SENATE BILL 26
IF IT AIN'T LAW ALREADY, IT SHOULD BE

We expect some may oppose this bill on grounds of a philosophic dislike for class-action lawsuits, as this bill makes it easier for the state Attorney General to involve Oregon in such suits. The bill enables the AG to "represent the state, an agency or officer of state government or a political subdivision … as a lead plaintiff or representative party in a class action involving a claim relating to a security in which the putative class members include persons that are not agencies or officers of state government … or political subdivisions."

There are three possible arguments against this.

One is that the AG should not represent state agencies or subdivisions without their consent. But the bill does require such consent before the AG can take up the case.

The second is that the AG should not be active in class action cases if doing so means the state defending the interests of private parties. This is bogus, since the whole point of a class action suit is to bring together various kinds of harmed parties in one suit. This argument is really an argument against class action suits, which we do not oppose.

The question properly stated is, actually, does the state have an interest sufficient to warrant joining the class action suit?

And that is the third argument against this bill - that SB 26 allows the use of state power where the state may not have a big enough claim to really warrant joining the lawsuit - after all, it doesn't cost ODOT or DEQ anything to have the AG go to court. But this is about "securities" and if the state has bought a few of them, it probably has bought a lot of them. If it has an interest, it will likely be a big interest. Further, the Supreme Court has already dealt with this by tightening the definition of who may join such a class to the point where "strict construction" has become "stuck constriction." The notion the AG will somehow get Oregon involved in a class action suit Oregon doesn't have much interest in is a very red herring, indeed..

If someone opposes class actions per se, fine, oppose this bill. But let him make his case openly, on grounds of ideology and legal philosophy and not through these obvious, but obviously invalid arguments. If the state has been among the members of a class swindled in a securities matter, the state should be able to join in seeking justice against the swindler.

SENATE BILL 30
GOING AGAINST THE GRAIN

This bill would lift the tax burden on the people tax relief usually bypasses: the guy, gal or family well below the poverty line, whom Oregon taxes, we have read, more severely than most states. So here is a tax relief that can make a difference in ordinary lives.

SB 30's proposed tax code changes would not create huge changes for our poorest working families, but then, they don't have huge incomes or huge taxes in the first place. We've crunched some numbers and the bill does appear to cut taxes a bit for the poorest among us. For taxpayers earning less the $5,000, we have not reached any numbers, preferring to let those better versed in tax law deal with the question of what is a person's "taxable income" at that low level. But we can say that for a taxpayer earning $6,000 this bill would drop his tax from $390 to $314. For one earning $7,000, it would go from $490 to $384. For one earning $10,000, from $760 to $594. And for one earning $15,000, from $1,210 to $980.

These are not big sums, but when you are that poor, every nickel helps. We are already seeing inflation creep up on us, even by Commerce Department standards. (Amazing how that department reports "core inflation" as excluding food and energy costs - the two going up the fastest!) Inflation is here, and our large and growing national deficit ensures it will worsen; and most salaries we know of are not keeping up. A little tax relief for our most vulnerable taxpayers seems warranted.

As long we're on the subject - how about a minimum alternative tax for corporations so PGE never again can pay $10 income tax, as it did one recent tax year. If such an alternative minimum, at say, $1,000 ends up affecting, say, 1,000 companies with clever accountants, it would raise $1 million. That's not a lot in terms of Oregon's budget deficit, but it would help. And (at $1,000 per corporation) it would not be enough to prompt one company to move one factory, office or job from Oregon. But it could balance SB 30 and make it all more-or-less revenue neutral. Such an additional bill or added provisions should include a clause requiring that the alternative minimum be revisited every ten years, to make sure bracket creep due to inflation does not do to this what inflation has done to the federal alternative minimum tax (i.e., make it apply more and more to taxpayers with less and less.)

We could thereby craft tax relief for the poorest taxpayers, end the outrage of billion-dollar companies paying virtually no income tax, lose no jobs in the process, and avoid the unintended consequences of the federal alternative minimum tax. Is that too much to ask?

The legislature, The Oregonian recently reported, is seeking ways to recover legitimacy for the state. This is how to do it.

SENATE BILL 36
SAVING ON SUBPOENA SERVICE COSTS

It's not that we don't trust the U.S. Post Office - though we wonder why a letter sent from Toledo to Newport has to be routed through Salem - but we do not favor this bill. SB 36 would allow service of a subpoena by certified/registered return receipt mail, instead of by a process server, when the time or date of a court appearance has been changed.

We think the idea of a subpoena served by a process server, with its built-in protections and assurance of actual receipt and actual knowledge by the person served, was one of the great ideas of English common law. Not all things new are worthy. The possibility that a person may move, be ill, or get divorced and have the ex-spouse sign for him or her in spite - not to mention the possibility of plaintiff deceit, prosecutorial misbehavior or court error - were present back in Merry Ole England. They have not disappeared. Kill this bill.

