The 2013 Special "Grand Bargain" Session

The three-day special session of the Oregon legislature ended on October 2nd with the bipartisan passage of all five bills. The Governor called the session to secure more funding for our K-12 schools, colleges and universities, mental health, and senior services, all of which have been underfunded for so long.

The goal was to provide short term funding to these programs in the second year of this biennium, as well as to adjust the Public Employee Retirement System (PERS) and revenue to allow for more stable long term funding.

While I am passionate about finding sustainable funding for public education, health, human services, economic development, and infrastructure, the special session was frustrating for several reasons:

- We need comprehensive (rather than piecemeal) tax reform that provides fair, stable, and adequate funding to replace our over-reliance on income and property tax.

- I am alarmed about the growing gap between the wealthy and the poor - and the stagnant middle class - in Oregon and the US. We must strengthen the local economy *and* ensure that Oregonians have access to livable wage jobs, which this package does not do.

- Legislators and the public had little time to digest the 2013 special session bills. I appreciate that the Governor gave more notice for this session than the 2012 special session and that many concepts had previously been discussed. However, the bills were only published days before the vote, which prevented a thorough vetting of the details.

Despite a flawed process and package, I supported all bills except the GMO bill. With the backdrop of the federal shutdown in Washington DC, it was important to find common ground. While I have major reservations (see below), I was given enough assurances about potential changes to the GMO policy and business owner tax break that I ultimately felt the positives outweighed the negatives.

Below is a recap of the bills and why I voted as I did.

1) SB 861 cuts cost-of-living adjustments (COLA) for PERS retirees, while mitigating impacts on the smaller retirements. Passed the House 31–24, the Senate 22–7. **I voted YES.**

Background: As a result of PERS policies made long ago, the increasing lifespan of retirees, and the stock market crash in 2008, the unfunded liability of PERS has increased dramatically. School districts, colleges and universities, cities, counties and state governments are spending an increasing portion of their budgets to fund PERS. This has contributed to teacher layoffs, stagnant wages, furloughs, and higher tuition for college students.

To preserve PERS sustainability into the future, we passed SB 822 during the regular 2013 session. That saved $805 million in the current biennium by eliminating a tax compensation for out-of-state retirees who don't pay state income tax, by reducing the COLA on a tiered basis, and by postponing $350 million in employer payments to the PERS fund in hopes the fund would rebound as the economy does.

While schools, colleges, and public agency budgets would benefit from SB 822 during this biennium, they would face massive cuts in the next ('15-'17) biennium. This is due in part to the need to pay back the $350 million in postponed PERS payments, and to mandatory Kindergarten and Physical Education (bills passed a few years ago) in the next biennium. Pressure mounted to deal with the pending cuts now rather than wait for the 2014 or 2015 session.

The bill: The bill further reduces the annual COLA increase to 1.25% on benefits up to $60,000 and .15% on benefits above $60,000 – reducing the unfunded liability in the PERS system by a third over 20 years. To mitigate the effect on lower and middle-income retirees, recipients of $20,000/yr and below will receive annual checks of .50% COLA on top of the 1.25%, and those with benefits between $20,000 and $60,000 will receive checks of .25%. The $65 million for these payments over the next six years will come out of the PERS reserve fund.

The bill calls for an analysis by 2018 to determine the unfunded liability. The PERS board could then recommend to the Legislature that the COLA and/or supplemental payments be reduced or increased.

I hope the fund will recover quickly so that we can restore the full COLA for lower and middle-income retirees.

My vote: I voted YES with a heavy heart. I appreciate our public servants and the fact that they are not at fault for the unfunded liability. This COLA reduction will be particularly hard on low and middle-income seniors on fixed incomes. I had pushed for fairer ways to pair back PERS, i.e., further reducing the COLAs on higher income beneficiaries to provide more protection to those with smaller benefits, and adding a COLA per year worked.

I would have gone further on these fairness measures – and would support an overall cap on PERS benefits for a Tier 4, as California Gov. Jerry Brown did in 2012. I appreciate that the Ways and Means co-chairs amended the original bill to mitigate the impact on retirees with smaller benefits, and to direct the PERS board to explore adding a COLA based on years worked to compensate those who had worked many years at lower wages. While far from perfect, I felt we needed to pass the bill to rebuild the PERS fund without decimating our education and public sector budgets.

2) SB 862 reforms three PERS policies. Passed the House 54–1, the Senate 27–2. **I voted YES,** seeing them as common sense changes.

Removes Future Legislators from PERS to eliminate any real or perceived conflict of interest of legislators when they consider PERS bills. Future legislators will now go into the state's deferred compensation program. Only new legislators who are already in PERS will be able to remain in PERS, to avoid creating a barrier for public employees who want to run for public office.

Bars Payments in Lieu of Insurance Coverage from Being Calculated as Salary for PERS. This prevents the rare instances where employees have their employer-paid insurance premiums converted into salary during their final three years of employment, raising their PERS benefit.

