SENATE BILL 75
IT'S WHAT IS LEFT OUT, NOT WHAT IS PUT IN, THAT MATTERS

This bill seems, at first blush, to be merely housekeeping - changing the wording but not the meaning of ODOT's authority to randomly select for review vehicles as to compliance with the state financial responsibility laws (i.e., maintaining insurance coverage). But there is a fairly big change. In fact, a 90 percent change, in a way.

The old law limits ODOT to annually selecting for verification of such compliance "not more than 10 percent of the motor vehicles registered in this state." The new law omits that limit.

Yes, driving without insurance is a genuinely serious crime; no debate about that. But allowing ODOT to randomly select what? - 20 percent, 30 percent, 90 percent - of the cars registered in the state for compliance verification does seem a bit much. The fact that a person in the past broke the law does not mean he is breaking it now. But under this bill, ODOT could require compliance verification for 100 percent of those drivers who in the past had broken the law on driving with insurance. We are edging away from "innocent till proven guilty" towards "guilty until proven innocent" here. SB 75 does not take us all the way down this road. But it opens the garage door to that journey. Bad idea.

SENATE BILL 76
MAKING IT HARDER ON THE HARDIEST OF YOUNG WORKERS

SB 76 would remove the employer of a minor (under age 18) from the list (father, mother, guardian, employer) of those who, under current law, can sign onto the minor's application for a driver's license. We think this bill a mistake.

Admittedly, it will not affect many youngsters. But here and there, scattered across the landscape, there must still be minors who are working, and who, in order to get to work or do their work, need a driver's license - and who, due to neglect, abandonment, parental violence, state DHS incompetence and/or personal reasons, are on their own. On their own, that is, except for one small blessing. They know a neighboring farmer, rancher, grocer, plumber or other small business owner who has taken a liking to the kid, and given the kid a job. Especially (though not only) in rural areas, the job would likely require some driving.

This species of kindness seems almost to belong to another time - the era of Norman Rockwell paintings, Andrews Sisters songs and uncelebrated small-town acts of kindness. We hope such acts of kindnesses are, if rare, not quite extinct. If this sort of kindness has lived on - and we expect it has - there is no need to kill it off.

SENATE BILL 77
ODOT APPRAISAL WAIVER -

POTENTIAL MISTREATMENT FOR THE LITTLE GUY?

When ODOT needs, for some valid public purpose, to take privately-owned property, it is required by federal and state Constitutional law to pay just compensation for the "taking." We think this is a right and proper thing. We think it so whether the property owner is rich and powerful or poor and powerless - and we are glad the Founding Fathers felt the same way, too. This bill would change that by creating a separate, distinct procedure for the poor and powerless property owner - and not one to his benefit.

SB 77 would direct ODOT to create an administrative procedure for "appraisal waiver" for properties it wishes to condemn that are worth less than $20,000. The first question is, of course, how ODOT can be certain a property is worth less than $20,000 without an appraisal. But, let us agree for the moment that some small slice of property in a far distant corner of Oregon might be good for raising only dust devils, and that it would visibly seem to be worth less than $20,000. Not that we agree with this premise, mind you, but, for the sake of the argument, we'll pretend we do.

Isn't even that poor schmuck of a property owner entitled to an independent appraisal of the worth of his property - just in case ODOT is wrong (or, heaven forbid, deliberately underestimating the property value)? Doesn't the constitutional mandate for just compensation presume an independent determination of what is "just" and not give the power to make that determination to the very agency doing the taking?

Isn't the whole idea of this bill a first step on a road we don't want to travel?

SENATE BILL 78
LEAVE WELL ENOUGH ALONE

When a driver is in an accident, he is supposed to report it, under today's law, to ODOT, or the sheriff or the local chief of police. This bill would narrow that list to ODOT alone. We appreciate the efficiency bonus this might offer, but still oppose the bill.

The one thing that keeps us free - besides the Bill of Rights and the Constitution - is the fact that when one government agency may do us wrong, another may help out, even come to the rescue. We'd prefer to allow the motorist his choice of which agency he trusts - the local police, the county sheriff, or ODOT, when filing his accident report. Efficiency is not the only virtue in government; freedom of choice is a virtue, too.

