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Oregon: Progressive Agenda, Yet Facing Great Fiscal Risks

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Abstract

The 2018 midterm elections strengthened the Democrats' control of Oregon's state government. Governor Kate Brown won re-election with 50percent of the vote defeating moderate Republican Knute Buehler with 46.6percent of the vote. Democrats also increased their seats in both the House and Senate, leading to super majorities in both houses. Governor Brown and the Democrats in Salem have taken fairly strong progressive policy stances in 2017 and 2018, particularly opposing President Trump's immigration and marijuana policies, reinforcing the West Coast carbon-reduction pattern, and strongly supporting health care coverage expansion. With a booming economy and unemployment at record lows, the state seems to be able to deliver on its progressive agenda for the 2017-19 biennium, but funding progressive policies in the future will be a challenge for the governor for a variety of reasons. The fate of this progressive vision depends on five elements: (1) the continuation of the favorable economy and the corresponding revenue growth in the approaching budget cycle; (2) the ability to manage the ongoing taxing and spending structures that include major obligations for the Public Employees Retirement System (PERS); (3) the constraints of ongoing dependency on income taxes; (4) the vicissitudes of Trump era politics and policy with declining federal funds; and (5) continued public support for expansive public policies.

The Oregon Economy and Revenues in 2018-19

As 2018 ends, the Oregon economy looks healthy. According to the September 2018 *Oregon Economic and Revenue Forecast* published by the Oregon Office of Economic Analysis, "Between today and the next recession, Oregon is expected to continue to hit the sweet spot. Workers are being pulled back into the labor market, household incomes are rising and poverty rates are falling" (Oregon Office of Economic Analysis 2018). Unemployment reached a record low in 2017 and 2018. In June 2018 unemployment was at 4.0percent, while the state's annual increase in non-farm payroll was second in the country at 2.7 percent (Oregon Office of Economic Analysis 2018). Although the Metro area continues to lead and dominate the state's economy, southern and eastern parts of the state are finally emerging from the dark days of the 2008-2010 recession.

The strong economy has greatly increased personal income tax revenues, which generate about 85percent of the state's general funds. According to the Pew Trust for the States, Oregon's revenues increased by 16.5 percent in 2017, compared to a national state average of 6.5 percent (Pew Charitable Trusts 2018). Looking ahead, the state economist sees good revenue growth for the 2019-2021 budget, predicting another $148 million increase in March 2018 for the cycle on top of earlier predicted increases (Borrud 2017). Overall, the Oregon Office of Economic Analysis projects general fund revenues to grow by 11 percent in the 2019-2021 cycle and 10 percent in 2021-2023 (Oregon Office of Economic Analysis 2017). However, there are some concerns looming about the economy. For example, the September 2018 Oregon Economic and Revenue Report states (Oregon Office of Economic Analysis 2018):

> "…potential danger lurks around the corner with many forecasters pointing at the confluence of events beginning in 2020. At this time, federal fiscal policy will be a drag on economic growth and monetary policy is expected to have transitioned from accommodative, to neutral, and potentially even restrictive. Should this come to pass, a recession is likely to follow. However, this outcome is not a forgone conclusion."

Ongoing Taxing and Spending Structural Issues

While Oregon legislators may feel that things could not be better economically, they should be less sanguine about the state's bottom line, where both certain and possible problems lurk. The first and most visible worry in the state's budget picture concerns the Oregon Public Employees Retirement System (PERS). While the PERS investment fund has done well in the recent record-breaking climb in the stock market, reducing the $25 billion unfunded liability by $3 billion, the scale of the problem remains daunting (Sickinger 2018).