PERS Distributions Subject to Garnishment/Attachment. The bill establishes conditions under which monthly PERS benefits or lump sum payments can be garnished for court-ordered restitution or for fines for a felony.

3) [HB 3601] raises $244 million in new revenue, reallocates money from reserves, and cuts taxes for some. Passed the House 36-19**,** the Senate 18-10. A supermajority of each chamber is required to raise taxes. **I voted NO at first, then changed my vote to YES.**

Given the need to contain PERS, I feel strongly that we need to contain costs and unfunded liabilities related to health care, and we need "shared sacrifice" from those who can most afford it. This bill contained many such revenue items, which I heartily endorse:

a) It gradually raises the cigarette tax to 15 cents/pack with the proceeds dedicated to community mental health. I had advocated for a much higher increase to discourage smoking and to raise more revenue to cover tobacco-related health care costs. Our current tax of $1.18 compared to Washington's $3 is woefully inadequate. While I welcome any increase, I will continue working to raise taxes on tobacco products.

b) It eliminates the personal exemption credits of $183/person for single filers with over $100,000 taxable income, or $200,000 for a joint filers. If PERS retirees sacrifice for the common good, so should all Oregonians who make over $100,000 as part of the "shared sacrifice."

c) It maintains the highest tax rate for corporations with more than $1 million of taxable income, with some of that revenue being directed to the Rainy Day Fund. Corporations with taxable income between $1–10 million were scheduled to have their tax rate drop 1%, but the rate will now remain 7.6%. With the tax burden having increasingly shifted from corporations to individuals over the past decade, this was a small but important part of the "shared sacrifice."

d) It converts the senior medical deduction (which was only accessible to seniors who itemized deductions on their taxes) to a subtraction, allowing thousands of new lower and middle-income seniors to get relief. The program will be *means-tested* for the first time, capping the subtraction at $1800 per taxpayer ($3600 for joint filers) and phasing it out for single filers with over $100,000 (couples with over $200,000) in taxable income. Oregon was the only state to have this senior medical deduction program, and the cost trajectory was enormous due to rising health care costs and the rising number of baby boomers. *Note that this bill does not change the federal or state deduction for extraordinary medical expenses.*

e) It increases the earned income tax credit (EITC) in year two of the biennium from 6% to 8% of the federal credit, for a $12 million additional credit. Given that our income tax begins on a lower income than in most states, this is a fair way to return dollars to working Oregonians with low wages. Research shows that additional dollars in the pockets of low-income Oregonians go directly into local economies.

Those are the portions of the revenue bill that I heartily endorse, and why - after years of attempts to raise the EITC and tobacco tax and reform the senior medical deduction - I wanted to support the bill.

However, the portion of the bill that lowers tax rates for certain agricultural companies that export products and on the "pass through" Schedule E income for business owners with S Corps, partnerships, or LLCs caused me to initially vote NO.

While I strongly support helping small business owners create living wage jobs, this is not a fiscally prudent, fair, or targeted way to reach those goals.

1) Lack of fiscal prudence: The Schedule E business owner tax break is expected to cost $38 million in the next biennium since it only starts in the last quarter (Jan 2015), resulting in a surplus for schools and senior services *in the short run*. However it is estimated to cost $200 million in the first full biennium of its implementation and climb to over $300 million in the fourth biennium, reducing the estimated net revenue from HB 3601 to $50-75 million per biennium.

If these estimates are low, we could end up with a *net loss in revenue* rather than a net gain from HB 3601. The "circuit breaker" that will automatically raise tax rates under certain conditions doesn't go into affect for four years; when it does, it potentially allows for a huge net loss before and after being triggered.

While there is a sunset on the circuit breaker after it is applied at the 4 and 8-year mark, *there is no sunset on the tax break!* There would have been a sunset had we voted on this after Jan 1, 2014, when a new law requiring sunsets on all tax breaks goes into affect. Without a sunset, legislative change to this tax rate requires a 3/5 majority, a very high bar. Thus, *I worry we traded one unfunded liability (PERS) for another.*

2) Lack of fair, targeted relief: I do not see it as the "targeted, small business tax relief" some call it, for the following reasons:

a) *It does not limit the tax break to owners of Oregon businesses:* filers with "material participation" in a business out-of-state can qualify for this tax break.

b) *It does not require the business owner to invest any of the tax break back into the business* by creating or retaining jobs, increasing wages, providing earned vacation or sick time, investing in capital expansion.

c) *It is not limited to "small" businesses,* but rather to businesses of *any size* that are set up with a certain legal structure; several truly small businesses told me they could not take advantage of this tax break.

d) *There may be a negative impact on the nonprofit sector,* because Schedule E filers who receive this preferential tax rate may not use Schedule A (itemized deductions for mortgages, charitable contributions, etc.), and thus have less incentive to donate.

e) *The tax break is available on the first $5 million in business income* to owners, many of whom are not the Oregonians who need "relief." Owners may pay a lower tax rate than their employees, potentially exacerbating the income and asset inequality that has been growing in our state and our country. Analysis of the revenue package by the Oregon Center for Public Policy heightened my concerns.

