SENATE BILL 101
A JUST ROAD TO FOLLOW

SB 101 would provide a procedure for the owner of an approach road rendered unusable by a statutory enactment to seek compensation for his loss. The procedure is already in place: the bill merely adds this category of road owner to two others (those who own approach roads for which a permit was issued but which is then closed off, and those whose ownership in such an approach road arises under a grant or reservation of access). This bill would merely add a third class of property owner to the list of those who could utilize a contested case procedure to seek recompense.

We hope the cost of this is not too high, and we think it probably is not - otherwise ODOT might not have joined the Office of Regulatory Streamlining in supporting this bill. Further, the fact that the Regulatory Streamlining Office supports SB 101 suggests that the problem not only does exist but that the solution is to provide a procedure for its resolution. There seems, then, no reason why this bill, and such justice as it may enable, should not be passed.

SENATE BILL 102
A TRICKIER QUESTION

SB 102 is clearly a companion piece to SB 101, but not the kind of virtual no-brainer 101 represents. The case for 102 is that when ODOT takes an action that eliminates all right of access to a parcel to and from a highway, perhaps it should be able to acquire, by eminent domain if need be, another parcel that it could then transfer to the party it cut off from the highway. If the bill were restricted to parcels made unreachable at all by an ODOT action, it would be, like SB 101, something that simple justice demands. But this bill refers to ODOT action that "eliminates all right of access for a parcel of real property to and from any highway," not "all right of access for a parcel," period. What if the parcel retains access, only not directly onto the nearby highway? Do we really wish to use eminent domain - a heavy-headed hammer indeed - when the parcel to be benefited by its use is not landlocked, but merely needs to use some local road to achieve access to that nearby highway?

On the other hand, the loss of direct highway access may well doom some kinds of businesses. Perhaps in that more limited type of case, the use of eminent domain to acquire replacement highway access might better be justified. But that is not what this bill does. Eminent domain is already used for any number of purposes, some quite useful and justified, some perhaps not so justified. SB 102 may be in the category of not so justified.

This Petition is to allow your voice to be heard

Edward Johnston

February 19, 2007

Dear Leader and Board of the Oregon District Attorney's Association:

I am writing you regarding SB 111, which would shift the burden of investigating allegations of improper use of deadly force by local Oregon law enforcement from the Attorney General's office to the District Attorney. Besides the extra financial costs involved, this bill would grievously harm the District Attorneys and their ability to properly and effectively enforce the law. It would put every DA into a potentially impossible bind This bill sets every D.A. up for serious trouble. . Here is why:

With all due respect to AG Hardy Myers and to Senator Avrel Gordly, SB 111 would put any D.A. who falls under its rule into a very difficult bind. He or she would, when making such an investigation, have to do one of two things. He or she would have to find against the officer who used the deadly force, or not.
If he or she finds the deadly force to have been improper, he or she will impair his or her ability to work with not only that officer, but everyone else in that precinct and perhaps everyone in law enforcement in that city or county. It would totally break apart the trust between law enforcement and the District Attorney that is essential to law and order. If, on the other hand, the D.A. exonerates the officer who used deadly force, he or she might well be tossed out of office by the voters, especially if the district is of a racial minority or is very politically liberal or conservative and the deadly force was used at a political rally or protest. The bill would surly worsen racial antagonism in the state. But it would put any D.A., in any kind of community, in the same type of bind, with or without racial, class or ideological overtones. Most importantly, it would make it impossible for the DA involved to ever be able to really do his or her job in the community again. He or she would always be looking over his or her shoulder at the damage done to his or her office by the investigation he or she was foolishly compelled to do by the bill. Making decisions based on the law and equities involved, but on the politics. Every D.A.
should want to be insulated, as much as possible, from just the kind of situation SB 111 will place at least some D.A.s into.

In addition, the bill would not be good for police.
Yes, it might compel a few DAs to wrongly protect an officer who improperly used deadly force in order to maintain the DA's good relations with the local police department. One can argue this is good or bad for the police - but it would not help the best police officers. More certainly, just the potential for this kind of situation will further weaken community support for our police departments, and weaken community-based policing. And it would leave under a permanent cloud every officer who ever is charged with and exonerated from a claim of improper use of deadly force that occurred under circumstances deadly force was clearly needed and appropriate. Good officers will be hurt by this bill. How could it be otherwise, when his exoneration would be much less credible and much more susceptible to political manipulation than it is under the current system. Good police officers who use deadly force properly will come under permanent and unwarranted, but with this bill unavoidable, criticism and disbelief.

If you want to change the current arrangement, and make the change effective, it

should e through conversion to a community-based community police review board with only citizens holding the positions upon it - no elective officers, and no public employment job holders, at all.