Although the grim long-term implications and immediate consequences of financing public employee benefits are undeniable, determining the specific size and importance of the shortfall between resources and future obligations is complicated. The "Unfunded Actuarial Liability" (UAL) is the shortfall between the investment fund, investment returns, and existing contributions and the projected benefit distribution over time. The UAL is influenced by employee retirement patterns and lifespans, inflation (since benefits are indexed to inflation), and returns on investment. These factors constantly change and lack perfect predictability. An example of this is how changing the expected rate of return on the fund investment alters the UAL. Seeking to be more fiscally prudent, the PERS Board has incrementally moved the estimated rates of return from the 8 percent annual return used for decades to 7.2 percent in 2016. The 2017 change from 7.5 percent to a 7.2 percent assumed rate of return increased the UAL by $2.3 billion alone (Oregon Public Retirement System 2017a). The extent to which the UAL is considered a problem depends on the changing numbers and the assumptions of the analyst. For example, a Tax Foundation study based on 2015 data rated Oregon as the second-best state for funding its retirement system, while a 2014 Urban Institute study rated Oregon at a "D" for its funding ratio (Urban Institute 2014; Scarboro and Walczak 2017).

However, Oregon has its own numbers on the matter, and they are grim. Fundamentally, the state is grappling with how much the roughly 925 participating entities should be investing in PERS to responsibly prepare for the increasing costs of their legal obligations to beneficiaries. According to the final 2017 report by Governor Brown's task force appointed to develop solutions to the shortfall of December 2016, the PERS system as a whole had a shortfall of $19.9 billion (about the size of the state's biennial general fund), or about $5,000 per Oregonian. This

means PERS has enough accumulated and projected revenue to fund 75percent of its anticipated legal obligations (Oregon Public Retirement System 2017a). While each participating government has its own debt ratio depending on its employment and contribution patterns, the increasing number of retiring employees requires participating governments to dramatically increase contributions to maintain an acceptable debt ratio.

According to the PERS Board, for the 2019-2021 budget cycle, PERS will need over $4.3 billion in contributions, an increase of over $1.4 billion from the 2017-2019 cycle (Sickinger 2017). For a specific example, Oregon State University's retirement contributions for its "Tier 1" employees (those who were employed before 1996 and who have the highest defined benefit formulas) amounts to 29.84 percent of those workers' payroll costs, and the total costs of retirement for the University is over $70 million for 2017 (Oregon State University 2017). The PERS liability is part of a larger cost driver for Oregon's public institutions, which Phil Keisling of Portland State University labels "Total Employer Compensation Costs" or "TECC." For Oregon State University, TECC would include the over $80 million in health care benefits as well as the retirement benefits (Oregon State University 2017). According to Kiesling, "By the 2021-2022 fiscal year, a typical local government will pay approximately $4,000 towards employee retirement obligations for every $10,000 it devotes for base salaries. Some – especially in the realm of K-12 school districts – are projected to pay even more than 40percent for this one TECC component alone" (Kiesling 2017).

The PERS situation is not easily resolved. From a simply budgetary perspective, the question is only about the mathematic of balancing benefits and contributions, but ethically and legally the problem is far more complex. Four aspects of the PERS evolution are notable. First, many participants, and all state employees in PERS do not actually pay into it directly. Faced with a severe recession and inflation, the Oregon legislature and many local governments struck a deal with unions to pick up the 6percent employee contribution towards retirement. This allowed the governments to avoid Social Security and other employer payroll expenses on the increased take-home pay going to the workers.

Second, in the 1990s when the stock market was truly booming, the PERS board chose to increase benefit levels for public employees, even though employee returns on their accounts were guaranteed at 8percent in poor investment years. Combined with the reluctance of the PERS board to force member governments to contribute at appropriate levels in hard times, this generous act engendered the slow-moving crisis. It soon became clear that the PERS system was out of balance, so politicians created a third aspect of the PERS issue: multiple categories of employees. To begin to limit the state's financial exposure, the legislature mandated that employees hired on or after January 1, 1996 would be categorized as "Tier 2" and their benefits were entirely dependent on market returns with no guarantees. Pressures for reform continued, however, and employees hired after August 29, 2003 receive retirement benefits through Oregon Public Service Retirement Plan (OPSRP) Pension Program. The OPSRP features no guaranteed payout and no COLA adjustments (Oregon Public Retirement System 2017b).

