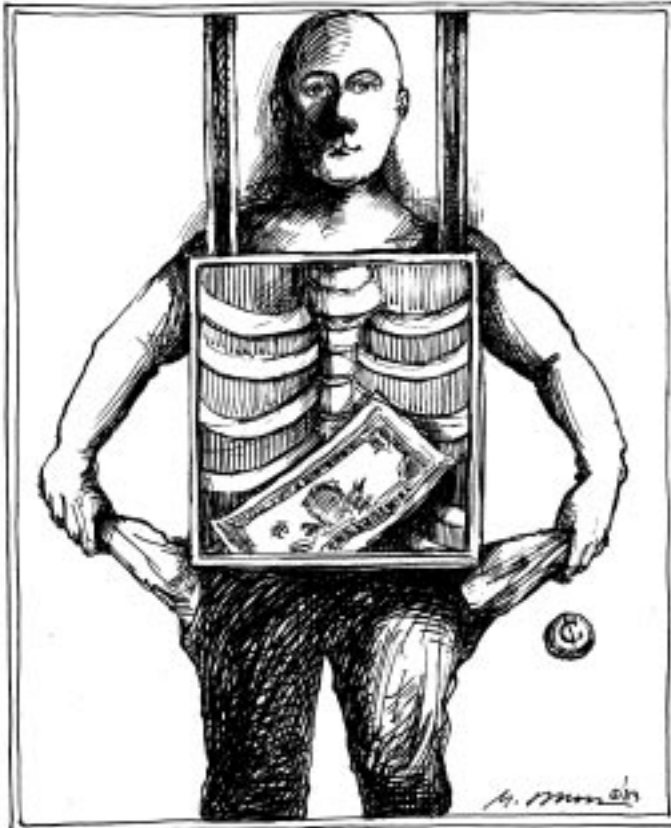


March 20, 2006

Hidden treasure



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Top Story

Electric utilities in 26 states are charging their customers fees to cover the companies' state and federal income taxes...and then pocketing the tax money instead of turning it over to the government.

SNCJ Spotlight

Utilities evading income taxes

Many of the nation's electric utilities are charging their customers fees — typically a nickel for every dollar's worth of electricity they use — to cover the companies' state and federal income taxes and then pocketing the tax money instead of turning it over to the government.

According to an analysis of regulatory filings by the *New York Times*, electric utilities in 26 states have held on to money collected for income

taxes. The practice is actually legal in most states. All of the fees utilities charge — including fees to cover their corporate income taxes — are generally set by state regulators. But in recent years, utilities have expanded into unregulated industries, such as energy trading, or have been acquired by companies that operate in other industries. And when those other business sectors lose money, the losses can be used to offset the income the utilities take in.

Sometimes the utilities can end up owing nothing in taxes, or even earning large tax refunds. For instance, Xcel Energy, a utility that operates in 10 Midwest and Western states, collected \$723 million from its customers to cover taxes between 2002 and 2004, but the company received tax refunds from the government in those years totaling \$351.4 million.

Ed Legge, a spokesman for the company said the refunds were the result of a failed energy trading business. And the company sees nothing wrong with keeping the tax fees it charged its customers. “Utility customers did not bear the risk of [the energy trading] business, and they should not benefit either,” Legge said.

Paul L. Joskow, an economist at the MASSACHUSETTS Institute of Technology, basically supports Xcel’s position, asserting that if the utility were a stand-alone business and had to file its own tax return, its customers would still pay the same rate for their electricity. “For the customer, the result is the same,” he said.

Critics, however, say customers do lose when the government doesn’t receive the tax fees they pay their utility providers. “Essentially, the utility ratepayers pay the tax twice, once through the utility bill and again through the lost revenue to government that means either higher taxes for them or less government services,” says MINNESOTA Attorney General Mike Hatch, who is seeking to require Xcel to pay the government any tax fees it bills its customers.

Only a few states currently prohibit utilities from pocketing tax fees. OREGON and WEST VIRGINIA passed laws to that effect (although the OREGON law, enacted last year, is being challenged in court), while PENNSYLVANIA’s Supreme Court barred utilities from billing their customers for “fictitious” expenses, such as taxes the companies don’t pay the government.