SENATE BILL 81
CONSERVATION PRICING FOR ELECTRICITY PERMITTED

This is one of those bills where the only question is why it hasn't been law for decades already. A light clearly went on in somebody's noggin, and better late than never. SB 81 enables conservation pricing in energy billing as an incentive to the

customer's adoption of energy conservation measures. It would encourage conservation pricing in general and conservation during peak demand times specifically, and it does so in easy-to-understand, easy-to-operate language. If one bill should get a unanimous vote this session, SB 81 is it. Do pass.

SENATE BILL 84
CASTING A WIDER NET FOR NET METERING

Someday, this age we live in - the Age of the Petrosaurs (whose range extends from Riyadh to Dallas to our own Enron-entangled state) - will be looked back upon with amazement by historians. We believe they will view bills like SB 84 as genuinely heroic contributions to the hope for a viable human future.

We do not know precisely which clean renewable energy technologies or sources will ultimately replace the fossil fuel sources now giving our poor planet a fever. But we know the illness will one day end, and long-delayed new technologies will replace the old. Decades ago, it seemed that solar photovoltaics would lead the way into the future. In recent years, wind power has become the leading clean energy source. Hydrogen may yet prove viable. Biomass is already used in Brazilian automobiles, as part of a mixed-fuel regime. California captures waste methane gas and uses it, doubly reducing global warming. We are glad to see this bill expand the roster of alternative energy sources that the state encourages, by qualifying them for the benefits of net metering. Who knows which way out of our polluted petroleum pickle will ultimately prove most promising? Better not to prejudge the answer, and open the doors instead to all qualified contenders.

Which is what this bill does. It is a small counterweight to the immense federal tax breaks and subsidies regularly shoveled into the furnace of the coal-oil-and-gas industry, but for whatever good it may do, let us ensure that this good is maximized. This bill would do just that.

A thought: can we include electricity-generating water wheels, installed alongside and into downspouts on buildings, as a qualifying clean energy source? Nobody has yet invented the home- or office-installed downspout water wheel generator yet, but why think small? Why not encourage it? It could make use of Western Oregon's gravity-driven rains as an (at least local) energy source. Maybe a legislative push would bring out the creativity of our Oregon inventors? (We know - leave well enough alone and hope SB 84 passes. But we had to ask.)

SENATE BILL 90
PLANNING TO SAVE SOME MONEY, WE HOPE

This bill would abolish the Capitol Planning Commission, and transfer its duties, powers and functions to the Department of Administrative Services. It was, not surprisingly, proposed by the DAS - but that does not mean it is a bad bill. In fact, we rather like it.

We are limited in our knowledge of Salem and local planning for the capitol mall section of the city, living as we do some ways away from the capitol. However, we think the need for a Capitol Planning Commission probably fairly small. The governor's residence is not reputed to be badly in need of repair or replacement. The buildings that comprise the capitol are not likely to be soon replaced, redesigned or in another way redone, and its parks are equally unlikely to be changed much. Perhaps the street grid could use a few more or a few less one-way streets, but the issue doesn't seem to agitate capitol residents much. In short, why have a Capitol Planning Commission at all?

Here is a bill that just might save some taxpayer money without sacrificing anything the state, its citizens - or the residents of Salem - really need.

SENATE BILL 95
EXPANDING THE CRIMINAL JUSTICE COMMISSION

This bill would expand the membership of the Oregon Criminal Justice Commission from 9 to 15 members. We will leave aside the question of what this commission does and how useful it is, and assume that what it does do is useful and worthy of doing. Our question is why, in expanding the membership of this commission, we can't be a bit more creative. As it is, the commission includes only, ahemmmm, the usual suspects.

Why include only representatives of the "agencies, entities and officials involved in the criminal justice system?" Why not include a former convict who is now serving the public interest by providing "scared straight" or similar education to the public, youth, youth offenders, first offenders and the like? Why not include one jail manager, warden, or other jail worker? Why not include an officer involved expressly in fighting methamphetamine and/or narcotics? Why not include a person who has organized a local citizen patrol? Why not a representative, for that matter, of the criminal defense bar, or someone from the Public Defenders office?

