (4) of this Article.

This means that once the RDF is full only the kicker will be refunded to taxpayers. Once the RDF is at 12%, then the population limit goes into semi-hibernation. This means the automatic 3% set aside for projected revenue in a biennium (and all RDF interest) would automatically added to available funds in the next biennium. Once full, this could permit GF increases that greatly exceed population. At least half of this money should be split with the taxpayers in a RDF kicker.

(6) If the moneys in the Oregon Rainy Day Fund just prior to the time of a transfer scheduled under subsection (3) of this section or section 14 or 15 of this Article do not equal at least 12 percent of the amount of General Fund revenues collected during the prior biennium, the transfer to the Oregon Rainy Day Fund shall be made regardless of whether that transfer increases the amount in the Oregon Rainy Day Fund to at least 12 percent of the amount of General Fund revenues collected during the prior biennium.

(7) As used in this section, "legislatively adopted budget" means the budget enacted by the Legislative Assembly during a regular session.

SECTION 17. [University Stability Fund fed by Corporate Kicker]

(1) The Oregon Universities Stability Fund is established as an account in the General Fund. Moneys in the Oregon Universities Stability Fund may be appropriated only for purposes that will benefit higher education institutions or activities or community colleges authorized by law to receive state aid.

These separate Higher Ed funds may also distort the effect of the spending limit in the same way that the RDF appears to.

(2) The Legislative Assembly may appropriate moneys from the Oregon Universities Stability Fund only if the appropriation is approved by three-fifths of the members serving in each house of the Legislative Assembly and the Legislative Assembly finds one of the following:

- (a) That the last quarterly economic and revenue forecast for a biennium indicates that moneys available to the General Fund for the next biennium will be at least three percent less than appropriations from the General Fund for the current biennium;
- (b) That there has been a decline for two or more consecutive quarters in the last 12 months in seasonally adjusted nonfarm payroll employment; or
- (c) That a quarterly economic and revenue forecast projects that revenues in the General Fund in the current biennium will be at least two percent below what the revenues were projected to be in the revenue forecast on which the legislatively adopted budget for the current biennium was based.

Same concerns with regard to RDF criteria, use of this fund has no connection to the spending limit. Also, not sure why it needs to have its own specific RDF based on the corporate kicker. Wouldn't it make the university system have a vested interest in corporate income tax policies with less predictable outcomes (just so they could get more corp. kicker windfall opportunities)?

(3) Once each month, in the manner provided by law, a state agency designated by law shall calculate the amount of General Fund interest that is attributable to moneys in the Oregon Universities Stability Fund. Except as provided in subsection (5) of this section, the amount calculated under this subsection shall be transferred to the Oregon Universities Stability Fund.

(4) The Legislative Assembly may not appropriate for any one biennium more than two-thirds of the amount that is in the Oregon Universities Stability Fund at the beginning of that biennium. If the appropriation is for a biennium that has not yet begun, the Legislative Assembly may use as the base the most recent estimate of the amount that will be in the Oregon Universities Stability Fund at the beginning of the biennium for which the appropriation is made.

(5) There is created a Universities Capital Improvement and Maintenance Subaccount within the Oregon Universities Stability Fund. If the moneys in the Oregon Universities Stability Fund just prior to the time of a transfer scheduled under subsection (3) of this section or section 14 of this Article equal at least 15 percent of the amount of General Fund revenues appropriated to the Oregon University System during the prior biennium, moneys that would otherwise be transferred to the Oregon Universities Stability Fund shall be deposited in the Universities Capital Improvement and Maintenance Subaccount. Moneys in the subaccount may be appropriated only for the purposes of capital improvements or deferred maintenance, as defined by law, at Oregon University System facilities. Subsection (2) of this section does not apply to appropriations of moneys in the subaccount.

When the University RDF fills then corp kicker money would spill into a capital/maintenance account that could be appropriated with a simple majority vote. However, I think that appropriations from this fund (which could be big ticket items) would fall within the spending limit for a biennium and could (when revenue projections are low) potentially compress spending in other areas. Alternatively, when revenue projection are very high, big ticket spending from this fund could inflate appropriation levels in a biennium artificially, thereby inflating the baseline that would be used to establish the spending limit for the next biennium.