The Week in Session

States in Regular Session: AK, AL, AZ, CA, CO, CT, DC, DE, FL, GA, HI, IA, ID, IL, KS, KY, MA, MD, ME, MI, MN, MO, MS, NE, NH, NJ, NY, OH, OK, PA, RI, SC, TN, US, VT, WI

States in Special Session: CA "a", PA "a"

States in Recess: AL

Special Sessions in Recess: OK "a"

States Adjourned in 2006: IN, NM, SD, UT, VA, WA, WV, WY

States in Special Session Adjourned in 2006: AZ "a", LA "a", TN "a"

Letters indicate special/extraordinary sessions

Source: State Net, 03/17/06

Some suggest one simple way to ensure that utilities pay the taxes they collect from their customers would be to require them to file their own tax returns. But Robert Batinovich, a chairman of the CALIFORNIA Public Utilities Commission in the 1970s who was known for promoting innovative approaches to regulation, has posed an alternative solution: exempting utilities from the corporate income tax and imposing some other tax on them, like a sales tax. (NEW YORK TIMES)

— *Compiled by KOREY CLARK*

Budget & taxes

QUICK CHANGE OF FORTUNE FOR IA TOUCHPLAY: Last Monday, IOWA’s General Assembly began debating the future of the slot-like TouchPlay machines installed in taverns, grocery stores and other locations across the state. By the following day, both the House and Senate had voted overwhelmingly to ban the machines. It was an abrupt change of course for a state well accustomed to legal gambling after 20 years of riverboat casinos, racetracks and lotteries.

It actually appeared early on that the machines were headed for regulation rather than elimination. But according to key lawmakers, public outcry over the rapid spread of the games led them instead to adopt the ban. “TouchPlay was in their face every single day — restaurants and dry cleaners and Laundromats and convenience stores and grocery stores,” said Sen. Mary Lundby (R), who supported the ban.

Sen. Mark Zieman (R), who opposed it, said there were other factors involved, such as the 30 GOP county conventions that adopted resolutions calling for a ban over the weekend preceding the TouchPlay debate. Zieman also said he thought some Democrats voted for the ban because the American Federation of State, County and Municipal Employees — a key Democratic supporter — favored it. But, ultimately, Zieman felt the ban was “media-driven.” He said, “It stayed on the front page regularly enough that all of the sudden that ginned up some (public) animosity.”

Retailers and distributors that had invested millions in TouchPlay had tried to make the debate about “mom and pop” businesses and jobs but they were drowned out by voices like House Speaker Christopher Rants’ (R), who said, “I do not want Iowa to look like a poor man’s Las Vegas. I do not believe we should litter our storefronts and main streets with these gaudy machines. Is this the image we really want to portray?”

If Gov. Tom Vilsack (D) signs SB 2330 when he returns from his trade mission to India on March 20, businesses would have 45 days to remove all of the Touch-Play devices. (DES MOINES REGISTER, QUAD-CITY TIMES)

STATES MAY HAVE TO KICK TOBACCO SETTLEMENT HABBIT: States may soon be receiving less money from big tobacco manufacturers if an adjustment to the 1998 Master Settlement Agreement currently under consideration goes through. The major tobacco companies have sought that adjustment on the basis of their loss of market share in 2003 to producers that were not included in the settlement. An independent auditor has already issued a preliminary decision indicating that the settlement was a significant factor in the companies' losses and a final decision will be rendered on March 24. That's cause for concern for states like UTAH, which opted to receive their share of the \$206 billion settlement — \$836 million in UTAH's case — in

annual installments set to continue for the next 25 years. The Beehive State's annual payments provide funding for such things as the Children's Health Insurance Program, the Department of Health's Tobacco Prevention and Control Program and cancer research at the University of Utah. "We've become addicted to the tobacco money," said Richard Ellis, Gov. John Huntsman Jr.'s (R) budget director. The state's attorney general's office says the national adjustment for 2003 could be well over \$1 billion. (DESERET MORNING NEWS [PROVO])

Bird's eye view



Source: State Nat. National Right to Work Committee

States ponder right to work

In recent weeks, lawmakers in INDIANA, NEW HAMPSHIRE, DELAWARE and KENTUCKY have rejected legislation that would have made them "right-to-work" states — where it is illegal to require employees at unionized workplaces to join the union as a condition of employment. Since the passage of the Taft-Hartley Act in 1947, it has been up to individual states to determine whether they want to bar "union shop" requirements. This also includes the "agency" shop, which allows workers to refuse joining the union but still requires them to pay similar dues in order to keep their job. Supporters of right-to-work laws say these statutes protect workers' constitutional rights to free association and create a more efficient and competitive workforce. Opponents contend such laws allow non-union workers to benefit from gains earned by union collective bargaining and drive down wages and benefits. The accompanying map shows all 22 states that currently have right-to-work statutes.



the work done this session “will benefit the people of the state for generations to come.”