Maybe such folk already are members of this commission. Maybe not, we have to admit, we don't know. But we see nothing in the existing statute to mandate or even encourage this broader base of ideas, criticism and experience.

The point is not that there is anything wrong with including on such a commission people who serve in the agencies, etc. of the criminal justice system. But they are not the only people with knowledge of, and potentially ideas about, that system and how to improve it.

SENATE BILL 99
INVASION OF THE BODY SNATCHERS, 21ST CENTURY-STYLE

This bill would allow any "health care provider" - from local doctor or dentist to neurosurgeon to jailhouse physician - to "retain genetic information of an individual without obtaining an authorization from the individual or a personal representative of the individual" under certain conditions. How the doctor would obtain that information is not specified, but as every movie-goer knows, it could be gained from any tissue sample, from blood or urine to a fallen hair. This authorizes its covert retention; the law already, to a certain extent, approves its covert collection. We fear such information could be used for anything from identify theft to identity confirmation, medical research and treatment to covert cloning and genetic manipulation.

The conditions under which a medical provider could secretly retain genetic information are about as broad as one could imagine.

1. For "payment." A medical provider could retain a patient's genetic sample if the patient has not paid him. Since the provider can do so without notice or consent, the patient may never know what happened, even if he may wonder why he never got billed for that visit. Can the provider deliberately not bill the patient and, without notice or consent, take a sample at their next meeting? SB 99 says he can.

2. For "his own treatment?" This seems a red herring, inserted into the bill because it feels equitable. But how will a doctor use a patient's genetic data for his own treatment, when doing so requires specialized, costly equipment only a few biotechnology firms possess? Besides, isn't secretly taking something because we want it usually called theft?

3. For "health care operations." Now we get to the meat of this legalized invasion of the body snatchers. Could a provider, having covertly but legally gotten your genetic data, go into business with it, and be legally shielded from his theft? Would SB 99 allow him to sell it, or use it in a partnership with a technologically equipped biotech company?. Yes, if for "health care operations." That's pretty broad.

Ah, but there is a limit, passed in 2003. The law already limits who the health care provider can give that genetic information to. A provider can disclose genetic information, taken under SB 99 without consent or notice, only if he does so in accordance with ORS 192.520(3). Under that, a health care provider

"(3) May disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) To another covered entity for health care operations activities of the entity that receives the information if:

(A) Each entity has or had a relationship with the individual who is the subject of the protected health information; and

(B) The protected health information pertains to the relationship and the disclosure is for the purpose of:

(i) Health care operations as listed in ORS 192.519 (4)(a) or (b);* or

(ii) Health care fraud and abuse detection or compliance;

(b) To another covered entity or any other health care provider for treatment activities of a health care provider; or

(c) To another covered entity or any other health care provider for the payment activities of the entity that receives that information."*

* Two points about the above text. One is that the intent of (c) above is clear enough, even if the language itself is gibberish. The second is what ORS 192.519 (4) (a) and (b) refer to: "(a) Quality assessment, accreditation, auditing and improvement activities; and (b) Case management and care coordination."

The key to the mess SB 99 makes when combined with this existing statue is in the existing ORS approval of the transfer of medical information "for treatment activities" and for "payment activities," in (b) and (c) however ill-stated the later.

SB 99 combined with 192.520 allows the retention and transfer of genetic information - like, it appears, all other medical information - from virtually any health care provider to any health care provider if there is some sort of treatment proposed or some transaction between the provider with the genetic data and the provider that wants it.

The 2003 legislation was bad law, and now SB 99 would plunge our genes as well as our organs and illnesses through the door the 2003 legislation opened. There are dangers here we cannot yet imagine, yet we all know are present. The legislature should go back to square one, undo this mess and replace it with a coherent structure than respects personal privacy, our property rights in our own genes, and the normal rules about notice and consent. If we get this wrong - and the 2003 bill already has and SB 99 makes it worse - we may face unpredictable, vast and frightening consequences. Must we make Oregon the Wal-mart of stolen somatic samples and pirated personal genetic data, just to encourage biotechnology companies to locate here?