The three-tier system has inherent equity problems, but the PERS budgetary and legal context makes the situation difficult to correct. Reducing newer employee benefits did not adequately resolve the PERS fiscal situation and in 2006 the legislature passed yet another reform that rolled back and restricted some of the benefits for existing retirees and the workers in the Tier One system. At this point, the third aspect of the system emerged when the Oregon Supreme Court declared in the case of *Moro vs. Oregon* (2006) that, due to its contractual nature,

PERS created constitutionally-protected property rights and the state could not reduce benefits that have been agreed upon in contracts.

The PERS situation is basically unchanged since the *Moro* case. Seeking a solution, Governor Brown convened group to study the PERS situation. The group's report was released in 2017 and presents ideas ranging from privatizing the state universities to raising the liquor tax to absorbing diverse other funds (such as the school reserve fund) for this purpose (Oregon Public Employee Retirement System 2017a). No major action on PERS is being seriously considered in the 2018 short legislative session. The ethical, political, and legal limitations on restricting PERS benefits constrict the state's options, but the ideas of having workers pick up their share of the payments (which would not affect retirees) and carefully designed changes in the benefit calculation formulas still draw attention.

One direct solution to the PERS problem would be to find new revenues, but the 2016 rejection of a major corporate tax reform seems to demonstrate the limitations of that approach. Without a sales tax, Oregon's reliance on the personal income tax makes it prone to powerful revenue swings. To moderate the risks of its highly elastic general funds revenues, the legislature created two major "rainy day" funds that have accumulated significant money in recent good economic times. The "Oregon Rainy Day Fund" ("ORDF") is projected to have over $594 million at the end of the 2017-2019 biennium, while the Education Stability Fund (ESF) had a balance of approximately $608 million in 2017. The ORDF receives excess revenues remaining at the end of a biennium up to 1percent of the total appropriations, plus any specific allocations made by the legislature, while the ESF receives 18percent of the earnings from the Oregon Lottery. Analyzing the adequateness of these reserves in 2018, the Oregon Office of Economic Analysis stated:

> Such levels of reserve balances are bigger than Oregon has ever been able to accumulate, at least in the state's recent history. However, such reserves would barely be sufficient to withstand a typical recession's impact on state revenues, let alone account for the increase in public services and programs during downturns. That said, reserves of approximately 7 percent are generally accepted to withstand a medium sized recession (Oregon Office of Economic Analysis 2018a).

One final notable structural limitation on the state's revenues is Oregon's unique "2 percent kicker" policy. The state government does not receive the full potential benefits of the good times because if personal income tax revenues exceed projections for the two-year budget cycle by more than 2 percent, all money above the original projections is "kicked" back to the taxpayers. Intended to prevent the state from developing high levels of spending in good times that would require tax increases in bad times, the kicker is blamed by service advocates for preventing the accumulation of larger reserves and the failure to pay down long-term obligations such as with PERS. When Oregon taxpayers file their 2017 state income taxes, they will receive a personal tax reduction of 5.6 percent on their tax liability, which overall means the state is forgoing a total of approximately $463 million in this biennium (Oregon Department of Revenue 2017).

One small promising spot for Oregon budget makers is that marijuana revenues have exceeded projections; Oregon collected a total of $108.6 million in state and local taxes between January 4, 2016 and August 31, 2017. The annual projection for the 2017-2019 biennium is $204 million, assuming the federal government does not alter its prosecution program (Crombie 2017; Oregon Office of Economic Development 2018a).

Impacts of the Trump Presidency and Republican Congressional Control

The Trump presidency and Republican control of Congress create some very significant fiscal challenges and uncertainties for Oregon. One of the first tasks legislators confronted when they met in Salem in January 2018 was crafting a response to the 2017 Tax Cut and Jobs Act (TCJA), passed by Congress in December 2017. Among the many complexities of the sweeping law, three distinct concerns to Oregon are 1) the immediate impact on revenues due to the linkage of the Oregon tax code to the federal tax code; 2) whether the new federal code may alter the appeal of Oregon for investors and rich individuals; and 3) the possibly positive effects of the law if it stimulates growth in the long run. Oregon's income tax code incorporates sections of the federal code, meaning that a change in the federal law automatically alters state policy. One widely supported response to the TCJA by the legislature was to pass SB 1529, limiting the cost to the state of a federal tax break given to companies repatriating overseas profits. This change earned the state an extra $148 million and had bipartisan support. Despite some Republican push to devote some of the money to the state's troubled foster care program, the one-time money is being sent to the PERS fund (Hubbard 2018).