That work included suspending the sales tax on food for two years, increasing heating bill assistance for low-income families and sales tax relief for the elderly and disabled, and increasing funding for local governments. Lawmakers also approved more than \$1 billion-per-year in funding for K-12 schools, which will probably push the state to first or second in the nation in per-capita spending on education. And thanks to the state’s bountiful energy revenues, they were able to do so without increasing taxes.

“It is a remarkable statement by the state of WYOMING that we would allocate such a significant share of the bounty that the state enjoys to the educational system,” Freudenthal said.

Senate President Grant Larson (R) also gave himself and his colleagues a pat on the back, stating, “I think we’ve had a remarkable session. We’ve done more for people in the state, we addressed the programs, we addressed the funding and saved enough money to get us by, I think, any crisis.” House Speaker Pro Tem Colin Simpson (R) managed even higher praise with fewer words. “I think we’ve done some pretty incredible things in this session,” he said.

Even members of the Legislature’s Democratic minority seemed to feel pretty good about the session. “I think there are lots of good positive things that came out and we were part of that process,” said Sen. Ken Decaria (D).

(CASPER STAR-TRIBUNE)

POLITICS IN BRIEF: The **ARIZONA** Senate passed legislation last week that would make voting by mail subject to the same identification requirements as voting in-person under Proposition 200, approved by voters in 2004. The bill would require all early voters to include with their ballot a legible copy of a government-issued photo ID card, such as a driver’s license, or two forms of non-photo ID, like a utility bill or vehicle registration. The bill still needed to pass a final roll-call vote before moving to the House (**ARIZONA DAILY STAR** [TUCSON]). • Also in **ARIZONA**, three employees of the state Treasurer’s Office have resigned and another simply hasn’t shown up for work since the Attorney General’s Office initiated an investigation of Treasurer David A. Petersen three weeks ago for theft, fraud and conflict of interest (**ARIZONA CAPITOL TIMES** [PHOENIX]). • Former **WISCONSIN** Assembly Speaker Scott Jensen (R) was found guilty last Saturday of felony misconduct in office for allowing state employees to campaign for him on the state’s dime. Jensen announced three days later that he will resign his seat before he is sentenced next month (**CAPITAL TIMES** [MADISON], WXOW TV-19). • With elections coming in November,



MARYLAND's General Assembly has introduced more bills this session than it has in 20 years. Old Line State lawmakers fell 131 bills shy of the 2,938 introduced in 1986, which was also an election year (ANNAPOLIS CAPITAL). • Joe Walker, the Democratic challenger for **KENTUCKY**'s 22nd Senate seat pulled out of the contest last week, citing a desire to spend more time with family. His decision means incumbent Sen. Tom Buford (R) will be uncontested in November. Democrats were understandably disappointed by the news, believing Walker, a county sheriff, would have given them a good chance at eroding the Republicans' 21-16 majority in the Senate (LEXINGTON HERALD-LEADER).

— *Compiled by KOREY CLARK*

Governors

BUSH NAMES **KEMPTHORNE INTERIOR SECT**: President George W. Bush last week named IDAHO Gov. Dirk Kempthorne (R) to succeed the resigned Gale Norton as head of the U.S. Dept. of the Interior. Kempthorne, a former U.S. Senator and Boise mayor before being elected twice as the Gem State governor, had already said he would not seek another term.

Bush praised Kempthorne as someone who “understands that those who live closest to the land know how to manage it best” and the “right man to build on” the progress of his predecessor. Bush also lavished praise on Norton in her role as the first woman to lead the Interior Department, saying she had been instrumental in establishing the federal Healthy Forests Initiative aimed at thinning fire-endangered forests as well as helping to lead efforts to restore off-shore energy production after Hurricane Katrina.

But Norton's five-year tenure was also marked by controversy, including frequent clashes with environmental groups over her persistent efforts to open more Western lands to oil and gas drilling, including the Arctic Nation Wildlife Refuge in ALASKA. In recent months, it was learned her second-in-command, Steven Griles, had a close relationship with indicted Washington lobbyist Jack Abramoff, and that another one-time Norton associate, Italia Federici, helped Abramoff gain access to Griles in exchange for contributions from Abramoff's Indian tribe clients.

Providing he is confirmed — most likely a rubber stamp given his previous role in the Senate and the GOP majority in that chamber — Kempthorne will be expected to hit the ground running on a variety of pressing problems, including a backlog of building needs in the National Park system and concerns over the downtrodden state of health care on impoverished Indian Reservations.

GREGOIRE STAYS WA GOV: Sixteen months after the November 2004 gubernatorial election, the WASHINGTON state Supreme Court officially confirmed Democrat Christine Gregoire as governor. That confirmation came as the court dismissed four separate lawsuits challenging her 133-vote win over Republican Dino Rossi.

