Opinion

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EDITORIAL

Warner's retire plan is sensible

Oregon's Public Employees Retirement System — PERS — is riddled with problems.

The version of PERS that applies to employees of local and state governments and public schools hired before Jan. 1, 1996, is particularly problematic. It guarantees employees annual returns on their pension accounts regardless of the actual performance of the PERS fund. This has led to some retirees earning more in retirement than they did while working. It has also forced public agencies, including cities, counties and school districts, to pay an increasingly large portion of their budgets into PERS rather than spending those dollars on public services.

But occasionally a PERS provision has the potential to save public dollars. Baker City Manager Fred Warner Jr.'s proposal to retire from PERS at the end of 2019, but to continue working in that job for another year or so, is an example.

The benefit to Baker City in this arrangement is that after Warner retires from PERS, the city has to contribute less for his pension. That will save the city about $6,000 per year (Warner told councilors Tuesday that his initial estimate of $33,000 in savings was in error).

This scenario also gives the City Council ample time to search for Warner's replacement without having to appoint an interim manager.

The City Council didn't take action Tuesday, but it would be sensible to approve a one-year contract that keeps Warner on the job, and at a modest discount.

— Jayson Jacoby, Baker City Herald editor

OUR VIEW

Special session fiasco

Gov. Kate Brown missed an excellent opportunity when she declined last week to call for a special session of the Legislature to amend Senate Bill 1013, a new law that revises the crime of aggravated murder and tightens which crimes carry the death penalty.

In a classic example of unintended consequences, lawmakers passed the law during the last legislative session believing the new law would not be retroactive. That means they believed the law would only apply to crimes going forward, not to individuals already in prison facing a sentence of death.

As soon as the law passed, though, the Oregon Department of Justice said the law could very well apply to people already on death row, creating the possibility many of their original sentences could be modified.

Many law enforcement and state district attorneys never liked the bill to begin with and some lawmakers — including Sen. Bill Hansell, R-Athena — didn't vote for it. The dilemma the law created is a serious one and a great deal of confusion about the impact of the bill remains unknown.

There was enough gray area, then, to make a special session to revise the bill necessary and prudent. That the governor has declined to do that raises its own set of questions that voters should be able to get answers to.

The new law always left a lingering sense of unease to anyone committed to democracy in Oregon. That's because such sweeping adjustments to the criminal code should be decided by the people. After all, it was voters — not lawmakers — who originally agreed to amend the state constitution in 1984 to legalize capital punishment. Voters should make that difficult call because the ramifications of the death penalty are extremely serious and long-lasting.

On this bill lawmakers simply didn't get it right. They had the opportunity to do so but failed. The legislation, like so many others, was overshadowed by the big debate regarding the state's effort to create a byzantine law to address carbon emissions. The bill deserved more attention and it didn't get it, and now voters are left with few options other than to, once again, shake their heads at what is becoming more and more of a dysfunctional legislative system in Oregon.

The special session could have promptly, and effectively, addressed the issue, made the necessary modifications to the bill and been done with it.

Instead voters have another legislative mess to try to clean up.

Surely, we can do better than this.