SENATE BILL 38

SENATE BILL 38

EITHER A VERY GOOD THING, OR A WASTE OF TIME & MONEY

Another commission? To study another problem? With another broad mandate to look at virtually everything in a field - in this case, K - 12 financial costs, non-classroom revenue losses and reform thereof - and no power to mandate anything. Is this worth it. Probably, yes.

Let's put it this way. If there is even an outside chance something useful might come of this bill, it is worthwhile. And we think there probably is that chance. We like the mission SB 38 gives the study commission it creates:

a. study the entire K - 12 public school system, including the Department of Education, school districts and education service districts;
b. identify all barriers within the system that diminish resources available to the classroom;
c. identify statutes and rules relating to K - 12 that create barriers to providing additional resources to the classroom;
d. recommend solutions for providing additional resources to the classrooms; and
e. recommend how any additional resources could be gained from the elimination or amendment or repeal of statutes or rules and how these additional resources could be redirected towards reducing class size, increasing the number of classroom teachers, making available additional classroom support materials, and increasing the number of courses offered to students.

We have numerous mandatory programs - many useful, some redundant, some downright Stalinist (like those abominable student surveys) - that do not advance classroom education. We do not advocate wholesale destruction of all such programs. That would cause new forms of damage; some of them are doubtless worth having. Rather, we would like to see existing programs and policies that cost money which

could go to classrooms tested against specific standards. May we propose:

The use or program or rule must not be likely to provide only little aid or assistance (in learning or generally), or little effective aid or assistance, to its target group of students, even if the target group is a group that is truly in need of some aid;

The use or program or rule must not, however well-intentioned, be experienced or be likely to be experienced, by its nature or its implementation, as condescending, demeaning or insulting by the student or parent (or groups thereof) who are the intended beneficiaries or participants;

The use or program or rule must not intrude the school system or broader state government or any agency, department, program or agent of state government into the personal, private lives or constitutionally protected rights of the students or parents.

The use or program or rule must not require or involve the establishment, maintenance or use of computer databases regarding students or their parents that includes anything beyond what is needed to affirm the students' actual presence in school and in particular classes, and enable contact with parents in an emergency - i.e., name, date of birth, address, class and grades record, and medical history of the child, and the name and home and work phone numbers of the parents or guardian.

Make all hearings public hearings. If we really want to get rid of waste and fraud, good intentioned red tape and bad-intentioned bureaucratic babble, make all the hearings public.

SENATE BILL 47
A NEEDED EDUCATIONAL REFORM, DONE BADLY

This brief and seemingly simple bill would terminate the application of Oregon's Administrative Procedures Act to actions taken by the Teacher Standards and Practices Commission. That commission sets standards for the work done by teachers. The standards it sets can be good or bad, tough or lax, encourage or discourage creativity, intelligence, dissent, dullness or cavalier unconcern. Whatever those standards do, however, they should be subject to at least some parts of the APA. Other parts of the APA are paperwork quicksand, a sandbox for bureaucratic turf-fights. Figuring out which parts are which is a large task - and a task this bill does not even try to do.

Here are excerpts from some of the provisions that currently apply to actions by the Teacher Standards and Practice Commission (all of which, under this bill would no longer apply).

ADMINISTRATIVE PROCEDURES ACT

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

Comment: Goodbye the teacher's right to contest a decision by the commission?

183.325 Delegation of rulemaking authority to named officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation.

Comment: Maybe, given the proliferation of educational red tape, losing this is good!

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

Comment: Do we really want to get rid of this?

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given (under subsection 1 hereof) … notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochairs of any interim or session committee with authority over the subject matter of the rule.

Comment: Hmmmmm?

CONCLUSION:

It would be great to cut out some of the immense red tape that swamps our schools with the ever-growing non-educational costs of delivering an education. Each ribbon of red tape may have a good reason behind it, but the totality has become a costly disaster. We need some smart policy wonk with big scissors, a vacuum cleaner and a head for cutting red-tape and cleaning bureaucratic sand-boxes and sand-bars. We need someone who respects due process and hates voodoo process, to look at the nexus of the APA and education. But this bill is lazy; it ducks the question, and sticks its head in the sand. Somebody should goose whoever wrote it. This could be a valuable initiative; let's do it right.

SENATE BILL 64
TRESPASS FOR A GOOD CAUSE IS STILL TRESPASS

Once Upon a Time in the Wild West, the government conspired with White folks who didn't own land to take land away from Red folks - Native Americans - who did. Now this bill would in certain circumstances reverse the takings. The first was a crime against the Native Americans; this bill is, in small scale, not much better, in reverse.

Under existing law, a "person who is conducting an archaeological investigation" had to do so either with a permit on public lands or else on private lands, and if on private lands, "with the owner's written permission." SB 64 changes that. It does three things:

1. It removes the requirement for written permission from the private landowner;

2. Gives to State Parks the authority to issue a permit for access to - shall we say, trespass on - private property for archaeological purposes; and

3. Forces the State Parks Department to pay for the consequences only if those consequences include a denial of a permit and consequent inability of the landowner to engage in certain specified conduct on his land.