Justices dismissed one of the challenges because they said it was essentially identical to the GOP suit they had already considered and rejected. A second challenge claimed that the election was not “free,” as required by the state constitution, because the Democratic Party posted the \$730,000 deposit to pay for the hand recount of the votes that gave Gregoire her victory. That complaint also alleged that it was statistically invalid to use only the final count to determine the election instead of averaging the three counts, that state elections officials wrongly added ballots for inclusion in each recount and that those officials illegally enhanced improperly marked ballots so they could be read by counting machines. The court rejected those arguments, saying that all of the practices are valid under state law.

A third suit maintained that the election should be thrown out because the difference in the vote totals for Rossi and Gregoire was within a statistical margin of error, while the final challenge came from a King County man who said that while Gregoire was attorney general before her election as governor, she conspired with other public officials to cover up the abuse of his autistic son in foster care to shield the state from a large damage claim. That, he said, violated a state law that bans vote-buying. The court said neither of the final suits met the legal requirements for challenging an election. (SEATTLE POST-INTELLIGENCER)

SCHWARZENEGGER’S BOND MEASURE FLOUNDERS: CALIFORNIA Gov. Arnold Schwarzenegger (R) has placed his re-election hopes on gaining approval of a \$49 billion bond measure aimed at funding the most ambitious infrastructure program in state history. But his efforts to get lawmakers to approve that measure in time for the June ballot were snuffed last week after an 11th hour negotiating session ended with the Assembly approving only a \$4.1 billion plan to shore up aging levees and another \$19.1 borrowing deal to build new schools. The

Upcoming Elections

(03/16/06 - 04/06/06)

03/21/2006 Alabama Special Election
House 001

03/21/2006 Illinois Primary Election
Senate 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33,
36, 39, 42, 45, 48, 51, 54, 57

Constitutional Officers:
Governor, Lieutenant Governor, Secretary of
State, Treasurer, Attorney General,
Comptroller
US House (All)

04/04/2006
Alabama special general if needed
House 031

04/04/2006 Missouri Special Election
Senate 002

04/04/2006 Oklahoma Special Primary
Senate 038

only to a basic phone line. It moves to the Senate (LEXINGTON HERALD-LEADER). • The **MICHIGAN** House endorses a measure that would increase the Wolverine State minimum wage by \$1.80-per-hour. It moves to Gov. Jennifer Granholm (D), who is expected to sign it (DETROIT FREE PRESS). • **SOUTH DAKOTA** Gov. Mike Rounds (R) vetoes HB 1055, legislation that would have required state government to help local businesses find customers, suppliers and investors in other countries. Rounds vetoed the measure because it only allocated \$1 to fund the effort (ARGUS LEADER [SIOUX FALLS]).

In case you missed it:

Hospitals pass on infections to millions of patients each year, leading to thousands of deaths. Many of these infections are not reported, primarily because most of the nation's hospitals are not required to do so. But as State Net Capitol Journal associate editor Korey Clark reported on February 20, more than 30 states are this year considering legislation that would bring hospital-acquired infections (HAI) out into the open.

In case you missed it, the article can be found on our Web site at http://statenet.com/capitol_journal/02-20-2006

CRIME & PUNISHMENT: The **GEORGIA** Senate endorses SB 606, which would make it illegal to engage in disorderly or disruptive behavior at funerals. The measure would also prohibit any type of assembly or demonstration within 500 feet of a funeral one hour before, after or during the service. It moves to the House (ATLANTA JOURNAL-CONSTITUTION). • A similar measure passes in the **KENTUCKY** Senate, which unanimously approves HB 333. That measure, which now returns to the House, would keep funeral protesters 300 feet away from services (LEXINGTON HERALD-LEADER). • Still in **KENTUCKY**, the Senate endorses SB 250, which would make nude stage dancing and semi-nude lap dancing a misdemeanor. It struts off to the House (LEXINGTON HERALD-LEADER). A **KANSAS** Senate committee endorses HB 2554, which would require anyone arrested on felony charges to submit a DNA sample. Those samples would be destroyed if the person is not convicted. It moves to the House (KANSAS CITY STAR). • The **OKLAHOMA** House okay's a measure that would authorize citizens to use deadly force to defend themselves when they believe they are in danger in any place they have a legal right to be, including their car, office, or in another person's home. It shoots off to the Senate (DAILY ARDMOREITE [ARDMORE]).