One change in the TCJA enables owners of private businesses that file under the personal income tax code can take a 20 percent "pass-through deduction," a provision that would automatically apply to Oregon income taxes unless the legislature changed the law. Seeking to prevent the loss of an estimated $200 million through this federal change, Democrat Senator Mark Hass successfully passed SB 1528 eliminating this provision from the state code. According to the liberal think tank, the Oregon Center for Public Policy, only 7 percent of the benefit of this pass-through change would go to the bottom 80 percent of the state's population, but no Republicans supported this bill and a few Democratic legislators opposed it as well (Ordóñez 2018). As of early March 2018, the bill is estimated to save the state $258 million in the current budget cycle that would have been lost without excising the federal change (Mapes 2018). SB 1528 also allows higher income households avoid the new $10,000 federal cap on deductions for state taxes by granting them a tax credit for donations to the Opportunity Grant Fund, which finances college scholarships. The fate of SB 1528 remains unclear, however, since Republican opponents threaten to take it to the court for violating the state's constitution by not passing with the 2/3 super-majority vote required for a tax increase. Democratic supporters say it is not a tax increase but a refinement of the code since the tax only retains funds that were already raised by the tax system (Borrud 2018). It is notable that the relatively conservative Tax Foundation supported SB 1528 due to the inequities and complicated nature of that provision of the TCJA (Kaeding 2018).

Beyond the immediate consequences of the 2017 federal tax reform, many Oregon leaders are concerned about the broader implications of the change for Oregon's appeal to investors and the wealthy in general. The question here primarily centers on whether the new cap on the federal tax deduction for state and local taxes ("SALT") at $5,000 per individual and $10,000 per couple would incentivize high-income earners to leave or avoid migrating to the state. This strategy for avoiding taxes was noted in a *Fortune Magazine* article in December 2017 (Derousseau 2017). One final point regarding the TCJA is that regardless of the equity and federal implications, most economists anticipate the law will stimulate the economy at least in the short term. Oregon's Office of Economic Analysis agrees, and estimates that future biennia should see at least a $200 million increase in revenues due to economic growth caused by the TCJA (Oregon Office of Economic Analysis 2018b).

The area where the Republican control of the federal government creates the greatest risk for Oregon is the threat it poses to federal support for Oregon's social services. No single issue defines Oregon's Democratic commitment to liberal values more than their effort to promote health care coverage. Through the creative use of waivers and a willingness to match federal funds, Oregon is among the top five states for health insurance coverage in the country, at about 95 percent in 2016 (Kaiser Family Foundation 2016a). This commitment is ongoing, as the state had a record number of enrollees in the state health insurance exchange at the start of 2018, nearly 50 percent higher than enrollment in 2014 (when Oregon's exchange wasn't functioning properly) and significantly more than 2015's enrollment, when Oregon first started using HealthCare.gov (Norris 2018). This high as a result of the state's deliberate effort to compensate for the Trump Administration's reduction of the enrollment period and outreach to support enrollment. However, Oregon's health care coverage does not come cheap, and is heavily subsidized by the federal government.

For the state budget, the significance of Oregon's health care commitment arises from its high dependence on Medicaid to provide health insurance for residents. At 24 percent, Oregon was among the top five states for the number of people receiving health insurance through Medicaid (which includes CHIP in Oregon) (Kaiser Family Foundation 2016a). This introduces a vulnerability to any changes in federal Medicaid funding. In 2016, Oregon spent $8.4 billion on Medicaid, with 64.5percent coming from the federal government, generally as matching money to state funds (Kaiser Family Foundation 2016b). Any change in federal spending, either in total amount (as a switch to lesser-funded block grants would do) or in matching percentages will directly alter Oregon's ability to sustain its current service levels.