In my opinion this bill would also change the Constitution, as well. Since it does not mention the use of a grand jury in the process it establishes, the grand jury, it appears, would be eliminated from the process of deadly force investigations. Besides being possibly unconstitutional, and certainly against the spirit of the constitution, this would also lead to additional law suits brought under the federal Section 1983 statute.

You know, our system has worked since 1776, or, in this regard, at least since Oregon became a state.
This bill would hurt DAs; it would hurt law enforcement; it would hurt good police caught in desperate situations; it would hurt the constitution.
Can someone explain to me how the changes this bill proposes would benefit Oregonians at large?

Thank You for Your Time

Sincerely

Edward Johnston

SENATE BILL 125
SOMETHING TO CHEW UPON

SB 125 rights a mind-numbing, stomach-churning wrong. Apparently, current law does not prohibit the possession nor require a permit for possession of "live fish that are of the genera Pygocentrus, Serrasalmus or Pristobrycon that are carnivorous." For those who don't know, the Serrasalmus sub-family of the family Characidae are, the bill tells us "commonly known as caribe or piranha."

How did this omission ever become law? Did some legislator's fish eat his homework? Was common sense devoured by the piranha importer lobby? Did some little old lady weep crocodile tears before a committee at the thought of having to permit her favorite fish, Igor?

SB 125, would change all that. It would place, instead of Pygocentrus, Serrasalmus or Pristobrycon as fish for which no permit is needed, "live fish of the genera Colossoma, Metynnis or Myleus that are primarily herbivorous fish in the sub-family Serrasalminae, from the family Characidae, commonly known as pacus or silver dollars." Presumably, under other law, that would require a permit for Igor.

Well. We've chewed this one over we're glad we've got it straightened out. This

could be a law with some teeth in it. But we still end up wondering: ORS has had this backwards for some time now, without causing much harm. Piranha owners are unlikely, one suspects, to let little Johnny stick his finger in the fish tank: good neighborly relations, for one thing, the possibility of getting his wallet chewed off in court, for another. Maybe we don't need to regulate this. If we have a piranha permit, we need a piranha permit writer, and a piranha permit compliance officer. More costs to an overburdened government. Maybe the real piranha is the ever-hungry regulatory mouth, eager for more rules to enforce, more funds to eat.

SENATE BILL 126
A GOOD IDEA, BUT NEEDS TWO MORE CLAUSES

This bill provides an appeal process if someone thinks he can successfully create a new commercial fishery in Oregon waters and the Oregon Fish and Wildlife Commission does not agree and does not grant him a developmental fisheries permit. As it stands now, the commission makes a decision on establishment of a new developmental fishery, after study by the Developmental Fisheries Board, and if they are wrong, there is no clear route of appeal - except, perhaps seeking specific legislation creating a developmental fishery.

SB 126 would give the Commercial Fisheries Board review power over decisions by the commission rejecting creation of a new fishery. That board is and would remain part of ODFW, and so, ultimately under jurisdiction of the commission. But it would still offer a separate review - an appeal, in short - of a commission decision against creation of a new developmental fishery. If the fishery proposed is a bad idea - too many harms to other species, the target species is too weak a stock, etc. - then the Commercial Fisheries Board could still reject the applicant's idea. But it is generally a good idea to offer some sort of independent - or at least, separate - review of administrative decisions.

We have just two concerns. First, as it stands, the bill does not state the basis upon which the Commercial Fisheries Board is to make its determination. One expects it is the same as the rules governing the Fish and Wildlife Commission, whatever precisely those rules are. But this is not stated. A reviewing panel, hearing an appeal, is not supposed to apply different law than the lower court - it is supposed to make sure the lower court applied the law fairly and correctly. We would urge some addition to this bill making clear what rules the Commercial Fisheries Board is to follow in reviewing applications for a developmental fisheries permit denied by the commission.

Second - make it all a public hearing, with notice and comment. The Developmental Fisheries Board hearings are all public hearings, with prior notice and invitations for comment. We should do no less on the appeal.

That said, we congratulate the Department of Fish and Wildlife and the Commission for recognizing a weakness in its structure and moving to repair it.

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SENATE BILL 153

By repealing ORS 810.434, 810.435, 810.436, 810.438 and 810.439, this bill removes the authority of any listed city (or, presumably, any city that may have hoped to get on the list) of those authorized to use photo radar as a traffic law enforcement device. Like the authors of this bill, we do not like photo radar. We do not minimize the havoc that idiot drivers can cause. But we do not think photo radar will stop any drunk, moronic, or incapacitated driver from driving - and we do think photo radar is another step on the road to Big Brother.