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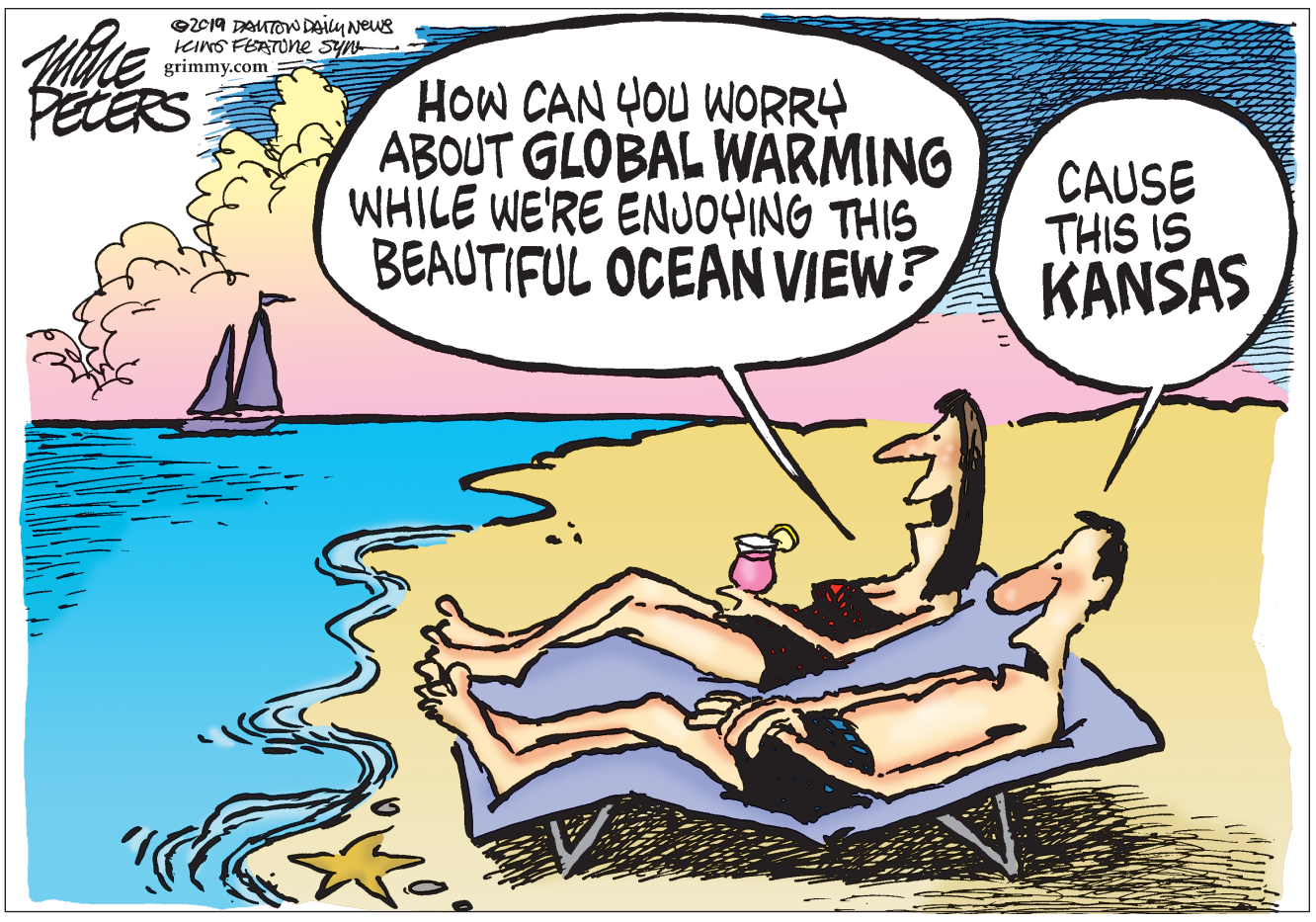

Your views

Idaho Power's spending doesn't justify building B2H

I am bothered by the recent article that ran in both the East Oregonian and the Baker City Herald. Written by Phil Wright, it bannered the headline, "B2H cost so far at $100 million." The article infers that, since Idaho Power started this project — without asking us the public, and, since they have spent so much so far, they now have the right to start building the project. This is a species of extortion. If I started painting your house behind your back and suddenly you found out, you'd obviously ask me to stop and in no friendly manner. But now imagine if I didn't stop but instead said, "Too bad, I can't, I've come this far, I'll have to finish." I imagine you'd be livid, even if I hadn't chosen purple.

And while I'm on the subject of paint, in 13 years of their $100 million scheming, Idaho Power plans to run their pylons directly in front of the BLM National Historic Oregon Trail Interpretive Center, because it is shortest and cheapest. The BLM lists this land as an ACEC (Area of Critical Environmental Concern). This, though, is not a concern of Idaho Power because in the recent Draft Proposed Order their mitigated solution would be — and I'm not making this up — to lower the pylons from 195 feet to 145 feet and apply a magic camo paint on the pylons, concluding the visual impact would be less than significant. (Their words not mine.) Nothing is mentioned about wires being seen.

