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SENATE BILL 611A

Comments to the House Revenue Committee
by Gil Riddell, AOC Policy Director, on March 16, 2015.

The Association of Oregon Counties represents all 36 county governments in Oregon, covering the entire State from a local policy perspective. AOC *does not* seek to maximize taxes on centrally assessed companies, because incentives are required to attract the right kind of new development. AOC wants to ensure through due diligence that the appropriate questions are asked and answered to result in the correct balance between the cost of new incentives for development and the cost to current local public resources needed to protect, maintain, and where necessary enhance critical public services for our communities.

Our perspective of SB 611A reflects that of an important public sector stakeholder that was *not* at the table where discussions on reform of the central assessment process (at the cost of property taxes, the fundamental local public resource) began in earnest in January. We do appreciate the occasional informal sidebar updates from those at the table as the designs of the bill progressed.

To AOC, SB 611A was a product of hard work and difficult decisions made in a rushed and opaque process by a serious-minded Senate Finance & Revenue Committee. Indeed this may have been the only way to get the conversation started productively on the exceedingly complex issue that has haunted the Legislative Assembly for at least 25 years. In fact, when an open process from the beginning of reform discussions was attempted in the past, it invariably ended without resolution with centrally assessed companies either squabbling among themselves or asking for far too much (e.g., complete elimination of intangible values, as if the intangible values could be isolated and separately determined). And the inevitable results were lawsuit after lawsuit, draining taxpayer revenues away from productive programs in both the public and private sectors. So hats off to the Senate committee.

AOC fully supports the current amendments in the bill that modestly and carefully liberalize standards to protect data centers from central assessment.

The rest of SB 611A, probably because of the committee's need for quick action and minimal public debate, left serious questions for the House Revenue Committee to open up and answer.

Presented in early February, the initial design of reform of central assessment, "historic costs" times 130%, was based on hard data, with minimal ambiguity, permitting the Department of Revenue to calculate the assessment in a clear manner. Using an arguably arbitrary factor as a surrogate for intangible value (factor of 130%) did provide an opportunity for lawsuits on behalf of a centrally assessed company, but as a method of valuation it was superior to calculation of depreciation, which DOR was unprepared to do. And the tax break for "legacy" companies (those already in Oregon) was significant but in our view not excessive and appropriately targeted to those in the communications business (i.e., effecting less than 15 companies): $2.3 million annually of local revenues statewide off the books immediately and thereafter. The counties' share of the annual loss ($437,000) seemed acceptable given the incentive-based opportunity of community development and a reduction of wasteful lawsuits.

This initial design, however, was determined by those at the table to be inadequate. After what seemed to be about four more designs of formulas for exemptions during February, SB 611A ultimately provided choices of calculations of exemptions, extremely difficult to decipher and increasingly benefitting legacy companies. The result is an *exponential increase* in loss of public revenue of an estimated $16.2 million annually and a benefit for more centrally assessed legacy companies.

AOC understands the limitations that private proprietary protections present to legislative fact-finding. There is no equivalent in the private sector of the Public Records Act. *AOC greatly appreciates the effort to which your committee at the outset of hearings on SB 611A, in spite of proprietary limitations, has pressed for clarification and documentation of sweeping claims made by witnesses, particularly those related to relative tax burdens and future business plans*.

It appears nearly obvious that the major contributing factor of the exponential increase in loss of property tax revenue is the late-coming exemption for the value of franchises and their distinct and more favorable treatment in the complex exemption formulas. Unlike the other two key exemptions (Federal Communication Commission license; satellites, with FCC license related to the satellite), which are calculated in the initial determination of value of the company, franchises were removed from the valuation formula and became a subtraction to Assessed Value. This, of course, avoids any reduction to the full value of the franchises under Measure 50 (1997). This is a basic imbalance in treatment among centrally assessed companies and creates an excessive and unnecessary loss of local public resources. **AOC urges the House Revenue Committee, as a first step and at the very least, to delete the distinct and special treatment franchises receive in SB 611A. We ask that the committee treat franchises**

the same as the other two of the three key exemptions (Federal Communication Commission licenses; satellites for direct communication services to retail customers and accompanying FCC license). That is, exempt the book value of a communication company's franchises only from the initial calculation of Unitary Value (real market value) of the company. This will come closer to leveling the cost of the three key exemptions and provide more parity of treatment among competing centrally assessed communication companies.

AOC also will support amendments to SB 611A that make the language of the bill more clear, reduce opportunities for wasteful lawsuits, make administration of the process by DOR easier, provide adequate incentives for the right kind of new development, and reduce the loss of public resources.

A comment about "deferred billing credits". This concept originated by AOC in 2010 is in response to lengthy litigation on valuations made by DOR of large-valued properties. Instances where the taxpaying company was successful in reducing its valuation on appeal – and hence its property taxes owed – resulted in refunds with interest from public funds already distributed, budgeted, and spent by effected school districts and other local taxing districts. The deferred billing credit law gives the county assessor authority to substitute the credit as payment of the taxes in dispute. Less money is collected immediately for taxing districts, but the threat of unanticipated, and at times enormous, refunds is checked. But please be clear. If the dispute is resolved so that the taxpayer company must pay the taxes, this is *not a windfall* to local districts. This is payment of money owed by the company, which it is as obligated to pay as any other taxpayer, for public services that directly benefit the company and communities. This includes the some $113.4 million now withheld from public resources by communications companies. The exact amounts to be paid will be determined ultimately by a judgment of the Tax Court, a judgment of the Supreme Court on appeal from the Tax Court, or a settlement.

The Senate Committee chose to not put a settlement of the tax dispute on the table during discussions of SB 611A. The House Revenue Committee may choose a different approach.

A comment about comparing the taxes collected from communications companies that were locally assessed in FY 2008-09 to those collected later under central assessment. The meaning of the *Comcast* decision is that the Supreme Court has agreed that these companies are properly centrally assessed, and in effect, could have been centrally assessed years before FY 2008-09. It could be said that those companies caught a break

with years of significant – and unwarranted - partial property tax exemptions, and not that they suffered a tax hike in FY 2009-10.

AOC urges this committee to continue to ask hard questions and demand answers backed by objective data. A very frustrating element of making public policy on this subject is the lack of verified numbers to determine revenue impacts to local resources and appropriate incentives of the policy choices you contemplate.

AOC is fully prepared to help find the correct balance of incentives for the right kind of community development and foregone local public revenues, which are critical to protect and enhance Oregon's communities.