The bill's ritual repetition of the requirement that any city that does use photo radar must study its effects on traffic safety, the degree of public acceptance it receives, and how photo radar is administered seems useless if the bill is to close these sleepless Big Brother eyes anyway. We hope that ritual repetition is there just to make the bill more palatable to those who fear dangerous drivers more than they fear dangerous government. We worry it may be there to provide a database that fans of photo radar may later use to try to undo this bill. However that may be, this bill repeals the laws authorizing photo radar, and we hope it passes and stays passed.

But this still leaves open one big question. Does removal of authority to use such radar make its use by some city illegal? We would prefer to see an affirmative prohibition, rather than just the repeal of authorization. This bill may create a legal limbo. Is that what its sponsors intended? Why not do the right thing and prohibit photo radar now? As it stands, this bill buys time for a bad idea to try to rehabilitate itself. Let's not give it the time.

S.B. 158

Inch by inch we further deprive families of their freedoms

This bill includes "community learning centers" in the roster of entities that are part of the Services to Children and Families system. That phrase includes a lot. ORS 329.007 defines the phrase:

"Community learning center" means a school-based or school-linked program providing informal meeting places and coordination for community activities, adult education, child care, information and referral and other services as described in ORS 329.157. "Community learning center" includes, but is not limited to, a community school program as defined in ORS 336.505, family resource centers as described in ORS 417.725, full service schools, lighted schools and 21st century community learning centers.

As many of you know, I find the activities of SCF to be out of bounds and at times even out of control. Even the best of its people, who truly want to help children avoid abuse and other harms, cannot operate in a fair and reasonable fashion because the law that defines when they may take custody away from a parent is so broad as to allow SCF to do so, literally "for any cause" a staff person finds reasonable. That

grant of authority brings us ever closer to a totalitarian system, where the state asserts powers it should be able to exercise only to prevent a clear and present danger. SCF under current ORS is under no such restriction. Adding "community learning centers" - literally any place connected in any way to a school, if it provides informal community activities (including but not limited to adult education, child care, and information and referral) - expands what is, to me an unconstitutional or at least often-abused government power. This bill is a big step in the wrong direction. It should be buried.

SENATE BILL 166
GIVING THE HEN HOUSE BACK TO THE FOX FOR RECONSIDERATION

There is no guarantee that a group of parents and teachers, organized into a charter school, will do a better or a worse job managing their children's education, than would a regular school district and school board. Given that, what should happen if a group of parents and teachers simply feel that the local schools do a lousy job and they can do better by forming a charter school and the local school board disagrees? Who should judge their application to try to do better, and who should review that judgment on appeal?

As the law stands, it is the local school board, which has a vested interest in blocking charter schools (as they are, inevitably, a challenge to at least some extent to the school board's competence and authority). As it stands now, if the school board says no, the parents and teachers can appeal it to the State Board of Education - which itself, is perhaps not an entirely unbiased reviewer. But as one philosopher said, we must take the world as we find it, and nobody has proposed a better reviewing forum for appeal.

This bill proposes a worse reviewing forum: the local school board.

SB 166 would allow the State Board of Education to drop the hot potato charter application and send it back to the board at the originating school district. Why send the parents and teachers back to be heard again, and their proposal judged again, by the very people they are seeking to get out from under in the first place? The very people who said no to them once, and who will have the same vested reasons for saying no again? Why send the hens back to the fox for reconsideration if the fox wants to let them go free?

SENATE BILL 168 -
A BILL THAT DESCRIBES EVERYTHING ABOUT ITSELF EXCEPT ITS PURPOSE

Whatever shall we make of this? It's not a long bill, only two and a half pages. It goes into great detail on who shall appoint which members of the proposed "Task Force on Kindergarten through Grade 16 Integrated Data System." It describes the criteria such a new "data system" shall meet. It does not say a thing about what the new

integrated data system shall do. Or contain.

We would call this bill a tease if not for the worry that what it hides is not enticing at all. The authors of this veiled totalitarianism cannot hide the intent behind a screen of "who shall appoint who" and "this operating standard shall meet that functional criteria." The intent is the further reach of the state into what used to be the private realm of hearth and home, the realm where parents work with, or fail to work with, their children. The nuclear family isn't perfect - it is a reflection of the loves and hates, strengths and weaknesses of larger society, and of each human being. But it is a realm not to be quickly intruded into by the state. Oregon has gone too far in this direction already, and if this bill has one great virtue it is simply this: despite the lack of description as to what this Task Force is to do, its task is still crystal clear. It is to integrate all the data we have on children - and of course their parents, else how can we understand what drives the wayward youth? - into one gigantic database. Operated, no doubt, by people of worthy intentions, but people no less fallible than all others who arise in the flawed arena of the family. Only now, those fallible data managers (and their agency chiefs and staffs), will know everything there is to know about our children. And their parents. At the press of a button. Click! Watch Out! Big Brother is databasing you.