We understand that the permit process will still be a public process, and one where the landowner may come and make a case against the permit. But this bill still transfers the right to decide who shall trespass on private property, in archaeological matters, from the private sphere to the public domain. This is, surely, for good scientific and tribal purposes. But what about the harm to the landowner from the trespass, and what about other harms or losses that may arise due to the state-sanctioned trespass? The bill would allow the trespass, shield the permitted archaeologist or tribe from the ordinary legal consequence of the trespass, and then restrict the circumstances where the property owner can be compensated for the harm or loss.

Why shouldn't the tribe or archaeologist ask the land owner for permission to enter the property and perhaps pay for that right, as the law stands now? What is so wrong with that? Archaeology is a good thing, and respect for tribal rights, heritage and

remains is good, too. But currently, the market decides when and where the archaeologist or tribe may enter private property for archaeological or tribal purposes. Yes, we know that the land once upon a time all belonged to the Native Americans. We are now paying them back, in part, for the theft, by allowing tribal casinos to fleece willing gamblers of the contents of their pockets. Surely, some degree of justice is being done through this device - but it is not being done upon unwilling parties who have not volunteered for the fleecing. Current landowners are not the ones who did the crimes against the Native Americans a century or so ago, and it seems unwarranted to authorize, through the state, new crimes against those innocent landowners.

SENATE BILL 71
A GOOD BILL, ON TRACK, BUT IT MISSES A COUPLE STOPS

We understand that Governor Kulongoski has made improving our transportation network a priority, and that this year's focus will be on multi-modal transportation. We support that. This bill will clearly be a centerpiece of that effort. It's a good bill, on track, but it misses a few stops. The following may be only housekeeping points, but they may not be merely housekeeping.

Section 3 (3) states that the Oregon Transportation Commission shall allocate at least 10 percent of the monies this bill would generate to "aeronautic and airport projects; marine and port projects; rail projects; and public transit projects." What about projects that are, indeed, multimodal? If a project links, say the Port of Newport to the Port of Toledo and through that, the Port of Newport to railheads in Toledo, is that a port project or a rail project? How are the funds allocated to such a project to be deemed under this provision? And, if it depends on barges to connect Newport and Toledo, as has been suggested, is it a marine project? Not clear. There should be some - brief - statement authorizing the OTC to divide an allocation on a proportionate basis between its constituent elements for this sub-section. We could avoid later problems by clarifying this point in the bill now.

Section 4 (3)(d) notes the possibility that a project's "applicants and sponsors" might not be able to provide more than 20 percent of the cost of a proposed project, and asks for a determination whether that inability "is due to economic distress in the area that would be helped" by a proposed project. It is left unclear, however, what the results of a finding of such economic distress might be. Since Section 3(2)(b) allows for funding of "more than 80 percent of the total cost" of a project anyway, the determination of economic distress impairing local financing seems pointless.

We should not let a good bill get delayed or derailed after passage by some nit-picking lawsuit that forces a court to pick its way through these nits. Lets clean-up SB 71 before it passes, so it can remove some red lights on our economic development road, give us full steam ahead, help our state's economic take-off, and etc. Add what metaphor you like, but lets make sure the semaphore is a clean green.

SENATE BILL 73
YES - AND A PERSONAL THANK YOU TO ODOT AND THE GOVERNOR

This bill enables ODOT to reinstate driving privileges to an individual who it determines had his license suspended because ODOT determines that the person was actually in compliance with the requirements of a court. Yes, Virginia, even courts and judges - those who sit in judgment of our mistakes - can themselves make mistakes. Since I have been one who has suffered a license suspension in error by ODOT based upon a false and politically-motivated assertion of non-compliance by a local court, this is one bill I totally approve of. This bill gives ODOT legal protection for doing the right thing.

SENATE BILL 74
HOW MANY LICENSES SHOULD ONE GUY HAVE?

Senate Bill 74 would enable ODOT to set rules for when someone can receive a new drivers license with a different number than his or her old one. It seems to us this bill could do more harm than good. The number of legitimate reasons why a person could need a drivers license with a new ODL number seems limited. The mischief this could open up to, in terms of multiple licenses for single individuals, seems less limited.

If somebody has stolen a person's identify, then maybe this bill would help - although it would be better to apprehend the bad guy and put him behind bars. And to use this bill, the victim would have to go forward with numerous other problematic and time-consuming changes to his paper-life, too.

On the other hand, if somebody wants to create alternative identities for himself or, in return for cash, for somebody else, this could make that easier. And if somebody has stolen an identity (or otherwise created a false one), this would open up an avenue for the multiplication of fraudulent identities.

This bill either should be killed, or thought-out and spelled-out much better. It might make more sense if we knew why ODOT might wish to issue a new drivers license with new number to a person. Perhaps the agency should, instead of planning to answer that question through an administrative rule, tell the legislature just what it has in mind before the legislature writes a blank check to ODOT - and who knows who else - with this bill.