(6) If the moneys in the Oregon Universities Stability Fund just prior to the time of a transfer scheduled under subsection (3) of this section or section 14 of this Article do not equal at least 15 percent of the amount of General Fund revenues appropriated to the Oregon University System during the prior biennium, the transfer to the Oregon Universities Stability Fund shall be made regardless of whether that transfer increases the amount in the Oregon Universities Stability Fund to at least 15 percent of the amount of General Fund revenues appropriated to the Oregon University System during the prior biennium.

(7) As used in this section, "legislatively adopted budget" means the budget enacted by the Legislative Assembly during a regular session.

Sec. 14. [Current Constitutional Kicker provisions - bolded language is new - [bracketed] language is removed]

(1) As soon as is practicable after adjournment sine die of an odd-numbered year regular session of the Legislative Assembly, the Governor shall cause an estimate to be prepared of revenues that will be received by the General Fund for the biennium beginning July 1. The estimated revenues from corporate income and excise taxes

shall be separately stated from the estimated revenues from other General Fund sources.

(2) As soon as is practicable after the end of the biennium, the Governor shall cause actual collections of revenues received by the General Fund for that biennium to be determined. The revenues received from corporate income and excise taxes shall be determined separately from the revenues received from other General Fund sources.

(3) If the revenues received by the General Fund from corporate income and excise taxes during the biennium exceed the amount estimated to be received from corporate income and excise taxes for the biennium, by two percent or more, the total amount of the excess shall be [returned to corporate income and excise taxpayers] transferred to the Oregon Universities Stability Fund established by section 17 of this Article.

(4) If the revenues received from General Fund revenue sources, exclusive of those described in subsection (3) of this section, during the biennium exceed the amount estimated to be received from such sources for the biennium, by two percent or more, one-half of the total amount of the excess shall be transferred to the Oregon Rainy Day Fund established by section 16 of this Article and one-half of the total amount of the excess shall be returned to personal income taxpayers. If a transfer may not be made to the Oregon Rainy Day Fund under subsection (5) of section 16 of this Article, the total amount of the excess shall be returned to personal income taxpayers.

(5) The Legislative Assembly may enact laws:

(a) Establishing a tax credit, refund payment or other mechanism by which the excess revenues are returned to taxpayers, and establishing administrative procedures connected therewith.

(b) Allowing the excess revenues to be reduced by administrative costs associated with returning the excess revenues.

(c) Permitting a taxpayer's share of the excess revenues not to be returned to the taxpayer if the taxpayer's share is less than a de minimis amount identified by the Legislative Assembly.

(d) Permitting a taxpayer's share of excess revenues to be offset by any liability of the taxpayer for which the state is authorized to undertake collection efforts.

(6)

(a) Prior to the close of a biennium for which an estimate described in subsection (1) of this section has been made, the Legislative Assembly, by a two-thirds majority vote of all members elected to each [House] house, may enact legislation declaring an emergency and increasing the amount of the estimate prepared pursuant to subsection (1) of this section.

(b) The prohibition against declaring an emergency in an act regulating taxation or exemption in section 1a [Article IX of this Constitution] of this Article, does not apply to legislation enacted pursuant to this subsection.

(7) This section does not apply:

(a) If, for a biennium or any portion of a biennium, a state tax is not imposed on or measured by the income of individuals.

(b) To revenues derived from any minimum tax imposed on corporations for the privilege of carrying on or doing business in this state that is imposed as a fixed amount and that is nonapportioned (except for changes of accounting periods).

(c) To bienna beginning before July 1, 2001.

SECTION 14a. [Effective Date]

(1) Sections 15 to 17 of this Article and the amendment to section 14 of this Article by Senate Joint Resolution 26 (2011) apply to biennia beginning on or after July 1, 2011.

(2) This section is repealed on June 30, 2015.

PARAGRAPH 2. The revision proposed by this resolution shall be submitted to the people for their approval or rejection at the next primary election.

These are the basic kicker modifications. I'd rather see 100% of the kicker go into the RDF until it is full and then create a RDF kicker as mentioned above. They key to trading the current kicker for the RDF kicker would require a solid spending limit (functions rationally and cannot be easily manipulated).

This language seems to partially conflict with language in Sect 16(5) which permits excess funds to go into the GF or back to personal taxpayers when the RDF is full.

I think it is supposed to mean that the personal kicker returns to full strength whenever the RDF is full but any other revenues that came in over the spending limit stay would with the state. However, it could be read alternatively that once the RDF is full then all unappropriated revenues left over from a biennium are kicked back. If so that would make the whole proposal much stronger.