We made progress towards helping small businesses in the 2012 and 2013 sessions, and Treasurer Ted Wheeler has promoted several concepts that deserve consideration. If we invest $200-300 million in small businesses, how could we maximize our return? Because this tax break was not well vetted – part of the fallout from a compressed special session – it is an inefficient, "blunt economic development instrument" that may cost our state far more revenue than it generates.

So why did I change my vote from NO to YES?

The revenue bill fell three votes short, and the Speaker issued a "Call of the House" the first time since 2007 to keep all legislators on the chamber floor. I spent part of the next hour with the Speaker (whom I respect enormously), the director of the Legislative Revenue Office, and two representatives who were considering changing their vote with me.

Rep. Barnhart, who chairs the Revenue Committee, and Rep. Lively, who has spent much of his career addressing poverty through economic development, both shared my concerns about the tax break's inequity and fiscal risk.

As everyone waited in the Chamber, the three of us eventually came to a YES vote after receiving commitments from leadership, the legislative revenue office, and the Governor that the business tax cut will be closely monitored, and that we can work on refining and improving its cost control and accountability measures as early as February of 2014. I was heartened to hear that some Republicans shared the same concerns about the fiscal risk – indicating potential bipartisan support.

Given these assurances, I felt that the strong positives in the other revenue components justified moving ahead. **Of all the hard votes I've taken, this was the hardest.** I appreciate the kind words from my colleague, Rep. Dembrow, in his newsletter about our change in votes:

"What quid pro quo did (the Speaker) offer them in exchange? Will they be getting new highways in their districts or plum committee assignments or guaranteed passage of their favorite bills. No, none of that. Those three legislators are individuals of extremely high moral fiber. They opposed the bill for the best of reasons—their concerns about the policy and potential impact of the business tax cut. What brought them to yes was a strong commitment from the Speaker and the Governor that the tax cut would be closely tracked and mitigated further if necessary. I admire them for what they did."

4) HB 5101 appropriates $200 million to Oregon's public schools, community colleges, universities, mental health services, senior programs. Passed the House 54-1, the Senate 27-1. **I voted YES and enthusiastically support these investments.**

$140 million to education:

a) $100 million for K-12 next year: Portland Public Schools will receive $7.85 million and David Douglas School District will receive $1.86 million to hire teachers and paraprofessionals, restore programs, and provide after-school and summer interventions.

b) $25 million for Universities and $15 million for Community Colleges, allowing this year's tuition increase to be reduced or eliminated for Oregon's students, in some cases beginning this winter term.

$20 million for community mental health:

a) $5.8 million for Juvenile
b) $4.2 million for Adult/Crisis Services
c) $10 million to be determined in the 2014 session

This is the first time that mental health programs in Oregon will receive a dedicated, stable source of funding. In combination with the new access to mental health and addictions treatment required under the Affordable Care Act, these community-based programs will make an enormous difference in many lives.

$41 million for senior programs:

a) $10 million for Oregon Project Independence: This doubles OPI, which enables seniors to stay in their homes with support
b) $5 million for Elderly and Disabled Transit, which also enables seniors to stay in their homes and live independently
c) $26 million to be determined in the 2014 session

5) SB 863 bans local ordinances on GMO products, except in Jackson County where an ordinance already qualified for the ballot. Passed the House 32-22, the Senate 17-12. **I voted NO.**

The bill: Modeled after a bill that passed the Senate but failed to come to the House floor during the regular 2013 session, this version allows Jackson County to proceed with its planned referendum next May. Republicans added it to the package when the money match for "in-actives" in the PERS bill was removed. It should never have been part of a special session that focused on PERS and revenue.

My vote: I was against this bill during the regular session and remained so during the special session. Given how little we know about the long-term affects of GMO's and given increasing regulation in other countries, we need to be more diligent about protecting non-GMO farming, our food supply, and consumer choice.

While I believe that GMO's should be regulated at the state level, citizens should be able to vote on issues that affect their health and local economy *when the state fails to do so*. While trying to pass local ordinances is not the most effective way to regulate GMO's, the pressure of potential ballot measures is an important leverage to compel the state to develop thoughtful regulation – as we did with canola production this past session.

Although I regret that this bill became a part of the "grand bargain," it raised awareness about GMOs. Due to efforts by OLCV, Oregon Conservation Network, Oregon Environmental Council, Friends of Family Famers, Organic Consumers Association, Sierra Club, Oregon Tilth and many other concerned groups, legislators received thousands of emails from Oregonians in opposition to the bill.

As a result of this activism, the Governor agreed to create a workgroup to seek a statewide solution to regulating GMO's in our state. On the day before the vote he sent a letter to the Speaker and the Senate President, articulating his plans to pursue GMO labeling and ways to ensure that GMO seeds do not taint non-GMO crops.

I will continue to study the emerging research about GMO's and the development of statewide GMO policies.