

Oregon House advances controversial revenue bill

By **CLAIRE WITHYCOMBE**
Capital Bureau

SALEM — The state House of Representatives Friday narrowly passed legislation that would make it harder for businesses to qualify for tax breaks passed in 2013 as part of the so-called “grand bargain.”

The bill, which now heads to the Senate, puts new limits on a tax cut for certain business owners, and should it pass, is expected to raise nearly \$196 million in the next two years.

It’s a far cry from the major tax overhaul many Oregon Democrats called for this session, but after a stalemate over proposals to switch the basis for taxing businesses from income to sales two weeks before legislators must close the books, it now appears to be the session’s big tax vote.

After a nearly three-hour debate the measure passed with 31 Democrats voting in favor. All House Republicans and three Democrats voted against it: state Rep. Brad Witt, of Clatskanie; Rep. Teresa Alonso Leon, of Woodburn; and Rep. Caddy McKeown, of Coos

Bay. A fourth Democrat, Rep. Deborah Boone, of Cannon Beach, was excused.

Under current law, owners of S-corporations, limited liability companies or partnerships can choose to have income “passed through” to them from the business taxed at a lower rate, as long as the income they earn from the business is “nonpassive,” the business employs at least one nonowner, and the nonowner employee or employees do at least 1,200 hours of work in a year. By taking the lower rate, owners give up other deductions.

The bill the House approved Friday would limit eligibility for the lower income rate to seven sectors, including agriculture, mining and manufacturing. To qualify under the new bill, businesses would also need to have at least 10 non-owner employees, instead of one.

In short, the bill means fewer owners would be eligible to pay the lower rate, and so some of those removed from eligibility under the bill would pay higher income taxes.

By tweaking the cut as the

bill outlines, the state would collect about \$196 million more in taxes in the next two-year budget.

That’s a significant figure in light of a projected gap of about \$1.4 billion between revenues and expenses in the upcoming state budget.

That figure was partially closed by an assessment on health care providers passed by the legislature Wednesday, which is projected to narrow the gap by at least \$600 million, according to impact estimates.

Some in favor

Many Democrats who spoke in favor of the bill Friday portrayed the 4-year-old policy as hastily compiled and failing to meet its policy objective, which was to help the state’s small businesses create jobs.

Instead, they argued, the break benefited “scrubs and suits” — doctors and lawyers.

“We created yet another giveaway to the very wealthy,” said the bill’s carrier, Rep. Phil Barnhart, a Democrat from Eugene.

Democrats point to figures from the Legislative Revenue Office, which found that

in 2015, over 90 percent of beneficiaries made more than \$200,000 per year, and that more than 70 percent made at least \$500,000.

Rep. Janelle Bynum, D-Happy Valley, said Oregon’s economy was thriving before the tax break was passed in 2013.

“Why is small business thriving?” Bynum said. “It’s not because of this tax break.”

Conversely, many Republicans cast the legislation as a broken promise to the state’s small businesspeople.

Rep. Sherrie Sprenger, a Republican from Scio, said the law could advance the state’s “urban-rural divide,” and said the state would be hard-pressed to find a small agricultural business that employed at least 10 people year-round.

Rep. Carl Wilson, R-Grants Pass, appealed to legislators’ self-interest and said the tax would not be popular among voters.

“This is not going to play well in your district, you know it won’t,” Wilson said. “... I’m talking from Brooks to Portland, and from Grants Pass to Roseburg and Cottage Grove,

you’ve got a lot of constituents that are going to be damaged by this.”

For a period, the debate over the bill took a detour as legislators debated whether it required a simple majority or a three-fifths majority.

The distinction, trivial at first glance, is actually essential when it comes to the Legislature’s efforts to raise new taxes this session.

Under the Oregon Constitution, measures raising revenue require a three-fifths majority approval in both the House and Senate.

Democrats have a simple majority in both chambers, but are one seat shy of that three-fifths majority in both. So, assuming all Democrats vote for a revenue-raising policy, in order to pass, it needs at least one Republican signing on.

At issue Friday was whether the partial repeal of the tax cut qualified as “raising revenue.”

The debate over that question quickly turned philosophical.

“They call a tax rate cut an expenditure,” said House Minority Leader Mike McLane, R-Powell Butte, “As

if somehow the premise is that the government owns your money.”

But a legislative counsel opinion Thursday says otherwise.

“... We view (the bill) as adjusting the parameters of a tax benefit rather than enacting a new tax,” Legislative Counsel Dexter Johnson wrote in a letter addressed to House Speaker Tina Kotek of Portland.

And some Democrats suggested it was fiscally irresponsible to maintain what a spokesman for the House Democratic Caucus called a “run-away tax break,” or money that would otherwise be taxed and an amount that is projected to continue growing.

Kotek, in a speech toward the end of Friday’s floor session, said the policy did not have the “targeted effect” of incentivizing small businesses to hire more people.