Then again, perhaps you are right, Mr. Wright. Idaho Power's $100 million R&D spent so far is a good thing. Who else has invented invisible paint? I know it works because I'm told it's the same paint they painted all those fish ladders with on their dams down in Hells Canyon.

Whit Deschner
Baker City

Trump abusing discretion in California car emission case

JON HEALEY

President Donald Trump says he's canceling California's ability to enact tough vehicle emissions standards for several reasons, but none of them fit what Congress had in mind when it granted the state the ability to keep adopting clean-air rules in 1967.

This is just the latest example of the Trump administration abusing the discretion Congress afforded the executive branch — a flexibility intended to make laws more workable and adaptable to changing circumstances, not to let presidents try to subvert Congress' intent. The list includes numerous uses of "national security" exemptions to impose tariffs on trading partners and even close allies, to threaten to penalize Mexico for allowing Central American migrants to cross into the United States and to shift funds from military construction projects into a wall along the southern border.

Before you shout "DACA!" at your screen, allow me to note that Trump's predecessors also stretched the boundaries of federal statutes in pursuit of their agendas. But President Obama's Deferred Action for Childhood Arrivals is a good example of the sort of liberties he and other presidents have taken. DACA relied on the discretion granted by Congress to set enforcement priorities to carve out a class of people who would be exempt from deportation.

Trump's attack on California's ability to set emissions standards is something else entirely. Congress often preempts state and local laws on issues of national importance to avert a confusing patchwork of state requirements. When Congress enacted tailpipe emission limits in 1967, though, it recognized that California had already adopted regulations to try to clean its especially smoggy air. So the law preempted state rules on vehicle emissions, it also required the federal government to allow California to continue regulating, provided that its rules were tougher than the federal standards.

"The Secretary shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this title," the law states. Section 202(a) is the one calling on the federal government to set standards for emissions from new vehicles that cause or contribute to air pollution that "endangers the health or welfare of any persons."

Subsequent versions of the Clean Air Act retain this exemption with similar limits, guaranteeing California the right to adopt tougher tailpipe standards to address its air quality problems as long as they're in line with the overall purpose of the law.

So, what is Trump's justification for yanking the waiver? Here's what he tweeted last week:

The "safer" argument, which has been debunked, has nothing to do with air quality. And making cars cheaper, which Trump lauds as a way to increase sales and "JOBS! JOBS! JOBS!" is only tangentially related to cutting smog; his argument is that more people will trade in older, dirtier cars for new, greener ones if the prices are lower.

But nothing in the law requires California's standards to be more effective at cutting emissions than the federal government's. Instead, the law leaves it to California to determine if its standards "will be, in the aggregate, at least as protective of public health and welfare" as the feds' rules.

State officials suggested that the administration may try to use the Energy Policy and Conservation Act, which preempts state laws setting fuel economy standards, to block California's vehicle emissions standards. But those are two different animals — fuel economy standards were introduced to reduce U.S. dependence on imported oil, while the tailpipe emission limits are designed to combat smog and other forms of air pollution. California is using the latter to address greenhouse gas emissions too, which the Supreme Court has recognized as a pollutant qualified for regulation.

According to a report by Harvard Law School's Energy and Environmental Law Program: "Two federal district courts have held, for separate reasons, that the Energy Policy and Conservation Act does not preempt California's pollution standards, and that fuel economy standards can coexist with pollution standards. In addition, the Supreme Court has held that pollution standards and fuel economy standards are legally distinct and aimed at fulfilling different congressional purposes, noting ... there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

It's just appalling to see the administration try to stop a state with lingering smog problems and ambitious greenhouse-gas targets from reducing tailpipe emissions. Naturally, California officials pledged to fight; said Attorney General Xavier Becerra, "When you endanger our people, our economy, or our planet, we rise with the full force of the law behind us."

Again, this fits into this administration's practice of contorting the law to achieve its ends. And it offers an important lesson for Congress: Before lawmakers grant the executive branch discretion in carrying out a law, they need to consider how that discretion might be used by a president acting in bad faith.

Jon Healey is a columnist for The Los Angeles Times.

Letters to the editor

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