Popular and Political Support for Progressive Programs

One notable event in this respect was the passage of a major infrastructure bill by the 2017 legislature in July 2017. The $5.3 billion transportation package included a gas tax increase which will phase in to be ten cents per gallon in eight years, higher taxes on new cars (disproportionately higher for fuel efficient and electric cars that do not use gas), a .1 percent payroll tax, and provisions to allow some toll roads (Friedman 2017).

A more direct indication of Oregonians' willingness to fund enhanced social services was the approval of Measure 101 in January 2018. The genesis of the Measure 101 was when the 2017 Oregon legislature passed a deal to increase taxes on health care providers and some insurance programs to raise revenues that would enable the state to leverage more federal matching funds and expand Medicaid coverage. Although a few Republicans voted in favor of the bill, other Republican legislators helped put the bill on the ballot through the petition referendum process. Presented with a chance to reject the approximately $320 million in indirect taxes that supported expanded health care coverage, Oregon voters supported the funding by 60 percent, perhaps influenced by how the "yes" position outspent their opponents by $3.2 million to $125,000 (Dake 2018).

There seems to be a zone of acceptable tax enhancement in recent years. In 2010 Oregon voters approved an increase in the top personal income tax rate (for those earning over $125,000 for singles and $250,000 for couples) by approving Measures 66 and also slightly raised corporate taxes with Measure 67. But the state remains reluctant for truly major tax reform, as evidenced by its 58 percent rejection of Measure 97 in 2016 that would have raised over $3 billion by taxing corporate sales by larger companies at a 2.5 percent rate (Borrud 2016). In the same election Oregonians elected a Democratic governor and strong majorities for the

Democratic Party in the legislature. However, the 2016 election demonstrates the conundrum facing Oregon's Democratic leaders: how to fulfill the job they were elective for without the necessary resources. Oregon Democrats seem committed to their "progressive agenda," but they must continue to nudge Oregonians to fund it.

Conclusion: What's Coming Up

In 2010, Ballot Measure 71 passed by a 2 to 1 margin in the November election and replaced the previous biannual legislative session process with an annual legislative process. The initiative mandated that legislative sessions in odd number years meet for 160 days and in even number years for 35 days. The 2018 "short session" lasted only 27 days with the Democrats putting off several controversial and potentially expensive policy initiatives until the 2019 session. These included a "cap and invest" proposal to reduce carbon emissions and identifying health care as a "right" in the state's constitution. The Governor and legislative leaders have made these a priority for 2019, especially the cap and invest proposal. House Speaker Tina Kotek announced at the end of the session, "Oregon's economic and environmental future depends on us working together to get a carbon plan in place by 2012" (Radnovich 2018). Similarly, Senate President Peter Courtney commented, "If you don't want to deal with the carbon invest issues and get it done then don't come to the 19 session" (Radnovich 2018 However, all House and Senate Republicans as well as many business groups and agricultural groups are opposed to this legislation and believe it will harm the economy, which will have negative consequences for the state budget (Danko 2018).

The Democratic-controlled House approved a bill on February 13 which would have made healthcare a constitutional right, but the bill never reached the floor of the Senate because it lacked sufficient votes at the time. The bill would have obliged the state "to ensure that every resident of Oregon has access to cost-effective, medically appropriate and affordable healthcare as a fundamental right." According to the National Conference of State Legislators, the legislation would have been unprecedented in the U.S. Many opponents, including all House and Senate Republicans, argued the bill would have made Oregon exposed to various lawsuits, and the League of women voters commented, "The State of Oregon has insufficient income to support its current responsibilities and cannot provide the added cost of healthcare coverage for all its residents at this time" (Associated Press 2018). Proponents of the bill say they will pursue a referendum on the bill if the legislature doesn't take action in 2019.

Both of these progressive initiatives could have enormous implications for the state budget and will provoke intense partisan conflict. As noted in Oregon's 2016 Western Budgeting paper, "the Democratic majority pursued very progressive policies in a state with a dysfunctional revenue system, making it a blue state in policy preferences that often finds itself in the red due to an unstable system of taxation." This may even be more true given that the November 2018 midterm elections have provided the Democrats super majorities in both houses and the governor's office.

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