“We’re not eliminating this break,” Kotek said. “We’re trying to fix it and make it more targeted.”

The Capital Bureau is a collaboration between EO Media Group and Pamplin Media Group.

Judge reverses key ruling in \$1.4 billion timber class action

Counties can’t seek financial damages

By **MATEUSZ PERKOWSKI**
Capital Bureau

A judge has ruled that counties can’t sue the state for financial damages, potentially undermining a \$1.4 billion class action lawsuit over state logging practices.

Linn County Circuit Court Judge Daniel Murphy has reversed an earlier ruling in the case, which held that Oregon’s sovereign immunity doesn’t bar counties from seeking such damages.

In his most recent decision Tuesday, Murphy has agreed with Oregon’s attorneys that counties — as subdivisions of the state — cannot sue the state government for money.

Murphy said he’s “well aware this interpretation contradicts” his earlier opinion, but he will provide the plaintiff counties with “the opportunity to re-plead their case in such a manner that is supported by the law if they can.”

“Like peeling a very large onion this case contains complex layers of legal issues and theory that can take time to unravel,” he said.

The judge has left open the possibility for the plaintiffs to seek an “equitable” remedy, such as an injunction or order that requires the state government to take certain actions without paying financial damages.

However, the counties

have repeatedly said they’re not aiming for Oregon to change its logging practices, but instead seek compensation for insufficient timber revenues.

The class action lawsuit was filed on behalf of 14 counties that donated forestland to the state government in exchange for a portion of logging proceeds.

The counties argue that a 1998 rule change emphasizes environmental and recreational values over timber harvest, thereby violating a contract that required logging to be maximized.

John DiLorenzo, attorney for the counties, said his clients may decide to recharacterize their complaint or seek clarification from an appellate court regarding sovereign immunity and other issues.

In the long term, such an opinion would provide a “road map” for the litigation, DiLorenzo said.

“Maybe we’re better off having clear declarations from the appellate courts on what the law is,” he said.

The EO Media Group/Pamplin Media Group Capital Bureau was unable to reach an attorney representing Oregon in the case.

Ralph Bloemers, an environment attorney with the Crag Law Center, said that Murphy’s latest ruling has effectively “torpedoed” the counties’ lawsuit.

“In essence, he’s granting the motion to dismiss for sovereign immunity,” Bloemers said, adding that he expected the state’s attorneys to refile a motion for the complaint to be thrown out.

Warrenton Kia applies for pass on fish passage

Comments accepted about parking lot expansion plans

By **KATIE FRANKOWICZ**
The Daily Astorian

The Warrenton Kia car dealership has applied for a fish passage exemption in a project to expand its parking lot.

The Oregon Department of Fish and Wildlife says the unnamed tributary this project effects eventually drains into the Columbia River via Youngs Bay, but is not important to fish passage. No fish appear to use the site, a department analysis states.

Fish and Wildlife is seeking public comment on the proposed exemption. Unless the department receives new information that would give them pause, the exemption request will be approved and Warrenton Kia’s plans to expand the parking lot will proceed, state officials say.

The state issues few such exemptions, said Greg Apke, the Fish and Wildlife’s fish-passage program coordinator. And when the state does issue them, the exemptions are rarely popular.

“Nobody likes these exemptions and I get that completely,” Apke said. But, he added, they are completely legal and viable when site conditions are appropriate.

The state rules are clear, he said. To qualify for the exemption, Warrenton Kia has to show that native fish wouldn’t benefit even if the stream was open to fish passage.

“The proposed project at the Warrenton Kia site undoubtedly meets this cri-

terion,” an analysis by Fish and Wildlife concludes, “due to the developed nature of the area, poor habitat and lack of fish at the project site, and no habitat available upstream.”

The stream affected by Warrenton Kia’s plans may have once been a tidal stream or channel, years before the area was developed. Now it is essentially a drainage ditch, choked with weeds and algae, that dips under roads and eventually hits a tide gate. If fish were interested in the stream, that tide gate completely blocks entry 90 percent of the time anyway, Apke said. The water in it now comes from runoff; it is not fed by stream channels.

“Habitat conditions are very poor, especially in the summer with very little or no flow,” the analysis states. “... Winter conditions would offer slightly better water quality, but habitat conditions overall would still be poor.”

Any proposed exemption must also pass muster with the state’s Fish Passage Task Force, which makes recommendations on whether the department should or should not approve a request for exemption.

For more information and for the department’s benefit analysis, visit www.dfw.state.or.us/fish/passage.

People will have until July 14 to submit written comments on the proposed plan. Comments or requests for additional information can be sent to Greg Apke, ODFW Fish Passage Program leader, 4034 Fairview Industrial Drive SE, Salem, OR 97303; or by email to Greg.D.Apke@state.or.us; or by calling (503) 947-6228.



Oregon Department of Fish and Wildlife

The culvert exit and ditch to be filled adjacent to Warrenton Kia was found to have poor water quality and habitat conditions.

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