EDUCATION: An **ILLINOIS** Senate committee passes legislation that would bar Prairie State high school dropouts under the age of 18 from driving. The measure would also apply to anyone with 18 or more unexcused absences. It moves to the full Senate (QUAD-CITY TIMES [DAVENPORT]). • The **IOWA** Senate endorses a proposal to bar local school districts from starting classes before Aug. 25. Current Hawkeye State law already mandates that schools open

after Sept. 1, but in 2005, 358 of the state's 370 school districts received permission from state education officials to start the school year weeks earlier. Supporters say the early starts cut into the state's tourism trade and lead to heat-related illnesses among students. It moves to the Senate (QUAD-CITY TIMES [DAVENPORT]). • **KANSAS** education officials decree that Sunflower State students must obtain parental consent before being allowed to take sex education courses. **KANSAS** joins **NEVADA**, **UTAH** and **ARIZONA** as the only states with such a requirement (KANSAS CITY STAR).

ENVIRONMENT: The **INDIANA** House approves HB 1110, which requires auto manufacturers that sell cars in the Hoosier State to develop a plan to remove mercury-containing switches from those automobiles before they are crushed for scrap. Small amounts of mercury, which is toxic to humans, are found in many convenience light switches in cars and trucks produced before 2003. It moves to the Senate (SOUTH BEND TRIBUNE).

HEALTH & SCIENCE: The **OKLAHOMA** House approves HB 2842, a measure that would, among other things, bring doctor and hospital reimbursement rates for caring for Medicaid patients up to 100 percent of cost. The bill moves to the Senate (OKLAHOMAN [OKLAHOMA CITY]). • A **MINNESOTA** Senate committee approves SF 2674, a proposal to require companies with 10,000 or more employees to spend an amount equal to 8 percent of the wages they pay to their paid workers on health benefits, or pay the difference to a state fund. It heads to the House (MINNEAPOLIS STAR TRIBUNE).

HOMELAND SECURITY: The **ARIZONA** House rejects a proposal to financially penalize cities and counties whose police departments don't enforce federal immigration laws. The legislation would have denied cities that have

In the Hopper

State Net's database tracks tens of thousands of bills in all 50 states at any given time. Here's a snapshot of what's in the legislative works:

Number of 2006 profiles last week: 1,114

Number of 2006 Intros last week: 3,493

Number of bills enacted/adopted last week: 1679

Number of 2006 profiles to date: 15,618

Number of 2006 Intros to date: 70,696

Number of enacted/adopted overall in 2006: 8,127

— Compiled By JAMES ROSS
(Measures current as of 03/16/06
Source: State Net)

“sanctuary” policies for illegal immigrants their share of state sales and income taxes. Lawmakers responded to complaints that the bill would amount to asking the state to assume control of local police agencies (ARIZONA DAILY STAR [TUCSON]). • **WISCONSIN** Gov. Jim Doyle (D) signs AB 69, legislation that requires people to show proof of legal residence before they can acquire a Badger State driver’s license. The measure is designed to bring the state into compliance with the federal Real ID Act (MILWAUKEE JOURNAL SENTINEL).

SOCIAL POLICY: The **OKLAHOMA** House approves HB 2884, which would allow Sooner State pharmacists to refuse to fill prescriptions if they believe the medication will cause an abortion or help someone commit suicide. It moves to the Senate (OKLAHOMAN [OKLAHOMA CITY]). • A **COLORADO** Senate committee approves HB 1212, which would allow Centennial State pharmacies to dispense emergency contraception without a doctor’s prescription. It goes before the full Senate (ROCKY MOUNTAIN NEWS [DENVER]). • The **MISSOURI** House approves legislation that bars state funding of contraceptives for low-income women and prohibits state-funded programs from referring those women to other programs. It moves to the Senate (KANSAS CITY STAR). • **UTAH** Gov. Jon Huntsman (R) signs legislation that will require girls under the age of 18 to get a parent’s permission before obtaining an abortion. The old law required notification of at least one parent, but not permission (SEATTLE POST-INTELLIGENCER).

POTPOURRI: The **OKLAHOMA** Senate signed off on SB 1818, legislation that would supply Sooner State counties that want to display the Ten Commandments with public funds to help pay for defending themselves from lawsuits. The measure would not protect any other religious symbol or doctrine. It moves to the House (OKLAHOMAN [OKLAHOMA CITY]). • The **KENTUCKY** House endorses HB 289, which would ban Internet hunting, which allows computer users to aim and shoot a real gun at live animals. There are currently no such businesses operating in the Bluegrass State (COURIER-JOURNAL [LOUISVILLE]). • The **KANSAS** Senate approves legislation that would allow qualified residents to carry concealed weapons. It shoots off to Gov. Kathleen Sebelius (D), who vetoed a similar measure in 2004 (LAWRENCE JOURNAL-WORLD).

— *Compiled by RICH EHISEN*

